2

3

4 5

6 7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

FILED AUG 30 1900

COMMISSIUN ON JUDICIAL CONDUCT

BEFORE THE COMMISSION ON JUDICIAL CONDUCT OF THE STATE OF WASHINGTON

In Re the Matter of))))	CJC No. 98-2785-F-77 ANSWER
The Honorable Grant L. Anderson,		
Pierce County Superior Court		

COMES NOW, The Honorable Grant L. Anderson answering the Statement of Charges filed on August 9, 1999.

- 1. Paragraphs 1 and 2 relating to part I. Judicial Service are admitted.
- 2. Except as specifically admitted below, Paragraphs 3 through 9 of part <u>II. Facts</u>, are denied.
- 3. Paragraph 10 of part III. Prior CJC Disciplinary Action is admitted.
- 4. Paragraph 1 of part IV. Statement of Allegations is admitted.
- 5. Paragraphs 2 and 3 of part V. Probable Cause are denied.

A. ALLEGATION OF FALSE TESTIMONY

In response to the allegation that he testified falsely in the prior Commission proceedings Judge Anderson acknowledges that he testified in those proceedings but denies that he testified falsely. The issue of the rental payments had not been an issue in the those proceedings. The payments only came up as an aside during the review of an accounting sheet on an entirely different issue. Judge Anderson had never been asked about this before by the Commission and he had not been asked to review the documents in connection with the rent.

27 28

XURT M. Bulmer Attorney A. Law 20 I westlake Avenue K SEATTLE, wa daloo (200) 342-5700

BOOK PUBLISHING

1 2

3 4

5 6

7

8 9

10

11

12

13 14

15 16

17 18

19 20

21 22

2324

25 26

27

28

KURT M. DULMER ATTORNEY AT LAW SO I WESTLAKE AVENUE N SEATTLE, WA 98109 (206) 343-5700

When asked about the rent he specifically couched his answers in indefinite terms such as what his understanding was and to the best of his knowledge.

Judge Anderson testified to the best of his knowledge at the time he was asked the questions. The Commission has no evidence and can produce no evidence that he intentionally told an untruth as opposed to simply being mistaken. Allegations of perjury cannot be proven by circumstantial evidence nor by inference. There must be direct evidence that he knowingly and intentionally testified falsely about these minor events which had occurred many years before. There is no such evidence because he did not do so.

The allegation of false testimony is not true and should be dismissed.

B. ALLEGATION OF ALLEGED BACKDATED LEASE ADDENDUM

The Commission baldly asserts that a rental increase for Pacific Lanes was accomplished through a document entitled "Addendum to the Lease." This is not correct. The rental increase was accomplished by the accountants telling Judge Anderson that the \$12,000 was the right amount to charge for the rent. The "Addendum" was nothing more than the documentation of the increase.

As to the so-called "backdating" of the "Addendum" - there is no proof, and the Commission is aware there is no proof, that Judge Anderson ever knowingly participated in or directed any such action.

As the Commission acknowledges, the document was prepared by a legal assistant. Judge Anderson believes that the accountant told him that the rent needed to be increased and that consistent with his usual practice he made some sort of informal notation to that effect in the file or corporate minute book. At some point the records were being formally prepared and the "Addendum" was prepared by the legal assistant to that effect. The dates on the

"Addendum" was almost certainly a product of the legal assistant looking at the date on the informal notation about the rental increase and using that as the operative date for the increase. Judge Anderson signed the document presented to him. The handwriting on the document showing dates is not his and it is highly likely that the dates were not even noted on the addendum at the time he signed it.

The Commission's position on this is that Judge Anderson intentionally signed a "backdated" document so as to achieve some sort of tax advantage for the Pacific Lanes. Judge Anderson had no personal interest in Pacific Lanes and it made no difference to his compensation as to whether or not the alleged tax advantage was obtained or not. The Commission is well aware that no actual cash exchanged hands between Pacific Lanes and Hoffman-Stevenson (although Judge Anderson was not aware of this until the time of the prior Commission hearings). If it had been agreed, as Judge Anderson believes it was, that the rental rate would be increased then when the notation was actually made in the books was not crucial. It would be entirely consistent with reasonable business practices for the agreement to raise the rents to have been made in 1989 but for the paperwork reflecting that change to not been formally prepared until the tax advisors were preparing the tax returns which would have been in about March, 1990.

