SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Disciplinary Proceeding Against DOUGLAS A. SCHAFER, an Attorney at Law.	Bar No. 8652 MOTION FOR COURT TO CONSIDER WRITTEN VIEWS OF NONLAWYER CITIZENS

1. Identity of Moving Party: Douglas A. Schafer, the Respondent Attorney, on my own behalf and on behalf of Michael B. Murphy and of Michele L. Parker.

2. Statement of Relief Sought: I request that the Court exercise its discretion under RAP 1.2(c) and its inherent and exclusive jurisdiction under RLD 7.1(b) to accept and consider the written views of Mr. Murphy and Ms. Parker, both being nonlawyer members of the general public, on the effect of this proceeding and its possible outcomes on the public's confidence in the legal profession and the judicial system.

3. Facts Relevant to Motion: Mr. Murphy is a nonlawyer and a principal of a family-owned construction company that has been a client of mine, as have he and his spouse, for approximately 10 years. Consequently, he has closely

Schafer Law Firm
950 Pacific Ave., Suite 1050
P.O. Box 1134, Tacoma, WA 98401
(253) 383-2167 Fax: 572-7220

observed this disciplinary proceeding and the events that led up to it. Of his own initiative, Mr. Murphy filed with the Court on October 19, 2001, an 11-page letter dated the prior day, a copy of which is attached as Exhibit 1, expressing his beliefs concerning the effect of this proceeding and events leading up to it on his confidence in the legal profession and the judicial system. This Court's Clerk by letter of October 24, 2001 (Exhibit 2) rejected his letter, informing him that the Court would ***only*** consider submissions by lawyers. Mr. Murphy's attempted e-mailing on February 1, 2002, of his letter to this Court's justices was met with an admonition by Mr. Merritt at the direction of the Chief Justice (Exhibit 3).

Michele L. Parker is a mother, wife, and homemaker, and a nonlawyer. I have represented her and her husband in certain matters for approximately three years, so she and her husband have taken an interest in this disciplinary proceeding and the events leading up to it. I believe that Ms. Parker has read much of the factual background information and other material about those events and the case posted on the Internet website that I maintain (http://www.DougSchafer.com). On her own initiative, she wrote, and personally delivered to the Court a copy for each of its members, an eight-page letter dated January 25, 2002 (Exhibit 4) expressing her views concerning the effect of this proceeding and events leading up to it on her confidence in the legal profession and the judicial system. This Court's Clerk then sent Ms. Parker a letter dated January 30, 2002 (Exhibit 5) at the direction of the Chief Justice informing her that this Court would ***not*** be reviewing or

Schafer Law Firm
950 Pacific Ave., Suite 1050
P.O. Box 1134, Tacoma, WA 98401
(253) 383-2167 Fax: 572-7220

considering the information that she submitted in her letter.

4. Grounds for Relief, and Argument: This Court has discretion under RAP 1.2(c) to "waive or alter the provisions of any of these rules [of appellate procedure] in order to serve the ends of justice." Such a waiver arguably could also be granted to serve the primary purpose of the lawyer disciplinary system that this Court has described as "to protect the public and preserve confidence in the legal profession and judicial system." *In re Felice,* 112 Wn.2d 515, 522, 663 P.2d 1330 (1983). Additionally, this Court has asserted in RLD 7.1(b) that it possesses "inherent and *exclusive* jurisdiction over the lawyer discipline and disability system" so its discretionary actions are not reviewable by any other authority (except to the extent that the electorate may later express its disagreement with the Court's actions).

This Court has recognized, in RLD 4.11(a) "the legal principle that lawyer disciplinary proceedings are neither civil nor criminal but are *sui generis* [Latin for *unique*]." Thus, discretion that the Court might exercise in a lawyer disciplinary proceeding to permit public input concerning the effect of the proceeding on public confidence in the legal profession and the judicial system would ***not*** establish unwanted precedent for public input in civil or criminal proceedings.

Concerning precedent, I am quite aware that in the closely related case of *Discipline of Anderson*, 138 Wn.2d 830, 981 P.2d 426 (1999) [Docket No. JD-

Schafer Law Firm
950 Pacific Ave., Suite 1050
P.O. Box 1134, Tacoma, WA 98401
(253) 383-2167 Fax: 572-7220

14], this Court received from the Commission on Judicial Conduct ("CJC"), and presumably considered in making its decision, a record that included many letters, newspaper clippings, and other documents indicative of public opinion that the CJC received *subsequent* to its disciplinary hearing, and even *subsequent* to the CJC's ruling, in its disciplinary proceeding concerning Pierce County Superior Court Judge Grant L. Anderson.

As additional precedent, I am aware that the appellate courts of this state have not been rigid in applying the mandate of RAP 10.6(a) that *amicus curiae* briefs be filed ***only*** by lawyers who are themselves admitted, or associated with lawyers who are admitted, to practice law in the state of Washington. As but one example, the *amicus curiae* brief filed in *Hawkins v. King County*, 24 Wn. App. 338, 602 P.2d 361 (1979), was signed only by, and identifies as the only lawyer involved, Robert H. Aronson, a law professor who has never been admitted to practice law in the state of Washington. The appellate court expressly adopted the dispositive policy arguments that were made by Prof. Aronson in his *amicus curiae* brief but, perhaps because he was neither admitted nor associated with a lawyer admitted to practice law in Washington, the appellate court never named him in the body or in the preliminary material of its opinion.

Several of the current members of this Court made public statements to the voters of this state in their last election that they would bring to their judicial positions "common sense," and one specifically assured voters that, "I will

Schafer Law Firm
950 Pacific Ave., Suite 1050
P.O. Box 1134, Tacoma, WA 98401
(253) 383-2167 Fax: 572-7220

listen." It might reasonably appear to citizens and voters that such statements, and statements that lawyer discipline is intended to preserve public confidence in the legal system, are inconsistent with this Court refusal to accept and consider responsible citizen input that addresses the effect of this proceeding on their confidence in the legal system. I therefore urge this Court to accept and consider the input of Mr. Murphy and Ms. Parker contained in their letters to the Court that are appended as Exhibits 1 and 4.

