

COURT OF APPEALS, STATE OF WASHINGTON, DIVISION II

In re the Estate of ANDREA C. BAROVIC,  
Deceased.  
DOUGLAS A. SCHAFER and DONALD  
BAROVIC, *Petitioners*.

No. 20635-6-II

In re the Estate of MIKE BAROVIC a/k/a  
MICHAEL BAROVIC and MITCHELL  
BAROVIC, Deceased.  
DOUGLAS A. SCHAFER and DONALD  
BAROVIC, *Petitioners*.

MOTION TO UNSEAL COURT RECORD  
(GR 15)

In the Matter of the DONALD M. BAROVIC  
TRUST.  
DOUGLAS A. SCHAFER and DONALD  
BAROVIC, *Petitioners*.

1. **Identity of Moving Party:** Douglas A. Schafer, attorney and co-Petitioner *pro se*.

2. **Statement of Relief Sought:** I seek an order directing the Court Clerk to unseal the court records (Appendix “D” to Petitioner’s Motion for Discretionary Review filed April 26, 1996) that this Court by order entered May 3, 1996 directed the Court Clerk “to file . . . in a separate sealed envelope.”

3. **Parts of Record Relevant to Motion:**

- (1) Ruling Granting Temporary Limited Stay entered May 3, 1996.
- (2) Motion for Discretionary Review filed April 26, 1996, including its Appendix “D.”
- (3) Declaration of Deficiency of Notice of Hearing and Related Matters filed in the trial court on March 27, 1996. [Clerk’s Papers page 10-11]
- (4) Motion of Prejudice and Supporting Statement filed in the trial court on February 2, 1996. [Clerk’s Papers page 1-3]

4. **Grounds for Relief, and Argument:** General Rule (GR) 15(c)(2)(B) provides that court records may be sealed *only* upon motion of a party or the court following a hearing on the motion, with reasonable notice of that hearing given to the nonmoving parties. The requirements of GR15(c)(2)(B) were *not* followed by the Court when it, on its own initiative, sealed Appendix

1 “D” by its Ruling of May 3, 1996. No motion to seal the appendix was filed. No notice of any  
2 hearing of such a motion was given to any party. No hearing was conducted on any motion to  
3 seal the appendix.

4 On page 5 of the Motion for Discretionary Review, I, as co-petitioner, described the  
5 relevance of the material in Appendix “D” as follows:

6 I believe that Judge Thompson’s true basis for finding that I violated RPC 8.2(a)  
7 was my statement that I suspected the “appropriate authorities” would remove  
8 Judge Grant L. Anderson from the bench after they investigate his handling of the  
9 Estate of Charles C. Hoffman, (Pierce County Sup. Ct. No. 89-4-00326-3). I made  
10 that statement in the Motions of Prejudice and Supporting Statements filed in the  
11 Barovic cases on February 2, 1996; and I then did, and still do, believe it to be  
12 true and well founded based upon documentation, some of which I have included  
13 in the appendix to this motion.

14 On page 2 of the Declaration of Deficiency of Notice of Hearing and Related Matters that  
15 I had filed in the trial court on March 27, 1996 [Clerk’s Papers page 10-11], two days before  
16 Pierce County Superior Court Judge Donald H. Thompson entered the order that this Court later  
17 vacated (by its Opinion filed Nov. 21, 1997), I had offered to show the trial judge, in open court  
18 or privately, the documents that I later included in Appendix “D,” saying:

19 I suspect that the unstated, but actually primary, reason that I have incurred Judge  
20 Thompson’s wrath is that I have called into question, in publicly filed court  
21 documents, the conduct of Judge Anderson for what Judge Thompson assumes  
22 are unfounded reasons. If that is, in fact, a factor in Judge Thompson’s  
23 deliberative process, then I hope he will afford me an opportunity, *in camera* if  
24 desired, to show to him the documentation concerning that matter that I have  
25 provided to the Commission on Judicial Conduct and other appropriate  
26 authorities.

27 The publicly filed court documents there mentioned were my affidavits that I had filed in  
the trial court on February 2, 1996, captioned “Motion of Prejudice and Supporting Statement”  
requesting Judge Grant L. Anderson’s recusal based on my belief that he had committed such  
serious misconduct in his administration of the Hoffman Estate that he likely would be removed  
as a judge. Commissioner Donald G. Meath stated, at page 3 of his Ruling entered May 3, 1996,  
that he shared my presumption that my statement supporting my request for Judge Anderson’s  
recusal was, in fact, a significant underlying reason why Judge Thompson found me to have  
acted unethically. Commissioner Meath stated:

1 The court found that Schafer's letters (and presumably his affidavit supporting the  
2 motion for Judge Anderson's recusal) were "an apparent violation of the Rules of  
Professional Conduct, paragraphs 3.5(c), 8.2(a), and 8.4(d)."

3 My inclusion of the material in Appendix "D" supporting my request for Judge  
4 Anderson's recusal was relevant to my Motion for Discretionary Review by this Court's of  
5 Judge Thompson's order sanctioning me for, presumably, publicly questioning Judge  
6 Anderson's judicial fitness. The Appendix "D" material was included in my motion to this Court  
7 because, consistent with RAP 17.3(b)(8), it was "other material which would assist the court in  
8 determining whether the motion should be granted."

9 Among the compelling reasons that I am now asking this Court to unseal Appendix "D"  
10 is that it contains material that should, by now, be in the public domain. The Washington State  
11 Legislature presently is considering whether to exercise its authority under Article IV, Section 9  
12 of the Washington Constitution to remove Judge Anderson from his judicial office. I am arguing  
13 that legislative action is needed because events over the last three (3) years have illustrated that  
14 members of the judicial branch are more prone to cover-up the misconduct of their judicial  
15 colleagues than they are to expose, or permit others to expose, such misconduct. The judicial  
16 branch's Commission on Judicial Conduct was given all 59 of the pages included as Appendix  
17 "D" (and hundred of more pages) but has concealed most of them from the public, contrary to  
18 applicable law. Judge Thompson's unlawful order sanctioning me, this Court's unlawful order  
19 summarily sealing Appendix "D," and the refusal of this Court's panel that decided this case to  
20 acknowledge the true retaliatory and vindictive nature of Judge Thompson's order against me are  
21 further events illustrating the hostility of the members of the judicial branch toward anyone who  
22 would dare to challenge the ethics or integrity a fellow jurist. I ask this Court to take judicial  
23 notice of Judge Anderson's highly publicized disciplinary proceeding and of the news report last  
24 January that he settled the \$1 million claim by the Hoffman Estate's beneficiaries for \$500,000.

25  
26 March 12, 1999

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Douglas A. Schafer, WSBA No. 8652