Judge Anderson is not and never has been sophisticated about tax and accounting matters. He looked to and relied upon professionals for these services. He relied upon them to properly prepare the accounting records and he relied upon them to properly prepare the tax returns. If there are errors or mistakes in these records and returns Judge Anderson is not aware of them, did not direct them to be made and did not have anything to be gained by having them made.

Kurt M. Bolmer Attorney at Law 201WEBILAKE AVENIE N SEATTLE, WA 98109 (206) 343-5700 The allegation of improperly having backdated a lease addendum is not true and should be dismissed.

C. ALLEGATION OF FALSE POLICE REPORT

The Commission also asserts that Judge Anderson caused a false police report to be filed with the Tacoma Police Department. First, it must be noted that the Commission is less than candid in its charges about why the charges were dismissed against Mr. Santos. They assert they were dismissed "in the interest of justice." In fact the charges were dismissed only because his girlfriend provided a last minute alibi.

This matter involves the Anna Allotta Estate. Anna Allotta had two sons - Tiny and Sam. Sam had a daughter, Jennifer. At the relevant times, Jennifer had a hoyfriend - Mr. Santos.

Judge Anderson met Anna Allotta initially when he and Sam Allotta had first become acquaintances in the 1960's. He knew her and occasionally saw her over the years. Judge Anderson does not remember the circumstances but in 1988 he was asked to prepare a will for her. He does remember meeting with her at least once, alone at his office. He prepared the will but feels that it is very likely that the unsigned original was delivered to someone to take to Anna to be signed and witnessed.

It was apparently signed and witnessed on June 29, 1988. The witnesses were Jennifer Allotta and Santos. (It is also possible that Jennifer and Santos signed the will after Anna's death because it looked like Jennifer was going to get some of her grandmother's estate.) Judge Anderson believes that he was not present for the signing as he is unlikely to have had Jennifer as a witness since she was a partial beneficiary. He also was aware that Sam would not have liked having his mother's will witnessed by Santos.

9

10

1516

17 18

19 20

21 22

2324

25

26 27

28

KURY M. BULMER ATTORNEY AT LAW 201WESTLAKE AVENUE N SCATTLE, WA 98109 (208) 343-5700 The will named Sam Allotta as personal representative and Judge Anderson as alternate personal representative. The will provided for some specific bequests to Jennifer and other family members but the majority of the assets were divided into two separate equal trusts, one for Tiny Allotta and one for Sam Allotta. The trust established for Tiny was a special needs trust. The trust established for Sam provided that upon Sam's death any remaining portion of Sam's trust would be distributed to the special needs trust for Tiny. Judge Anderson was to be the trustee for the trusts.

On July 2, 1988, within days of when she apparently signed her will, Anna died. Sam, the personal representative, did not open an estate. Judge Anderson recalls asking Sam more than once about the will and being told that it could not be found. Sam was somewhat evasive about the whole thing. The reason for this would become apparent later when Judge Anderson opened Anna's estate after Sam died. It is clear that Sam treated Anna's estate's assets as his personal assets. He would have been restrained from doing so if the trusts envisioned by the will had been set up. It should be noted, however, that he also took very good care of Tiny.

Sam moved into Anna's house and took over caring for Tiny with the help of family members including Nick and Diana Iacobazzi. Diana Iacobazzi is Anna's sister.

Sam died on September 25, 1989. The Iacobazzis immediately moved Tiny into their home. Anna's will was located in the house and was delivered to Judge Anderson. Pursuant to its provisions probate proceedings on Anna's estate where filed on October 10, 1989. Prior to that Judge Anderson took steps to marshal and secure the property of the estate and to make sure that Tiny was okay.

These events occurred over nine years ago but as best as Judge Anderson can recall the following occurred. At some point Nick Iacobazzi (Iacobazzi) told Judge Anderson that very

shortly after Sam's death he had seen Santos at the house and that Santos had run from the house when he saw Iacobazzi. Judge Anderson recalls wondering how Santos could have gotten in the house since Iacobazzi was supposed to have the only keys. Judge Anderson and Iacobazzi visited the house together. At that point either Judge Anderson noticed or Iacobazzi pointed out that a window had been pried open and they discussed that this must have been how Santos got in the house.