February 5, 2002 Respectfully submitted,

Doug Schafer

Douglas A. Schafer, WSBA No. 8652

CERTIFICATE OF SERVICE

I certify that I am providing this Motion to my co-counsel and that today I caused a copy of this Motion to be sent by first class mail, postage paid, to:

Christine E. Gray, Discip. Counsel
Washington State Bar Association
2101 - 4th Ave., 4th Floor
Seattle, WA 98121-2330

Mr. Michael B. Murphy
11030 56th St. NW
Gig Harbor, WA 98335

Ms. Michele L. Parker
1747 Sunset Dr.
Tacoma, WA 98465

February 5, 2002

Doug Schafer

Douglas A. Schafer, WSBA No. 8652

Schafer Law Firm
950 Pacific Ave., Suite 1050
P.O. Box 1134, Tacoma, WA 98401
(253) 383-2167 Fax: 572-7220

Michael B. Murphy

11030 56th Street Northwest
Gig Harbor, Washington 98335
Home 253.265.3684
Fax 253.265.2918 (non dedicated)
e-mail mbmurphy3@aol.com

18 October 2001

The Washington State Supreme Court
c/o C. J. Merritt - Clerk of the Court
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

Reference: The Matter of the Disciplinary Proceeding Against Douglas A. Schafer

The Honorable Justices of the Washington State Supreme Court:

If I was a lawyer and knew how to write, in substance and form, an amicus brief in the above referenced matter, I would. Since I am not a lawyer, I forward this letter for your just consideration. I believe that the Lawyer/Judicial disciplinary system is in place to protect us as individuals and as a society from abuses that lawyers and judges do occasionally commit while evoking "justice". I believe that the intertwined cases of Judge Anderson and Lawyer Schafer constitute such abuses. I believe that the system is on trial and needs to be disciplined rather than Lawyer Schafer. I believe that I, as one of the people protected by the Rules of Professional Conduct, have standing to address your court when those rules are being interpreted.

I am asking for the Court's indulgence and assistance procedurally. I have not delivered this letter to anyone except the Court. If for the Court to consider this letter, I need to serve or deliver it to the various parties to the matter, I am willing to do that. If the Court would be so kind as to let me know to whom the letter should be delivered, I will do it.

EXHIBIT 1

I feel strongly about the issue I am addressing. The emotion may be evident. I will apologize in advance for anything that the Court might consider hyperbole. Nothing herein should be considered condescending. That which might appear to be condescending is better characterized as indignation. Throughout this document I will use the terms "your Honors" and "Court". I realize that in the strictest sense the Justices sitting on the Supreme Court have changed from time to time. I have not distinguished the composition of the current Court from previous Courts.

I have followed this case as a result of knowing Mr. Schafer and Mr. Newman. I admire their propensity to stand up against overwhelming odds when it becomes necessary to countervail the vested structure of power. I idealistically believe that the just power to govern is granted by the governed. I further believe the governed retain the right to remove their grant through proper legal redress. When the political inbreeding of any branch of government challenges the grant of the governed, it is time for an intellectual revolution to rectify the situation. Your Honors, you are the last bastion of intellectual reason in this case.

However, this case has garnered enough national publicity to legitimately say that the governed are monitoring the outcome as a test of the legal system. As was the situation in removing Judge Anderson, your Honors are asked to protect our individual rights from being subjected to the unrestrained power of the Bar. You must create respect for the law, which has in large measure been destroyed by the ineffectual disciplinary system. You must provide the environment where rational self-government is possible.

The picture of Senator Sam Irwin lambasting John Ehrlichman, a lawyer, during the Watergate hearings for his erudite legal arrogance will forever be a defining image of a necessary response to lawyers out of control. A President, a lawyer by training, wagging his finger at me and saying, "[he] did not have sex with that woman" is another defining image of lawyers in America. The subsequent tortured rationalization by lawyers belaboring the meaning of word "is", is a call to intellectual arms for those of us that believe we are not being served by such nonsense. That having been said, I am cynical of lawyers policing lawyers.

Like Senator Irwin, my mother tongue is English; I was blessed with some common sense; and I know a conflict of interest when I see one. This then becomes the backdrop for my simple critique of the Office of Disciplinary Counsel (ODC) and the disciplinary process, which is recommending to you the suspension of Mr. Schafer's law license for a period of one year. I believe that it is up to your Honors to speak plain English, apply common sense, and sanction the inept system, which is corrupted by its own inbred, unethical failures.

Permit me to explore this case from the point of view of a mind not burdened with forever debating the definition of the word "is".

The ODC concluded that had Lawyer Schafer presented them with less information, in the case of Judge Anderson, the same result would have been achieved. There is a backhanded truth to this contention. The ODC failed miserably in its investigation of Lawyer Anderson. Thus, if Lawyer Schafer had presented them with no information, he would have achieved the same result the ODC endorsed up to the point where your Court removed Judge Anderson from the bench.

Of course this is not what the ODC meant. They meant to say that Lawyer Schafer did not need to involve Mr. Hamilton's statements of an impending fraud to prompt the ODC and the legal system to react. Putting linguistic and legal rationalization aside, the simple truth is that the ODC and other agencies did nothing of substance with the compelling information that they were given by Lawyer Schafer. The Commission on Judicial Conduct (CJC) ultimately recommended a wholly inadequate sanction (a four-month suspension from his bench) that your court rejected. Your removal of Judge Anderson in the face of the hand-slap recommendation of the CJC speaks volumes. The ODC and the CJC did nothing to the insider, Judge Anderson, who was clearly corrupt. In contrast, the ODC wants to suspend the outsider, Lawyer Schafer's, law license for exposing the insider crook. The message to society is clear. The treatment of insiders by the system subordinate to your court will be mild and unjust to the social order. The treatment of the outsiders who challenge their authority will be severe and unjust in comparison.

Perhaps it takes a simple mind, such as mine, to comprehend that less is not more. Your court had to remove Judge Anderson before the ODC was shamed into dealing with Lawyer Anderson. Then and only then did the ODC accept a stipulation, by the vested parties, that there was an "appearance" of impropriety by Judge Anderson, without ever addressing the violations of the Rules for Professional Conduct by Lawyer Anderson. It does not take a mental giant to understand that the weight of your removal of Anderson, with its additive effect, provided the "more" that forced the ODC to finally react. The ODC's contention that Mr. Schafer should have presented less information to convince the legal disciplinary world to do its job defies common sense when viewed in the historical context of this affair.

I have reduced the history of this affair to the discussion above since deliberation of the minutiae of details is quite irrelevant to the real problem that this case reveals. The orchestrated refusal of the disciplinary system to deal with Lawyer/Judge Anderson, perforce pitted Lawyer Schafer against the system itself.

