

IN THE
SUPREME COURT
OF THE STATE OF WASHINGTON

In re:

DOUGLAS SCHAFER,

Lawyer.

Bar No. 08652

BAR ASSOCIATION'S
RESPONSE TO RESPONDENT
SCHAFER'S MOTION FOR
COURT TO CONSIDER
WRITTEN VIEWS OF
NONLAWYER CITIZENS

Under Rule 10.6 of the Rules of Appellate Procedure (RAP), the Washington State Bar Association (Association) opposes the request of respondent lawyer Douglas Schafer to have the Court reconsider the decisions of the Supreme Court Clerk rejecting amicus letters filed by non-lawyers in this matter.

The two amicus letters submitted by non-lawyers include a significant amount of information that is nothing more than testimony by these non-lawyers concerning respondent's character, evidence that was neither offered nor admitted at hearing. Moreover, to the extent that the briefs contain legal argument, their submissions either parrot portions of Respondent Douglas Schafer's voluminous briefs or raise issues not presented by the parties to this appeal.

RELEVANT PROCEDURAL HISTORY

The hearing in this disciplinary matter occurred in July 2000. In August 2000, the Hearing Officer issued Findings of Fact, Conclusions of Law and Recommendation, finding that Mr. Schafer had violated Rule 1.6 of the Rules of Professional Conduct (RPC) and his oath as a lawyer, and recommending that he be suspended for six months.

In May 2001, the Disciplinary Board issued its decision, upholding the Hearing Officer's findings of fact and conclusions of law, and recommending a one-year suspension.

This matter is now before this Court on Mr. Schafer's appeal from the Disciplinary Board's Order and Sanction Recommendation. It has been fully briefed by the parties.

On October 19, 2001, the Court received an eleven-page letter from non-lawyer Michael B. Murphy. By letter dated October 24, 2001, the Supreme Court Clerk informed the parties that no action would be taken on a letter sent by Michael B. Murphy.

On January 25, 2002, non-lawyer Michelle L. Parker submitted an eight-page letter to the Court. By letter dated January 30, 2002, the Supreme Court Clerk informed Ms. Parker that "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 proceedings or information from

authorized amicus curiae,” and informed her that the Court would not consider the information she had submitted.

On February 5, 2002, the Respondent filed the pending Motion For Court To Consider Written Views Of Nonlawyer Citizens.

ARGUMENT

RAP 10.6(a) provides:

The appellate court may on motion grant permission to file amicus curiae brief only if all parties consent or if the filing of the brief would assist the appellate court. An amicus curiae brief may be filed only by an attorney authorized to practice law in this state

It is quite clear that Ms. Parker’s letter and Mr. Murphy’s letter fail to satisfy the requirement of RAP 10.6(a) that a brief may be filed only by an attorney.

In addition, the two letters fail to meet the other requirement for filing of amicus curiae briefs, that the brief would assist the appellate court. Each letter contains extensive “testimony” regarding Mr. Schafer’s character that was neither offered nor admitted at hearing. Thus, this testimony was not made under oath, has not been subject to cross-examination, and has not been subject to rebuttal evidence. In this state’s highest court, decisions are made based upon the rule of law and the factual evidence properly offered and admitted during a trial or hearing.

Moreover, each letter contains extensive recitations of alleged facts,

many of which are not a part of the hearing record in this case. Since the letters contain no citations to the hearing record, it is impossible to tell exactly which alleged facts are supported and which are not supported.

To the extent that the letters contain legal argument, they closely echo the style and the content of the 95 pages of briefing filed by Mr. Schafer. Moreover, they go beyond the briefing of the parties and raise issues not presently before this Court. For example, Ms. Parker's letter at page 6 raises the issue of the cause for delay in these disciplinary proceedings, and at page 7 raises an issue regarding discovery that was fully resolved by the Hearing Officer at hearing. Neither of these issues was identified by Mr. Schafer as issues on appeal

For these reasons, the Court should not exercise its discretion under RAP 1.2(c) to accept and consider the two amicus curiae briefs submitted by non-lawyers.


CONCLUSION

For the foregoing reasons, the Association respectfully requests the Court to deny Mr. Schafer's motion.

DATED this 28th day of February, 2002.

Respectfully submitted,

WASHINGTON STATE BAR ASSOCIATION



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Managing Disciplinary Counsel