Some items that Judge Anderson expected to be in the house were missing, specifically a Rolex watch and an unusual ring. Jennifer told Judge Anderson that Santos had taken items from the house. Arrangements were made for Judge Anderson to pick up the items. Judge Anderson then met with Santos and Santos told him that he had taken the items from the house, Santos delivered a shotgun, a jar of coins and three watches.

Judge Anderson did not know whether Santos had stolen the items but it certainly looked like it to him. What he did know was that there was a pried open window in the house, items were missing from the house, that Iacobazzi had told him that he had seen Santos run from the house, that Jennifer told him that Santos had taken items from the house, that Santos had said he had taken items from the house and had delivered items from the house to Judge Anderson. Judge Anderson reported what he knew and had been told to the police because it was the right thing to do, because other valuable items were also missing and because there would need to be a police report in the event an insurance claim needed to be filed.

Judge Anderson gave his oral report to the police, apparently on October 12, 1989. He does not recall being shown the police report and it does not appear that he was asked to sign it. The report is the police officer's interpretation of what Judge Anderson was saying, contains at least one clear error and has information not provided by Judge Anderson. The

ANSWER
Page 6

KURT M. BULMER ATTOKNEY AT LAW 201 WEST AKE AVENUE N SEATTLE, WA DE LOO (204) 343-5700

9

10

5

13

22

20

28

The police apparently turned the matter over to the prosecuting attorncy. Charges were filed October 31, 1989. Amended Charges were filed November 16, 1989. Amended Charges were again filed on February 8, 1990. The case was set for trial on March 12, 1990.

On the day of trial, almost four and one-half months after the charges were first filed, Jennifer appeared and testified on behalf of her boyfriend and the father of her children. If convicted Santos, having had at least one prior conviction for burglary, faced extremely serious consequences. In a pattern familiar in criminal and domestic violence matters, she provided Santos with a defense. Jennifer asserted that she had been with Santos in the house and had given Santos permission to remove the items. As a result the charges were dismissed. The Commission has a copy of the transcript of the dismissal hearing and is well aware of this history.

Judge Anderson did not file or cause to be filed a false police report, all he did was tell the police what he had been told including that Mr. Santos did indeed have in his possession items which had been removed from the house.

Judge Anderson has been prejudiced by the passage of well over nine years since these events took place. He no longer knows exactly what he told the police. He does not believe that he ever saw the police report until it surfaced in this matter. It is probably generally accurate as to what he told the police but it is no longer possible to determine if the use of vocabulary selected by the police officer to characterize the events are the words of the police

KURT M, BULMER ATTORNET ALLAW BOLWESTLAKE AVENUE N SEATTLE, WA 98100 (200) 343-5700 officer or the words of Judge Anderson, Judge Anderson does know that he has never filed a false police report - all he did was tell the police what he understood to have happened. At that point it was in the police and prosecutor's hands.

Santos admits that he had been to the house and that he took items. The only question is whether he did so with or without permission. Santos is totally without any credibility, he is a convicted felon who had to do everything he could to avoid another burglary conviction. He apparently hates Judge Anderson. He is a con man who has suddenly developed an heretofore non-apparent interest in Tiny's welfare. We believe that he has hopes of preying on Tiny in the event Tiny should come into additional funds.

His defense that he had permission to be in the house is not credible. Santos was apparently on a suspended sentence for burglary at the time he was charged with burglarizing Anna's house. If he had really had Jennifer's permission to be there does it make any sense at all that he would wait until the day of trial several months later to make such assertion? What any innocent person would have done when served with a criminal complaint is to have immediately said - "Wait a minute, this is all wrong, I had permission to be in the house and here is the person who gave me that permission." But, of course, that did not happen. Far and away, the most likely scenario is that Jennifer had not given him permission and was not willing to lie for him until he put pressure on her shortly before trial. The complaint against Santos had been amended in February, 1989 from RCW 9A.52.030(1) - Second degree burglary, a class B felony - to RCW 9A.52.020(1)(a) - Burglary in the first degree armed with a deadly weapon, a class A felony. The stakes had increased considerably for Santos. Only after this did Jennifer appear on the scene and say she had given him permission to be in the house.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27 28

Santos obviously played to Jennifer's affection for him and we believe would have pointed out that if he took the fall on another conviction he was going to be gone for a very long time. She would lose him personally as well lose support for their children.

