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January 25, 2001

WSBA Disciplinary Board
c/o Julie Shankland, Clerk/Counsel
Washington State Bar Association
2101 - 4th Ave., 4th Floor
Seattle, WA 98121-2330

Re: In re Douglas Schafer; Public No. 00#00031

Dear Disciplinary Board Members:

This is my reply to Disciplinary Counsel Gray's response by letter to you of January 23, 2001, to my letter to you of January 16, 2001.

Ms. Gray chooses to disregard the explicit definitions of the terms "believes" and "reasonably believes" within the "Terminology" section of both the ABA Model Rules and the Washington Rules of Professional Conduct. The "Terminology" section is an integral part of the RPCs that follows the "Preliminary Statement" and precedes "Title 1. Client-Lawyer Relationship." It is clearly erroneous to interpret and apply rules without respecting the rule drafters' explicit definitions of the terms-of-art used within those rules.

In her letter, Ms. Gray again seeks to control just what information the Disciplinary Board members consider in this matter, as is her office's pattern. Please note that RLD 6.7(a) states, "The Board may additionally review any other portion of the record of the matter *including bar file documents and exhibits.*" The state supreme court will thoroughly review the entire case record, just as it did in judge/lawyer Grant L. Anderson's disciplinary case before declaring in 1999 that his "clear pattern of dishonest behavior" made him unfit for judicial office. The volunteer members of the Commission on Judicial Conduct in 1998 apparently had *not* thoroughly reviewed Anderson's disciplinary case record before forwarding it to the supreme court, for those members had *not* recognized Anderson's clear pattern of dishonesty (nor had Bar officials). Please be thorough in reviewing the record.

Ms. Gray objects to Board members reading Connecticut Bar Association Ethics Committee Informal Opinion 95-17, even though she calls it "worthless." I had discussed

that ethics opinion on pages 6 and 7 of my Response by Respondent to Bar Association's Counterstatement. It is the only authority I could find interpreting Rule 8.3(c) in the context of a client who had conspired with a dishonest law professional, as had Mr. Hamilton with lawyer/judge Anderson. That ethics opinion is cited and paraphrased at page 578 in ABA, *Annotated Model Rules of Professional Conduct* (4th ed. 1999), the editors of which apparently did not consider it "worthless."

Contrary to Ms. Gray's claim, the relevant part of Connecticut's version of Rule 8.3(c) is *identical* to Washington's version of Rule 8.3(c): "(c) This rule does not require disclosure of information otherwise protected by Rule 1.6." Paragraphs (a) and (b) of Rule 8.3 *require* Connecticut lawyers and *admonish* Washington lawyers to report dishonest lawyers and judges. In each case, paragraph (c) balances client confidentiality against the lawyer's reporting obligation. The ethics opinion recognizes that a client's participation with a dishonest lawyer should *not* shield that lawyer from being reported by another of the client's lawyers.

It is true that Connecticut is one of the many states that expressly permits a lawyer to disclose client information to rectify a crime or fraud that the client had furthered through the lawyer's services. But the reasoning and the wording of Connecticut Bar's Ethics Opinion 95-17 clearly indicate that Rule 8.3(c) should not permit a dishonest client to shield his dishonest lawyer, whether or not the reporting lawyer was unknowingly used to further their crime or fraud.

For any Board members who may be interested, the Connecticut Rules of Professional Conduct are posted on the Connecticut supreme court's Internet website at URL <http://www.jud.state.ct.us/faq/attorney.html#rules> of conduct. The Connecticut Bar Association's ethics opinions might be posted in full text on Lexis or Westlaw, but I simply requested Opinion 95-17 from the Connecticut Bar staff, and they promptly faxed it to me.

Thank you for considering this letter.

Very truly yours,

Douglas A. Schafer

cc: Christine Gray, Disciplinary Counsel
Shawn T. Newman, Co-Counsel
Donald H. Mullins, Co-Counsel