



WASHINGTON STATE BAR ASSOCIATION

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August 15, 1996

Mr. Douglas Schafer
Attorney at Law
1019 Pacific Avenue, Suite 1302
Tacoma, WA 98401-1134

Re: Grievance against lawyer Grant Anderson
WSBA File # 9600432

Dear Mr. Shafer:

This letter is to advise you that we have completed our investigation of your grievance against lawyer Grant Anderson and to advise you of our decision. The purpose of our review has been to determine whether there is sufficient evidence upon which to base a disciplinary proceeding. Under the Rules for Lawyer Discipline, a lawyer may be disciplined only upon a showing by a clear preponderance of the evidence that the lawyer violated the Rules of Professional Conduct.

Based on the information we have reviewed, there is insufficient evidence to prove unethical conduct by lawyer Anderson by a clear preponderance of the evidence in this matter. Therefore, we are dismissing the grievance. Our decision to dismiss the grievance is based upon a review of your original grievance received on April 9, 1996, all of the documents you presented with your grievance, a review of the estate file, a review of the complete PDC documentation regarding Grant Anderson, and conversations with you, all respondents (either personally or through counsel), Frank Clark, William Hamilton, Jim Findlay, the interim administrator at Ocean Beach Hospital, Bob Hanke, Ian McMillan, Alan McPherson, Eileen Peterson, Duncan McMillan, Kevin Iverson, and Bill Peare.

Your grievance makes several allegations of self dealing and fraud against Grant Anderson and the lawyers practicing with him prior to his election as a Pierce County Superior Court Judge. You indicate that Judge Anderson's rulings in the Medley Estate caused you to doubt his competency as a judge. After these rulings, you began to research the public documents in the unrelated Hoffman estate. Your grievance included several hundred pages of documentation from

the Hoffman estate and Public Disclosure Commission documentation. You did not submit the complete Hoffman estate file nor all of the PDC documentation. You have not represented any of the parties involved in the Hoffman estate. You also allege that Gary L. Frind, CPA and Arnold F. Stoehr, retired manager of the Time Share Section of Department of Licensing were involved in the misconduct. We will not discuss the allegations against Mr. Frind or Mr. Stoehr because they are not lawyers and we have no jurisdiction over their conduct. We also will not discuss your allegations regarding lawyer Anderson's judicial conduct. You indicated that the Commission on Judicial Conduct was investigating these allegations. We will discuss each of your remaining allegations separately. You also indicated that you submitted this information to the Pierce County Prosecutor and the Attorney General. Both agencies declined action.

Your allegations arise out of the estate of Charles Hoffman, a probate Judge Anderson and his firm handled for several years. Charles Hoffman died in 1989. When Mr. Hoffman died, his estate consisted, principally, of Pacific Lanes, a bowling center in Tacoma, and Surfside Inn, a Condominium development near Ocean Park, on the Washington Coast. The Condominium development included a swimming pool, restaurant, convention center, sewer treatment plant, and golf course. Apparently, these condominiums are near, but not on the ocean. During his life, Mr. Hoffman ran into money trouble and the state of Washington took over the golf course. Additionally, the condominiums were registered under the time share act, to be sold in one week sections. Each section rotates weeks each year. Consequently, if your section is the first week of October, you will not have a summer week for many years. Only the higher units have an ocean view. During his life, Mr. Hoffman apparently used the profits from the bowling center to further develop his dream on the coast. The coast development, apparently, did not support itself and was poorly maintained for several years before Mr. Hoffman's death. Mr. Hoffman's will left a life estate to his ex-wife Millie, and then gave 90% to the Ocean Beach Hospital and 10% to his son, Curtis Hoffman. Millie died on January 22, 1993.

I. The Estate taxes paid indicated in the Petition for Distribution filed 12-14-92 understated the taxable estate.

We understand your allegation to be that lawyer Anderson failed to give the accountant the correct value of the estate for preparation of the estate tax return. You state that the death taxes paid were \$82,837.00. You indicate that this translates to an estate of \$820,020.00. You believe that this is an understatement because Pacific Lanes sold for \$1,000,000.00, the condos and timeshares sold for \$820,000.00, and the convention center sold for \$850,000.00. You indicated that there was an outstanding \$443,000.00 small business loan. You also indicated that you did not know whether there were other debts or not. You state that lawyer Anderson retained lawyer S. Alan Weaver of Eisenhour Carlson to prepare the IRS form 706. However, you also state that you have no reason to suspect any trouble with lawyer Weaver's conduct.

The IRS accepted the estate tax return as filed. Many circumstances appear to have

influenced the ability to value this estate's assets. The convention center was the subject of an arson fire and Pacific Lanes contained asbestos, and a broken roof truss (running the entire length of the building). Additionally, some of your figures are higher than the actual sale values. We are not in a position to second guess the IRS. The evidence does not rise to the level necessary to prove an ethical violation.

