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BEFORE THE DISCIPLINARY BOARD OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

DOUGLAS SCHAFER,
Lawyer (Bar No. 8652).

Public No. 00#00031

RESPONDENT'S MOTION PER RLD
6.8 THAT CHAIRPERSON MODIFY
REQUIREMENTS TO PERMIT
SUPPLEMENTATION OF RECORD

Pursuant to RLD 6.8, I, Respondent Doug Schafer, move that the Chairperson of the Disciplinary Board permit me to supplement the record—specifically the “bar file documents,” as that phrase appears in RLD 7.5(b)(7)—with this Motion and the attached pages taken from the disciplinary hearing transcript from *In re Michael A. McKean*, WSBA No. 4438, Public No. 00046 (hereafter “the McKean case”). RLD 6.8 permits the Chairperson to modify any requirements to achieve fairness. Because the Disciplinary Board members have been reviewing the McKean case (including the attached transcript pages) since its meeting on January 12, 2001, simultaneously with their review of my disciplinary case, and because the attached pages refute the false picture that Disciplinary Counsel Christine Gray sought to portray through the misleading testimony of lawyer Philip R. Sloan, fairness requires that the record available for Supreme Court review include these transcript pages.

Disciplinary Counsel Gray at my hearing in July 2000 presented testimony by lawyer Philip R. Sloan claiming that the impact upon former banker William L. Hamilton of my 1996 disclosure of his 1992 comments was to destroy him, to cause him to be shunned, to have broken his health, to have changed him from an extrovert to a recluse. TR 169–71. Ms. Gray emphasized my alleged “destruction” of Hamilton in her closing argument (TR 1078) and in her Bar Association’s Counterstatement in Support of Hearing Officer’s

1 Decision (BF 125, page 23).

2 But, the transcript from the McKean case indicates, through sworn testimony of
3 felon McKean at his disciplinary hearing in June of 2000, that federal investigators and
4 prosecutors had by then been investigating *William L. Hamilton* for seven years, having
5 “gone through every relative, every business, every, every, every, every, everything” Page
6 695. McKean testified that the federal law enforcement authorities’ primary target was
7 Hamilton and the bank that he controlled, and that “those people still have the cloud
8 hanging over their heads.” Pages 192 , 194, and 687. In McKean’s disciplinary hearing,
9 federal special agent Denise Stone refused to testify as to certain information based upon
10 Rule 6(e) of the Fed. Rules of Criminal Procedure (barring disclosure of matters occurring
11 before a grand jury), and WSBA Special District Counsel Richard Clinton reported that
12 Assistant U.S. Attorney Kurt Hermanns had told him that the grand jury investigation was
13 still ongoing. Page 181. McKean testified that two Assistant U.S. Attorneys had told him
14 that if he did not plead guilty (which he did in March, 1998), they would continue
15 investigating until the limitations period was about to expire before charging and trying
16 him. Page 20. Special Agent Denise Stone’s affidavit of October 1996 detailing unlawful
17 activities of Hamilton and McKean since the early 1980’s is part of Exhibit D-12
18 (particularly affidavit paragraphs 70–81) that was admitted in my hearing along with Exhibit
19 D-13, also relating to Hamilton and McKean.

20 If William Hamilton has been “destroyed,” it is due to his having been the primary
21 target of a probing *seven-year* federal law enforcement and grand jury investigation that still
22 in ongoing and was unrelated to any allegedly improper disclosure in 1996 by me. McKean
23 refers repeatedly (e.g., Page 192) to Hamilton’s lawyer, C. James Frush, a white-collar
24 criminal defense lawyer with Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim,
25 P.L.L.C. (the law firm of Disciplinary Board member Terry L. Brink).

26 I am mindful of RLD 6.5(b) which bars the Disciplinary Board from considering

1 evidence not before the hearing officer in a case. But because the members of the Board, if
2 faithfully fulfilling their responsibilities, will have read the transcript from the McKean case,
3 it would be humanly impossible for them to purge its information from their minds while
4 they are simultaneously considering my case. Because that information, as reflected in the
5 attached transcript pages, is materially relevant to my case, in fairness it must be part of the
6 record, as a bar file document, available for the members of the Washington Supreme
7 Court to review under RLD 7.5(b)(7).

8 Thank you for considering this request.

9
10 March 22, 2001

11 _____
Douglas A. Schafer, WSBA 8652

12 Attachments:

13 McKean case hearing transcript pages 1, 20, 181, 192–94, 687–88, and 695.

14
15 **Certificate of Mailing**

16 I certify that simultaneously with my mailing of the original of this document to the
17 Clerk of the Disciplinary Board, I am mailing by first class copies of it to Disciplinary
18 Counsel Christine E. Gray and my co-counsel Shawn T. Newman and Donald H. Mullins
at their office addresses of record in this proceeding.

