



**King County**  
**Metropolitan King County Council**  
**Committee of the Whole**

**STAFF REPORT**

<b>Agenda Item No.:</b>	<b>4</b>	<b>Date:</b>	<b>6 Mar 2013</b>
<b>Motion No.:</b>	<b>2013-0104</b>	<b>Prepared by:</b>	<b>Nick Wagner</b>

**SUBJECT**

Motion to fill a judicial vacancy on King County District Court.

**SUMMARY**

Proposed Motion 2013-0104 (pp. 9-10 of these materials<sup>1</sup>) would fill a judicial vacancy in the northeast division of King County District Court. In its current form, the motion has a blank for the name of the person being appointed.

The motion is before the Committee of the Whole for discussion and possible action at its meeting of March 6. At that time the committee will have an opportunity to interview the seven candidates who have received the highest rating from one or more of the local bar associations that have established judicial candidate evaluation procedures and have rated candidates for District Court.

**BACKGROUND**

The death of Judge Frank V. LaSalata on 1 September 2012 has left a vacancy in the northeast division of King County District Court.

Under state law, RCW 3.34.100, the county legislative authority (for King County, that is the council) is directed to fill district court vacancies by appointment. The King County Code, Chapter 2.70 (Att. 2, p. 11), prescribes a merit selection process for filling such vacancies, including:

- Advertising of existing or anticipated vacancies by the clerk of the Council;
- Rating of interested applicants by the King County Bar Association (KCBA) and any other bar association with an established judicial candidate evaluation procedure;
- Referral by KCBA to the Council of the names of candidates receiving the highest rating;
- Review of the candidates by the Council's Committee of the Whole, which must then make a recommendation to the Council; and

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<sup>1</sup> All page reference in this staff report are to these meeting materials.

- Final appointment by the Council.

The appointee will serve until a successor is elected this November and will be eligible to run for election.

Through consultation with KCBA and five other local bar associations, council staff has determined that seven candidates have received the highest rating from at least one of the local bar associations that have established judicial evaluation procedures.

### **THE CANDIDATES**

The seven candidates, listed in alphabetical order by last name, are:

- Enrico Leo
- Richard L. Mitchell
- Kara Murphy
- John L. O'Brien
- Lisa Napoli O'Toole
- Mychal Schwartz
- Ketu Shah

Written materials submitted by each candidate constitute Attachment 6 to this staff report (beginning on p. 21). The materials consist in large part of the candidates' responses to an extensive Uniform Judicial Evaluation Questionnaire prepared by the Washington State Governor's Office. Most of the candidates have also submitted additional materials to the Council, including, for example, letters of recommendation. The materials in Attachment 6 are arranged alphabetically by candidate last name, with a table of contents on p. 21.

A table prepared by council staff, comparing the candidates according to a limited set of criteria, is included as Attachment 5 (pp. 18-19). The table is not intended as a substitute for review of the candidates' materials.

### **THE BAR ASSOCIATION RATINGS**

Pursuant to the county code, the candidates have been rated by KCBA and five other bar associations that have established judicial selection procedures. A table summarizing the ratings is Attachment 4 to this staff report (p. 17). KCBA's description of how its judicial screening process works is included as Attachment 3 (pp. 13-15).

### **COUNCIL REVIEW PROCESS**

#### **March 6 COW Meeting**

Councilmembers will have an opportunity to interview all seven candidates in Council chambers at the Wednesday, March 6, meeting of the Council's Committee of the Whole. The candidates will be asked to wait in a room near the Council chambers until they are called before the committee one by one. Each candidate will be asked to respond, within a prescribed time period, to a series of questions. In the interest of

fairness, all candidates will be asked the same questions. After answering the councilmembers' questions, each candidate will be given an opportunity to make brief closing comments. The total time for each candidate interview is expected to be about 15 minutes.

Following the interviews, the committee is expected to report the motion out of committee, either with or without amending the motion to include the name of the appointee. (Reporting the motion out of committee, with or without amendment, and with or without a recommendation for action by the full council, meets the applicable code requirements, as determined by legal counsel.)

### **March 11 Council Meeting**

At the March 11 Council meeting, councilmembers are expected to consider the recommendation of the Committee of the Whole and make a final decision appointing one of the candidates to the District Court. The mechanism for Council action will be adoption of Proposed Motion 2013-0104, either with or without amendment, depending on the form in which the motion is reported out of the Committee of the Whole.

### **AMENDMENT OF THE PROPOSED MOTION**

As described above, Proposed Motion 2013-0104 must be amended by inserting the name of the recommended appointee (or by recommending more than one appointee) before the motion is adopted. It is expected that there will be an oral motion to amend.

### **INVITEES**

1. A representative of the King County Bar Association
2. Enrico Leo, Candidate
3. Richard L. Mitchell, Candidate
4. Kara Murphy, Candidate
5. John L. O'Brien, Candidate
6. Lisa Napoli O'Toole, Candidate
7. Mychal Schwartz, Candidate
8. Ketu Shah, Candidate

### **ATTACHMENTS**

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# KING COUNTY

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

## Signature Report

February 28, 2013

### Motion

**Proposed No.** 2013-0104.1

**Sponsors** Patterson

1           A MOTION making an appointment to fill a vacant judicial  
2           position in the northeast division of King County district  
3           court.

4           WHEREAS, a judicial vacancy exists in the northeast division of King County  
5           district court, and

6           WHEREAS, RCW 3.34.100 authorizes the county legislative body to fill judicial  
7           vacancies in district court, and

8           WHEREAS, K.C.C. chapter 2.70 provides for the metropolitan King County  
9           council to fill judicial vacancies in district court by selecting from among candidates  
10          receiving the highest rating from the King County Bar Association or another bar  
11          association with an established judicial candidate evaluation procedure, as defined in  
12          K.C.C. 2.70.020, and

13          WHEREAS, the council: has received candidate ratings from the King County  
14          Bar Association; has reviewed written materials concerning each candidate; has  
15          conducted interviews of candidates in accordance with K.C.C. chapter 2.70; and has  
16          carefully considered the qualifications of the candidates;

17          NOW, THEREFORE, BE IT MOVED by the Council of King County:

18 \_\_\_\_\_ is hereby appointed to fill the vacant judicial position in  
19 the northeast division of King County district court.  
20

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

\_\_\_\_\_  
Larry Gossett, Chair

ATTEST:

\_\_\_\_\_  
Anne Noris, Clerk of the Council

APPROVED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Dow Constantine, County Executive

**Attachments:** None

## 2.70 DISTRICT COURT - MERIT SELECTION PROCESS

### Sections:

- 2.70.010 Establishment.
- 2.70.020 Process.

**2.70.010 Establishment.** There is hereby established a merit selection process to fill judicial vacancies occurring in District Court in King County pursuant to the King County council's responsibilities under R.C.W. 3.34.100. The council desires a fair and open process which will insure the council shall select and appoint individuals of the highest quality. (Ord. 8350 § 1, 1987).

**2.70.020 Process.** The process to fill district court judicial vacancies shall be as follows:

A. Notice of existing or scheduled vacancies shall be advertised by the clerk of the council twice in the official county newspaper and in a newspaper of general circulation within the district. Notice of the vacancy shall also be sent to the Seattle-King County Bar Association (SKCBA), East King County Bar Association, South King County Bar Association, Washington Women Lawyers, Loren Miller Bar Association, National Conference of Black Lawyers (Northwest Chapter), Asian Law Association and other interested groups.

B. Names of individuals wishing consideration for appointment shall be submitted to the clerk of the council or directly to any of the bar associations listed in subsection 2.70.020 A. which shall review and evaluate the candidates.

C. Any other bar group with an established judicial candidate evaluation procedure may also review and evaluate the candidates. A group with an established judicial candidate evaluation procedure shall mean a bar association group:

1. With evaluation procedures open to any candidate,
2. Which has written by-laws governing its evaluation process,
3. Which has written criteria upon which the candidates are to be judged which shall be made available to the public, the council and candidates, and
4. Which has been actively evaluating judicial candidates for at least two years.

D. SKCBA shall refer to the council the names of candidates receiving the highest rating. The list shall contain no less than three names. Any other group with an established judicial candidate evaluation procedure, as defined in subsection 2.70.020 C., shall provide to SKCBA a list of the names of candidates given its highest rating. SKCBA shall note on the list referred to the council any disagreements on the respective lists by indicating names on their own list not included on the list(s) of the other evaluating committee(s) and adding names not included on the SKCBA list with the name of the group which provided the rating.

E. The committee-of-the-whole shall review the candidates and interview the final candidates and make recommendation to the council.

F. The final appointment shall be made by the council by motion from the candidates referred by the evaluation committees. (Ord. 8350 § 2, 1987).

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## **How the Judicial Screening Process of the King County Bar Association Works**

The King County Bar Association Judicial screening process utilizes a representative body of the King County Bar Association in its 73-member judicial screening committee. The committee undertakes a fair and comprehensive rating process designed to create a high quality bench and assist the public by providing them with important information on judicial candidates. The King County Bar Association invites judicial candidates for contested judicial elections to participate in this thorough, three-part screening process.

### **Uniform Judicial Evaluation Questionnaire**

First, candidates complete the Uniform Judicial Evaluation Questionnaire from the Governor's Office. That questionnaire covers:

- Professional history;
- Bar association and professional society membership;
- Nature and extent of law practice;
- Trial experience;
- Significant matters handled;
- Judicial interest and experience;
- Experience as a neutral decision-maker;
- Significant mediation experience;
- Educational background;
- Court committees or administrative positions held;
- Public offices held;
- Professional and bar activities;
- Publications;
- Community and civic activities;
- Business leadership activities;
- Honors received;
- Statements of judicial interest and philosophy.

### **Reference Checks**

In order to insure full disclosure and candor, the portions of the questionnaire related to checking references are used only by the Judicial Screening Committee. Those portions cover questions of a private or privileged nature regarding disciplinary matters, claims, suits or complaints filed against the candidate, or other involvement as a party in legal proceedings. References requested come from the following categories, most of which cannot be avoided by the applicant, including:

- Opposing counsel;
- Attorneys appearing before the candidate as a judge or neutral decision-maker;
- Non-attorneys;

- Judges and opposing counsel from the last five trials in which the candidate participated;
- Additional attorneys familiar with the candidate's professional qualifications, skills, experience or attributes.

In addition, the candidates must complete a Supplemental Questionnaire that requests additional references from the following categories of attorneys:

- Past attorney supervisors or attorneys who have reviewed and are familiar with the candidate's work;
- Counsel and judges in appellate matters.

Committee members are assigned to contact the listed references by telephone. After being promised confidentiality, the references are encouraged to speak with full candor about their own knowledge of and experiences with the candidate and to evaluate the candidate's qualifications, strengths, and weakness for the position sought.

### **Candidate Interview**

The Committee convenes with a panel of at least 12 members to carefully review and consider the questionnaire, the information from the listed references and conduct a twenty-minute personal interview with the candidate. The interview consists of questions pertaining to qualifications for the office as well as issues raised by the questionnaire, reference checks, or other information received. The candidate is provided an opportunity for closing remarks.

Thereafter, the Committee deliberates and, by secret ballot, votes to rate the candidate, based upon the written criteria of the Committee's Rules and Procedures. An adequate rating requires a majority vote. The higher ratings require a "super-majority" vote of two-thirds of the members present.

### **Rating Criteria**

The criteria for rating candidates are uniform and objective and have been used substantially in the same form for the past twenty-five years. These criteria measure an individual's suitability to serve in a judicial position. When applying the rating criteria, the screening committee evaluates each candidate against the same criteria. There is no ranking of candidates or comparison of one candidate against another.

The criteria are as follows:

- a. Maturity, integrity, courtesy, intellectual honesty, fairness, good judgment, curiosity, and common sense;
- b. A demonstrated commitment to equal justice under the law, and fairness and open-mindedness with sensitivity to and respect for all persons, regardless of race, color, sex, sexual orientation, national origin, ancestry, religion, political ideology, creed,

age, marital status, or physical or mental handicap, disability, or impairment. This commitment and sensitivity can be evidenced by the individual's involvement in community affairs and activities, professional practice, and personal and professional background.