We thus segue into what should be obvious to all: the conflict of interest, which the WSBA disciplinary system had and continues to have with respect to Lawyer Schafer. Their failure to recognize and accommodate that conflict of interest is, itself, a violation of the Rules of Professional Conduct (RPC). Bringing this to your attention is not just some esoteric intellectual exercise.

I direct you to the Preamble of the RPC, which reads in part:

> "The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and the capacity through reason for enlightened self-government. ... Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct. ... Within the

> framework of fair trial, the rules should be uniformly applied to all lawyers, regardless of the nature of their professional activities."

The legal profession has been quite successful in keeping a strangle hold on its own governance. The Bar makes the rules with little more than tacit approval of the Court. Though your Court is the final dispositive authority; the Bar wields immense power in the preliminary proceedings. It is, in large measure, a privatization of virtually an entire branch of government that I doubt the Founding Fathers contemplated. The legislative and the executive branches do little if anything to counterbalance this single focus (privatization) of power. This overwhelming or even absolute power, cultivated by the Bar, comes with an equally awesome responsibility. The words above recognize that power and responsibility. Unfortunately few mortals are up to the noble task imposed by the inspirational words they have written. Moreover, the haughty behavior of many of the mortals I will herein discuss defaces and insults the wisdom set down by the expressions above.

If you believe the words in the RPC preamble, society is the client when the disciplinary system is activated. Lawyer Schafer attempted, for the good of society, to activate the system with respect to Lawyer and Judge Anderson. When it was clear that the disciplinary system was acting in its "good old boy" glory, Schafer, in addition to questioning the honesty of Lawyer/Judge Anderson challenged the integrity of the disciplinary system.

The disciplinary system was not up to the challenge. Indeed the legal system was not up to the challenge. Consequently, it put its full weight and power against Lawyer Schafer in order to silence him. To exemplify the consequence of challenging absolute power, your Honors need only look to the sorry proceedings of Judge Thompson with respect to Lawyer Schafer. Judge Thompson's unconscionable and unilateral removal of Lawyer Schafer from the representation of his client when Judge Thompson took over the Barovic case from the dishonest Judge Anderson, defied any sense of procedure and process. Though Judge Thompson was ultimately overturned, his action damaged both society and the client that Schafer represented. This was an obvious, if

pathetic, attempt to protect the entrenchment of power within the network. One can only imagine the nature of the irrelevant ex-parte baggage carried into the courtroom by Judge Thompson as he faced Lawyer Schafer for the first time. Judge Thompson, without warning to Lawyer Schafer or his client, removed Lawyer Schafer from the case. Moreover, this was done without the benefit of a motion by opposing counsel. Judge Thompson was acting in obvious deference to his fellow jurist, Judge Anderson.

Lawyer Schafer was compelled to fight this injustice. Based on the legal system's reaction to Lawyer Schafer's audacity, society ceased to be the disciplinary system's client. The disciplinary system showed its mortal nature as it turned inward to represent itself. Thus, the disciplinary system, itself, became the client. The old adage that the lawyer that represents himself has a fool for a client certainly has merit in this case.

The RPC's should not be taken out of context. My daddy always told me that the run is not scored until you touch home plate. That was his colloquial way of informing me that the four corners of any document or concept must be considered and not just expedient excerpts used, for convenience, out of context. The language of the RPC provides the necessary guidance to your Honors to simplify this case to its essence. It recognizes:

> "In fulfilling professional responsibilities, a lawyer necessarily assumes various roles that require the performance of many difficult tasks. Not every situation which a lawyer may encounter can be foreseen, but fundamental ethical principles are always present as guidelines."

Like Lawyer Schafer, the ODC found itself in a situation not specifically foreseen but allowed for under the concept above. Unlike Lawyer Schafer the ODC failed to adhere to the fundamental ethical principles. If we assume that the lofty words of the RPC Preamble have meaning in the disciplinary system, then the ODC cannot discharge its duty to society while effectively representing itself, fending off the Schafer challenge. The ODC is thus in a position where RPC 1.7 (a) and (b) must be considered. At the outset, I do not trust the lawyers of the disciplinary system to make an unbiased judgment on the existence of their conflict of interest. I will weigh in as a member of

society in concluding that the exceptions to RPC 1.7 do not apply. Since the ODC has failed to see the conflict of interest it would never occur to them to disclose the conflict of interest to their client, society, even if such a disclosure would have been practical.

The RPC Preamble also recognizes the need for "uniform [application]" of the rules. Let me compare the application of the rules between the Anderson and Schafer cases. In the Lawyer/Judge Anderson case, the ODC failed to even suggest a reprimand prior to his removal from the bench by your court. Keep in mind that said removal was, in your words, for conduct that "clearly exhibit[s] a pattern of dishonest behavior unbecoming a judge". Prior to your Honors removal, the CJC could only find reason to sanction Judge Anderson for four months. The CJC had sufficient information to come to the same conclusion that you did, but as compared to your decision, failed miserably in its duty to society. Reasonable minds can differ. The disparity between your Honor's decision and the CJC's is too great to be considered reasonable.

We now come to the ODC recommendation for Lawyer Schafer. A global look at the ODC must conclude the suspension of Lawyer Schafer's law license for a period of one year is equal to their ignoring the transgressions of Lawyer/Judge Anderson. Even if you concluded that Schafer violated his duty to society by his actions (a conclusion I am totally unwilling to accept) the suggested punishment is wholly inconsistent and, thus, unequal with the disciplinary system's failure to deal with Anderson in their normal course of business. As you are well aware, the ODC only dealt with Anderson after his removal from the bench. The ODC did not deal with Lawyer Anderson in their normal course of business. The disconnect between the laudable words in the RPC preamble and the actions of those lawyers that failed their duty of equal application of the rules is - again - left to your Honors to correct.

I believe that if you read the RPC from the Preamble to its last word there is a consistency you do not find if you take its rules and words out of context. Rule 8.3 of the RPC provides the portal through which justice can be applied to this case. Some might say that Lawyer Schafer had a conflicting duty to both society and a client. The rules state he had a duty to report both judicial and lawyer misconduct. If you read the duty to

his client outside of the context to his duty to society, then you might mistakenly conclude that he did something wrong. Rule 8.3 is the rule that placed the duty on Lawyer Schafer to report the misconduct of a lawyer and a judge. Interestingly, the rule states at 8.3 (c) "This rule does not require disclosure of information otherwise protected by rule 1.6." What is significant here is that the rule does not prohibit such disclosures as it certainly could.