2. Lawyer Anderson was paid a \$112,000.00 personal representative's fee that he did not declare in his public disclosure commission form F-1 and may have failed to report on his IRS 1040.

You allege that lawyer Anderson was paid a \$112,000.00 personal representative's fee individually. Consequently, you believe that he failed to report this fee as income on his 4-4-94 F-1 form and may have failed to report this amount on his IRS 1040 form also. Our investigation shows that this \$112,000.00 fee went to the law firm, not to lawyer Anderson directly. Consequently, this fee was not income that lawyer Anderson needed to disclose separately on his F-1 or his 1040. This is not an ethical violation.

3. Lawyer Anderson sold time share units from the Hoffman estate to members of his firm and other friends for less than market value. You allege that lawyer Anderson took advantage of his position as personal representative of this estate to sell time share units to his friends for below market value. You also state that you doubt that the members of the firm and friends actually paid anything at all for their time share units. You indicate that in December 1992, several lawyers in Anderson's firm were deeded time share units in Surfside Condo #132 for \$1,000.00 per unit (week). You allege that the fair market value of these time share units was actually \$2,000.00-\$3,000.00. Consequently, you believe that all persons who received these units should have reported the "bargain element" as compensation. You apparently base your determination of fair market value on your compilation of sales prices for Surfside time shares over a several year period. You apparently calculated the time share sales prices from the excise tax affidavits filed with Pacific County. You submitted several deeds and excise tax affidavits for the years 1983-1995. Excluding the units in questions, the prices range from \$1,500.00 to \$4,935.00 per time share unit. Most of the higher prices were during 1983 and 1984. We reviewed a list of time share units currently for sale by owners. The prices range from \$1,500.00 to \$3,995.00 per week. Many of these units have been on the re-sale list for months. You did not submit any documentation to support your allegation that the purchasers did not pay the amounts stated in the excise tax affidavits.

When Mr. Hoffman died, apparently, only some of the Surfside units had been sold. Some were sold as whole units and others were sold as time shares. Many units had only random weeks sold. Additionally, the buildings were in need of repair and maintenance. Owners were complaining that the exterior maintenance had been badly neglected and the halls in the building were rotting because the carpet was continually wet. The estate performed repairs and maintenance to bring the units into condition to sell. The estate also did some upgrading to entice buyers. Some

of these repairs and upgrades appear to have been financed by raising the assessments charged to owners.

Lawyer Anderson, acting as personal representative of the estate, listed the Surfside development for sale with several real estate agencies in Ocean Park and Long Beach. One of the agents set up a 1-800 number for potential buyers to use. Direct mailing of brochures and offers of a free one night stay were used. Advertisements were published over the entire West Coast. Apparently, only three offers were made. One offer was very low and, consequently, not accepted. Trendwest, the eventual purchaser, would only buy full units--those with all weeks available. Consequently, lawyer Anderson decided to create as many full units as possible. Lawyer Anderson began contacting time share owners and attempting to consolidate full units. Lawyer Anderson arranged sales for owners wishing to sell their units. Eventually, the sale to Trendwest occurred. However, a few units could not be sold to Trendwest because they had a few weeks sold. Lawyer Anderson attempted to sell these to all willing buyers. After these extraordinary efforts to sell the Surfside units, Lawyer Anderson apparently made a business judgment that the cost to the estate to continue to hold the units while waiting for a buyer was higher than selling the units at \$1,000.00 per unit. Lawyer Anderson sold these units to anyone he could convince to buy--including his friends and partners. These buyers did pay for their units. Some of them are continuing to pay on promissory notes. Lawyer Anderson did not purchase any units from the estate. Lawyer Anderson cannot now remember whether he discussed these sales with Millie Hoffman, the life beneficiary. The remainder beneficiaries do not dispute the sales.

We analyze this issue as having the following two parts: a) whether lawyer Anderson used reasonable judgment in deciding to sell the remaining time share units instead of allowing them to remain in the estate for a potential better price later; and b) whether lawyer Anderson sold the units to his friends at lower than market value to profit from the estate assets. The first issue is a matter of professional judgment. Lawyer Anderson, in his capacity as personal representative determined that the estate would benefit more from selling the remaining units than holding them for a potential future buyer. A lawyer is required to give his or her client his best advice regarding the merits of the case. This office is not in a position to second guess a lawyer's professional judgment and will take no further action. You apparently attempted to convince Ocean Park Hospital to retain you to challenge these sales, but they refused your solicitation.