- c. The courage and ability to make difficult decisions under stress.
- d. The competence, ability and experience (which may include trial experience) to manage pretrial and trial proceedings, including administrative proceedings, arbitration, settlement conferences, and commissioner or magistrate responsibilities. It should include an ability to address diverse issues, weigh conflicting testimony, apply the law to the facts, understand the dynamics of the trial or conflict resolution process, and command respect from attorneys, litigants, and other participants in the process.
- e. The ability to work with a wide variety of subject matter.
- f. Excellent legal ability and confidence, and demonstrated excellence in legal work and practice.
- g. The energy and capacity for hard work.
- h. The potential for ongoing professional development and demonstrated leadership in the profession.
- i. The ability to communicate clearly and effectively, orally and in writing, with attorneys, litigants, witnesses, and jurors.
- j. Interest and commitment to working with other judges and court administrators to improve the administration of justice.

### **Rating Levels**

Individual rating levels are:

"Exceptionally Well Qualified"-- "Well Qualified"-- "Qualified" -- "Not Qualified." The Judicial screening committee also has the discretion to decline rating a judicial candidate, with statements of reason -- "Insufficient Information to Rate" or "Declined to Participate" or to give a rating with the notation, "Failed to Cooperate fully with the Judicial Screening Committee."

[from the KCBA website , 27 Feb 2013]

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## Consolidated Bar Ratings of District Court Candidates

### As of 26 February 2013

BAR ASSOCIATION CANDIDATE	Cardozo Society <sup>1</sup>	Joint Asian Bar Association	King County Bar Association	King County Washington Women Lawyers	Latina/o Bar Association of Washington	QLaw <sup>2</sup>
<b>Enrico Leo</b>	Exceptionally well qualified	Well qualified	Exceptionally well qualified	[no rating]	Well qualified	Exceptionally well qualified
<b>Richard L. Mitchell</b>	Exceptionally well qualified	Well qualified	Exceptionally well qualified	Exceptionally well qualified	Exceptionally well qualified	Well qualified
<b>Kara Murphy</b>	Exceptionally well qualified	Exceptionally well qualified	[no rating <sup>3</sup> ]	[no rating]	[pending]	Qualified
<b>John L. O'Brien</b>	[no rating]	Exceptionally well qualified	Exceptionally well qualified	[no rating]	Exceptionally well qualified	Exceptionally well qualified
<b>Lisa Napoli O'Toole</b>	[no rating]	Well qualified	Well qualified	Exceptionally well qualified	Well qualified	Exceptionally well qualified
<b>Mychal Schwartz</b>	[no rating]	Exceptionally well qualified	Well qualified	[no rating]	[no rating]	Well qualified
<b>Ketu Shah</b>	[no rating]	Exceptionally well qualified	Exceptionally well qualified	Exceptionally well qualified	[pending]	Exceptionally well qualified

<sup>1</sup> As described on its website, the Cardozo Society of Washington State is the official Washington State Bar Association minority bar for Jewish lawyers in Washington.

<sup>2</sup> As described on its website, QLaw – the GLBT Bar Association of Washington – is an association of gay, lesbian, bisexual and transgender legal professionals and their friends.

<sup>3</sup> Although Ms. Murphy timely submitted her supporting materials to KCBA with her request to be rated for the current position, KCBA declined to interview and rate her in time for the current appointment because of insufficient resources to interview and rate all the candidates who applied.

## Comparison of Judicial Candidates – Selected Criteria<sup>1</sup>

	Enrico Leo	Richard L. Mitchell	Kara Murphy	John L. O'Brien	Lisa Napoli O'Toole	Mychal Schwartz	Ketu Shah
<b>Year admitted to practice law in Washington</b>	1998	1992	1995	1981	1987	1994	1995
<b>Experience practicing law</b>	criminal: 15 yrs.	criminal: 20 yrs.; civil: 10 yrs.	criminal: 18 yrs.	criminal & civil: 30 yrs.	criminal: 12 yrs.; civil: 6 yrs.	criminal: 15 yrs.	criminal & civil: 16 yrs.
<b>Jury trials as attorney</b>	criminal: 39 approx.	criminal: 158 approx.	21 approx.	14 approx.	29 approx.	133 approx.	140 approx.
<b>Judicial experience – years</b>	4 yrs. as pro tem	several cases in 2011 as pro tem	3 yrs. 4 mos. as pro tem	15 yrs. as pro tem; 70 cases as arbitrator	1 yr. 9 mos. as pro tem	11 yrs. 5 mos. as pro tem; 1 yr. as hrg. examiner	5 yrs., 4 mos. as pro tem
<b>Legal education</b>	J.D., 1997 Catholic Univ., Washington, DC	J.D., 1979 John Marshall College of Law, Chicago, IL	J.D., 1995 Notre Dame University, South Bend, IN	J.D., 1981 University of Puget Sound (Seattle Univ.)	J.D., 1987, University of Puget Sound (Seattle Univ.)	J.D., 1994 American Univ, Washington, D.C.	J.D., 1994 Univ. of Minnesota, Minneapolis, MN
<b>Undergraduate education</b>	B.A., 1992 M.A., 1993 SUNY (State University of New York), Albany, NY	B.S., 1975 Georgia Institute of Technology, Atlanta, GA	B.A., 1988 St. Mary's College, South Bend, IN	B.A., 1978 Gonzaga Univ., Spokane, WA	B.A. 1984 Whitman College, Walla Walla, WA	B.A., 1990 Stanford University, Palo Alto, CA	B.A., 1990 Whitman College, Walla Walla, WA

<sup>1</sup> This table is based on information obtained from written materials provided by the candidates. To some extent it represents Council staff's interpretation of that information. Much more information is contained in the candidates' written materials.

	Enrico Leo	Richard L. Mitchell	Kara Murphy	John L. O'Brien	Lisa Napoli O'Toole	Mychal Schwartz	Ketu Shah
<b>Judicial philosophy (in 50 words or fewer)</b>	<p>"My judicial philosophy: to be fair to the process. As a Pro Tem, when I take the time to explain why I am making the decisions and rulings that I do, the individuals involved, while perhaps not always happy with the outcome, are satisfied with the reasoning behind my rulings."</p>	<p>"Parties before the court are entitled to a fair hearing and respectful treatment. Each case must be decided solely on the evidence and the law. For a defendant who is convicted the court must impose a sentence which protects the community and provides a defendant a reasonable opportunity for rehabilitation."</p>	<p>"I firmly believe in offender accountability and victim/community safety. I believe that the best way to achieve this is to determine the issues underlying particular criminal behavior. I believe that the respectful treatment of every person in the courtroom is paramount to the administration of justice."</p>	<p>"First, I endorse the philosophy that the District Court upholds the current law. It holds individuals accountable for their actions. Second, I believe an attempt at treatment is recommended over penal punishment for most first time offenders. Having said that, I have seen the glow of pride in a defendant who has successfully completed a probationary counseling program, but have also sentenced defendants to maximum</p>	<p>"It is essential that all individuals in the Courtroom have the strong sense that justice is administered fairly, justly, and equally to all. The Judge must ensure that all matters are impartially heard, all parties are treated with respect, and all matters are adjudicated fairly and according to the law."</p>	<p>"It is a judge's responsibility to ensure that all parties are shown respect, treated fairly, and are given an opportunity to have their voices heard. A judge must apply the law evenly and appropriately. Judges should also be leaders in their communities advocating for access to justice for all."</p>	<p>"The orderly resolution of disagreements is the core purpose of the judiciary. The bench must be fair to everyone by being impartial, intelligent, and respectful. When litigants receive a fair hearing and a decision is made, the judiciary is strengthened and our society moves forward."</p>

	Enrico Leo	Richard L. Mitchell	Kara Murphy	John L. O'Brien	Lisa Napoli O'Toole	Mychal Schwartz	Ketu Shah
				confinement for failed efforts at personal reform."			

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# THE WASHINGTON STATE GOVERNOR'S OFFICE

## UNIFORM JUDICIAL EVALUATION QUESTIONNAIRE<sup>1</sup>

Position Sought (Court/Division/District): Redmond Courthouse/East Division/King County

By Appointment: ☒ By Election:

### Personal Information

1. Leo Enrico (Rick) Salvatore 27816  
Last Name First Name Middle Name WSBA Bar Number
2. Business Address: The Leo Law Office  
Business Name  
18920 Bothell Way NE, Suite 208  
Street or P.O. Box  
Bothell WA 98011  
City State Zip
- Business Phone No. (425) 481-2600
- Work e-mail address: rick@leolawoffice.com

3.

4.

6.

### Prior Evaluation / Application History

7. Please state the date of all other judicial evaluations you sought, bar polls you participated in, and appointment applications you submitted. Please specify whether you sought appointment or election for each, from whom the evaluation was sought, the position sought, and the outcome.  
08/09/12: Black Diamond Municipal Court Judge appointment; outcome – pending.

<sup>1</sup> The Governor's Office uses this questionnaire exclusively for candidates seeking judicial appointment. The Washington State Bar Association and other state bar associations noted on the last page also accept this questionnaire in their judicial evaluation process. The Governor's Office reserves the right to update this questionnaire and will post updated versions of the questionnaire on the Governor's webpage. Please direct all questions about the questionnaire to the Governor's Office of General Counsel.

<sup>2</sup> Only include your social security number on the copy of the questionnaire forwarded to the Governor's Office.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

**Professional History**

8. Year admitted to practice law in Washington: 1998

9. Employment History (in reverse chronological order):

a. Start Date: January 2009 End Date: Current

Organization: The Leo Law Office

Address: 18920 Bothell Way NE, Suite 208, Bothell WA 98011

Phone No.: (425) 481-2600

Position/Title: Trial Attorney/Owner

Supervisor: N/A

Nature of Practice (including frequency of court appearances):

I am a trial attorney defending individuals accused of crimes. I handle DUI and other serious driving related charges, gross misdemeanor, misdemeanor, and felony cases. I appear in court daily for arraignments, pretrial hearings, evidentiary hearings, jury and bench trials, sentencing, and review hearings in the Municipal, District, and Superior Courts. I also handle civil administrative hearings with the Department of Licensing. I assist clients in obtaining evaluations and appropriate treatment for substance abuse and mental health issues. Additionally, I manage all business matters, financial affairs, marketing, and the day-to-day operations of the office.

Reason for leaving: N/A

b. Start Date: January 2009 End Date: Current

Organization: Snohomish County District Courts

Address: Lynnwood/Arlington/Monroe

Phone No.: N/A

Position/Title: Pro Tem Judge

Supervisor: N/A

Nature of Practice (including frequency of court appearances):

I am a Pro Tem Judge in the Snohomish County District Courts. I preside over arraignments, pretrial and readiness hearings, evidentiary hearings, sentencing, and failure to comply hearings in gross misdemeanor and misdemeanor criminal cases. I also hear civil matters such as small claims pretrial and trials, contested and mitigation infraction hearings, name changes, anti-harassment, and domestic violence protection order proceedings. Additionally, I review and issue search warrants.

Reason for leaving: N/A

c. Start Date: December 2003 End Date: December 2008

Organization: Veitch, Leo & Associates

Address: 777 108<sup>th</sup> Avenue NE, Suite 1800, Bellevue WA 98004

Phone No.: (425) 452-1600

Position/Title: Trial Attorney/Partner

Supervisor: Jeffrey Veitch, Eric Gaston, David Kennedy

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

Nature of Practice (including frequency of court appearances):

I joined the firm as an associate trial attorney in its original incarnation as Veitch, Gaston & Kennedy. I became a partner in 2006. Over time, the firm evolved to become Veitch, Leo & Associates. I handled DUI and other serious driving related charges, gross misdemeanor, misdemeanor, and felony cases. I appeared in court daily for arraignments, pretrial hearings, evidentiary hearings, jury and bench trials, sentencing, and review hearings in the Municipal, District, and Superior Courts. I also handled civil administrative hearings with the Department of Licensing. I assisted clients in obtaining evaluations and appropriate treatment for substance abuse and mental health issues. Additionally, I handled administrative appeals from Department of Licensing hearings in Superior Court.

