

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

FILED

APR - 3 1998

COMMISSION ON JUDICIAL CONDUCT

In Re the Matter of)
)
The Honorable Grant L. Anderson)
Pierce County Superior Court)
930 Tacoma Avenue South)
Tacoma, WA 98402)
_____)

No. 96-2179-F-64

COMMISSION DECISION

Following the filing of a Statement of Charges alleging that Judge Grant L. Anderson violated the Code of Judicial Conduct, the Commission held a fact-finding hearing January 12 through January 16, 1998 in Tacoma. Members of the Commission present as fact-finders were Dale Brighton, Honorable Stephen E. Brown (presiding), Vivian Caver, Harold D. Clarke III, Honorable Michael E. Donohue, Nora Reynolds, Honorable John A. Schultheis and Todd Whitrock.

Judge Grant L. Anderson (Respondent) was present and represented by his attorney, Kurt Bulmer. Disciplinary counsel was Paul R. Taylor of Byrnes & Keller LLP.

The Commission has carefully considered the testimony of witnesses, the exhibits admitted, and arguments and briefs of counsel. The Commission finds by clear, cogent and convincing evidence that:

FINDINGS OF FACT

1. From 1977 through 1992, Judge Grant L. Anderson was a part-time municipal court judge for the City of Fircrest, Washington.
2. From January 8, 1993, to the present, Judge Anderson has been a judge of the Superior Court of Washington for Pierce County.
3. Charles Hoffman was a longtime client of Judge Anderson while Judge Anderson was in private law practice. Judge Anderson drafted Mr. Hoffman's will which designated Judge Anderson to be personal representative upon Mr. Hoffman's death. Mr. Hoffman died in March, 1989. Judge Anderson's work as personal representative

of the estate of Charles Hoffman began in 1989 and continued until the closing of the estate in December, 1992.

4. The estate of Charles Hoffman consisted of various assets including three business corporations: (i) Hoffman-Stevenson, Inc., which owned the real estate and building housing a bowling alley operation in Tacoma, Washington; (ii) Pacific Lanes, Inc., which operated the bowling alley and leased the real property from Hoffman-Stevenson, Inc.; and (iii) Surfside Inn, Inc. Shortly after becoming personal representative, Judge Anderson installed himself as president of each of these three corporations.

5. In mid-1992, Judge Anderson began his campaign for election to the Superior Court.

6. In mid-1992, Judge Anderson, in his capacity as personal representative and as president of Hoffman-Stevenson and Pacific Lanes, began discussions with his good friend William Hamilton, a Tacoma area banker and businessman, about the sale of the bowling alley business. These discussions culminated in a written agreement, entitled "Business Acquisition and Lease Agreement" dated August 26, 1992. This agreement was modified in writing on September 19, 1992, to name the acquiring newly formed corporation, Pacific Recreation Enterprises, Inc., and extend the sale closing date until the necessary liquor and gambling licenses were obtained. William Hamilton was the sole shareholder and president of Pacific Recreation Enterprises, Inc. The agreement provided that Hamilton's corporation would purchase the operating assets of the bowling alley from Pacific Lanes, Inc., for \$300,000.

7. The sale of the bowling alley closed on December 4, 1992. Pacific Recreation Enterprises, Inc., paid \$50,000 to Pacific Lanes, Inc., and signed and delivered a note payable to Pacific Lanes, Inc., in the sum of \$250,000.

8. Pursuant to the terms of an existing loan from First Interstate Bank to Pacific Lanes, Inc., Judge Anderson, in his capacity as president of Pacific Lanes, Inc. pledged the note received in the sale to First Interstate Bank as additional security for its loan. First Interstate Bank received the note on December 24, 1992.

9. At the closure of the Hoffman estate in December, 1992, its assets, including the stock of Hoffman-Stevenson, Inc., and Pacific Lanes, Inc., were transferred to a trust. Stephen Fisher, Judge Anderson's former law partner, became the trustee, while Judge Anderson continued as president of each company.

