

**BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION**

In re

Public No: 00#00031

**DOUGLAS A. SCHAFER,**

DISCIPLINARY BOARD ORDER

Lawyer.

Bar Number 8652

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This matter came before the Disciplinary Board on review of the Findings of Fact, Conclusions of Law and Hearing Officer's Recommendation. The hearing officer found that Mr. Schafer's conduct violated RPC 1.6 and recommended a six-month suspension was the appropriate sanction. **The Disciplinary Board adopts the hearing officer's thorough findings and conclusions, but recommends that the sanction be increased to a one-year suspension.** The Board believes this increase is necessary to achieve the goals of lawyer discipline—protection of the public and deterring other lawyers from similar misconduct. *See Discipline of Plumb*, 126 Wn.2d 334, 340, 892 P.2d 739 (1995). The vote on this matter was 7-3. Horne, Cullen, S. Smith, Bonnell, Brandon, Dullanty and D Smith voted in the majority. Sturwold, Weatherhead and Hayton dissented. Brink, R. Johnson and Klein recused.

This case is important because of what it is not. **This is not a whistleblower case.** This is not a case about a lawyer who was faced with deciding whether to violate his ethical duties to his client by disclosing the client's secrets or confidences to report alleged unethical conduct by a judge. The record in this case clearly establishes that this is a case of a lawyer who intentionally decided to disclose his client's confidences in addition to reporting unethical conduct by a judge. Reporting alleged ethical misconduct by a judge is absolutely necessary to maintain the integrity of the judicial system. In contrast, disclosing a former-client's secrets and confidences destroys the integrity of this same judicial system. One is not a defense for the other. The intentional and planned nature of the conduct in this case and the injury to the client and the integrity of the judicial system require a more severe sanction than that recommended by the hearing officer.

#### FACTS

Mr. Schafer represented Mr. Hamilton from the 1980s until 1992. In August 1992, Mr. Hamilton asked Mr. Schafer to form a corporation for him. Mr. Hamilton

wanted this done quickly because a lawyer friend, Grant Anderson, was going to sell him a bowling alley from an estate the friend had been “milking” for four years. Mr. Hamilton told Mr. Schafer that he was getting a good deal on the bowling alley and that he would pay Anderson back later. Mr. Anderson was becoming a judge and wanted to finish the estate before he took the bench. Mr. Schafer told his client that he did not want to hear any more about it. Mr. Schafer formed the corporation for the client. He was not involved in this transaction in any other way. The bowling alley transaction was completed in 1995. Also in 1995, Mr. Hamilton made the final payment on a Cadillac for his lawyer friend.

In 1996, Mr. Schafer began representing a client in the Barovic estate. The Barovic estate was assigned to Pierce County Superior Court Judge Grant Anderson. Mr. Schafer did not like Judge Anderson’s rulings and realized that this was the person involved in the earlier transactions with his client Hamilton. Mr. Schafer immediately began an investigation of Judge Anderson. During this investigation, Mr. Schafer disclosed to at least two people that he was concerned about his own client’s bowling alley transaction. Mr. Schafer concluded that Judge Anderson and Mr. Hamilton had defrauded the estate and that judge Anderson must be removed from the bench. Mr. Schafer’s client, Mr. Hamilton, and his new counsel Phil Sloan both indicated that they believed that any disclosure of Hamilton’s statements to Mr. Schafer would violate RPC 1.6. Mr. Schafer asked law professors John Strait and David Boerner whether he could ethically disclose his client’s communications. Both professors told him that he should not disclose his client’s statements.

In 1996, Mr. Schafer disclosed his client’s statements, along with the voluminous documentation he had discovered in his investigation to the Commission on Judicial Conduct, the Pierce County Prosecutor’s Office, the FBI, the IRS, the WSBA, and others. Before any of these offices had a chance to complete an investigation, Mr. Schafer filed a pleading in court containing his client’s statements. He did not request a protective order and testified that he filed the pleading, in part, to make the statement public. That same day he disclosed his client’s statements to three newspapers. He testified that he hoped for press coverage and an investigation.

## ANALYSIS

The Board unanimously supports Mr. Schafer’s reporting of suspected judicial or lawyer misconduct. The hearing officer found that Mr. Schafer could have made these reports based on his investigations, without disclosing his client’s statements. The record supports this finding. **The Board does not support Mr. Schafer’s disclosures** of his client’s secrets and confidences during his personal investigation, **especially to the prosecutor’s office, the FBI, the IRS and the press.** **It is not reasonable to believe that any of these disclosures were necessary to report suspected judicial or lawyer misconduct.** Mr. Schafer took no steps to protect this information. For example, he could have submitted his investigation results, without the client’s statements, and indicated that he had additional attorney-client privileged information that could be provided, with appropriate protections, upon court order. Instead, Mr. Schafer intentionally included this information in a court filing, for the purpose of making it public. Instead of trying to

protect his client, he contacted the newspapers for the purpose of widely publicizing his client's statements. These are not the actions of a responsible whistleblower.