The permissive nature of Rule 8.3 should be viewed within the broader context of the full body of the RPC's. Like most citizens, I do not know much about the law and its overwhelming complexity. What I do know is that the law should exhibit the values of the society it claims to represent. On the one hand we have the principle of "innocence until proven guilty" as the anchor point for our criminal system. Within that principle it seems logical that a lawyer and a client must be insulated from judgment for the discussion of prior acts. In the civil arena, I can accept with more difficulty, the need for a similar insulation for discussions of prior acts. What I cannot accept, on the other hand, is that the greater good of society is served by mandating that a lawyer be forbidden from disclosing the future, immoral, dishonest, or illegal acts of a client, judge, or fellow lawyer. The rights of the individual client and society are not juxtaposed. For the rights of those two entities to be in opposition under the future act scenario there would have to be an unalienable right to commit a fraud. If we promote such acts by failing to stop them before the start or curbing their continuation, we have created a legal system where lawyers and judges are allowed to be crooks. In such a system, rights or "justice" are exclusive to the highest bidder.

What is done cannot be undone but its commencement or continuation can be blocked when need be. In Lawyer Schafer's case the width and breadth of the future illegal immoral act was not immediately apparent. When Lawyer Schafer disclosed the fraud, it was ongoing. Some might argue that at the time of disclosure, the fraud had morphed to the status of a prior act. This is a distinction that only a lawyer that struggles with the meaning of the word "is" could appreciate. The RPC's place a societal duty on Lawyer Schafer to report the misconduct of the Lawyer and the Judge. Rule 8.3 is permissive, not restrictive, with respect to his lesser duty to his client Hamilton. The seminal

question is: Should the continuing and future turpitude of a client be protected at the expense of society's confidence in the legal system?

As observed by this "legal commoner" the actions of the client central to this situation stir well defined notions of turpitude. Judging him for his prior acts is not at issue. Protecting us from his future acts is. Mr. Hamilton should not have an expectation of or deserve confidentiality for a future dishonest act. Rule 8.3, through its permissive nature, leaves it to the conscience of Lawyer Schafer to decide the hierarchical order of his duties. The RPC Preamble again provides guidance: "The Rules of Professional Conduct point the way to the aspiring and provide standards by which to judge the transgressor. Each lawyer must find within his or her own conscience the touchstone against which to test the extent to which his or her actions should rise above minimum standards."

Society would not have been served by a failure of conscience in this case. When the pending and/or continuing fraud was going to involve[d] not only a member of the Bar but also a judge, the expectations of society clearly usurp any expectation of confidence that Mr. Hamilton claims for disclosing the nefarious plan. This case has always had an inextricable tie between Hamilton and the "dishonest" Lawyer and Judge Anderson. Lawyer Schafer, most likely, was the only one who could have made the payoff connection between Hamilton and Anderson. Any disclosure by Lawyer Schafer of Judge Anderson's dishonesty must ultimately reveal that Lawyer Schafer came to that conclusion by way of the Hamilton disclosure of the pending fraud. Hamilton's Cadillac payoff was the quid pro quo alluded to in Hamilton's revelation to Schafer. Thus the stage was set for Schafer to engage his conscience as mandated by the RPCs.

Lawyer Schafer rose above his minimal duties under the RPC's at grave personal and professional risk. He performed his role as conservator of society, without regard to his personal risk. Since any disclosure that he made was rooted in the statements that Hamilton made to him, Lawyer Schafer had to make a choice. He could say nothing; he could say something without revealing the truth about how he came to the knowledge; or he could reveal what he knew and why he new it - guts, feathers, and all. The first

option would violate his duty to society. The second option would be the act of a coward bent on self-preservation at the expense of the truth, which, would certainly be discovered, in a reasonable investigation. The third option was the only moral and ethical option available to Lawyer Schafer and Lawyer Schafer opted for it.

Justice is not served if Mr. Schafer is sanctioned for protecting society from a crooked judge. From the RPC:

> "Without [justice], individual rights become subject to unrestrained power, respect for law is destroyed, and rational self-government is impossible"

And

> "Lawyers, as guardians of the law, play a vital role in the preservation of society."

The apparent conundrum between the interests of society, the interests of the Bar and its disciplinary system, and the interests of an individual is a creation of the unrestrained power of the Bar. The legal system has made the choice to be both the writer and arbiter of its rules. The rules ostensibly are in place to protect society. Alas, the rules too often protect the writers and arbiters from society. It is the actions of the legal system, not the words of its mission, that society will judge. If the legal system is not up to the task, then society must assume control of the policing function to protect itself.

To put it succinctly and in plain English, I have been and will be a client of Lawyer Schafer. I do not fear him. I consider Lawyer Schafer a profile in courage. I have faith in Lawyer Schafer. I have faith in a legal system, which through lawyers like Schafer, rises above the minimum standards set forth in the RPC. I have faith in Mr. Schafer. I consider him worthy of emulation both as a lawyer and a person.

I do not have faith in the disciplinary arm of the bar and ex-parte back scratching that protects crooked clients, lawyers, and judges. I fear the unrestrained power of the Bar and its self-serving tendencies. I have lost respect for the law as a result of the pontifications of the likes of Nixon, Clinton, Ehrlichman, Dean, Mitchell, and our own CJC and ODC. Your Honors have proven to be above such claptrap in the past.

Physicians heal thyself. Please restore the heath and integrity of or lawyer/judge disciplinary systems.

Your role is now to protect society by delivering justice and restoring the public's confidence in the system. Your ruling should exonerate Lawyer Schafer. It should applaud his courage. Most of all it should admonish, in no uncertain terms and in plain English, the failure of the subordinate disciplinary system to protect society from the evil within the legal system.

Thank you for the opportunity to address the Court.