10. Judge Anderson remained as president of Hoffman-Stevenson, Inc., and Pacific Lanes, Inc., through October, 1993.

11. On December 24, 1992, Judge Anderson purchased a new Cadillac automobile for \$36,177. Judge Anderson obtained a loan for the entire purchase price from Sound Bank in Tacoma, Washington. Judge Anderson paid \$9,000 on the loan immediately and agreed to make payments of \$800 per month over a three year period.

12. On January 8, 1993, Judge Anderson was sworn in as a Pierce County Superior Court Judge.

13. On January 9, 1993, Judge Anderson accepted William Hamilton's offer to pay his automobile loan payments as compensation for selling the estate's bowling alley business to Hamilton, his long-time good friend. Judge Anderson told his then wife, Diane Anderson, that the car was a commission from William Hamilton for selling the bowling alley to him.

14. William Hamilton then arranged to pay Judge Anderson's automobile loan payments out of the business checking account of Pacific Recreation Enterprises, Inc., and listed each payment as an automobile expense on the books of the corporation. For income tax purposes, William Hamilton's company treated these payments as ordinary and necessary business expenses. Payments of \$800 per month were made on Judge Anderson's loan from January, 1993, through May, 1995. Judge Anderson received a total of \$31,185 from the company and good friend who had purchased the bowling alley business from him in his capacity as personal representative of the Hoffman estate.

15. During the time Judge Anderson was accepting payments from William Hamilton and Pacific Recreation Enterprises, Inc. (after January 8, 1993), Judge Anderson was involved in discussions with William Hamilton, trustee Stephen Fisher,

and Mr. Hamilton's accountant, Kevin Iverson, regarding a price adjustment for the bowling alley in favor of William Hamilton and Pacific Recreation Enterprises, Inc. Judge Anderson, along with William Hamilton, Kevin Iverson and Stephen Fisher attended a meeting on March 9, 1993, at trustee Stephen Fisher's office. This meeting culminated in a price adjustment on the sale of the bowling alley in favor of William Hamilton and Pacific Recreation Enterprises, Inc., of \$92,829.

16. At no time during or prior to the meeting of March 9, 1993, did Judge Anderson disclose his acceptance of payments from William Hamilton and Pacific Recreation Enterprises, Inc., to trustee Stephen Fisher.

17. In October, 1993, William Hamilton's company, Pacific Recreation Enterprises, Inc., purchased the land and buildings on which the bowling alley was located. Judge Anderson, in his capacity as president of Hoffman-Stevenson, Inc., executed the closing documents on behalf of the corporation.

18. In October, 1993, prior to executing the closing documents as president of Hoffman-Stevenson, Inc., Judge Anderson still had not disclosed to trustee Stephen Fisher his receipt of money from William Hamilton and Pacific Recreation Enterprises, Inc.

19. Judge Anderson did not disclose his receipt of payments totaling \$9,600 in 1993, \$9,600 in 1994, and \$11,985.08 in 1995 from William Hamilton on his legally required filings with the Public Disclosure Commission for the years 1993, 1994, and 1995.

CONCLUSIONS

1. The Canons of the Code of Judicial Conduct pertinent to this proceeding are as follows:

Canon 1

Judges Shall Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. Judges should participate in establishing, maintaining, and enforcing high standards of judicial conduct, and shall personally observe those standards so that the integrity and

independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

Canon 2

**Judges Should Avoid Impropriety and the Appearance of Impropriety
in All Their Activities**

(A) Judges should respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

....

Canon 5

**Judges Shall Regulate Their Extrajudicial Activities to Minimize the Risk
of Conflict with Their Judicial Duties**

....

(C) Financial Activities

....

(3) Subject to the requirements of Canon 5(C)(1) and (2), judges may hold and manage investments, including real estate, and engage in other remunerative activity, but should not serve as officers, directors, managers, advisors or employees of any business.

Canon 6

**Judges Shall Regularly File Reports of Compensation Received for
Quasi-Judicial and Extra-Judicial Activities.**

Judges may receive compensation and reimbursement of expenses for the quasi-judicial and extrajudicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judges in their judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

....

(C) Public Reports. A judge shall make such financial disclosures as required by law.

2. The Statement of Charges lists seven alleged violations of the Code of Judicial Conduct by paragraph number: III 3(a), III 3(b), III 3(c), III 3(d), III 3(e), III 3(f) and III 3(g).