Reason for leaving: I chose to start my own law practice and to begin my Pro Tem Judge career.

d. Start Date: January 2003 End Date: December 2003  
Organization: Snohomish County Prosecuting Attorney's Office  
Address: 3000 Rockefeller Avenue, Everett WA 98201  
Phone No.: (425) 388-3333  
Position/Title: Deputy Prosecuting Attorney  
Supervisor: Ed Stemler  
Nature of Practice (including frequency of court appearances):

I was a trial attorney responsible for prosecuting gross misdemeanor and misdemeanor cases in the Snohomish County District Courts. I appeared in court daily and handled arraignments, pretrial and evidentiary hearings, bench and jury trials, sentencing, and review hearings. As a deputy prosecuting attorney, I was responsible for my cases from the initial case preparation through the trial process.

Reason for leaving: I accepted a position with Veitch, Gaston & Kennedy.

e. Start Date: March 1998 End Date: December 2002  
Organization: Snohomish County Public Defender Association  
Address: 1721 Hewitt Avenue, Suite 200, Everett WA 98201  
Phone No.: (425) 339-6300  
Position/Title: Trial Attorney  
Supervisor: Bill Jaquette/Susan Gaer/Karen Halverson/Elizabeth Graham  
Nature of Practice (including frequency of court appearances):

I served as a trial attorney in the Snohomish County District Courts and Superior Court. In the District Court Unit I made daily court appearances handling arraignments, pretrial hearings, evidentiary hearings, bench trials, jury trials, sentencing, and review hearings. I managed a caseload of 300-400 cases per year. While in the Felony Unit, I appeared in the Snohomish County Superior Court daily to handle all aspects of felony matters. During this time, I managed a caseload of approximately 75 cases per year, ranging from high profile class A felonies to simple unranked felonies.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

Reason for leaving: I accepted a position with the Deputy Prosecuting Attorney's Office.

Please continue, if necessary, on a separate piece of paper in the above format as needed.

10. Please list all other courts and jurisdictions in which you have been admitted to practice law and the dates of admission. Please provide the same information for administrative bodies having special admission requirements.

United States District Court, Western District of Washington – (2004)

11. Please list all bar associations and professional societies of which you are a member and give the titles and dates of any offices that you have held in such groups.

Washington State Bar Association (1998 – Present)

Washington Association of Criminal Defense Lawyers (2003 – Present)

National College of DUI Defense (2003 – Present)

12. Are you in good standing in every bar association of which you are a member? Yes. If you answered “no”, please explain.
13. If you have ever been a judge, please identify any court committees on which you have served or administrative positions you have held. Please state the dates of service for each.

N/A

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

14. Please list up to five of your most significant professional accomplishments. (If applicable, please provide the case and court name and the citation if a case was reported (and copy of the opinion).

While at the Snohomish County Prosecuting Attorney's Office, I was chosen to lead the investigation into a Washington State Patrol Trooper who was accused of falsifying his police reports. At the conclusion of my investigation, my supervisor and I met with the Washington State Patrol's high-ranking officials to examine the results. My findings clearly showed that the trooper was falsifying key facts in each of his case reports. Ultimately my investigation led to the dismissal of hundreds of gross misdemeanor and misdemeanor cases and the resignation of the trooper.

While with Veitch, Gaston & Kennedy, I assisted in the FBI investigation and prosecution into a Washington State Patrol Trooper who was accused of sexually assaulting at least 10 women he pulled over for routine traffic offenses. Eventually the trooper entered into a plea of guilty after one of the firm's clients (a victim of the sexual assault) came forward and supplied crucial evidence in the prosecution.

The transition from the Public Defender's Association to the Office of the Prosecuting Attorney was a significant accomplishment for me because this transition occurred in the same county. I therefore began working with those individuals that had prosecuted my clients for years, and working on the opposite side of allies in the public defender's office, all with the same set of judges. This was a very challenging time for me, but one that I believe made me a much better attorney. This was the time when I truly recognized that everyone has a role to play in the criminal justice system and each role should be respected.

Being asked by the Snohomish County District Court Judges to be a Pro Tem Judge in their court system has been a significant accomplishment. I have always had a great deal of respect for judges and I was honored to be asked. I accepted graciously, and every day that I am able to fulfill this role, I take it on with the utmost respect for the position.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

15. Please summarize up to eight of the most significant matters that you participated in as an advocate. Please include the dates of your participation and the reason each was significant to you. Please provide the citation if a case was reported. If you have been a judge, please include some cases that have been tried before you.

The most significant matter that I participated in as an advocate was a murder trial that I co-chaired twice throughout 2001 and 2002. The defendant was David Schubert. Mr. Schubert was charged with murdering his wife who went missing in the late 80s. He wasn't charged until 2001, some 13 years later. A body was never found in this case. Prior to the first trial, Mr. Schubert was sued civilly by the victim's family after the criminal case was going nowhere. The statements that Mr. Schubert made during the civil trial without constitutional protections were used in the criminal trial against him. The first trial lasted for weeks with the jury deadlocked on the charges. During the deliberations, one of Mr. Schubert's teenage sons committed suicide in his dorm room. The second trial was less than a year later and it resulted in Mr. Schubert being found not guilty of first degree murder and guilty of second degree murder. This case received significant media attention both in print and on television. This case helped shape me as an attorney. I had two different co-counsels during the two trials, both with significant trial experience. They taught me how to look at the evidence, to think on my feet and to think outside the box. They taught me how to treat this case like any other and how to minimize the outside distractions. I learned how to communicate with the media, how to juggle multiple witnesses, and how to organize thousands of pages of materials to access at a moment's notice without today's luxury of a laptop or an iPad. I learned how to deal with tragedy in the middle of a case (the death of the defendant's son) and to keep going and stay focused. I learned how to regroup quickly when I had to retry the case less than nine months later with a different co-counsel. Co-counsel during the first trial was Richard Tassano. Co-counsel on the second trial was Caroline Mann. The prosecutors were Ed Stemler and Paul Stern. The judge was Snohomish County Superior Court Judge Ronald Castleberry.

Another significant matter that I was involved in was in 2003 when I was co-counsel for Jeffrey Grote, who was convicted of first degree murder. He, along with three other individuals (all juveniles) ambushed and killed a man with a baseball bat. This came at the urging of an adult female (Barbara Opel) who was eventually convicted of first degree murder and is serving a life sentence. This was a significant event for me as an advocate because I visited the murder scene. I saw all of the evidence first hand and I had to learn to separate the emotion from the evidence. It was also significant to me in learning how to explain to my 19 year old client, that a 50 year sentence was a good plea offer. After it was accepted, he testified for the State against the adult woman. I helped prepare him for his testimony as a State's witness, which involved many hours with the state prosecutors. I was also with him as counsel while he testified at the trial.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

**Educational Background**

16. Please list all undergraduate and graduate (non-law school) colleges and universities attended, years of attendance, degree awarded and reason for leaving if no degree was awarded.

SUNY at Albany

1988 – 1992

Bachelor of Arts

College/University

Dates of Attendance

Degree

SUNY at Albany

1992 – 1993

Master of Arts

College/University

Dates of Attendance

Degree

17. Please list all law schools attended, years of attendance, degree awarded and reason for leaving if no degree was awarded.

Columbus School of Law,

Catholic University of America

1994 – 1997

Juris Doctor

Law School

Dates of Attendance

Degree

**Professional Experience**

18. Please summarize, briefly, the general nature of your current law practice.

I am a criminal trial attorney. I handle DUI and other serious driving related offenses, misdemeanor, gross misdemeanor, and felony cases. I appear in court daily for arraignments, pretrial hearings, evidentiary hearings, jury and bench trials, sentencing, and review hearings in the Municipal, District, and Superior Courts. Additionally, I assist clients in obtaining evaluations and appropriate treatment for substance abuse and mental health issues.

19. If you are in practice, please describe your typical clients and any areas of special emphasis within your practice.

My clients are tax-paying citizens who come from a varied socio-economic background; most of whom have made mistakes in judgment. Within the practice area of criminal law, I specialize in the complex defense of DUI charges, but also handle other misdemeanor and felony charges.

20. If your present law practice is different from any previous practice, please describe the earlier practice, including the nature of your typical clients and any area of special emphasis within your practice.

N/A

21. Within the last 5 years, did you appear in trial court:

☒ Regularly

☐ Occasionally

☐ Infrequently

22. Within the last 5 years, did you prepare appellate briefs and appear before appellate courts:

☐ Regularly

☐ Occasionally

☒ Infrequently

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

23. Within the last five years, how often did you appear in the court for which you are applying:

☒ Regularly

☐ Occasionally

☐ Infrequently

24. Career Experience

(a) What percentage of your appearances in the last five years was in:

(1)	Federal appellate courts	0%
(2)	Federal trial courts	0%
(3)	State appellate courts	0%
(4)	State trial courts	5%
(5)	Municipal courts	40%
(6)	District courts	55%
(7)	Administrative tribunals	0%
(8)	Tribal courts	0%
(9)	Other	0%
	TOTAL	100%

(b) What percentage of your practice in the last five years was:

(1)	Civil litigation (excl. family law)	0%
(2)	Criminal litigation	100%
(3)	Family law litigation	0%
(4)	Non-litigation	0%
	TOTAL	100%

(c) What percentage of your trials in the last five years were:

(1)	Jury trials	100%
(2)	Non-jury trials	0%
	TOTAL	100%

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

- (d) State the number of cases during your total career that you have tried to verdict or judgment (rather than settled) in the following courts, and indicate for each court the following percentages: trials in which you were sole counsel or chief counsel, jury trials, and trials where you were the arbiter/decision maker.

<u>Number</u>	<u>Court</u>	<u>% as Sole / Chief Counsel</u>	<u>% Jury</u>	<u>% as the Arbiter</u>
<u>1</u>	Municipal	<u>100%</u>	<u>100%</u>	<u>          </u>
<u>30</u>	State Dist.	<u>100%</u>	<u>75%</u>	<u>          </u>
<u>15</u>	State Superior	<u>75%</u>	<u>100%</u>	<u>          </u>
<u>0</u>	Federal Dist.	<u>          </u>	<u>          </u>	<u>          </u>
<u>0</u>	Administrative	<u>          </u>	<u>          </u>	<u>          </u>
<u>0</u>	Tribal Courts	<u>          </u>	<u>          </u>	<u>          </u>
<u>0</u>	Other	<u>          </u>	<u>          </u>	<u>          </u>

- (e) State the number of appellate cases during your total career where you appeared as counsel of record in the following courts, and indicate for each court the following percentages: cases where you were sole counsel or chief counsel, and cases where you were the arbiter/decision maker (if applicable).

<u>Number</u>	<u>Court</u>	<u>% as Sole / Chief Counsel</u>	<u>% as the Arbiter</u>
<u>6</u>	State Superior Court	<u>100%</u>	<u>          </u>
<u>0</u>	WA. Div. I COA	<u>          </u>	<u>          </u>
<u>0</u>	WA. Div. II COA	<u>          </u>	<u>          </u>
<u>0</u>	WA. Div. III COA	<u>          </u>	<u>          </u>
<u>0</u>	WA. Supreme Court	<u>          </u>	<u>          </u>
<u>0</u>	Fed. Cir. COA	<u>          </u>	<u>          </u>
<u>0</u>	U.S. Supreme Court	<u>          </u>	<u>          </u>

- (f) Briefly describe no more than five significant litigation matters that you directly handled as the sole counsel. For each, please provide the name and telephone number of opposing counsel, the name of the judge or other judicial officer, and the citation (if applicable).

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

I represented an individual, Ricky O. Villines, who was charged and convicted of making telephone threats to a juror in a double-murder trial. The reason this was significant to me was because Mr. Villines had a history of mental instability and developmental disability. The prosecutor and I both had our reservations about whether or not Mr. Villines truly understood the legal implications of his actions. Through this experience, I gained a better understanding of people who cope with mental illness. The prosecutor was Michael Magee (425) 388-3333 and the judge was Snohomish County Superior Court Judge George Bowden.

I represented an individual, Raul Celso Orea-Herrera, who was charged and convicted of first degree kidnapping and first degree rape. This case was significant to me because it was one of my first sexual assault cases and it received a lot of media attention. The victim was chosen at random and besides being raped, was brutally beaten and left for dead in a field. Although I was the defense attorney, I learned about what a victim endures in the criminal justice process. I also gained experience in working with the media. The prosecutor was Michael Held (425) 388-3333 and the judge was Snohomish County Superior Court Judge Joseph Thibodeau.