The problem with lies are that they are hard to keep straight, particularly when they are based on a conspiracy between two people. The Commission's case is based in large part upon declarations prepared by Attorney Douglas Schafer, a public and vocal critic of Judge Anderson.

When the Schafer declarations were prepared neither he nor Santos had the transcript of what Jennifer had said at the hearing in 1990. At that hearing she expressly stated that she went with Santos to the house. Yet in 1998 Santos makes it clear in his declaration that he went to Anna's home by himself, albeit while asserting that he had Jennifer's permission to do so. If in fact he had gone with Jennifer he would have stated that in his declaration in order to give himself the maximum amount of "credibility." But he had not gone with Jennifer nor did he have her permission. He went by himself and went into the house and stole the items. When trying, years later, to remember what happened, what he remembered was much closer to the truth about going to house then the story he and Jennifer had cooked up years before to get the charges dismissed.

Jennifer adopts Santos' declaration. This is unconvincing and is at odds with her prior statements on the record. Furthermore, we believe Schafer has told her that she can get money from Judge Anderson.

The remaining "proof" relied upon by the Commission is Nick Iacobazzi's declaration. Mr. Iacobazzi is a decent person who has always had Tiny's best interests at heart. His declaration seeks to reconstruct years after they happened conversations he had with Judge

ANSWER Page 9

KURT M. BULMER ATTORNEY AT LAW CIWESTLAKE AVENUE N SEATTLE, WA 98 LOS (806) 345 5700

 $\frac{1}{2}$

Kury M. Bulmer

ATTORNEY AT LAW
201WESTLAKE AVENUE N
SCATTLE, WA 95109
1208) 443-5700

Anderson but that declaration has been filtered and influenced by Schafer. Schafer will do anything he can to get Judge Anderson. He recently wrote to another lawyer in connection with the Hoffman estate:

Forgive me if I get too emotional about such antiquated concepts as "truth," "justice," and "morality," but I think about "the Judge" every day, and being able to periodically vent in this manner perhaps keeps me from acting out my "vigilante justice" fantasies. It is possible to get somewhat unstable when the trusted public institutions (the judiciary and its disciplinary system, the bar and its disciplinary system, law enforcement and prosecutorial officials, public interest journalists) that one has believed in for decades have been shown to be virtually worthless - with no one else seeming to notice or to care.

This demonstrates, in Schafer's own words, the level of desperation he feels in his quest to ruin Judge Anderson.

There is further reason to look at anything generated by Schafer with suspicion. An attorney for the Bar Association, in a recent report about Schafer to other bar officials, summarizes the history of Schafer's "investigation" of Judge Anderson, noting that it began after rulings made by Judge Anderson which were adverse to Schafer's personal interests. The report notes the Schafer's motives for taking certain actions were to "expose" Judge Anderson and notes the following:

We believe that a clear preponderance of the evidence establishes that lawyer Schafer was untruthful to third persons in the course of representing his client, in violation of his ethical duty. The circumstances surrounding the investigation suggest that the falsehoods were knowingly offered and not the result of mistake or simple negligence.

Why is this relevant at this these CJC proceedings? They are relevant because Schafer has substantially and permanently polluted the waters in regards to already ancient memories of what happened back in 1989. Unless he tape recorded his conversations with Iacobazzi and others we will never be able to know how much of the recollections are "true" recollections

28

KURT M. BULMER
ATTORNEY AT LAW
20 WESTLAKL AVENUE N
SEATTLE, WA 981 09
18081 343:5700

and how many are the product of Schafer's attempt to get "vigilante justice" or are the product of intentional falsehoods made to "expose" Judge Anderson.

Iacobazzi says that he never saw Santos alone in the house yet we know that Santos, by his own statements, was alone at the house on at least one occasion. We suggest that it is highly plausible that Santos was alone at the house and was leaving when Iacobazzi was arriving. Iacobazzi probably saw Santos getting into his car and leaving. The police report does not say that Iacobazzi was supposed to have seen Santos stealing anything nor that he saw Santos taking anything. It seems very likely that Santos was at the house getting things and that Iacobazzi saw Santos leaving and that Iacobazzi told Judge Anderson this. However, since Iacobazzi did not see Santos taking anything it would have been a passing moment and not one which he is likely to have remembered years later. If he had told Judge Anderson that he saw Santos stealing items he might very well have remembered this but if the police report is to be believed he did not do so.

