

Bar No. 8652

SUPREME COURT  
OF THE STATE OF WASHINGTON

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In the Matter of the Disciplinary Proceeding Against

DOUGLAS A. SCHAFER,

an Attorney at Law.

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RESPONDENT LAWYER'S STATEMENT OF  
ADDITIONAL AUTHORITIES

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

Pursuant to RAP 10.7, the following additional authorities are submitted without argument:

***United States v. Martin***, 278 F.3d 988 (9th Cir. Jan. 29, 2002) (Court condoned lawyer's report of client's fraud to FBI, saying, "Outside the specific protections afforded by the law of privilege, Defendant's lawyer is like any other citizen who might report a crime to authorities.")

***People v. Dang***, 93 Cal.App.4th 1293, 113 Cal.Rptr.2d 763, \_\_\_ P.3d \_\_\_ (Nov. 26, 2001) (Lawyer's reported to district attorney that his client intended to bribe or "whack" witnesses. The Court, at 1298, "note[s] that the State Bar Court has held the duty of confidentiality under Business and Professions Code section 6068 Bus. & Prof., subsection (e) is modified by the exceptions to the attorney-client privilege codified in the Evidence Code.")

***Gardner v. Loomis Armored***, 128 Wn.2d 931, 913 P.2d 377 (1996) (Justice Guy, concurring, said, "It defies what I believe is true about human nature that anyone would be willing to watch a person die in order to comply with a company safety rule. I believe our nature would cause any decent person, under these dire circumstances, to break the rule and save the life. Even normally good rules must have exceptions and yield to a higher good. When the company chose to enforce the rule under these facts, it failed to recognize that Mr. Gardner was acting for the higher good, as would any right-thinking person.")

***Florida Bar v. Calvo***, 630 So.2d 548 (Fla. 1993) (Disbarring an experienced securities lawyer, Mr. Calvo, the Court said, "We also reject Calvo's contention that, because the misconduct was originated primarily by his clients, he was required to maintain confidentiality. Florida long has held that the rule of attorney-client confidentiality comes to an end when an attorney knows that a client is engaging in crime or fraud.")

Lewis Becker, ***Ethical Responsibilities of a Lawyer for a Parent in Custody and Relocation Cases: Duties Respecting the Child and Other Conundrums***, 15 Journal of the American Academy of Matrimonial Lawyers 33 (1998)

Robert H. Aronson, *What About the Children? Are Family Lawyers the Same (Ethically) as Criminal Lawyers? A Morality Play*, 1 J. Inst. Stud. Legal. Eth. 141 (1996) (Dialogue of a fictional young female “up and coming” ethics scholar law professor, beginning at page 148: [Link to URL](#)

“More and more commentators have begun to suggest that the effort of the drafters of the Rules of Professional Conduct to state rules applicable to lawyers in all fields of practice has resulted in rules that, in some cases are irrelevant, and in others are contrary to, certain highly specialized practice areas. In the family law area, for example, the American Academy of Matrimonial Lawyers’ Bounds of Advocacy elaborate upon, and occasionally modify, the Rules of Professional Conduct. Thus, Standard 2.23 provides: “In representing a parent, an attorney should consider the welfare of children.” Standard 2.26 is more specific: “An attorney should disclose evidence of a substantial risk of physical or sexual abuse of a child by the attorney’s client.”

“Second, your analysis is premised on a client-oriented, libertarian - might I say “hired gun” - approach. Certainly, that has been the historical approach to legal ethics. But it is not the only reasonable approach. If you emphasize the lawyer’s obligation to justice and the public interest, rather than the client’s interests, no matter how much against the public interest (so long as they are legal), very different conduct would be expected of the lawyer. As Michelle said, the family law system, unlike the criminal justice system, is premised on the best interests of the child. I don’t believe that client autonomy, the adversary nature of our system, or notions of the right to counsel are sufficient to justify assisting the client in conduct that threatens the physical welfare of children. Although the client is entitled to take any action that is not illegal, no essential principle of ethics requires that the client have the assistance of a lawyer in that action. If the client is charged with abusing a child, your system-oriented approach may well justify withholding information disclosed by the client. But that does not necessarily justify withholding the information when that client seeks custody of a five-year-old child.

“Third, your approach is a typically male, “morality of justice” approach. As Carol Gilligan and others have demonstrated, many women (and a lesser number of men) embrace a “morality of care.” The morality of justice is a rule-oriented morality, in which adherence to one’s role in the system is essential. Your frequent references to what will result in justice “in the long run,” suggest a willingness to permit injustice in the short run. The morality of care is much less dependent on rigid adherence to rules. If an injustice can be avoided or corrected in an individual case, then a modification of the rules might be in order.”[footnotes omitted])

**American Academy of Matrimonial Lawyers, *Bounds of Advocacy*,**  
(Nov. 2000, 2nd Ed., Robert Aronson, Reporter, on the Internet at:  
<http://www.aaml.org/Bounds%20of%20Advocacy/Bounds%20of%20Advocacy.htm> (visited May 6, 2002). (Comment to Standard 6.5 states:

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“Notwithstanding the importance of the attorney-client privilege, the obligation of the matrimonial lawyer to consider the welfare of children, coupled with the client's lack of any legitimate interest in preventing his attorney from revealing information to protect the children from likely physical abuse, requires disclosure of a substantial risk of abuse and the information necessary to prevent it. If the client insists on seeking custody or unsupervised visitation, even without the attorney's assistance, the attorney should report specific knowledge of child abuse to the authorities for the protection of the child.”)

**American Bar Association *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*** (Approved by the American Bar Association House of Delegates, February 5, 1996) (posted on the Internet at: <http://www.abanet.org/child/childrep.html> ) (Under Standard B-4, approving a lawyer’s disclosure of a child-client’s confidences about past abuse or neglect if necessary to ensure the child’s safety, notwithstanding contrary ABA Model Rules of Professional Responsibility.)

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**Brief of Amicus Curiae Chamber of Commerce of the United States in Support of Petitioner in *Republican Party of Minnesota v. Kelly (U.S. Supreme Court Docket 01-521, argued March 26, 2002)*** (available at: [http://supreme.usatoday.findlaw.com/supreme\\_court/docket/2001/march.html#01-521](http://supreme.usatoday.findlaw.com/supreme_court/docket/2001/march.html#01-521) ) (Vigorously arguing with extensive case law support that the ABA Code of Judicial Conduct’s “Announce Clause” that bars judicial candidates from publicly expressing their views on issues violates the First Amendment *rights of voters* to receive relevant information about a judicial candidate’s qualifications for judicial office.)

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Respectfully submitted this 6th day of May, 2002.

/s/ Douglas A. Schafer  
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