I represented an individual, David W. Kaylor, who was charged and convicted of attempting to murder his ex-girlfriend. The reason this case was significant to me was because while he was awaiting sentence in the jail facility, he tried to commit suicide by hanging himself with a sheet. This gave me insight into the fragile nature of some individuals in the court system, signs that need to be acknowledged, and precautions that should be taken. The prosecutor was Michael Magee (425) 388-3333 and the judge was Snohomish County Superior Court Judge Gerald Knight.

I represented an individual, Rey Rivas Jr. (age 18) who was charged and convicted of manslaughter of his girlfriend (age 17). This incident took place during target practice when Mr. Rivas acted recklessly in fatally shooting his girlfriend. This case was significant to me because the victim's family believed that it was murder and not manslaughter. Ultimately, emotions had to be set aside as the facts of the case only warranted the charges of manslaughter and recklessness. This case received media attention as well, adding to my experience of working with the media. The prosecutor was Kathy Jo Kristoff (425) 388-3333 and the judge was Snohomish County Superior Court Judge George Bowden.

I represented an individual, Kevin Broers (age 19), who was charged and convicted of multiple counts of first degree animal cruelty for clubbing to death several calves on his neighbor's Monroe-area dairy farm. What was unique to this client was his response to the judge when asked why he helped kill 16 calves. His response was, "things happen." This case was significant to me because I had to defend an individual who was uncooperative. Since this case also garnered media attention, I had to deal with negative public opinion from animal activist groups directed not only at my client, but also towards me for defending him. Despite having to deal with negative public opinion and the frustration of having an uncooperative client, I had to maintain focus to ensure that my client's constitutional rights were still protected. The prosecutor was Patricia Lyon (current Snohomish County District Court Judge, Evergreen Division) (425) 388-3331 and the judge was Snohomish County Court Judge Kenneth Cowsert.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

- (g) State in detail your experience in adversary proceedings before administrative boards or commissions during the last five years.

I have not appeared before any administrative boards or commissions during the last five years. However, over the last ten years, I have handled close to 500 administrative hearings with the Department of Licensing where my clients arrested for a DUI face a potential administrative loss of their license. The hearings are conducted by an assigned hearing examiner and often times involve testimony from the arresting officer.

25. Please briefly describe any legal non-litigation experience that you feel enhances your qualifications to serve as a judge.

My experience as a Pro Tem Judge over the last four years has been an invaluable experience for me and one which I believe enhances my qualifications to serve as a judge. Over the last year and a half alone, I have put in approximately 400 hours as a Pro Tem Judge. When I first began to Pro Tem, I did it because I wanted to become a better attorney having already served the court as a defense attorney and as a prosecutor. I also figured this would naturally benefit my clients. Along the way however, I realized that this was something that I really enjoyed and I believe that I am strongly suited for. There really is really no substitute for experience. All of the Pro Tem hours I've acquired, as well as the tutelage and guidance I've received from the district court judges, have prepared me for the next step of becoming a judge.

26. If you are now an officer or director of any business organization or otherwise engaged in the management of any business enterprises, please provide the following: the name of the enterprise, the nature of the business, the title of your position, the nature of your duties, and the term of your service. If you are appointed and do not intend to resign such position(s), please state this below along with your reasons for not resigning.

N/A

27. Please list all chairmanships of major committees in bar associations and professional societies and memberships on any committees that you have held and believe to be of particular significance.

N/A

**Judicial Interest and Experience**

28. In 50 words or less, please describe why you should be appointed / elected and are seeking a judicial position.

My experiences as a public defender, prosecutor, private attorney, and pro tem judge allow me to continue the strong judicial presence that King County expects from its judges. As a Snoqualmie resident, King County is my community and giving back and establishing life-long roots is in the forefront to me.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

29. In 50 words or less, please describe your judicial philosophy.

My judicial philosophy: to be fair to the process. As a Pro Tem, when I take the time to explain why I am making the decisions and rulings that I do, the individuals involved, while perhaps not always happy with the outcome, are satisfied with the reasoning behind my rulings.

30. Have you ever held a judicial office or have you ever been a candidate for such office?  
Yes / No. If you answered "yes", please provide details, including the courts involved, whether elected or appointed, and the periods of your service.

N/A

31. Have you ever held public office other than a judicial office, or have you ever been a candidate for such an office? Yes / No. If you answered "yes", please provide details, including the offices involved, whether elected or appointed, and the length of your service.

N/A

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

32. Please briefly identify all of your experience as a neutral decision-maker (e.g. judge (permanent or pro tem) in any jurisdiction, administrative law judge, arbitrator, hearing officer, etc.). Give courts, approximate dates, and attorneys who appeared before you.

Snohomish County District Court Pro Tem  
(South, Cascade and Evergreen Divisions) 2009 – current

Jon Fox (425) 312-6069  
William Kirk (425) 822-1220  
Eric Gaston (425) 822-1220  
Geoffrey Burg (206) 467-2607  
Matthew Knauss (425) 822-1220  
Mark Garka (425) 422-5818  
David O (206) 459-6392  
David Jolly (425) 493-1115  
Jeannie Mucklestone (206) 623-3343  
James Feldman (425) 771-3600  
Michael Sheehy (425) 778-6900

Kara Murphy (206) 947-3852  
Teresa Cox (425) 388-3333  
Dana Little (425) 388-3333  
Michael Boska (425) 388-3333  
Katelyn Thomason (425) 388-3333  
Bob Hendrix (425) 388-3333  
Melanie Thomas Dane (425) 778-2429  
Yelana Stock (425) 778-2429

**Community and Civic Activities**

33. Please list your community and civic activities, including dates and leadership roles held, over the last 10 years.

Volunteer for Snohomish County Annual Law Day for Fifth Graders; 2011 – Present  
Founding Board Member for Bothell Municipal Court Youth Court; 2012 – Present

**Discipline and Disputes**

34. Have you ever been held, arrested, charged or convicted by federal, state, or other law enforcement authorities for violation of any federal law, state law, county or municipal law, regulation or ordinance? No. If you answered “yes”, please provide details. (Do not include traffic violations for which a fine of \$150.00 or less was imposed.) Please feel free to provide your view of how it bears on your present fitness for judicial office.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

35. Has a client ever made a claim or suit against you for malpractice? No. If you answered "yes", please provide details and the current status of the claim and/or suit.

36. Please describe your direct experience, if any, with domestic violence and sexual harassment.

As a Pro Tem Judge, I have heard cases involving domestic violence and have presided over dozens of ex parte hearings where I have had to make decisions with regards to entering no contact orders and protection orders. Over the course of my career, I have prosecuted and defended those accused of domestic violence charges and on occasion, have assisted victims in obtaining orders of protection.

37. Have you been a party in interest, witness, or consultant in any legal proceeding? No. If you answered "yes", please provide details. Do not list proceedings in which you were merely a guardian ad litem or stakeholder.

38. Have you ever been the subject of a complaint to any bar association, disciplinary committee, court, administrative agency or other professional group? No. If you answered "yes", please provide details.

39. Have you ever been disciplined or cited for breach of ethics or unprofessional conduct? No. If you answered "yes", please provide details.

40. If you have served as a judge, commissioner, or in any judicial capacity, has a complaint for misconduct in that capacity ever been made against you? No. If you answered "yes", please provide details.

**Miscellaneous**

41. Are you aware of anything that may affect your ability to perform the duties of a judge? No. If you answered "yes", please provide details.

42. Have you published any books or articles in the field of law? If so, please list them, giving the citations and dates. Also, please give the dates and forums of any Continuing Legal Education presentations that you have made.

"Chemical Dependency and the Law (2003); spoke to an audience of certified chemical dependency evaluators and probation officers about the role the law plays in chemical dependency.

43. Please list any honors, prizes, awards or other forms of recognition that you have received and whether they were professional or civic in nature.

N/A

44. Are you aware of anything in your background or any event you anticipate in the future that might be considered to conflict with the Code of Judicial Conduct? No. If you answered "yes", please explain.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

45. Please provide a writing sample of your work (between 5 and 10 pages long), written and edited solely by you, within the last 4 years.

Please see attached.

**Access to Justice**

46. Please describe activities that you have engaged in to eliminate bias or improve access to the judicial system for indigent populations and ethnic, racial and sexual minorities. As a member of the bench, what, if any, role do you believe a judge has to enhance equal access to justice?

I was a public defender for 5 years and represented indigent defendants from all ethnic, racial, and sexual backgrounds. The last two and a half years at this position, I only represented those accused of high-end felony charges and thus over 90% of my clients were in custody. I took my role very seriously and prided myself in making sure that each of my clients received the same high standard of legal access as those who were able to afford the most expensive legal counsel.

With my legal experience and also my upbringing in Brooklyn, NY, equal access to justice has come extremely easy to me as a judge. I treat all cases and defendants alike. The thought never crosses my mind that because a defendant is of a certain ethnic or social background, or because they have a public defender or private counsel, that they should be treated differently. I always find myself taking the extra time to ensure that those who do not have counsel at the time that they are in front of me understand the process and their rights going forward. My goal is to treat everyone before me as I would expect to be treated when I am in front of the court – with the utmost respect. There is a big difference between punishing an individual and disrespecting an individual. The latter is not necessary in accomplishing the former, which often has to occur.

47. Please describe the frequency, time commitment and substantive nature of your direct participation of free legal services to indigent populations, and ethnic, racial and sexual minorities.

As stated above, I dedicated five years of my legal career to representing those who were indigent from all ethnic, racial, and sexual backgrounds.

**Diversity in the Legal Profession**

48. Please briefly describe your understanding of the issue of "diversity within the legal profession."

"Diversity in the legal system," while such a complex term, comes very easy for me due to my legal background. To me it means that everyone is treated the same regardless of their ethnic, racial, or sexual background. It does not matter if an individual has a public defender or a private attorney. Everyone should be treated the same; fairly and with the upmost respect. It is up to the judge to make sure that an individual's rights are being protected throughout the process.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

**References**

It is useful for evaluators to speak with attorneys and non-attorneys who are familiar with you. One or more participants in the evaluation process may contact each of your references. All telephone numbers should be current and legible. If a reference is unreachable, your rating/evaluation may be delayed. **Please use a separate piece of paper for each list.** You may contact references in advance if you so desire. Individuals not listed by you as a reference may be contacted to obtain information about you.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

49. If you have been in practice within the past fifteen years, list the names and phone numbers of ten opposing counsels who know you best, including at least three opposing counsels on cases that went to trial.

Michelle Scudder  
King County Prosecutor's Office  
(206) 296-3540

Ed Stemler  
Snohomish County Prosecutor's Office  
(425) 388-3333

Rhonda Giger  
City of Bothell  
(425) 487-5585

Judge Patricia Lyon  
Snohomish County District Court, Evergreen Division  
(425) 388-3331

Judge Michelle Gehlsen  
City of Bothell  
(425) 487-5588

Yelena Stock  
Zacher & Thomas  
(425) 778-2429

Teresa Cox  
Snohomish County Prosecutor's Office  
(425) 388-3333

Sarah Roberts  
Moberly and Roberts  
(206) 205-5684

Andrew Nyugen  
Former City of Bellevue Prosecutor  
(206) 818-2198

Angela Gianoli  
King County Prosecutor's Office  
(206) 205-9000

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

50. If you have been a judge or otherwise have served as a neutral decision-maker within the past fifteen years, please list the names and phone numbers of the last ten attorneys who have appeared before you.

Mark Garka (425) 422-5818  
David Jolly (425) 493-1115  
Jeannie Mucklestone (206) 623-3343  
James Feldman (425) 771-3600  
Michael Sheehy (425) 778-6900

Justin Harleman (425) 388-3333  
Michael Boska (425) 388-3333  
Katelyn Thomason (425) 388-3333  
Bob Hendrix (425) 388-3333  
Yelena Stock (425) 778-2429

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

51. List the names and phone numbers of up to six non-attorney references whose opinions or observations – particularly with respect to your commitment to improving access to the judicial system for indigent populations, people of color, and disenfranchised communities – would assist in the consideration of your application.