Sincerely,

Michael B. Murphy

C. J. MERRITT
SUPREME COURT CLERK

RONALD R. CARPENTER
DEPUTY CLERK/CHIEF STAFF ATTORNEY

THE SUPREME COURT
STATE OF WASHINGTON

TEMPLE OF JUSTICE
P.O. BOX 40929
OLYMPIA, WA 98504-0929

(360) 357-2077
e-mail: supreme@courts.wa.gov

October 24, 2001

Mr. Michael B. Murphy
11030 56th St. Northwest
Gig Harbor, WA 98335

Re: Bar No. 08652 – Douglas Schafer

Dear Mr. Murphy:

Your letter requesting amicus curiae status was received on October 19, 2001. Rule of Appellate Procedure 10.6 requires that an amicus brief be filed by an attorney authorized to practice law in this state. Therefore, no action will be taken on your letter. A copy of Mr. Murphy's letter is enclosed for counsel.

Sincerely,

C.J. Merritt
Supreme Court Clerk

CJM:gm
cc/enc.

Mr. Douglas Schafer, Attorney at Law
Ms. Christine Gray, Disciplinary Counsel
Mr. Donald H. Mullins, Attorney at Law
Mr. Shawn Timothy Newman, Attorney at Law

EXHIBIT 2

Subject: email to justices
Date: Mon, 4 Feb 2002 11:52:22 -0800
From: Jerry.Merritt@COURTS.WA.GOV
To: Mbmurphy3@aol.com

The Chief Justice has directed me to inform you that the email which you directed to the justices will not be considered by the court for the reasons previously given to you by me. You should not communicate directly with the justices about a pending case.

Jerry Merritt
Supreme Court Clerk.

-------- Original Message --------
Subject: Citizen Access to the Washington State Supreme Court
Date: Fri, 1 Feb 2002 12:54:25 EST
From: Mbmurphy3@aol.com
To: j_g.alexander@courts.wa.gov,
j_b.bridge@courts.wa.gov,j_t.chambers@courts.wa.gov,
j_f.ireland@courts.wa.gov,j_c.johnson@courts.wa.gov,
j_b.madsen@courts.wa.gov,j_s.owens@courts.wa.gov,
j_r.sanders@courts.wa.gov,j_c.smith@courts.wa.gov

Dear Justices:

Included below as e-mail text is a copy of a letter that I filed with the Court on 19 October 2001. I have a timed stamped copy of the letter. The Clerk of the Court has refused to present the letter to you claiming that it is an "Amicus Curiae" brief and citing court rules that exclude me from having my voice heard because I am not a lawyer. I will leave the exclusionary nature of the rule together with the equal protection arguments for a later date. I am asking you to consider my input to the Court under the pragmatic concept that when citizens have no voice in the proceedings of their government they lose confidence in the integrity of government. The Courts, representing one third of our governmental triad, cannot afford to have the citizens lose confidence it its integrity. Thank you for your just consideration.

Michael B. Murphy
11030 56th Street NW
Gig Harbor, WA 98335

(note: I encourage you to retrieve the letter in its original form. The e-mail version loses some of the document formatting which makes it somewhat more difficult to read.)

EXHIBIT 3

January 25, 2002

The Honorable Justices of the Washington State Supreme Court
Temple of Justice
PO Box 40929
Olympia, WA 98504

Reference: The Matter of the Disciplinary Proceeding of Douglas A. Schafer, an Attorney at Law

Honorable Justices of the Washington State Supreme Court:

I am writing to petition my government to protect and serve justice and justice alone in the Matter of the Disciplinary Proceeding of Douglas A. Schafer, an Attorney at Law. I am an ordinary citizen. My husband and I are clients of Mr. Schafer's and are eyewitnesses to his professional integrity. We will be directly impacted by your court's decision. We will become victims if your court takes away Mr. Schafer's license to practice law. We specifically chose Mr. Schafer as our legal counsel because he had the honesty and courage to report a corrupt judge. We decided that the very lawyer we could trust was the lawyer who did not tolerate corruption within his profession. Mr. Schafer's ethics and integrity are beyond reproach. All that we have seen and read in the disciplinary cases of Schafer and Judge Grant Anderson and all that we have witnessed in our own guardianship/trustee case with Schafer as our attorney only confirm our rock-solid trust in and admiration for this most ethical guardian of the law.

On the other hand, what we have seen in the Washington State Bar Association's handling of both disciplinary cases, has caused us grave concern regarding the integrity of the Office of Disciplinary Counsel. We have serious doubts about whether the legal profession is capable of policing its own waters and whether it has society's interest at heart and is willing to protect the public from the influential corrupt members **within** the profession. While promising to chart us the safest course because they are best equipped to maneuver through legal waters, an abundance of lawyer jokes remind us landlubbers that some of the worst dangers on the high seas are plundering lawyers who do not navigate by a moral compass. An influential judge especially, has a tight-lipped crew by virtue of his influence and power, and a crooked one can manipulate his crew into silence or looking the other way. Lawyers are in the best position to spy and stop judicial corruption but if an honest lawyer is fool enough or courageous enough to be the "loose lip" that sinks the "judgeship", he endangers his reputation and is at grave risk of being pulled down by the sinking wreckage.

The sacrifices and toll that Mr. Schafer and his family have had to pay for his reporting of a corrupt judge is not a price that any upright citizen should have to pay for telling the truth. Mr. Schafer, with courage and fortitude, has helped to protect society from an unjust judge and has helped to protect the innocent from the harm created by a judge who was "for sale" and bent on unjust gain. The ODC's persecution of Mr. Schafer has roused us to anger and to action. This is why we plead with your court to have our voices considered. In a regular trial would not the court hear from the victims or those directly impacted by the court's decision before the court passes sentence? .

The Preamble to the Rules of Professional Conduct states, "Not every situation which a

EXHIBIT 4

lawyer may encounter can be foreseen, but fundamental ethical principles are always present as guidelines. Within the framework of these principles, a lawyer must with courage and foresight be able and ready to shape the body of the law to the ever-changing relationships of society." Furthermore, the Preamble states, "Each lawyer must find within his or her own conscience the touchstone against which to test the extent to which his or her actions should rise above minimum standards."