The second issue is also a matter of professional judgment, but you have raised allegations of fraud and breach of fiduciary duty. We understand your grievance to allege misconduct by lawyer Anderson in his capacity as personal representative of the Hoffman estate. Personal Representative Anderson had non-intervention powers and a duty to settle this estate as rapidly as possible, without sacrifice to the estate. Our investigation did not find any evidence that lawyer Anderson or any of his partners or friends benefitted from lawyer Anderson's actions as personal representative. It appears that lawyer Anderson determined that he could not find any other buyers for the last units, consequently, he sold them to people he knew. The estate did benefit

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from these sales. Lawyer Anderson states that he cannot remember whether he discussed these sales with the beneficiary, Millie. The better practice would have been to write a letter to the beneficiaries discussing the sales to the personal representatives law partners. However, because the personal representative had non-intervention powers, the sales benefitted the estate, and the beneficiaries do not dispute the sales, the evidence does not rise to the level necessary to prove an ethical violation.

4. Lawyer Anderson received some kind of personal consideration in return for his "bargain" sale of Pacific Lanes to William Hamilton and did not report this income on his IRS 1040.

This allegation is based on a statement Mr. Hamilton made to you during an attorney-client meeting. You state that Mr. Hamilton told you that Grant Anderson had been "milking an estate for years." You also state that Mr. Hamilton said that lawyer Anderson was giving him a good deal on Pacific Lanes, so he would "repay Anderson down the road by paying him by appointing him corporate secretary or something like that." You allege that Mr. Hamilton meant that lawyer Anderson had been using the Hoffman estate for his own advantage for years. You also allege that lawyer Anderson was selling Pacific Lanes to Hamilton for less than market value. You apparently did not review lawyer Anderson's 1040.

* Mr. Hamilton agrees that he made the statements you attribute to him. He states, however, that you have misinterpreted those statements. Mr. Hamilton states that by "milking" the estate, he meant that lawyer Anderson was working hard to turn the estate assets into more profits than losses, and generate cash for the beneficiaries. Mr. Hamilton emphatically states that lawyer Anderson, to his knowledge, was not gaining any personal advantage from the estate. Mr. Hamilton was also emphatic that he told you not to reveal any of these statements--that he considered them to be secrets.

Mr. Hamilton agrees that he told you that Pacific Lanes was a good deal -- but that he was only referring to the terms of the option. Originally, lawyer Anderson wanted Hamilton to purchase Pacific Lanes outright. Mr. Hamilton was only willing to lease the bowling alley, with an option to purchase. Lawyer Anderson agreed, and the deal was signed. Apparently, shortly after the original deal was signed, two major changes occurred; 1) the 90% beneficiary wanted the option exercised immediately; and 2) Mr. Hamilton discovered a broken truss in the bowling alley roof. The alley is, apparently, constructed of wood with trusses running the entire length of the building. Additionally, the roof contained asbestos, which had previously been contained. The bowling alley had to be closed for a period of time, while the truss was repaired and the asbestos re-contained. This, of course, was an expensive procedure. Initially, Mr. Hamilton's insurance company refused to cover this loss. Mr. Hamilton recently received a judgment against his insurance company for a portion of the expenses involved in the truss fix. Based on the significant problems with the bowling alley, a lower price was negotiated. The lower price was negotiated by Stephen Fischer, after lawyer Anderson had been elected to the bench. Neither of the

beneficiaries has complained about the price. In fact, you went to the hospital and attempted to convince them to retain you to contest the bowling alley sale--they were not interested. The evidence does not support finding an ethical violation.

5. Lawyer Anderson's \$112,000 personal representative fees were approved by Commissioner Johnson just a few days before Anderson became a judge.

Your grievance appears to have two parts; 1) that the \$112,000.00 was too high, and 2) that Commissioner Johnson should not have approved the fees just before Anderson became one of his supervisors.

You indicate that \$112,000.00 was too high for attorneys fees in this case. You also indicated that you believed that lawyer Anderson should have informed the court that his firm had also earned real estate commission fees from this case. This information was not included in the attorney's fees affidavit. Apparently, lawyer Anderson's firm did earn real estate commissions from the owners of the time share units that sold to Trendwest. These commissions were paid by the individual owners, not by the estate. This appears to have been part of lawyer Anderson's attempt to create as many whole units as possible for a sale to Trendwest.

You indicated that you talked with one such owner, Ian McMillan. Your memo indicates that Mr. McMillan told you that he was upset that lawyer Anderson charged him \$10,000.00 commission for the sale. You state that Mr. McMillan did not believe that lawyer Anderson could charge such a high commission without a license or something. You also indicate that Mr. McMillan was eager to cooperate in your investigation. We spoke with Mr. McMillan on May 22, 1996. Mr. McMillan indicates that he did not tell you that he was upset about the commission. He indicates that he was glad to get rid of the time share unit. He believes that he received fair market value for his unit. He also indicated that his unit was always a loss, because the income was very seasonal, but the costs were year-round. He also indicated that he was aware that he sold his unit to Trendwest. He indicates that he did not tell you that he sold to the attorneys.