Michelle Wilson  
Snohomish County District Court, Cascade Division, Supervisor  
(360) 435-7707

Tonja Nordberg  
Snohomish County District Court, South Division, Acting Criminal Lead  
(425) 744-6832

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

52. For the last five trials in which you participated (whether as trial lawyer or decision-maker), list as appropriate the following for each: case name, subject matter, court, judge (w/ phone number), and opposing counsel or counsel appearing before you (w/ phone number).

State of Washington v. Christina Westlake, Cause #C664568 WSP  
King County District Court, Redmond Courthouse  
DUI Charge  
Judge David Steiner (206) 205-9200  
Angela Gianoli (206) 205-9000

State of Washington v. Tom Houk, Cause #C96565 SNO  
Snohomish County District Court, South Division  
DUI Charge  
Judge Carol McRae (425) 744-6804  
Jeremy Bartels (206) 749-2832

City of Bellevue v. Hee Kim, Cause #BC0136981 BEP  
King County District Court, Bellevue Courthouse  
DUI Charge  
Judge Janet Garrow (206) 205-9200  
Andrew Nguyen (206) 818-2198

Trials prior to the above-mentioned were completed while I was a prosecuting attorney.  
During this time, I did not keep records of names, cases numbers, etc. in order to keep the  
defendants' information confidential.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

53. List the names and phone numbers of ten additional attorneys familiar with your professional qualifications, skills, experience or attributes.

Judge Carol McRae (425) 744-6804  
Snohomish County District Court, South Division

Judge Donna Tucker (206) 205-9200  
King County District Court, Redmond Courthouse

Judge Steven Clough (425) 388-3331  
Snohomish County District Court, Evergreen Division

Judge Michael Lambo (425) 587-3179  
Kirkland Municipal Court

Judge Jay Wisman (360) 435-7707  
Snohomish County District Court, Cascade Division

Commissioner Anthony Howard (360) 435-7707  
Snohomish County District Court, Cascade Division

Former King County District Court Judge Maryann Ottinger (425) 466-0619

Judge Steven Rosen (206) 615-0470  
Seattle Municipal Court

Judge Bill Bowman (206) 622-8000  
Black Diamond Municipal Court

Judge Tim Ryan (425) 744-6801  
Snohomish County District Court, South Division

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

**NOTE:** The Governor's Office requires individuals seeking judicial appointment to utilize, to the fullest extent possible, the ratings processes from state, county, and minority bar organizations. Contact information for the minority bar associations can be found on the Washington State Bar Association's website at (<http://www.wsba.org/public/links/minoritybars.htm>). It is the applicant's responsibility, however, to obtain these evaluations in a timely manner, and to forward evaluations received to the Governor's Office. To that end, all applicants are strongly encouraged to commence the evaluation process with the various bar associations as soon as possible. To facilitate the process, the following organizations have agreed to accept this questionnaire as the principal application in their evaluation process and may also require candidates to complete an additional supplement questionnaire:

**State Bar Association**

☐ Washington State Bar Association (WSBA) (appellate court evaluations only)

**County Bar Associations**

- ☒ King County Bar Association (KCBA)  
☐ Spokane County Bar Association (SCBA)  
☐ Tacoma-Pierce County Bar Association (TPCBA)

**Minority Bar Associations**

- ☒ Latina/o Bar Association of Washington (LBAW)  
☐ Loren Miller Bar Association (LMBA)  
☒ The Joint Asian Judicial Evaluations Committee of Washington<sup>3</sup>  
☐ Pierce County Minority Bar Association (PCMBA)  
☒ Q-Law / GLBT (Gay Lesbian Bisexual Transgender) Bar Association  
☐ Washington Women Lawyers<sup>4</sup> (WWL)

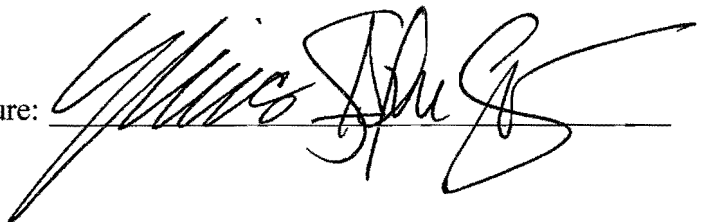
As of the date of your certification below and submission of this questionnaire to the Governor's Office, please check beside each of the above organizations you have contacted to evaluate you for the position for which you seek.

**Certification**

54.

By signing below, I declare under penalty of perjury under the laws of the State of Washington that the information provided by me in responding to this questionnaire is true and correct to the best of my knowledge.

Date: November 2, 2012 Signature: \_\_\_\_\_



<sup>3</sup> A joint committee of the Asian, Korean, South Asian and Vietnamese American Bar Associations of Washington.

<sup>4</sup> Washington Women Lawyers has approved the use of the Governor's Uniform Judicial Evaluation Questionnaire for its statewide and all county chapters.

**KING COUNTY BAR ASSOCIATION**  
**Supplemental Questionnaire for Candidates Seeking Appointment**  
**or Election to Judicial Office**

**COVER SHEET**

NAME Leo Enrico (Rick) Salvatore  
(Last) (First) (Middle)

Business Address: 18920 Bothell Way NE, Suite 208

Bothell, WA 98011

Telephone: (425) 481-2600

Business Email: rick@leolawoffice.com

Position Sought:

By Election \_\_\_\_\_  
By Appointment X

\_\_\_\_\_ Municipal Court  
X King County District Court (East Division)  
\_\_\_\_\_ King County Superior Court  
\_\_\_\_\_ Washington State Court of Appeals, Div.I  
\_\_\_\_\_ Washington State Supreme Court

**PLEASE NOTE:** In the process of determining judicial ratings, the Judicial Screening Committee of the King County Bar Association uses the Washington State Governor's Office Uniform Judicial Evaluation Questionnaire and this Supplemental Questionnaire, as well as reference checks, candidate interviews and other sources of information. (See Judicial Screening Rules and Procedures.)

The responses to the following questions on the Washington State Governor's Office Uniform Judicial Evaluation Questionnaire may be disclosed to persons other than the Judicial Screening Committee and, in the case of judicial elections, will be publicly available:

Position Sought, Name, Business Address, Business email  
Professional History: #8, 9, 10, 11, 12, 13, 14, 15,  
Educational Background: #16, 17  
Professional Experience: #18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32  
Community and Civic Activities: #33

At various times, groups not affiliated with KCBA have rated judicial applicants. The KCBA Judicial Screening Committee's bylaws preclude the Committee from disclosing the names of applicants seeking a rating for appointment to these other groups. However, if you are interested in obtaining the names and addresses of such other rating groups to request this information yourself, you may contact the Executive Director at the KCBA office, telephone: 206-267-7100.

**Include the following materials in your application packet:**

- Governor's Office Uniform Judicial Evaluation Questionnaire
- KCBA Supplemental Questionnaire
- A writing sample between 5-10 pages, as requested in question 45 of the Governor's questionnaire.

Please be advised that the Judicial Screening Committee may take into account the information provided in the questionnaire, the reference checks, the interview, and any other source of information available to it. Letters of recommendation will not be provided to the Committee and should not be solicited. Supplemental materials such as journal articles, legal research, motions, briefs or other documents that you have filed in court, other than the writing sample specifically called for in the Governor's Uniform Questionnaire, should not be included.

REFERENCES. The Committee finds it useful to speak with attorneys and non-attorneys who are familiar with you. One or more Committee members will attempt to contact each reference listed. All telephone numbers should be current and legible. You may contact references in advance if you so desire. The Committee may also call upon individuals not listed to obtain information.

(1) List the names and phone numbers of up to ten attorneys who have supervised you or who have reviewed and are familiar with your legal work, including your current supervisor and at least one other supervisor from your current workplace and at least one supervisor from each of your prior workplaces during the past fifteen years.

- a. Judge Carol McRae (425) 744-6804 (Pro Tem Judge)
- b. Tony Zanol (425) 452-1600 (Veitch, Leo & Associates)
- c. Eric Gaston (425) 822-1220 (Veitch, Gaston & Kennedy)
- d. Ed Stemler (425) 388-3333 (Snohomish County Prosecutor's Office)
- e. Mark Roe (425) 259-9333 (Snohomish County Prosecutor's Office)
- f. Karen Halverson (425) 257-2027 (S.C. Public Defenders Assn.)
- g. Commr. Susan Gaer (425) 388-3518 (S.C. Public Defenders Assn.)
- h. \*
- i.
- j.

\*I do not currently have a supervisor as I own my own law practice.

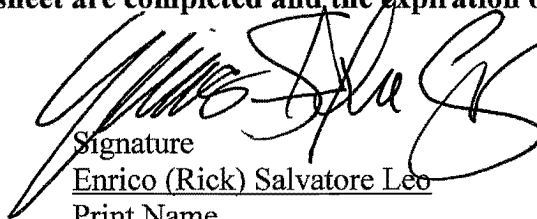
(2) For the last five appellate matters in which you participated (whether as lawyer or decision-maker), list as appropriate the following for each: case name, subject matter, court, judge (w/phone number), and opposing counsel or counsel appearing before you (w/ phone number).

- a. Case Name: Antoinette Forseth v. Department of Licensing  
Subject Matter: DOL Appeal  
Court: King County Superior Court  
Judge: Jeffrey Ramsdell (206) 296-9125  
Plaintiff's Attorney: Masako Kanazawa (206) 389-2126  
Defense Attorney: Rick Leo
- b. Case Name: Katheryn Raemell Mueller v. Department of Licensing  
Subject Matter: DOL Appeal  
Court: Snohomish County Superior Court  
Judge: Thomas J. Wynne (425) 388-3418  
Plaintiff's Attorney: Matthew Tilghman-Havens (206) 340-9627  
Defense Attorney: Rick Leo
- c. Case Name: Casey V. Aydel v. Department of Licensing  
Subject Matter: DOL Appeal  
Court: King County Superior Court  
Judge: Michael J. Trickey (206) 296-9265  
Plaintiff's Attorney: Pedro Bernal (619) 988-2595

Defense Attorney: Rick Leo

- d. Case Name: Dustin Jay Eney v. Department of Licensing  
Subject Matter: DOL Appeal  
Court: Snohomish County Superior Court  
Judge: Matthew Tilghman-Havens (206) 340-9627  
Plaintiff's Attorney: Larry McKeeman (retired)  
Defense Attorney: Rick Leo
- e. Case Name: Nita Petry v. Department of Licensing  
Subject Matter: DOL Appeal  
Court: King County Superior Court  
Judge: John Erlick (206) 296-9345  
Plaintiff's Attorney: Anthony Pasinetti (206) 464-7676  
Defense Attorney: Rick Leo

**I certify under penalty of perjury of the laws of the state of Washington that the above information is true, accurate and complete. I agree to notify KCBA if there are material changes in this information between the time the Uniform Questionnaire and this cover sheet are completed and the expiration of any rating received.**

  
Signature  
Enrico (Rick) Salvatore Leo  
Print Name  
November 2, 2012  
Date

Washington State Bar Association  
Office of Disciplinary Counsel  
1325 Fourth Ave Suite 600  
Seattle, WA 98101

RE: WAIVER AND AUTHORIZATION TO RELEASE INFORMATION

I, Enrico Salvatore Leo, WSBA No. 27816 have requested rating for judicial office by the King County Judicial Screening Committee.

Pursuant to ELC 3.4(c) I authorize and request the Washington State Bar Association, to disclose the record of disciplinary grievances filed against me and the status of otherwise confidential disciplinary investigations and proceedings and to provide copies of nonpublic information to the Judicial Screening Committee of the King County Bar Association, 1200 Fifth Avenue, Suite 600, Seattle, Washington 98101.

Dated this 10<sup>th</sup> day of September, 2012.

\_\_\_\_\_  
Signature

Enrico Salvatore Leo

Print Name

27816

WSBA Number

I \_\_\_\_\_, WSBA No. \_\_\_\_\_, decline to authorize the release of confidential discipline information under RD 11.1(n) to the King County Bar Association Committee.

