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The Wisconsin Supreme Court

c/o Clerk of Court, Rules Clerk

PO Box 1688

Madison, WI 53701-1688

RE: Petitioner's Response to Public Comment, Rule Petition 14-05

Dear Chief Justice and Justices:

I am writing in response to the two public comments received by the clerk's office in opposition to Rule Petition 14-05. I am frankly surprised. The commentators focus on the ABA Model Rules, the rules in effect in other states, the age of the current wording, and the OLR's assurance it is interpreting the rule to include the word "unlawfully." However, the commentators do not address the truly definitive question: Should there ever be an instance when a lawyer in this state may be permitted to *lawfully* alter, destroy or conceal a document or other material having potential evidentiary value?

I believe, based upon the hindsight of my personal experience and in the interest of increasing the public's faith in the legal profession and our justice system, the answer should be a resounding "No! There is never a time when an attorney should alter, destroy, or conceal potential evidence or advise someone else to do so."

As a formerly very zealous criminal defense attorney,¹ who believed it was his *duty* to do all he could for his clients, within the bounds of the law and the rules of professional conduct, I relied on the word "unlawfully" to my own detriment. After interviewing my client and a review of much of the potential evidence, I reasonably believed she did not commit a crime. After consulting this very rule, I advised and I acted, I believed lawfully and wisely, to save the client and the client's former employer additional public embarrassment should her emails and computer data become public. Whether the electronic data was exculpatory or incriminating differs depending on the eye of the beholder, but it was clearly potential evidence. Permitting attorneys to make our own judgment calls on the issue of lawfulness, only to have it called into question later by

¹ As I write this, I have not handled a criminal matter in over a year and my full-time employment is no longer in the legal field. I have a handful of non-criminal cases remaining and am contemplating resigning my license or taking inactive status in July.

others, with our law license or freedom on the line, is not beneficial to anyone in the profession.

In seeking this rule revision, I know all too well the consequences of having my determination of lawfulness called into question. I was accused of the felony of aiding a felon by Milwaukee ADA Bruce Landgraf, only to not be charged by my local district attorney. Then the OLR accused me of the same crime, in a proceeding where I potentially could have been responsible for the costs of the OLR and referee, a prospect my family could not afford. I insisted the OLR strike the accusation that I aided a felon, before accepting a public reprimand to allow me and my family to move on. However, the reprimand was not the end, it was just the beginning. I have since been subject to repeated media and public ridicule as a result.² I know, as my oldest son is just learning to read and use a computer, it is just a matter of time before my children will be able to discover for themselves what has been written about me on the bathroom wall called the internet. I don't know how I am going to explain this all to my children, as my own parents do not understand the legal ambiguity in this rule. All this for doing what I thought was my job. It is a disproportionate penalty that no attorney, no person, should bear. It is all due to one seemingly permissive, indefinite word in a rule of professional conduct.

There should be no gray area, no after-the-fact analysis of the attorney's motives or legal analysis, just a clear-cut rule. When it comes to potential evidence, an attorney should just leave it alone. No attorney who truly believes he is doing his job, within the bounds of the rules of professional conduct and the laws of this State, should ever fall into the same disrepute and ensuing personal hell that I have.

I ask the Court to make the line clear. The change will benefit attorneys, but more importantly, this proposed revision ultimately benefits the truth. No potential evidence should be permitted to be altered, destroyed or concealed by any attorney in this state, or by any person acting upon an attorney's advice. It is in no one's interests to leave this rule as it is today.

Respectfully Submitted,

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² It is clear from internet commentary about me that the general public does not seem to think an attorney should ever be able to *lawfully* alter, destroy, or conceal potential evidence.