19
20 March 22, 2001

21 _____
Douglas A. Schafer, WSBA 8652

BEFORE THE DISCIPLINARY BOARD
OF THE WASHINGTON STATE BAR ASSOCIATION

In re:)
MICHAEL A. McKEAN,) Public No.: 00046
WSBA No. 4438)

TRANSCRIPT OF PROCEEDINGS
VOLUME ONE

June 8, 2000
Gig Harbor, Washington

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McKean Testifying

1 Allen pounded me on the head enough to finally convince
2 me that my options were to pay him \$300,000 and go to
3 trial, at which case, technically on a number of these
4 issues I would lose. Whether I had taken anybody's
5 money or not, I would lose. If I did that and lost,
6 the penalties for going to trial would be considerably
7 more than the penalty for pleading guilty because they
8 offered such a -- they have such great discretion in
9 the federal system. The penalties are so large, even
10 though they're rarely enforced on anybody. But they
11 can scare you to death with the size of the penalty, so
12 you are heavily induced to cop a plea.

13 And so the financial came out even-stein. Did I
14 want to pay David \$300,000 or did I want to pay the
15 government \$300,000?

16 The other choice, as presented to me by the two
17 Assistant U.S. Attorneys, was if I chose not to plead
18 guilty, the investigation would go on another two
19 years. I could continue to live in this wonderful
20 limbo that is a federal investigation. At that time, I
21 would then go to trial. If I won, hooray; if I lost,
22 I'd be worse off by far than if I took the guilty plea.

23 Also, as they put it to me, by the time they got
24 done with the investigation, everybody else they
25 intended to indict, which was a long list of people --

1 in court.

2 MR. CLINTON: We're trying to help
3 the --

4 THE HEARING EXAMINER: Okay, yeah,
5 yeah. It's helping --

6 THE WITNESS: Well, we had -- okay.
7 With respect to that, I know that as it pertains to
8 Count No. 4 --

9 THE HEARING EXAMINER: Attorney
10 fees.

Federal Special Agent Denise Stone

11 THE WITNESS: -- the false attorney
12 invoices, that at least approximately \$77,000 was
13 false. Okay, at least that. And I am not at liberty
14 to discuss the rest of how the loss and the -- you
15 know, the loss to the government figures was derived.

16 THE HEARING EXAMINER: Is that that
17 6(e) stuff? I mean, I --

18 THE WITNESS: Yes. I would
19 recommend that you speak with Kurt Hermann, the
20 Assistant U.S. Attorney. *Special District Counsel*

21 MR. CLINTON: Well, I talked to
22 Hermann, and he said there's still ongoing
23 investigation under the grand jury. "You're going to
24 have to file motions. We're going to fight it. It's
25 going to go to Washington, D.C. And you're" --

1 because after I got to Sheridan, I was asked through my
2 attorney by an attorney for the bank, Cyrus Vance, and
3 the attorney for Bill Hamilton personally, Jim Frush,
4 if I would be willing to talk candidly about those
5 checks that William Hamilton had given me that are the
6 subject of Exhibit --

7 THE HEARING EXAMINER: Count 5. Is
8 that Count 5? No.

9 MR. McKEAN: The \$2,930 check.

10 THE HEARING EXAMINER: Right.

11 That's Count 5.

12 MR. McKEAN: I said yes, I would be
13 more than willing to talk candidly about that because
14 the government was trying to construe that as a payoff
15 to me, a payoff, and I didn't understand that at the
16 time.

17 But the purpose of my Plea Agreement and the
18 purpose of the intent to defraud the Department of
19 Agriculture as to the bank payments to me from Western
20 Community Bank was, I did not know at the time I pled
21 guilty, clearly to use those statements to compel me to
22 make statements against Western Community Bank, which
23 is who they really wanted to indict, it turns out, more
24 than me, and William Hamilton. And those people still
25 have the cloud hanging over their heads.

1 And all through the plea negotiations, what I was
2 told over and over again is, "Give us a bank, give us a
3 sawmill, give us a bark and chipping plant, give us
4 something like that" --

5 THE COURT REPORTER: I'm sorry.
6 You need to slow down.

7 MR. McKEAN: Oh, okay.

8 What I was told through the negotiations was, "Give
9 us a bank, a sawmill, a bark and chipping plant, and
10 you will get probation." And that was what I was told
11 all the way along. And nothing that I could say about
12 those people truthfully gave them what they wanted.
13 The Plea Agreement clearly is structured as a way to
14 have me, in effect, saying --

15 THE HEARING EXAMINER: Well,
16 listen --

17 MR. McKEAN: -- now that I look at
18 it -- and I only know that because since I've gotten
19 out, I've had to have the meetings with Frush to --

20 THE HEARING EXAMINER: Well, I'm
21 sorry, but I understand what you're saying. All right?
22 They wanted you to roll on these other guys --

23 MR. McKEAN: Sure.

24 THE HEARING EXAMINER: -- and in
25 return for your rolling on them, you either get one of

1 these 5K something-or-other departures, or you'd get a
2 better deal.