Dated this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
WSBA Number

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1  
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6  
7 IN THE MUNICIPAL COURT FOR THE CITY OF SEATTLE  
8 KING COUNTY, STATE OF WASHINGTON

9 CITY OF SEATTLE,

10 Plaintiff,

11 vs.

12 BRIANNA DEE DEFENDANT,

13 Defendant.

**CASE NO: 564113**

BRIEF IN SUPPORT OF MOTION TO  
SUPPRESS EVIDENCE; UNLAWFUL  
ARREST

**CLERK'S ACTION REQUIRED**

14  
15  
16  
17 **I. STATEMENT OF FACTS**

18 On August 7, 2010, Brianna Defendant was arrested for Driving Under the Influence by  
19 Seattle Police Officer J. Morris in Seattle, King County, Washington. The incident involved a  
20 collision in which Officers Gleason and Morris responded to the call.

21 Seattle Police Officer M. Gleason, the first officer on the scene spoke to the witnesses  
22 there and learned that none of them had actually seen any accident or collision. They only  
23 reported seeing Ms. Defendant lying in the roadway next to a motorcycle and to a taxicab

BRIEF IN SUPPORT OF MOTION TO  
SUPPRESS EVDENCE; UNLAWFUL  
ARREST - 1

**THE LEO LAW OFFICE**

Rick Leo  
18920 Bothell Way NE Suite 208  
Bothell, Washington 98011  
Phone 425.481.2600 • Fax 425.481.2601

1 then striking the motorcycle as it lay. The taxicab did not stop at the scene. Officer Gleason  
2 could not determine if another vehicle had initially struck the motorcycle, but believed it  
3 traveled 50 feet after Ms. Defendant was no longer on it and then another 20 feet after it was  
4 hit by the taxi cab. Officer Gleason overheard Ms. Defendant tell a Seattle Fire Department  
5 Aid Personnel that she did not know what happened. Officer Gleason smelled the odor of  
6 intoxicants on Ms. Defendant as she was being treated by the aid personnel. There was no  
7 direct interaction between Officer Gleason and Ms. Defendant at any time at the scene of the  
8 incident.

9 Officer Morris arrived on the scene while Ms. Defendant was in transit to Harborview  
10 Medical Center by the Seattle Fire Department Medic Van. Officer Morris reports hearing  
11 that officers and medics could smell the odor of intoxicants coming from Ms. Defendant's  
12 breath. She also spoke to witnesses who had been driving northbound on Aurora Ave N.  
13 They told her that they saw Ms. Defendant lying on the pavement in the right lane. Next to  
14 her was a motorcycle that had been struck by another vehicle.

15 Officer Morris later contacted Ms. Defendant in the emergency room of the hospital.  
16 According to the officer Ms. Defendant appeared alert and had no difficulty understanding  
17 her. In turn, Ms. Defendant spoke clearly and was easy to understand. Officer Morris  
18 immediately told Ms. Defendant that she was under arrest for DUI. Officer Morris observed  
19 Ms. Defendant's eyes to be extremely dilated at that point. Officer Morris also observed that  
20 she "could not smell the odor of intoxicants on her breath." Subsequently, the officer read  
21 Ms. Defendant her Miranda rights and Implied Consent Warnings for blood. A blood sample  
22 was drawn and later analyzed.

23 BRIEF IN SUPPORT OF MOTION TO  
SUPPRESS EVIDENCE; UNLAWFUL  
ARREST - 2

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1  
2 **II. ISSUE**

- 3 1. Whether Officer Morris has probable cause to arrest Ms. Defendant for  
4 Driving Under the Influence where no one saw Ms. Defendant driving, where  
5 the arresting officer dispelled the allegation of any odor of intoxicants on her  
6 breath and failed to observe any other signs of impairment.

6 **III. ARGUMENT**

- 7 1. Ms. Defendant's blood test should be suppressed by the Court because it was  
8 obtained as the fruit of an unlawful arrest.

9 A lawful arrest is an absolute prerequisite to the application of the implied consent  
10 statute. RCW 46.20.308; *O'Neill v. Department of Licensing*, 62 Wn.App. 112, 116 (1991).  
11 To trigger the implied consent statute, the officer must have probable cause to believe that the  
12 driver was driving under the influence of alcohol at the time of the arrest. *State v. Avery*, 103  
13 Wn.App. 527, 539 (2000). Probable cause to arrest must be judged on the facts known to the  
14 arresting officer before or at the time of arrest. *Waid v. Department of Licensing*, 43  
15 Wn.App. 32, 34-35 (1986). The concept of probable cause requires the existence of  
16 reasonable grounds for suspicion supported by circumstances sufficiently strong to warrant a  
17 man of ordinary caution to believe the accused guilty of that crime. *Avery*, 103 Wn.App. at  
18 539. Probable cause to arrest requires more than '{a} bare suspicion of criminal activity,'  
19 *State v. Terrovona*, 105 Wn.2d 632, 643 (1986).

20 All evidence that is obtained as fruit of an unlawful arrest must be suppressed. *State v.*  
21 *Greene*, 150 Wn.2d 740, 743 (2002); *State v. Griffith*, 61 Wn.App. 35, 40 (1991).

1 Information obtained after the arrest cannot be considered in evaluating the existence of  
2 probable cause. *Seattle v. Cadigan*, 55 Wn.App. 30 (1989).

3 Probable cause to arrest for DUI depends on observations of the officer and the specific  
4 facts of the case. While there is no mechanical rule for establishing probable cause most  
5 cases include an observation of the driving of the vehicle, an observation of the behavior of  
6 the driver and observation of the performance of roadside tests. See *State v. Smith*, 130  
7 Wn.2d 215, 224 (1996) (probable cause to arrest when driver's car nearly struck trooper's  
8 vehicle head-on; trooper observed the smell of alcohol on driver's breath, his lack of finger  
9 dexterity, and his failing several field sobriety tests); *State v. Staeheli*, 102 Wn.2d 305, 306,  
10 685 P.2d 591 (1984) (probable cause for arrest established when officer found petitioner  
11 asleep in car with lights on and engine running, with vehicle faced the wrong way in a weigh  
12 station); *City of College Place v. Staudenmaier*, 110 Wn. App. 841, 847-48 (2002) (Police  
13 officer had probable cause to arrest defendant for driving under the influence; officer testified  
14 that defendant's breath smelled strongly of alcohol, that defendant's eyes were watery and  
15 bloodshot, and that defendant told officer that he had consumed five or six beers, and  
16 defendant only passed one of four field sobriety tests conducted by officer). *Bokor v.*  
17 *Department of Licensing*, 74 Wn.App. 523, 527-28 (1994) (was probable cause as trooper  
18 testified that driver admitted he had been driving the car, trooper detected the odor of  
19 intoxicants on driver's breath, and driver repeatedly swayed during the interview and  
20 performed the field sobriety test very badly); *Williams v. Department of Licensing*, 46  
21 Wn.App. 453, 455-56 (1986) (reasonable grounds for arrest established by police observation  
22 of erratic driving, driver's red and watery eyes, and odor of alcohol).

23  
BRIEF IN SUPPORT OF MOTION TO  
SUPPRESS EVIDENCE; UNLAWFUL  
ARREST - 4

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1 In *O'Neill*, supra, the officer responded to a call about an automobile accident that  
2 involved the defendant. That officer concluded the driver had erratically crossed several  
3 lanes of traffic, there was a "great amount" of damage to parked cars and city property, the  
4 driver appeared to be intoxicated because he "wavered" and "slurred his voice," that he had "a  
5 strong odor of an alcoholic beverage emitting from his breath and from his clothes," that his  
6 eyes were "watery, bloodshot," and his speech was "thick-tongued" and "slurred." *Id.* at 540.

7 The facts in this case do not give rise to probable cause to arrest Ms. Defendant for  
8 DUI. An odor of intoxicants coupled with an accident that may or may not have been the  
9 driver's fault does not constitute reasonable grounds for suspicion supported by  
10 circumstances sufficiently strong to warrant a man of ordinary caution to believe the driver  
11 was guilty of DUI. See *Avery*, 103 Wn.App. at 539-541.

12 In *Avery*, the driver was involved in an automobile accident. *Avery* 103 Wn.App. at 530.  
13 After he was stopped he informed the officer that he had consumed a couple of drinks that  
14 evening; the two officers on the scene also noticed the odor of intoxicants on his breath. *Id.*  
15 They arrested the driver for failure to remain at an injury accident and took him to the station.  
16 There he passed out on several occasions. *Id.* at 530-31. Subsequent, blood draw analysis  
17 revealed a blood alcohol level of .17. *Id.* at 531. He was later charged with vehicular  
18 homicide. *Id.*

19 The court held that the officer did not have probable cause to arrest for DUI where the  
20 officer observed that the driver had a faint odor of alcohol on his breath and seemed very  
21 tired. *Id.* at 540-41. The court reasoned that there was no indication that the driver had poor  
22

1 coordination, that he was uncooperative, that his speech was poor, or that his eyes and face  
2 exhibited signs of intoxication. *Id.* at 541.

3 Like the officers in *Avery* Officer Morris had only a bare suspicion that Ms. Defendant  
4 had been driving under the influence of alcohol, which is insufficient to support probable  
5 cause to arrest. Officer Morris made no observations of Ms. Defendant at the scene, only  
6 after her transport to the hospital. She heard secondhand that ‘other officers and medics at  
7 the scene’ observed an odor of intoxicants on her breath. No one knows what caused the  
8 accident or whether Ms. Defendant was in any way at fault.

9 Unlike *O’Neill*, which also involved an automobile accident, Officer Morris never  
10 reported that Ms. Defendant exhibited any signs of intoxication. On the Washington State  
11 DUI Arrest Report Narrative she notes “none” under the section entitled Pre-Arrest Screening  
12 (Field Sobriety Tests). Under Pre-Arrest Observations, Officer Morris checks the box next to  
13 ‘cooperative’ under ‘1. Attitude,’ ‘pupils dilated’ under ‘4. Eyes’ and ‘good’ next to ‘7.  
14 Speech.’ Other Pre-Arrest Observations such as Coordination, Clothes, Facial Color, Odor of  
15 Intoxicants, and Officer’s Opinion (of Subject’s Impairment Due to Use of Alcohol/Drugs)  
16 are all left blank. Officer Morris made a point of reporting that Ms. Defendant appeared alert  
17 and had no difficulties understanding her. In addition she reported that Ms. Defendant spoke  
18 clearly and she was easy to understand. The only other first-hand observation -- besides the  
19 appearance of extremely dilated pupils -- was that she did not smell an odor of intoxicants on  
20 Ms. Defendant’s breath.

1 As in *Avery* the police did not have probable cause to arrest for DUI and no grounds to  
2 request a blood test at the hospital. Thus, the blood test must be suppressed as fruit of the  
3 unlawful arrest.  
4

5 **IV. CONCLUSION**

6 In conclusion, Ms. Defendant moves this Court to suppress from trial all the evidence as  
7 fruit of the poisonous tree that was obtained as a result from the unlawful arrest.  
8

9 RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of September, 2011.  
10  
11

12 \_\_\_\_\_  
Rick Leo  
13 Attorney for Defendant  
WSBA# 27816  
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BRIEF IN SUPPORT OF MOTION TO  
SUPPRESS EVIDENCE; UNLAWFUL  
ARREST - 7

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# Enrico Salvatore Leo

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## OVERVIEW OF ACCOMPLISHMENTS

In his fourteen years of practice, Enrico (Rick) Leo has earned the respect from his peers, opposing counsel and judges as both a passionate and ethical advocate of the law. Rick achieves remarkable results for his clients who come from a variety of occupations, professions and social classes, but who share a common trust in him. Rick serves as a Pro Tem Judge in various district courts while running his own private criminal defense practice. He is a resident of Snoqualmie, and his wife is a teacher in an Eastside elementary school.