What needs to be considered is whether Mr. Schafer's actions in reporting a corrupt judge who was a corrupt fiduciary who conspired with Schafer's corrupt client for sordid gain, were actions stemming from Schafer's conscience and consistent with truth and honor? Were Mr. Schafer's actions consistent with his personal and professional integrity and his duties as an upright citizen and a guardian of the law? Does a corrupt client who uses his lawyer's services for unjust gain have a right to subjugate and hold hostage that lawyer's conscience for his own dishonorable ends? Do the rules of professional conduct really bar a lawyer from his conscience and bar that lawyer from the bar who follows his conscience, seeking to prevent or rectify the harm done by an unjust judge in league with the lawyer's corrupt client? Apparently the Office of Disciplinary Counsel believes so for they stated in their Disciplinary Board Order that, "Our judicial system cannot allow lawyers to personally determine when they are morally required to disclose a client's secrets or confidences." If a lawyer cannot personally decide what is morally required of him, then how, pray tell, can he use his conscience as his touchstone to decide the extent to which his behavior should rise above the minimum standards and why then would that lawyer need courage and foresight for helping to change the body of the law?

Confidentiality rules, whose wording and interpretations are forever changing, are not immutable and fixed, like the laws of conscience and morality. Confidentiality rules which are so narrowly construed that they are used to cloak and cover up deceit and deceivers; wrongdoing and wrongdoers; or crimes and criminals; and which really serve as a guise to protect attorneys from the lawsuits of victims harmed by the attorney's silence instead of safeguarding the innocent, providing redress for the victim(s), and protecting those who bring the misdeeds and misdoers to light, are rules which sacrifice the spirit of the law for the letter of the law. Rules used in this way to defend the indefensible are rules that do not align themselves with truth and honor. Where the spirit of the law is sacrificed for the letter of the law, justice falls victim. Justice cannot be allied with a corrupt throne.

The rules of confidentiality are not the highest law to be considered here. They are subservient to and should not be so construed that they become impediments to justice and tools for injustice. The American Bar Association's argument and the argument fostered by Christine Gray of the ODC is that without lawyers' strict adherence to the confidentiality rules, clients would not fully confide in their attorneys and attorneys would not be able to give their clients the best advice or have a chance to dissuade them from wrongdoing. Christine Gray, ODC, further asserts that Mr. Schafer's legal interpretation of the crime-fraud exception listed in RPC 1.6 is "baseless." (p 40, Answering Brief of the Washington State Bar Association, Public No. 00#00031) There is, in fact, much argument in the great debate over the interpretation of confidentiality rules and how the exceptions are to be applied, which challenges the validity and reach of the bar's

assumptions and Gray's assertions. States Professor of Law, New York University, Harry I. Subin, "_if the client knows that his confidences can be divulged if he acts on his illegal intent, he might be deterred from doing so." (p19, *The Lawyer As Superego: Disclosure of Client Confidences to Prevent Harm*, 70 Iowa Law Review 1091, July 1985)

The changing history and focus of the confidentiality rules; the changing, parsed wording and exceptions listed in them, and the variations in allowances from state to state, are clear evidence that the confidentiality rules are inconsistent and do not deserve such narrow, rigid, and strict adherence, where such adherence protects the malefactors and allows the innocent to be harmed and plundered. Writes Professor of Law Subin (p22, *The Lawyer As Superego: Disclosure of Client Confidences to Prevent Harm*, 70 Iowa Law Review 1091, July 1985):

> At the heart of the rights-based defense of strict confidentiality is the proposition that access to counsel is essential to the preservation of individual autonomy. n343 Individuals obviously need professional assistance to preserve their legal rights, even those "rights" which, if vindicated, will cause disproportionate pain to others relative to the right-holder's gain. n344 The attorney-client privilege is, of course, based precisely upon this view. But the advocates of strict confidentiality have espoused clients' rights far beyond those which the privilege affords. They would protect bad faith as well as good faith communications; and they would prohibit disclosure, rather than simply prohibiting the use of disclosed information. (Emphasis mine)
>
> [*1162] Much can be said in support of protecting communications intended to safeguard legal rights. Nothing can be said, however, for a person's "right" to use an attorney to aid in the pursuit of an unlawful goal. Nor does preservation of individual autonomy require protection of confidences in such situations. Yet the advocates of strict confidentiality have taken precisely this position. This is clear under the Model Rules, which all but ignore the crime or fraud exception that has been developed over the centuries as part of the attorney-client privilege. The crime or fraud exception exists because, as the courts have repeatedly said, the ends of justice are not served by protecting the confidences of persons who would enlist the attorney as an accomplice in crime. The absolutists' rejection of the exception compels them to defend the ludicrous proposition that to preserve the individual's access to the legal system, the individual must be protected against disclosure of his attempts to subvert it. n345 The client may have the "power" to subvert the process, but surely has no "right" to do so. (Emphasis mine)

Integrity is a plumb line and conscience the touchstone. Actions consistent with truth and honor will fall true to the plumb line with consistency--for that is the nature of integrity--and with openness because there is nothing to hide. Actions not consistent with truth and honor will bear the marks of inconsistency and secrecy--if tracks can not be hidden in one way, then a different route will be tried and if one game plan does not achieve the desired ends, perhaps a newly revised game plan will.

Examining a person's professional history yields valuable information about that person's values, code of conduct, and state of mind. Consider and examine the actions, words and professional history of Mr. Schafer. Look at the actions, words, and history of the Washington State Bar Association's Office of Disciplinary Counsel. Whose actions and statements display an openness and an amazing consistency of purpose? Whose actions and statements have been all over the map, backtracking over previous actions and statements, and closed to outside scrutiny? Whose actions, statements, and history fall true to the plumb line of integrity? Did these actions stem from the lawyer's conscience? Did the lawyer use this touchstone to guide his decisions?

When one looks at the professional history of Mr. Schafer, prior to and during this disciplinary case, what emerges is a consistent purpose and pattern. What can be seen is a crystal clear portrait of an ethical lawyer who charts his course with a moral compass, driven by his conscience, his sense of fair play, and his desire and duty to help and serve his fellow man.

In 1991, Doug Schafer, in an article entitled, Self Interest Poisons Professionalism, wrote: "I submit that there is an additional force at work in the decline of professionalism: the growing preoccupation with our individual self-interest. As lawyers we are increasingly making judgments based upon, or excessively influenced by, personal and firm economics rather than traditional professional notions." He further stated: "What can we do to change? Remind ourselves regularly that our primary goal should not be simply the same as that of every business -- to make as much money as possible -- but to serve our clients and the public. With that as our collective focus, I am confident we will witness a resurrection of professionalism." (p8, Puget Sound Lawyer, Spring Issue 1991)

Schafer's belief that lawyers needed to focus more on serving the public and less on serving themselves evidenced itself in his successful 1996 crusade to reform guardianship practices in Washington State. In 1995, when Schafer saw abuses in the system for appointing guardians ad litem to represent elderly and incapacitated people, he prepared and sent a pamphlet highlighting the problems to the Legislature. Schafer's efforts led to needed protections in guardianship regulations in 1996.