3 MR. McKEAN: Right.

4 THE HEARING EXAMINER: And you were
5 unwilling to say that these -- as I understand it,
6 these other guys were involved. Like, for example,
7 Bill Orell knew that you were submitting false
8 invoices. And at the time --

9 MR. McKEAN: They knew that. They
10 didn't care about him. They wanted Bill Hamilton.

11 THE HEARING EXAMINER: Okay.
12 Whatever they wanted, whatever it was, you couldn't --
13 maybe you couldn't give them to them or you were
14 unwilling to. But that's simply not to me --

15 MR. McKEAN: It's not relevant --

16 THE HEARING EXAMINER: It's not
17 relevant as far as I can tell, from the perspective of
18 the decision I have to make --

19 MR. McKEAN: Okay.

20 THE HEARING EXAMINER: -- that you
21 were a stand-up guy and either didn't snitch somebody
22 off, okay, and you took the lumps for what you did and
23 you weren't going to snitch off your co-conspirators,
24 or you couldn't. It doesn't matter.

25 MR. McKEAN: Right. And I'm not --

1 MR. McKEAN: Never to this day have
2 gotten credit for payment --

3 THE HEARING EXAMINER: I
4 understand. Okay. So part of this you agree with and
5 part of this you don't.

6 MR. McKEAN: Right.

7 THE HEARING EXAMINER: Okay. What
8 was the --

9 MR. McKEAN: The reason, the very
10 reason that was in there -- and I know that from
11 talking to Jim Frush who's with -- whatever the name of
12 the attorney was that handled the resolution document
13 for Hamilton and I. Benson. Jim Frush's attorney was
14 there, and Frush tells me, and I certainly believe it,
15 looking back at it, that the very reason they wanted
16 this plea on that dollar amount is because it tied
17 Hamilton to making payments -- illegally concealed
18 payments to me. They weren't concealed in the least,
19 and thank God Bill's got documents with Frush that show
20 that. What they --

21 THE HEARING EXAMINER: Okay.
22 Let's --

23 MR. CLINTON: This is a direct
24 attack on --

25 THE HEARING EXAMINER: Okay. I

1 know.

2 (Simultaneous talking.)

3

4 MR. McKEAN: That's not in my
5 defense. That's in Hamilton's defense.

6 (Simultaneous talking.)

7

8 MR. McKEAN: They were after him,
9 not me.

10 THE HEARING EXAMINER: Wait. They
11 were -- I'm sorry. You seem to be saying it wasn't
12 concealed. In some respect it was concealed because
13 the \$2,930 check was not made out to you.

14 MR. McKEAN: Right.

15 THE HEARING EXAMINER: And it did
16 not state that the source was actually Hamilton.

17 MR. McKEAN: Right.

18 THE HEARING EXAMINER: Okay. So
19 some of it was concealed.

20 MR. McKEAN: The check is from his
21 account.

22 THE HEARING EXAMINER: Right.

23 Now, I think I got this straight.

24 Now, let me get to something. Mr. McKean, I'm
25 going to think about this, but I really don't believe

1 my intention is to say, you know, there are a lot of
2 mitigating factors in your case. I mean, I don't see
3 it as mitigating that other people were not prosecuted.
4 It's -- it may be that they are not prosecuting them
5 because the case against them may be even tougher than
6 the case against you, and they feel that they can't
7 make the case. As your former attorney, Mr. Hershman
8 indicated, when this thing started --

9 MR. McKEAN: Oh, I think that's
10 true.

11 THE HEARING EXAMINER: -- and they
12 came after you, they thought there was going to be a
13 lot more. Instead, they found a lot less. And where
14 they thought you had actually gotten money that you
15 shouldn't have gotten, they didn't find it. But they
16 found -- well, they found enough that you find yourself
17 here today. You went to prison.

18 MR. McKEAN: If there's one
19 complaint I have about what I've seen, it is not really
20 directed at my case. It really is more directed at
21 what I've seen Hamilton go through, because he's been
22 investigated now for seven years, I think. They have
23 gone through every relative, every business, every,
24 every, every, every, everything and still have come up
25 with nothing. And that's a long time -- I mean, what's