## STATEMENT OF QUALIFICATIONS

Accomplished and recognized trial lawyer and Pro Tem Judge

Experience includes service both as a Deputy Prosecuting Attorney and as a Public Defender in Snohomish County, as well as a criminal defense lawyer in private practice

Recognized by peers for adhering to high ethical standards and for his ability to motivate people to achieve positive results in their lives

## AREAS OF EFFECTIVENESS

- Experienced trial lawyer and Pro Tem Judge
  - Detailed knowledge of courtroom procedures and rules of evidence
  - Brings unique perspective to the bench having spent significant time as a public defender, deputy prosecutor and private defense attorney
  - Extensive know-how in efficiently and effectively handling high volume calendars in district court as judge, deputy prosecutor and public defender
  - Ability to assess evidence and testimony and imposes appropriate sentences as judge
  - Proven ability to communicate clearly both orally and in writing
- 

## PROFESSIONAL EXPERIENCE

**Snohomish County District Courts, Lynnwood/Arlington/Monroe, WA**  
**Pro Tem Judge**

2009 – present

- Presides over arraignments, pretrial and readiness hearings, evidentiary hearings, sentencing and failure to comply hearings in gross misdemeanor and misdemeanor criminal cases. Hears civil matters such as small claims pretrial and trials, contested and mitigation infraction hearings, name changes, anti-harassment and domestic violence protection order proceedings. Reviews and issues search warrants.

**The Leo Law Office, Bothell, WA**

2009 – present

***Trial Attorney/Owner***

- Lead attorney for cases involving DUI, other serious driving related charges, gross misdemeanor and misdemeanor cases and felony offenses.
- Appears in court daily for arraignments, pretrial and evidentiary hearings, bench and jury trials and reviews.
- Handles civil administrative hearings with the Department of Licensing.
- Manages all financial affairs and day-to-day operations of the office.

**Veitch, Leo & Associates** (originally Veitch, Gaston & Kennedy), Bellevue, WA

2003 - 2008

***Trial Attorney/Partner***

Partner in a DUI defense firm with multiple locations and a staff of up to seven. The firm handled about 250 cases a year.

- Responsible for DUI and other driving related and criminal cases brought before Municipal and District Courts.
- Appeared daily in court for arraignments, pretrial and evidentiary hearings, bench and jury trials, and reviews; conducted Department of Licensing administrative hearings.
- Handled administrative appeals from Department of Licensing hearings in Superior Court.
- Assisted the FBI in investigation and prosecution of Washington State Patrol Trooper convicted of sexual assault of ten women stopped for routine traffic matters.

**Snohomish County Prosecuting Attorney's Office, Everett, WA**

Jan. – Dec. 2003

***Deputy Prosecuting Attorney***

Prosecuted misdemeanor and gross misdemeanor cases in Snohomish County District Courts.

- Handled arraignments, pretrial and evidentiary hearings, bench and jury trials and reviews.
- Led the investigation into a Washington State Patrol Trooper who resigned over allegations of falsifying reports which directly led to the dismissal of hundreds of misdemeanor and gross misdemeanor offenses.

**Snohomish County Public Defender Association, Everett, WA**

1998-2002

***Trial Attorney***

Defended the accused of misdemeanor, gross misdemeanor and felony cases in Snohomish County District Courts and Superior Court.

- In District Court managed a case load between 300-400 cases. Tried dozens of cases to verdict.
- In Superior Court tried numerous high profile Class A felony trials to verdict.

## **EDUCATION**

**Washington State Bar Association #27816**

**Juris Doctor**, Columbus School of Law, Catholic University of America, Washington D.C., 1997

**Master of Arts**, Criminal Justice, State University of New York at Albany, 1993

**Bachelor of Arts**, Criminal Justice, State University of New York at Albany, 1992

Completed **Advanced Training** at the National Criminal Defense College in Macon, Georgia.

## **AFFILIATIONS**

**Washington State Bar Association** 1998-Present

**Washington Association of Criminal Defense Lawyers** 2003-Present

**National College of DUI Defense** 2003-Present

## **VOLUNTEER AND PRO BONO WORK**

Founding Board Member for Bothell Youth Court.

Volunteer for Snohomish County Annual Law Day for Fifth Graders.

## **PRESENTATIONS**

- "Chemical Dependency and the Law" (2003). Spoke to an audience of certified chemical dependency evaluators and probation officers about the role the law plays in chemical dependency.

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Dear Nick Wagner, Council Staff:

This letter and the enclosed materials are submitted to you as my application to fill the existing vacancy on the King County District Court bench. I believe my qualifications for this position are very strong and I have received the highest rating available from three Bar Associations. In addition, I present a distinguishing mix of experience and demeanor that the Court and the County very much need at this time.

As you can see from my resume, my experience over the past fifteen years has been committed to the District Courts. I have performed the work of the District Courts from every perspective – public defender, state prosecutor, private criminal defense lawyer, and ultimately Judge Pro Tem. In the latter role, I have served in multiple courts and thus will bring to the King County District Court bench a fresh mix of ideas that have worked well in other areas as a means to keeping the King County District Court an innovative leader with its alternative programs.

I have included the letters from the bar associations that rated me for this position. The King County Bar Association has rated me ***“Exceptionally Well Qualified,”*** as have the minority bar associations, the Cardozo Society and the GLBT Bar Association (QLAW). I received a ***“Well Qualified”*** rating from the Joint Asian Judicial Evaluations Committee and the Latina/o Bar Association.

Additionally, I have included for your consideration a variety of perspectives from those who have interacted with me over the past fifteen years in the courtroom, especially those who have observed my work on the bench serving as a Judge Pro Tem. You will see that these letters of recommendation are written by judges, prosecutors and defense attorneys who quite often have rather different interests in the very same courtroom. While their particular interests may differ, they agree that I am the right choice for this position at this time.

I would particularly draw your attention to a couple of the letters of recommendation from judges in leadership positions on the King County District Court bench. King County District Court Assistant Presiding Judge Donna Tucker, who indicates she is ***“familiar with all of the candidates for the open position on the district court bench and it is my strong belief that Rick is the best candidate.”*** Additionally, she notes that I have the ***“passion and energy to help move the court forward”*** in its endeavor to advance courtroom technology while maintaining that important “human factor” in the work of the District Court.

King County District Court Judge Peter Nault, who states that I am an exceptional candidate for the position, writes about a two hour meeting we had: ***“I came away convinced that not only would Rick Leo be a great judge but also a great asset to the bench in King County. He has an innate sense of what is just and fair, has the ability to make tough decisions, is experienced, and most important, has the integrity, patience and demeanor to be a quality judge.”***

Additionally, Mark Roe, the elected Prosecutor for Snohomish County, who describes the traits of a good judge as someone who is smart, fair and firm, but pleasant, states that my experience ***“on both sides of the ball is also a great trait to bring to the bench. I think Rick Leo has it all and will be as good a judge as he has been lawyer and pro tem.”***

I have also enclosed letters from UW Professor Camille Walsh and Judge Michelle Gehlsen of the Bothell Municipal Court. I worked closely with both of them to implement the Bothell Youth Court where high school students fulfill all of the roles in a courtroom as they apply restorative justice to youth traffic violators. This has been a community service project I have been very passionate about over the past year and am very proud that it just came to fruition with our first real hearings in February. I intend to remain involved in this important project.

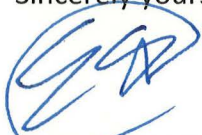
What makes me most proud and humble is that the recurring theme in the letters of recommendation, and from others who support me for this position, is that besides my unique experience, it is my **demeanor** on the bench that sets me apart.

- Attorney, Jon Fox, ***"I was struck with his courtroom demeanor."***
- Black Diamond Judge Melanie Dane, ***"Rick's demeanor on the bench is what judges should strive to emulate."***
- Attorney Eric Gaston, ***"His demeanor was both judicial, and at the same time compassionate."***
- Attorney Patricia Fulton states that, each time she appears before me, she is ***"reminded how effective Mr. Leo's judicial presence and demeanor is."***
- Attorney Aaron Shields, ***"His demeanor on the bench...exceeds the high standards I expect in a judge."***
- Attorney Jon Scott, ***"I found his judicial demeanor and style to be a perfect fit for the district court setting."***
- Snohomish County Commissioner Anthony Howard, ***"Mr. Leo's disposition from the bench is extraordinary."***
- Seattle Municipal Court Judge Steve Rosen, ***"Mr. Leo also possesses a very calm yet intelligent demeanor which would make him an outstanding addition to the bench."***
- Attorney Vernon Smith, who has practiced in district courts for the past 25 years, ***"I can say, without hesitation or reservation, that Mr. Leo's demeanor and appearance of fairness from the bench is as good as I have ever seen."***

These comments are humbling to me because I am the same person on the bench as I am off the bench. I understand that quite often this is a citizen's one and only encounter with the criminal justice system and they begin it nervous and are often confused about the process. I believe that the citizens before me can see that I am sincere, that I am fair, and that it is my goal to make sure that they have all the tools to succeed when they leave my courtroom.

The King County District Court is in need of experienced and innovative judges who are willing to adapt to technological advances and alternatives to expensive and repetitive incarceration. I believe that I bring a depth of experience in the work of the District Court as well as a creative and open mind to the Court at this critical time. Thank you for taking the time to consider my qualifications for this important role in our community. I look forward to meeting with you and answering any further questions you may have.

Sincerely yours,



Enrico (Rick) Salvatore Leo

January 26, 2013

Honorable Larry Gossett  
King County Councilmember  
516 Third Avenue, Rm 1200  
Seattle, WA 98104

Re: **Rick Leo**, Candidate for Appointment to the East Division of King County District Court

Honorable Council member Larry Gossett:

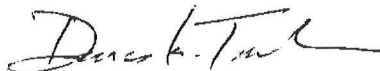
It is my great pleasure to recommend **Rick Leo** for appointment to the King County District Court bench. He has received ratings of exceptionally well qualified by several of the bar associations including the King County Bar Association and his application will be soon forwarded to the Council for your consideration. I am familiar with all of the applicants for the open position on the district court bench and it is my strong belief that Rick is the best candidate. He will be an excellent addition to King County's judiciary and he is well positioned to win election after his appointment. I urge your serious consideration.

Rick has appeared before me on numerous occasions, and I have had an opportunity to see him interact with the Court, opposing counsel, and his clients. It is worthy of note that Rick treats everyone in the courtroom with the utmost respect, including his clients, who are often at a distinct disadvantage in the litigation proceedings – frightened, confused, sometimes angry – and Rick always seems to have the perfect combination of strong advocacy and a professional demeanor that commands respect from all parties. I also know that Rick sits frequently as a Judge Pro Tem in Snohomish County and I have heard that he has a similar demeanor on the bench – clearly explaining his rulings and expectations to litigants – a skill that goes a long way toward assuring compliance and reducing repeat court appearances.

As you know, the future of the District Court requires that we advance our technology capabilities and Rick Leo is savvy with technology. Rick has the passion and energy to help move the court forward and I would view him as a key player in our endeavor of advancing courtroom technology that will reduce cost and waste while maintaining that important "human factor" in the District Court.

I would welcome Rick Leo as a member of this Court and would urge his appointment.

Sincerely,

A handwritten signature in black ink, appearing to read "Donna Tucker", with a stylized flourish at the end.

The Hon. Donna Tucker  
Assistant Presiding Judge  
King County District Court  
516 Third Avenue, W-1034  
Seattle, WA 98104

**JUDGE PETER L. NAULT**  
**KING COUNTY DISTRICT COURT**

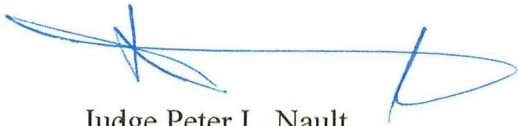
January 22, 2013

Dear Council Member:

I have known Rick Leo for a number of years. In his capacity as an attorney he has appeared before me on numerous occasions, always prepared, confident, knowledgeable and always respectful to the court. He has all those attributes needed to be a great judge. Rick is an exceptional candidate for the open District Court judicial seat.

More recently I had the opportunity to sit down with Rick for a couple of hours to discuss with him his application for appointment to this judicial position. I came away convinced that not only would Rick Leo be a great judge but also a great asset to the bench in King County. He has an innate sense of what is just and fair, has the ability to make the tough decisions, is experienced, and most important, has the integrity, patience and demeanor to be a quality judge. I unreservedly make this recommendation to you for your consideration.

