

Filed December 4, 2002

Bar No. 8652

SUPREME COURT
OF THE STATE OF WASHINGTON

In the Matter of the Disciplinary Proceeding Against

DOUGLAS A. SCHAFER,

an Attorney at Law.

RESPONDENT LAWYER'S
SIXTH STATEMENT OF
ADDITIONAL AUTHORITIES

Attorneys for Respondent:

Douglas A. Schafer, Attorney
Schafer Law Firm
P.O. Box 1134
950 Pacific Ave., Suite 1050
Tacoma, WA 98401-1134
(253) 383-2167

Donald H. Mullins, Attorney
Badgley~Mullins Law Group
Washington Mutual Tower
1201 Third Avenue, 51st Floor
Seattle, WA 98101
(206) 621-6566

Shawn T. Newman, Attorney
2507 Crestline Dr. NW
Olympia, WA 98502
(360) 866-2322

**RESPONDENT LAWYER'S SIXTH
STATEMENT OF ADDITIONAL AUTHORITIES**

These additional authorities are submitted pursuant to RAP 10.7:

**U.S. Securities and Exchange Commission (“SEC”) Proposed Rule:
Standards of Professional Conduct for Attorneys. Release 33-8150
(November 21, 2002); 67 Fed. Reg. 71669 (December 2, 2002).**

Heeding the Congressional mandate in Section 307 of the Sarbanes-Oxley Act of 2002 that the SEC, by January 26, 2003, adopt rules in the public interest setting forth minimum standards of professional conduct for attorneys who represent public companies, the SEC on November 21, 2002, proposed such rules as a new Part 205 to CFR Title 17. SEC Release 33-8150 announcing and explaining those rules is posted at <http://www.sec.gov/rules/proposed/33-8150.htm> and the Federal Register issue is at: http://www.access.gpo.gov/su_docs/fedreg/a021202c.html .

Paragraph 205.3(d) permits or requires lawyers with knowledge of client illegality to make a so-called “noisy withdrawal” in writing to the SEC. And as summarized in Part IV.B. of the Release:

“Paragraph 205.3(e)(2) also allows an attorney to reveal confidential information to the extent necessary to prevent the commission of an illegal act which the attorney reasonably believes will result either in perpetration of a fraud upon the Commission or in substantial injury to the financial or property interests of the issuer or investors. Similarly, the attorney may disclose confidential information *to rectify* an issuer’s illegal actions when such actions have been advanced by the issuer’s use of the attorney’s services.” (emphasis added)

California Government Lawyers Whistleblower Bill. In August 2002, the California legislature, by two-thirds vote, passed Assembly Bill 363 permitting lawyers to reveal confidential information to expose illegality by governmental officials. The Bill resulted from the state Insurance Commissioner’s staff lawyer Cindy Ossias exposing his corruption. The State Bar declined to prosecute her, but declined to issue a ruling protecting other lawyers under similar circumstances. In September 2002, Gov. Gray Davis vetoed the Bill. The Bill and its history are available at: http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=ab_363&sess=PREV&house=B&author=steinberg . The Bill sponsor’s press release is at: <http://www.peer.org/press/267.html> .

In re a Witness, 288 F.3d 289 (7th Cir. 2002). In a case relating to a federal grand jury investigation of the administration of Illinois Governor George Ryan (for events while he was Secretary of State), the court held that no relationship of confidentiality can exist between public officials and government lawyers, saying, at 294:

“interpersonal relationships between an attorney for the state and a government official acting in an official capacity must be subordinated to the public interest in good and open government, leaving the government lawyer *duty-bound to report* internal criminal violations, not to shield them from public exposure.”
(emphasis added)

United States v. Edwards, 303 F.3d 606 (5th Cir. 2002). In a case involving corrupt former Louisiana governor Edwin Edwards, the court held, at 619, the crime-fraud exception to confidentiality applied when one of a defendant’s purposes in hiring lawyers to defend himself against civil actions alleging past wrongdoings was *to continue the cover-up* of his past extortion and perpetuating his tax fraud. (emphasis added) (Relates to Opening Br. 49 n.66; Exhibit D-23; BF 242-97.)

Weaver v. Bonner, Eleventh U.S. Circuit Court of Appeals (No. 00-15158, October 18, 2002). The court held that the First Amendment protects a lawyer’s statements about the qualifications of an incumbent candidate for elective judicial office from sanction under professional ethics rules unless actual malice is found. The court applied *Republican Party of Minnesota v. White*, ___ U.S. ___, 122 S.Ct. 2528, 153 L.Ed.2d 694 (2002).

Chem-Age Industries v. Glover, 2002 SD 122 (October 2, 2002). The South Dakota Supreme Court, at ¶¶ 41-46, recognized the cause of action for aiding or assisting in the breach of a fiduciary duty by another.

Respectfully submitted this 3rd day of December, 2002.

Douglas A. Schafer
Douglas A. Schafer, WSBA No. 8652