Schafer's commitment to service and justice can also be seen in his representation of Donald Barovic. Though Barovic was not Schafer's client at the time he prepared his pamphlet for the Legislature in 1995, Barovic's case was one Schafer had researched for this pamphlet documenting problems in guardianship practices. (Several colleagues of Schafer's, knowing that he was interested in tackling the problems of guardianship abuse, suggested the Barovic case as a prime example of the problems.) Barovic, upon learning of the pamphlet and interviewing Mr. Schafer about his interest in his case, several months later retained Mr. Schafer, adding him to his team of lawyers who were also representing Barovic in this matter. Mr. Schafer's practice focused on estates, trusts, guardianship, and fiduciary matters, so when Schafer stood with his client Barovic in 1995 in front of Superior Court Grant Anderson, it dawned on Schafer that Anderson was the same person that his other client, William Hamilton, had said 3 years earlier was milking an estate. This caused Schafer to have serious doubts about Anderson's judicial integrity. Schafer went back to his 1992 notes of his conversation with William Hamilton, seeing that the estate in question was the Charles Hoffman estate. Schafer questioned

his previous client about Anderson's integrity. Schafer investigated the public records on the Hoffman estate. What Schafer discovered led him to believe that his client, Barovic, would not get justice in a fiduciary case where the judge himself was a corrupt fiduciary. Schafer's sense of duty to his client, Barovic, his sense of duty to protect society from a corrupt judge, and his professional outrage about fiduciary breaches and abuses led Schafer to expose the corrupt judge. First, meeting his professional duty to his previous client, Hamilton, Schafer waited for the 3 year statute of limitation to run out; thereby seeking to prevent Hamilton's potential liability. Then he consulted experts about the confidentiality rules. Then believing that he had the written and the moral law on his side, Schafer provided all the appropriate authorities with **all** the information. Schafer demonstrated ***his* reasonable belief** by not withholding any information. When the authorities failed to take action, Schafer also drew the public's and the Legislatures attention to the ODC's failure to police its profession. Schafer's motives were clear and his actions out in the open.

In our own guardianship/trustee case, Schafer again demonstrated his commitment to the elderly and the vulnerable. Though our initial meeting with Schafer was with our elderly 87 year old friend, my husband, and I, we became totally convinced of Schafer's integrity when he went to our friend's house unannounced and questioned her, independent of outside influences, regarding her wishes for the care of her disabled, 65 year old son and for her estate. That action demonstrated that Schafer was our friend's attorney, that he would act in her best interests by verifying her wishes independent of outside influences, and that he was not about to let us or anyone else take advantage of a desperate old woman and her handicapped son.

Schafer's commitment to ethical fiduciary conduct and to protecting vulnerable adults was especially obvious after our friend died in 1999. Though she didn't want any oversight from the court regarding our guardianship of her son and our trustee duties, Schafer suggested that we might want to make ourselves answerable to court review anyway. He told us the story of a man who was a trustee for someone. Later the man started having financial problems and started borrowing from the trust, fully intending to repay. Things got out of hand and he squandered the trust. We admired Schafer for being direct with us even though his implication was that we were not above such temptations. We readily took his advice for staying on the straight and narrow. Though it meant more red tape for us, it meant another set of eyes was helping to protect a vulnerable citizen and helping to protect us from being lead into temptation.

Schafer and his family have already paid a horrendous price for his belief that judicial integrity is paramount to a just justice system and that lawyers as guardians of the law, must do all they can to maintain the integrity of the judicial system. Schafer's professional and personal life have suffered. Yet Schafer has been unwavering in his commitment. Schafer could have taken the path of least resistance-- the easier low road of complacency, silence, and uninvolvement. Instead he chose the more difficult high road of duty--the one fraught with risks, sacrifice, and toil. Douglas Schafer has tirelessly served to protect society from a corrupt judge; consistently served to protect the elderly and the vulnerable from corrupt individuals, including lawyers; and diligently served to maintain the public's confidence in and respect for the judiciary.

This level of service and dedication to the public is nowhere to be found when one examines the ODC's actions and inactions in the disciplinary cases of Grant Anderson and Douglas Schafer. What emerges is quite a disturbing picture. Troubling motivations and glaring inconsistencies of purpose manifest themselves. The ODC, which dismissed Schafer's grievance against a corrupt judge because it could find no basis for misconduct charges in the mountains of documentation which Schafer supplied, then waited 3 years to pursue grievance charges against Schafer, and has now spent over 3 years trying to purge the legal system of the lawyer who dared to tell the truth about a self-dealing, corrupt judge, who was also acting as a corrupt fiduciary while he was both a judge and a lawyer! This very same ODC which "reopened" its investigation of Anderson in February 1999 when the Legislature became interested, still has never filed charges against Grant Anderson for any of the misconduct and ethical violations he committed as a lawyer. If an ordinary citizen, acting as a fiduciary or trustee had plundered the assets of a beneficiary; that citizen would be facing criminal charges. Why has the ODC failed to file misconduct charges against Anderson for his fiduciary breaches as a lawyer?

What motivates the Washington State Bar Association's ODC to pursue barring Mr. Schafer from the practice of law for 1 year? They originally requested an 18 month suspension of this truth-teller's license. Then Hearing Officer Mills reduced the suspension recommendation to 6 months and the Disciplinary Board increased the suspension back up to 12 months, stating their final decision was necessary for "protection of the public and deterring other lawyers from similar misconduct." (p1, Disciplinary Board Order, Public No. 00#00031) All of the bar's decisions outweighed the measly 4 month suspension which the bar's judicial disciplinary arm, The Commission on Judicial Conduct (CJC), decided was a sufficient penalty for Judge Anderson's misconduct! Not only did your court find that the CJC's punishment was far too lenient, but your court also found that Judge Anderson's appeal of his paltry suspension demonstrated a "complete failure to understand or his willful denial of the magnitude of his misconduct" and demonstrated "his disregard for the integrity of the judiciary, both in the sense of the individual judge's personal integrity and in the sense of the integrity of our justice system" and that "Judge Anderson's misconduct has eroded the integrity and respect for the judiciary to such a degree that he must be relieved of the duties of his office."? (p.29, In Re Discipline of Anderson)

If, as the Disciplinary Board stated in their Disciplinary Order, Mr. Schafer's one year suspension is necessary in order to protect the public and if his disclosing a former client's secrets and confidences destroys the integrity of this same judicial system, then why did the ODC wait 3 years to pursue their grievance against Mr. Schafer? Why did the ODC allow Mr. Schafer 3 more years to endanger the public and destroy judicial integrity? Did their lack of prompt action demonstrate that the ODC truly believed Mr. Schafer to be a threat to the public and to judicial integrity? The ODC's inconsistencies shoot holes in their stated reasons for seeking Mr. Schafer's one year suspension and demonstrate their complete lack of credibility. Clearly, their decision reeks of retaliation; it does not stem from the touchstone of conscience or the ODC would have promptly sprung into action in order to protect the public by combating the threat to judicial integrity!