Iacobazzi says he was unaware of the prosecution against Santos. If this is a correct memory, then it is even more likely that his memory of whether or not he saw Santos momentarily at the house is unreliable. Is it really very likely that years later he recalls with the precision represented in his Schafer drafted declaration whether or not he saw Santos leaving the house and told Judge Anderson this? What is far more likely is that his declaration is the product of his having been "assisted" by others who had a preconceived position they wanted him to adopt and that he was lead to the position taken in his declaration rather than being the true product of an actual memory.

The allegation in this matter is that Judge Anderson is supposed to have decided that Santos was not good for Jennifer and so to have set out on a conspiracy to arrange for Santos

ANSWER

Page 11

Jennifer, a person he hardly knew, from her boyfriend and the father of her children, Judge Anderson is supposed to have gone to the police and trumped up charges. In these trumped up charges he is supposed to have made false representations about what persons had said to him. These were persons who were a simple phone call away from the police and prosecutors. If Judge Anderson had wanted to "get" Santos wouldn't it make much more sense for him to tell a lie that he saw Santos running from the house rather than to make up a lie that would rely upon another to confirm?

This entire allegation is bogus and is based on the vindictive actions of Santos and Schafer. The police report is the unreliable hearsay of a police officer's understanding of what Judge Anderson was telling him. There is nothing which establishes that it is an intrinsically reliable document and it is factually wrong in at least one instance. The police have also added their own information to the report, including the information that Santos had been picked up for burglary 2 days before the report. There is no way of knowing, at this late date, if the police officer heard Judge Anderson correctly or simply translated what he heard into his own version of the story. Jennifer and Santos are completely unreliable. Iacobazzi is a nice person who is being asked to remember extremely minor events from years ago. He is being used by Santos and Schafer in their personal vendettas against Judge Anderson. It is being suggested that Judge Anderson, out of a desire to somehow separate Santos from a person Judge Anderson barely knew, had the time and inclination to make false statements, the truth of which could clearly be confirmed. The supposed motive is ridiculous

The allegations concerning a false police report are not true and should be dismissed.

KURT M. BULMER ATTORNEY AT LAW 20 I WESTLARL AVENUE N SEATTLE, WA 98 I US (206) 340 5700

D. ALLEGATION OF A BACKDATED ESTATE INVENTORY

Finally, the Commission accuses Judge Anderson of filing a backdated inventory in the Hoffman-Stevenson estate. It does not assert why he would do this. There is nothing in the inventory itself which is not accurate nor does the Commission assert there was. The Commission has interviewed the persons involved in this matter and is well aware that the information concerning the alleged backdated inventory is incomplete and that it cannot possibly meet the standard of proof required to show that Judge Anderson knowingly or intentionally filed a backdated inventory.

This relates to matters in the 1989 - 1993 period. There is simply no way to know exactly what happened but here is what we think happened: On or about September 26, 1989 a preliminary estate inventory was prepared and on November 8, 1989 Judge Anderson signed one. There are time records, which the Commission has but ignores in its charges, showing the preparation of the preliminary inventory and showing that Judge Anderson was in the office on November 8, 1989 working on estate accounting matters. The preliminary inventory was probably notarized at that time.

We believe that on or about November 5, 1992, as the estate was being wrapped up, someone went to look for the inventory. It was enough of a process that the assistant found it noteworthy to put a reference in the time records of a "review of file to locate inventory." Again the Commission has these time records but ignores them. The assistant probably could not find the original which had been prepared three years before. At that point the assistant would have gone to the computer and seen if the form was still on the computer. It probably was and so printed out another one using the stationary of the firm as it existed in 1992. The

ANSWER

Page 13

3 4

5 6

7

8

9 10

11 12

13 14

15 16

17

18 19

20 21

2223

24

26

25

27 28

KURT M. BULMER TORNEY AT LAW I WESTLAKE AVENUL N SEATTLE, WA 08109 (ZO6) 343-5700

prior form would have had the November 8, 1989 date. The date on the form is part of the typed document.