3. The Commission has determined that the allegations contained in paragraphs III 3(b), III 3(c), III 3(d) and III 3(e) have not been established by clear, cogent and convincing evidence, and, therefore, are dismissed.

4. Judge Anderson violated Canons 1, 2(A) and 5(C)(3) of the Code of Judicial Conduct by continuing to serve as President of Hoffman-Stevenson, Inc., and Pacific Lanes, Inc., through October, 1993, after becoming a Superior Court Judge. Judge Anderson failed to take any action to have himself removed as president of the two business corporations, even though remaining as an officer and conducting business on behalf of two business corporations was a clear violation of the Canons 1, 2(A) and 5 (C) (3) of the Code of Judicial Conduct. There is no reasonable explanation why Judge Anderson could not have resigned his corporate offices prior to becoming judge. Judge Anderson testified that he may have stayed on as president of the two corporations at the request of trustee Fisher. However, the duties of a judge to comply with the code are paramount. (Paragraph III 3(g) of the Statement of Charges.)

5. Judge Anderson violated Canons 1 and 2(A) of the Code of Judicial Conduct by accepting an offer from William Hamilton to have his car loan payments made by William Hamilton during the same time Judge Anderson and William Hamilton negotiated a reduction of \$92,829 in the amount owed by Hamilton's company, Pacific Recreation Enterprises, Inc., to Pacific Lanes, Inc. Personal integrity of the highest order is required of a judge. Judges should and must act at all times in a manner that promotes public confidence in the integrity of judges. The result of Judge Anderson's actions, in accepting the payments from William Hamilton, had the president of a corporation, and a Superior Court Judge, receiving undisclosed compensation from the purchaser of that corporation's assets. This compensation ultimately totaled over 15% of the adjusted purchase price (\$31,185 / \$200,000). The result of Judge Anderson's actions had trustee Steven Fisher, his former law partner, agreeing to a substantial price reduction without knowing that the former personal representative and current corporation president and Superior Court Judge was being paid by William Hamilton. The public confidence in the integrity of the judiciary is substantially eroded by such actions. Judicial integrity, if not the fiduciary duty of a personal representative or a corporation president, required Judge Anderson to disclose his agreement to receive over \$31,000 from Hamilton. (Paragraph III 3(a) of the Statement of Charges.)

6. Judge Anderson violated Canons 1, 2(A) and 6(C) of the Code of Judicial Conduct by failing to report his receipt of payments from William Hamilton and Pacific Recreation Enterprises, Inc., on the public disclosure filings for 1993, 1994 and 1995. Judge Anderson was required to report the payments totaling \$9,600 in 1993, \$9,600 in 1994, and \$11,985.08 in 1995 as compensation received from William Hamilton and Pacific Recreation Enterprises, Inc. A judge who hides compensation from public scrutiny severely damages the public's confidence in the integrity of the judiciary. (Paragraph III 3(f) of the Statement of Charges.)

7. Pursuant to Rule 6 CJCRP(c), the following aggravating factors were considered by the Commission before determining the appropriate sanction:

a. Judge Anderson's actions strike at the heart of judicial integrity and the public's respect for the judiciary. A judge receiving money to which he is not otherwise entitled casts the judiciary in the worst light. This is a serious violation.

b. At any number of occasions Judge Anderson could have made a disclosure of the payments: To trustee Fisher on March 8, 1993; to trustee Fisher in October, 1993; on his public disclosure forms each year, 1993, 1994 and 1995. Instead, Judge Anderson kept the payments hidden from public scrutiny.

c. Judge Anderson has failed to acknowledge any misconduct whatsoever and is unwilling to recognize the effect of his conduct on judicial integrity. His testimony indicated that he placed his friendship with William Hamilton above his ethical responsibilities as a judge.

8. Pursuant to Rule 6 CJCRP(c), the following mitigating factors were considered by the Commission before determining the appropriate sanction:

a. Judge Anderson's misconduct occurred outside of the courtroom.

b. The misconduct was not in his official capacity except as to his duty as an elected official to comply with the financial disclosure laws.

c. Judge Anderson served for 14 years as a part-time municipal judge and 5 years as a superior court judge without any other public disciplinary action.

d. Judge Anderson did not exploit his judicial position to engage in the misconduct.