If not the desire to protect the public and judicial integrity, arising from the touchstone of conscience, then what are the motivations behind the ODC's dogged pursuit of Mr. Schafer's license to practice law? Most notably, the ODC appears to be driven by a siege mentality, which closes ranks against the outsider to protect one of its more powerful and influential insiders. What triggered the ODC into action against Schafer is a penchant for payback for having been embarrassed by Mr. Schafer and the Washington State Supreme Court for the court's historic and unprecedented removal from the bench of Judge Grant Anderson. The ODC and the Commission on Judicial Conduct looked soft on judicial corruption or very inept because the very same evidence which the ODC "examined" to determine that there was no basis for misconduct charges against Anderson, and which the CJC "examined" and deemed meriting only a 4 month suspension, was reviewed by your court, the justices concluding unanimously that Anderson needed to be relieved of his duties because "removal from office is an appropriate sanction for a judge who engages in an extended pattern of conduct involving dishonest behavior unbecoming of a judge and who refuses to acknowledge the enormity of the effect of the misconduct on the integrity of the judiciary." (Headnotes, p.1, In Re Discipline of Anderson)

The ODC has engaged in many more disturbing practices during these disciplinary proceedings. The procedures for review are rather secretive, lack accountability, and are closed to outside monitoring. The 14 member disciplinary panel that is supposed to be reviewing all the evidence and passing judgement is not even required to be present when all the evidence is being presented. Furthermore, the full big box of documentation against Anderson that Mr. Schafer provided to the ODC in 1996, was subpoenaed by Mr. Schafer for his use in his disciplinary hearing defense. The ODC could only provide Schafer with 79 pages of documents from the box. Then the ODC claimed they lost the box containing the rest of the documents, though they never informed Mr. Schafer of its disappearance. In fact, since the ODC reopened its grievance of Anderson in February 1999, Schafer had repeatedly asked if they had all the documentation and had repeatedly offered to walk the ODC through the documents. He was repeatedly assured by the ODC's Doug Ende that he had everything in Anderson's grievance file and that he was spending time with it. The ODC's confession of the missing documents on Anderson was not made until Schafer's weeklong disciplinary hearing in July 2000, much to Schafer's shock. Then at the end of Schafer's hearing, when it was too late for him to use set of documents that he had provided to the ODC, did the ODC suddenly find the "missing" box of evidence! (See Transcript of Proceedings, pp15-19 & pp966-967) Clearly, in the ODC's failure to question Mr. Schafer about his persuasive documentation of Judge Anderson's corruption, and in their failure to keep Mr. Schafer informed of relevant developments, the ODC has the appearance of hampering the Anderson investigation. Why also has the ODC failed to provide Mr. Schafer with relevant documentation, in an electronically secure format? Are they trying to hamper Mr. Schafer's attempt to exonerate himself and call public attention to the ODC's complete failure to protect society from a corrupt judge?

The legal system has become so complex and technical and society so lawsuit oriented. We are more interested in protecting ourselves and less willing to become involved in the problems of our fellow man. We hesitate to come to the aid of the victims. We skirt around personal sacrifice and involvement by hiding behind the massive mountain of

rules and technicalities. Though we wear the guise of law-abiding citizens to disguise our by-standing mentality, the reality is that most of us are preoccupied with self-service and self-protection. A hero serves and sacrifices without counting the costs or calculating the odds. Douglas Schafer has served as a true guardian of the law. He deserves praise, not more punishment.

> "It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs and comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deeds; who knows the great enthusiasms, the great devotions; who spends himself in a worthy cause; who at the best knows in the end the triumph of high achievement, and who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who know neither victory nor defeat." --Theodore Roosevelt
>
> "Withhold no sacrifice. Grudge no toil. Seek no sordid gain. All will be well." --Winston Churchill

Thank you for your consideration,

Michele L. Parker

cc: Christine Gray, Managing Disciplinary Counsel, WSBA No. 26684
2101 Fourth Avenue -- Fourth Floor
Seattle, WA 98121--2330

Douglas A. Schafer, WSBA No. 8652
P.O. Box 1134
Tacoma, WA 98401--1134

C.J. Merritt, Clerk of the Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504--0929

C. J. MERRITT
SUPREME COURT CLERK

RONALD R. CARPENTER
DEPUTY CLERK/CHIEF STAFF ATTORNEY

THE SUPREME COURT
STATE OF WASHINGTON

TEMPLE OF JUSTICE
P.O. BOX 40929
OLYMPIA, WA 98504-0929

(360) 357-2077
e-mail: supreme@courts.wa.gov

January 30, 2002

Ms. Michele L. Parker
1747 Sunset Drive
Tacoma, WA 98465

Dear Ms. Parker:

The Chief Justice asked me to respond to your letter to him and the other justices regarding the disciplinary proceeding involving Mr. Douglas A. Schafer. In any proceeding heard by this court, the court limits its review to the information presented at the hearing that is being reviewed and to information submitted by the parties to the proceeding or information from authorized amicus curiae. The court knows it can rely on these sources to give it the information and authorities that it needs to make the most just decisions.

While your concern is understood, the court will not consider the information you submitted.

Sincerely,

C.J. Merritt
Supreme Court Clerk

CJM:gm
cc:
Chief Justice Alexander
Supreme Court Justices
Ms. Christine Gray, Disciplinary Counsel
Mr. Shawn Timothy Newman
Mr. Donald H. Mullins
Mr. Douglas Schafer

EXHIBIT 5