The document would then have been presented to Judge Anderson for signature. It is highly unlikely that he would have paid any attention to a date typed in at the notary line of a document presented to him by his legal assistant. He would simply have signed. It would then have been notarized.

Judge Anderson did not direct, authorize or seek to have an improper 1989 date put on the document. It would have made absolutely no difference as to what date was on the inventory. There is no motive for him to "backdate" this document. There was no indication at that time that there was any criticism of how that estate had been handled and even if there had been the date on the inventory would have made no difference.

There is another possibility which is that if the original had been prepared and signed on November 8, 1989 it is very likely that on that date Judge Anderson had indeed appeared and signed it before Deleon. She is the one who ordinarily notarized his documents. If that is so then the redone document is indeed correct and accurate. What stationary is used to set forth the correct statement is irrelevant. It is also possible that the document is the original from 1989 and that in November, 1989 a piece of stationary was used for the new firm which was formally coming into existence on January 1, 1990. At some point they would have had either samples or actual pieces of the new stationary. Mistakes do happen in an office and possibly someone simply used the wrong piece of stationary in 1989. The time records in 1992 would then be for creating the inventory listing.

ANSWER

Page 14

NURT M. DULMER ATTORNEY AT LAW 20 (WESTI AKE AVENUE H SEATTILL WA RE LOD (205) 2411-3700 Any of these three options, or some other option, may have occurred. But in any case there is no proof that Judge Anderson was aware of any of this and it is very unlikely that he would have been.

A person who "falsely swears" must have express knowledge that it is false. There is not negligent false swearing. The inventory is not false and the only thing that might be wrong is the date on which it was signed. There is nothing to point to knowledge by Judge Anderson as to what date was put into the notary field. Further, there is no evidence and none will be found that Judge Anderson knowingly arranged to have an otherwise accurate document backdated and then filed. There is no reason for him to do so.

This inventory was at the most an office mistake by the use of a form which already existed in the computer and which was done by a staff person who was just trying to do a good job. In all probability the original was finalized, generated and signed on November 8, 1989 and then lost. The "second" copy was then generated but which would still have been accurate. There is nothing to show to the contrary.

It is incumbent upon the Commission to have more than speculation before a judge is charged. That is all there is here - pure speculation as to what may have happened - based on limited records from a very long time ago. There is no reason to attribute "evil" motives when there is a valid explanation for what happened. This explanation is backed up with proof that an inventory was prepared in September, 1989, that Judge Anderson was in the office on November 8, 1989 working on estate matters and that shortly before the second copy of the inventory was probably prepared that someone was spending time going through the file searching for the inventory.

This allegation should be dismissed.

2 3

5

6

4

. The Commission asserts tha

7

8 9

10 11

12

13 14

15 16

17

18 19

20

2122

23

2425

26

27

28

ALIGNEY AT LAW ED IWESTLARE AVENUE & SEATHE, WA DRIOD (206) 349-5700

E. ADDITIONAL RESPONSE AND DEFENSES

1. These matters are barred by laches.

2. The Commission asserts that it did not have the relevant information at the time of the prior proceedings against Judge Anderson although it had spent thousands of dollars reviewing and copying virtually all the documents in the Hoffman Estate. It certainly did have all information in regards to the Hoffman Estate prior to the first proceedings. All matters in connection with that estate should have been finalized in that proceedings. It is a denial of due process, equal protection and fundamental fairness to seek a "second bite at the apple" on Judge Anderson in regards to the Hoffman Estate matters.

3. These proceedings were started against Judge Anderson after the Commission was aware that he had been ordered removed from the bench by the State Supreme Court. Nonetheless, the Commission felt the need to bring these proceedings. Such action is unnecessary and no rationale has been presented as to why such action is needed under these circumstances. The Commission's actions are counterproductive to the promotion of the integrity and standing of the judiciary and can have no possible benefit since Judge Anderson has been ordered removed from the bench. To have proceeded in the face of that order by the Supreme Court is unbecoming of the Commission. These proceedings should be closed as unnecessary.

Dated this 30° day of $Augus^2$, 1999.

Kurt M. Bulmer, WSPA No. 5559

Attorney for the Honorable Grant L. Anderson