Although you believe that the amount of attorney's fees in this case was excessive, the evidence does not appear to support that contention. This estate was open for 39 months. A total of \$105,342.00 was charged for hours of attorney time. Assuming a midpoint of \$120.00 per hour, this breaks down to 22.5 attorney hours per month, or 5.6 attorney hours per week. This case does not appear to be over billed. This did not appear to be an easy estate to manage. Our review of the estate file shows the following actions, among others taken by lawyer Anderson:

- a) 12\92 deal with high levels of iron, manganese, color and turbidity in the water system;
- b) 1992 deal with roofing contractor, who did not satisfactorily complete the job.

Lawyer Anderson withheld a portion of the payment until the roofer returned and properly completed the job. Lawyer Anderson personally inspected the roofing job.

- c) 9/92 deal with employee problems
- d) 1992 inform staff of new gambling regulations and insure report compliance; replace existing and add additional lighting for energy efficiency and increased security;
- e) 7/92 deal with Homeowner's Association and their court ordered duty to provide water to the condos and restaurant;
- f) coordinate sales generated by the condo manager Kathy Livingston and the real estate agency;
- g) deal with mis-applied back taxes to Pacific County
- h) unwind pacific Resorts International deal to purchase condos that did not close;
- i) many collection letters to owners not paying maintenance fee or note payment;
- j) sorting out why deed not returned to owners after the note paid off;
- k) foreclosures on units as necessary;
- l) consistently writing complimentary letter to staff members when deemed appropriate.

The fees charges in this matter are not clearly excessive and, therefore, not an ethical violation. Although it may have been better practice to inform the court of the real estate commission fees, this is not an ethical violation. The fees did not come from the estate, consequently, no misrepresentation was made.

The second issue is that you believe that Commissioner Johnson should not have approved these fees within days of lawyer Anderson becoming a Judge--one of the Commissioner's supervisors. We do not find an ethical violation here. Lawyer Anderson submitted his attorney's

fees affidavit to the commissioner, in accord with usual practice. If the Commissioner was not comfortable signing the order, he could have referred the matter to the presiding judge. Additionally, if either of the beneficiaries were concerned about the fees, they could have challenged the order. We found no evidence to support an ethical violation.

6. Lawyer Anderson could not charge real estate commissions without a real estate license.

You indicate that you spoke with Bob Hale, Manager of the Legal Support Section, Business and Professions Division, Department of Licensing. You state that he invited you to submit any paper work you believed applied, but that you did not follow up on his suggestion. We called to speak to Mr. Hale on May 22, 1996 and June 13, 1996. We were informed that no one named Bob Hale works for the Department of licensing. We did find a Bob Hanke, who could not remember whether this conversation occurred or not. Mr. Hanke indicated that the facts in

this situation did not sound like a problem. He also indicated that many people misunderstand the law in this area, so they normally send out a letter and only take action if a person continues to violate the law after receiving the letter. They issue a cease and desist order after the letter, if necessary.

7. Lawyer Anderson intentionally misrepresented his assets on his Disclosure Commission filings.

You indicate that Mr. Hamilton told you that he made a five figure contribution to lawyer Anderson's judicial campaign. You also indicate that this contribution does not appear on the contributions filed with the Public Disclosure Commission. You indicate that lawyer Anderson did not disclose his Sound Banking Company stock on his 1993 form, but did disclose this stock in 1994. You are aware that he received this stock in 1990. You also believe that Judge Anderson favors those who made contributions to his campaign. We have no jurisdiction over this last issue. We understand that judicial candidates do not know who contributes to their campaigns, but suggest that you convey any evidence to the Commission on Judicial Conduct.

Mr. Hamilton denies telling you that he made a five figure contribution to lawyer Anderson's judicial campaign. He also denies making any five figure contribution. It does appear that lawyer Anderson made some errors in his F1 forms between 1989 and 1993. However, lawyer Anderson has filed several corrections to those forms and they now appear to be complete. While we do not condone these errors, we believe that if lawyer Anderson had intended to hide these assets, he would not have corrected the forms. The corrections were made before your grievance was filed. The available evidence does not rise to the level necessary to prove an ethical violation.

For the reasons stated above, we do not believe that the evidence establishes unethical conduct which would warrant further action. Pursuant to Rule 2.6(c) of the Rules for Lawyer Discipline, we are dismissing this matter. Please be advised that, if you file a written protest of this dismissal, the decision to dismiss your grievance will be referred to a Review Committee of the Disciplinary Board for its consideration.

Sincerely,



Julie Anne Shankland
Disciplinary Counsel

cc: Kurt Bulmer
Attorney at Law
(counsel for Grant Anderson)