



March 26, 2015

Mr. Craig Holden
President, State Bar of California
180 Howard Street
San Francisco, CA 94105

Dear President Holden:

In advance of the inaugural meeting tomorrow of the State Bar's Second Commission for the Revision of the Rules of Professional Conduct, we wish to thank the members of the commission for their service and willingness to assist the California legal community through this endeavor to re-draft the rules that guide our profession. It has come to our attention that one of the preliminary matters that will be addressed at tomorrow's meeting is whether a procedure should be implemented by the Commission to permit an expedited review of certain rule petitions should a particular issue or request arise that requires priority consideration by the Commission and submission to the Supreme Court prior to the completion of the Commission's comprehensive review. We would like to express our support for the adoption of a procedure that would allow the Commission to expedite their consideration of rules that necessitate prompt action by the State Bar and the Supreme Court.

In December of last year, Professor Levenson made a joint statement on our behalf at an annual hearing of the State Bar that called for the urgent need to adopt an ethical rule similar to the obligations articulated in Rule 3.8 of the ABA's Model Rules of Professional Conduct. Rule 3.8 delineates the special responsibilities imposed upon prosecutors to disclose exculpatory information both prior to conviction as well as in the post-conviction setting. California is the only jurisdiction in the country that has not adopted 3.8(d) as an ethical rule to govern the timely pre-trial Brady disclosures by prosecutors. Forty-nine states, Guam, the United States Virgin Islands, and the District of Columbia have already implemented some version of Rule 3.8.

One of the objectives this Commission was tasked with in its Charter was to revise the current Rules with an aim to address "unnecessary differences between California's rules and the rules used by a preponderance of the states (in some cases in reliance on the American Bar Association's Model Rules) in order to help promote a national standard with respect to professional responsibility issues whenever possible." Given California's outlier status in its failure to adopt Model Rule 3.8, not to mention the on-going deprivation of criminal defendants'

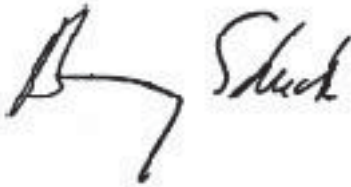
constitutional rights in our state, it is imperative that a mechanism for the fast-track consideration of certain rule petitions be implemented by this Commission.

It is our sincere hope that you and the rest of the rules commission will consider the adoption of Model Rule 3.8 as well as the implementation of a fast-track procedure for consideration of the rule. We would value the opportunity to discuss the merits of Model Rule 3.8 in more depth. We can be reached at by phone at 213-736-1149 (Ms. Levenson) and 212-364-5391 (Mr. Scheck) or by email at bscheck@innocenceproject.org and laurie.levenson@lls.edu. We thank you for your time and we look forward to working with this Commission in the future.

Sincerely,

A handwritten signature in cursive script that reads "Laurie L. Levenson".

Laurie L. Levenson
Professor of Law, Loyola Law School
David W. Burcham Chair of Ethical Advocacy

A handwritten signature in cursive script that reads "Barry Scheck".

Barry Scheck
Professor of Law, Benjamin N. Cardozo School of Law
Co-Director and Co-Founder, Innocence Project