The hearing officer found that Mr. Schafer violated RPC 1.6, that his mental state was knowing and that his actions caused actual injury to his client and to the judicial system. The hearing officer determined that ABA Standard 4.22 applied. He cited four aggravating factors and one mitigating factors and then recommended a six-month suspension. The Board finds that the aggravating factors increase the recommended sanction from a six-month suspension to a one-year suspension. The following is a discussion of the aggravating factors and why Board believes that they weigh in favor of increasing the sanction.

#### Aggravating factors:

The hearing officer found that Mr. Schafer's motive was partially selfish. He found that "in his zeal to expose corruption by Anderson, Schafer disregarded his duty to maintain the confidences and secrets of his client." Mr. Schafer's disregard was intentional. Additionally, the record indicates that Mr. Schafer planned to make his client's remarks as public as possible without subjecting himself to civil liability. Mr. Schafer worried about protecting himself, while injuring his client. Mr. Schafer asked Professor Strait about civil liability. Mr. Schafer also testified that he "was very judicious in only reporting to authorities with whom I felt that I would have an absolute summary judgment defense and probably assistance by some other official in getting that summary judgment dismissal of any claim." TR 263 lines 3-7.

Mr. Schafer testified that he filed a Motion for Discretionary Review in the Barovic matter. He stated his purpose in filing that motion was to expose a corrupt judge, not to benefit his client. He also testified that he was seeking some degree of personal vindication. The Motion for Discretionary Review included Mr. Schafer's memorandum detailing his client's secrets and confidences. Mr. Schafer stated that he did not request a protective order on these statements to protect his client. Instead, he testified "I was pleased that I was able to put this in a public court file, you know, under a basis that I felt would be safe from that threatened civil suit that Bill Hamilton and Phil Sloan had threatened me with." TR page 152 lines 14-18. This testimony makes clear that Mr. Schafer intentionally planned litigation to assist his effort to widely distribute his client's confidential statements. The Board cannot find other cases in Washington in which a lawyer intentionally plans to disclose client secrets, while protecting his own interests. The Board believes it is important that lawyers and the public understand that a lawyer should not selfishly protect his or her self while intentionally exposing the client to harm.

The hearing officer also cites a pattern of misconduct. This is related to the intentional plan discussed above. Mr. Schafer began his disclosures during his personal investigation. At a time when his own testimony established that he did not believe that criminal or fraudulent conduct had been established, Mr. Schafer called the Department of Licensing requesting ownership records on the Cadillac. In the letter requesting the Cadillac records, Mr. Schafer included the statement "After being elected, but before

taking judicial office, Mr. Anderson sold a business that was an asset of the probate estate to a friend of his, William L. Hamilton.” The end of the letter indicates that Mr. Schafer believes these facts show that some members of the judicial system are corrupt. Mr. Schafer’s statements about his client’s purchase of the bowling alley were unrelated to his request for public records. This exemplifies Mr. Schafer’s intentional disclosure and how it is unrelated to reporting judicial misconduct. The pattern continued over several months and included several agencies and three newspapers.



The hearing officer also cited Mr. Schafer’s refusal to acknowledge the wrongful nature of his conduct. In the Board’s view this factor best illustrates why a more severe sanction is necessary in this case. Mr. Schafer allowed his strongly held personal beliefs to interfere with his ethical duties to his former client. Our judicial system cannot allow individual lawyers to personally determine when they are morally required to disclose a client’s secrets or confidences. The balancing here has been done by the Supreme Court. Any exceptions to this balancing are appropriately submitted to a court for decision. Lawyers, including Mr. Schafer must follow this judicial balancing.

Finally, the hearing officer cited Mr. Schafer’s substantial experience in the practice of law. At the time Mr. Hamilton made his statements, Mr. Schafer had been admitted to the bar for fourteen years.

The only mitigating factor cited was no prior disciplinary record.

The serious nature of these aggravating factors weighs in favor of increasing the sanction recommended by the hearing officer. The Board recommends that the Court impose a one-year suspension.

Dated this 1<sup>st</sup> day of May, 2001

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Stephen C. Smith for the majority



[Link to Story -->](#)



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February 6, 1996

HAND DELIVERED

Director, Department of Licensing  
Vehicle Services Division; Records Section  
1125 S. Washington  
Olympia, Washington

Attn: Georgia

Re: Public Records Disclosure of Vehicle Ownership Records

Greetings:

This is to request records of all prior owners of a late-model Cadillac that I believe is presently titled in the name of Grant L. Anderson. The vehicle's Washington plate is 405EOH.

Mr. Anderson is a Pierce County Superior Court judge. I have been investigating into his handling of a certain probate estate during the 4-year period before he became a judge. After being elected, but before taking judicial office, Mr. Anderson sold a business that was an asset of the probate estate to a friend of his, William L. Hamilton. Based on information I have received, I believe that Mr. Hamilton may have transferred to Mr. Anderson either the Cadillac or the funds to purchase it. The ownership records that I am requesting may confirm that, or may permit further inquiry of other sources (*e.g.*, a dealership) who may confirm it.

The beneficiary of a 90% interest in the affected probate estate is Pacific County Hospital District; and I am attempting to help it recover what rightfully should have gone to it (possibly including Mr. Anderson's \$112,000 fee). I further am motivated by a desire to purge the judicial system of corrupt individuals.

Thank you for honoring this request.

Very truly yours,

Douglas A. Schafer