9. A judge is a highly visible symbol of government. Judge Anderson's demonstrated conduct detrimentally affects the integrity of the judiciary and undermines public confidence in the administration of justice. The Commission concludes that in light of Judge Anderson's covetous conduct, a mere public condemnation would not adequately express its disapproval. Therefore, to restore the integrity in and public confidence of the judiciary, Judge Anderson should also be suspended.

/////

DISCIPLINE


Based on the Findings of Fact and Conclusions, the Commission orders that Judge Grant Anderson be CENSURED. Further, Judge Anderson is hereby ordered to complete the following course of corrective action:

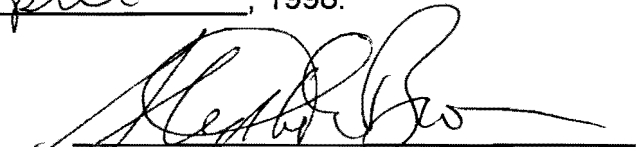
1. Judge Grant Anderson shall attend, and certify his attendance, at his own expense, within six months after this order becomes final, a course in Judicial Ethics to be approved in advance by the Commission.


2. Judge Grant Anderson shall amend his filings with the Public Disclosure Commission for the years 1993, 1994 and 1995 to reflect all compensation received from William Hamilton and Pacific Recreation Enterprises, Inc., during those years.

Further, the Commission recommends the Supreme Court SUSPEND Judge Grant Anderson without pay for four (4) months.


DATED this 3rd day of April, 1998.

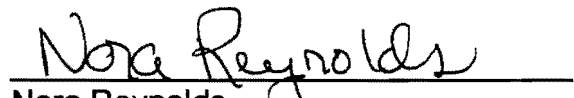

Dale Brighton


Hon. Stephen E. Brown


Vivian Caver

See attached opinion
Harold D. Clarke


Hon. Michael E. Donohue


Nora Reynolds

See attached opinion
Hon. John A. Schultheis


Todd Whitrock

CONCURRING AND DISSENTING OPINION

I concur in the result and in the sanction reached by the majority. However, I respectfully dissent from the majority's holding that Judge Anderson violated the Code of Conduct by not disclosing the Cadillac payments on his public disclosure filings.

The majority has found the Cadillac payments to be compensation. This finding necessitates a further finding that the payments were not disclosed as compensation in public disclosure filings.

I cannot find, by the requisite proof, that the payments were compensation. While questions exist regarding these payments, the appropriate characterization is that of a gift. Having found these payments to be a gift, I do not find a reporting violation by Judge Anderson in his PDC filings.

I realize there is some concern over how gifts are to be disclosed on PDC filings. However, the question of the requirements of the Canons as to the reporting of gifts is not before this Commission in this matter. Therefore, I will leave that topic to another day.

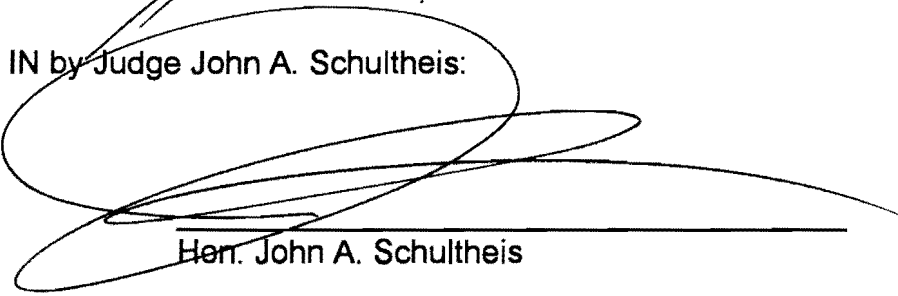
Regardless of how the Cadillac payments are characterized, these payments have the appearance of impropriety under the circumstances of this case. Therefore, while I respectfully dissent on the issue of the characterization of the payments, I concur in the order of censure with the recommendation for suspension.

RESPECTFULLY SUBMITTED this 3rd day of April, 1998.



Harold D. Clarke, III

CONCURRED IN by Judge John A. Schultheis:



Hon. John A. Schultheis