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June 26, 2020

VIA EMAIL

Hon. Glenn A. Grant, J.A.D.  
Acting Administrative Director of the Courts  
Subj: Working Group on the Duty of Confidentiality and Wrongful Convictions  
Hughes Justice Complex  
P.O. Box 037  
Trenton, NJ 08625-0037

Re: ACDL's Opposition to the Proposed Changes in RPC 1.6

Dear Hon. Grant:

I am writing on behalf of ACDL-NJ, which includes over 500 criminal defense attorneys, to strongly oppose the adoption of a new exception to confidentiality in Rule of Professional Conduct 1.6. The exception ("the wrongful conviction exception") would require an attorney to disclose information provided by a client indicating that the client committed an offense for which someone else has been convicted.

Attorney-client confidentiality is a cornerstone of our justice system and must be preserved. Confidentiality allows a client to speak freely with his or her attorney with the full confidence that his or her communications will remain private. Unhindered, open, and candid *confidential* communication between a client and his or her attorney is critical to constitutionally effective representation. The wrongful conviction exception would require an attorney to warn a client that if the client provides information indicating that he or she committed a crime for which someone else has been convicted, the attorney would be obligated to disclose that information. This would create a barrier between client and attorney, impeding open and candid communications, and make effective representation in a case that involves circumstances implicating the exception virtually impossible. More broadly, it would diminish the Sixth Amendment right to effective counsel by eroding a client's confidence that communications will remain private, chilling a client's willingness to be candid and truthful with his or her attorney, and diminishing the attorney's ability to advise and represent the client.

The Working Group's Report indicated that only Alaska and Massachusetts have elected to adopt a wrongful conviction exception to RPC 1.6. According to the Report, there have been no instances reported where the rule has been applied and an innocent person has been freed as a result of such exception. Yet, the chilling effect upon the attorney-client relationship and communication is immeasurable. A person facing prosecution deserves a vigorous defense from his or her attorney, and the proposed rule change will prevent counsel from obtaining full information from the client to properly provide a defense.

As criminal defense attorneys, we understand the suffering of an innocent, wrongly incarcerated individual. However, attorney-client confidentiality is paramount in our legal representation and it should not be eroded, even to remedy a wrongful conviction.

The ACDL and its members strongly believe that this proposed rule change will substantially and negatively affect the lawyer's ability to provide a competent defense to their client. It is therefore submitted that RPC 1.6 should not be modified.

Thank you for the opportunity to express the concern of our members.

Respectfully submitted,

LINDA D. FOSTER  
President, ACDL-NJ

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