Sincerely,



Judge Peter L. Nault  
King County District Court  
East Presiding Judge  
5415 220<sup>th</sup> Avenue SE  
Issaquah, WA 98029  
(206) 296-3686



**Snohomish County  
Prosecuting Attorney  
Mark K. Roe**

Administration  
Robert G. Lenz, Operations Manager  
Robert J. Drewel Building, 8th Floor; M/S 504  
3000 Rockefeller Avenue  
Everett, WA 98201-4046  
(425) 388-3772  
Fax (425) 388-7172

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November 28, 2012

King County Council  
516 Third Ave., Rm. 1200  
Seattle, WA 98104

Re: Rick Leo

Dear King County Council:

I have been a prosecuting attorney in Snohomish County since 1987, became Chief Criminal Deputy in 2001, and was appointed Prosecuting Attorney in 2009 before winning election to a full term in 2010. I have handled thousands of cases, and since the early 90's they have been primarily cases involving sex crimes, violent crimes, or crimes against children. It was during that time period that I became acquainted with Rick Leo.

Mr. Leo first came to my attention as a vigorous young Public Defender that deputies in our non-violent felony trial unit spoke highly of, and enjoyed working with. It was a few years before he moved on to the type of cases emanating from the Special Assault or Violent trial units I supervised. I was immediately impressed. The good things folks said about him were true. As each of you are no doubt aware, prosecutors and defense attorneys work together to achieve a fair result. When we can't agree, we go to trial. Rick Leo was always able to proceed down one road or the other with honesty, humility, and humor. He also displayed a quick wit, and easy grasp of the issues and impediments arising from any particular case. Most importantly in my mind, he was trustworthy. You could always believe what he said. I liked him so much in fact, that I hired him away from the public defender's office!

Rick performed very well here for a number of years, and I was very sad to see him go. He has gone on to even greater success.

You are looking at Rick as an applicant for a vacant judicial position. Our deputies here have seen him in that role often as a judge pro-tem. Below are some of the comments they sent to me:

My experience before him as a pro tem was very good. He followed the law (which is all that you can ask) and also had a very good demeanor in every case that I observed.

The cases I saw he displayed proper judgment and appeared to be an ideal pro tem.

I've always had good experiences with Rick, both as an attorney and on the bench.

---

Criminal Division  
Joan Cavagnaro, Chief Deputy  
Mission Building  
(425) 388-3333  
Fax (425) 388-3572

Civil Division  
Jason J. Cummings, Chief Deputy  
Robert J. Drewel Bldg., 8<sup>th</sup> Floor  
(425) 388-6330  
Fax (425) 388-6333

Family Support Division  
Serena S.A. Hart, Chief Deputy  
Robert J. Drewel Bldg., 6<sup>th</sup> Floor  
(425) 388-7280  
Fax (425) 388-7295

I've only had him a couple times, and he is always fair; and a nice guy off the bench too.

He is very good; patient, good bench demeanor and very fair. He would do a great job.

Rick is great. He's one of the only pro tems or judges that will take the time at arraignment to read the defendant's criminal history, look for warrants, and read the PC affidavit before making thoughtful rulings on conditions of release and bail.

Rick has good demeanor on the bench. He's patient with interns and learning attorneys. He's firm but polite to defendants.

I selfishly hope he doesn't get the appointment in King so we can keep him a little longer, but he's very deserving of the gig.

As a pro tem I like him. He isn't one of the pro tems I've had problems with.

I was Rick's boss, supervisor, or opposing counsel, and that's why I asked our deputies for their experiences. What you read above comes from different deputies, not just one or two. It says more than I could.

Judges should be smart, fair, and firm but pleasant. Having experience on "both sides of the ball" is also a great trait to bring to the bench. I think Rick Leo has it all and will be as good a judge as he has been lawyer and pro tem.

If you have any questions feel free to call me. Count me as a reference for Rick Leo.

Sincerely,



Mark K. Roe  
Snohomish County Prosecuting Attorney



UNIVERSITY of WASHINGTON | BOTHELL

INTERDISCIPLINARY ARTS & SCIENCES

December 19, 2012

King County Council  
516 Third Avenue, Room 1200  
Seattle, WA 98104

To Whom It May Concern:

I would like to say some words of support on behalf of Rick Leo in his current judicial candidacy. I have had the privilege of working with Mr. Leo on the Bothell Youth Court Community Advisory Board, and I have been consistently impressed at his commitment to the fledgling project and his enthusiasm and energy in seeing it through its many stages of development. Mr. Leo was invited to join the Community Advisory Board based on his history of interest in working with young people and his community service record in volunteering on behalf of children and youth. Judge Michelle Gehlsen and I coordinated the board last winter to launch a youth court in our community, and Mr. Leo has been a cornerstone of leadership since the very first meeting.

I have been especially impressed with his ability to work on a sub-committee led by two students, supporting their emerging leadership skills with his own experience and knowledge by ensuring that their voices were allowed room to grow. He truly went above and beyond the expectations we had of board members and threw himself into the project with dedication and enthusiasm. He was the one who came up with the slogan for the court, which everyone on the board unanimously approved, and he was the one who volunteered to research and compose a mission statement for the court after reviewing similar mission statements from other youth courts nationwide. He is the committee member every committee would wish for – always attentively listening, willing to engage new ideas and offer interested questions whenever needed, all without dominating or distracting from the business at hand.

Despite his busy schedule, he was also the only board member to volunteer to speak to the students in their training sessions. He spoke to the students toward the end of their third night of training, and not only did he effectively communicate several key principles of advocacy and deliberation skills, he offered them empathy and encouragement as they struggled to develop those skills. The students had just completed a somewhat contentious mock deliberation in which two “jury” groups reached quite different sentences, and he managed to bring the students back together right when they were feeling far apart. He shared his own experiences on the bench and as an advocate, and gave them the support and encouragement they needed in recognizing that it felt hard to decide someone’s sentence because it is hard. His confirmation that they had done exactly what they should have done – in taking very seriously the charges and defenses offered, in considering the ramifications of various sentencing options, and in debating the impact the sentence would have on both the defendant and the community – was exactly what the students needed to hear, and he was the perfect person to communicate that message.

Thanks to Mr. Leo and the rest of the board, these students will start hearing actual cases deferred from the local municipal court in February, and they will receive ongoing mentoring from Mr. Leo and others as they tackle real-life legal dilemmas. His mentoring skills are apparent not just in his clear commitment to public service and community empowerment, but even in regular interactions. He chose to attend the entire training at which he was speaking to better get to know the students during the course of observing the evening. When the high school students were engaged in small group work at one point, I found him barraged with questions and requests for advice from my own university students who are working as mentors on the court (many of whom were pre-law). He responded to them all with cheerfulness, patience and the kind of enthusiastic encouragement that can only come from someone who authentically wishes to see others succeed in the world.

Mr. Leo brings leadership, intelligence, and empathy to each endeavor, and I know that he will be a terrific asset to the judiciary in our state. I hope that you consider Mr. Leo for this position. If you would like additional information, please contact me by phone at (541) 968-3160, or via e-mail at [cwalsh@uwb.edu](mailto:cwalsh@uwb.edu). Thank you for your consideration.

Sincerely,



Camille Walsh, JD, PhD  
Assistant Professor, University of Washington-Bothell

Box 358530 18115 Campus Way NE Bothell, WA 98011-8246  
425.352.5350 fax 425.352.5335 [www.uwb.edu/IAS](http://www.uwb.edu/IAS)

November 1, 2012

King County Council / King County District Court Judicial Selection Committee  
Re: King County District Court, East Division,  
In support of **Judicial Candidate Rick Leo**

Dear Judicial Selection Committee,

I am writing to you in enthusiastic support of Rick Leo becoming the next judge in the East Division. Over the decade I have known and worked with Mr. Leo, I've seen him excel as a public defender, prosecutor, private defense attorney, judge *pro tem* and volunteer mentor for projects he is passionate about.

One of the reasons that Mr. Leo is a superb judge *pro tem* and why he would be an exceptional Judge is because he personally understands the role of each professional in the courtroom. He knows the role and duties of the prosecutor. He knows the unique pressure and stress of dealing with assigned and retained clients. He understands the staffing and personnel concerns of the clerks from running a legal practice. That understanding and those skills enable him to provide the proper ruling that takes into account the disparate interests of everyone before him.

Mr. Leo is professional, personable and respectful to everyone; he is a people person who enjoys interacting with people and solving problems. While the people who appear before him as a Judge may disagree with his ultimate decision, they will leave the courthouse knowing that they were heard, as well as understating the logic that he employed on their case.

In addition to his work as a lawyer, I know Mr. Leo to be a dedicated community volunteer. He has been instrumental as a board member for the Bothell Youth Court, and has also volunteered his time in Snohomish County's South District Court for 5<sup>th</sup> Graders Day, and other organizations that seek to introduce children to the court system in a positive light. He is committed to the idea that being a judge is a 24 hour position that has community service as one of its core responsibilities.

I am certain that if selected, Mr. Leo will be a tremendous asset to the court for many years to come.

Sincerely,



Michelle K. Gehlsen  
Judge

THE MUNICIPAL COURT OF SEATTLE

**Karen Donohue**

Judge



January 16, 2013

King County Council Members  
516 3rd Avenue, Room 1200  
Seattle, Washington 98104

RE: Rick Leo, Candidate for King County District Court appointment

Dear Council Members,

I am writing to express my support for the appointment of Rick Leo to the vacant King County District Court position.

Mr. Leo recently appeared before me in Seattle Municipal Court on a fairly complicated series of motions in a criminal (Driving under the Influence) case. The matter was fairly emotional as it involved, among other things, an argument that the city attorney had committed misconduct. Despite the allegations that Mr. Leo was making against the prosecutor, Mr. Leo was very polite and respectful towards the other attorney. I was impressed with the easy manner he had in court and with the way he interacted with some difficult witnesses. Mr. Leo thoroughly researched the matters, wrote a well reasoned and thorough brief and delivered a clear and professional argument.

It is my understanding that Mr. Leo sits frequently as a Judge Pro Tem in Snohomish County and that he has a similar demeanor on the bench, clearly explaining his rulings and expectations to the parties appearing before him.

Rather than coming to the bench with a narrow perspective, Mr. Leo has been a Prosecutor, Public Defender and is now running his own private practice. Mr. Leo will bring his compassion, attentiveness to detail, knowledge of the law and strong ethical background to the bench.

In a field full of strong candidates, I urge you to seriously consider – and ultimately appoint – Rick Leo for the position of King County District Court judge.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Donohue", is written over a horizontal line.

Karen Donohue  
Judge, Seattle Municipal Court



**Snohomish County**  
**District Court**  
*South Division*

Timothy P. Ryan, *Judge*  
Carol A. McRae, *Judge*  
Jeffrey D. Goodwin, *Judge*  
Mellissa I. Derksema, *Supervisor*

(425) 774-8803  
FAX (425) 744-6820

20520 – 68th Avenue West  
Lynnwood, WA 98036

November 30, 2012

King County Council  
516 Third Avenue Room 1200  
Seattle, WA. 98104

Dear Selection Committee:

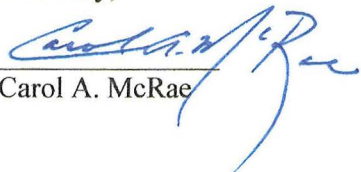
As you consider applicants to fill your vacant King County District Court Judicial position, I strongly urge you to give your full consideration to Rick Leo. He has my full support.

As an attorney appearing before me, Rick Leo always impressed me with the care and consideration he devoted to each and every case. He has excellent trial skills and was always thoroughly prepared for motions and trial. So when we began looking for additional pro tems to use in my court a few years ago, adding Rick Leo to our list was a very easy decision. His skill as a trial attorney, his understanding of the rules of evidence, his demeanor in court, his work ethic and integrity made Rick Leo stand out. We have never been disappointed in our decision.

He has proven to be an outstanding judge and is now used by all four divisions of the Snohomish County District Court. He is respected by both prosecution and defense and held in high esteem by the court staff. Additionally, I am aware that he has a stellar reputation with members of the State and Local Bar Associations for integrity and fairness.

In addition to his professional attributes as an outstanding attorney and judge, Rick Leo is a thoughtful and considerate gentleman. I have absolutely no reservations in giving Rick Leo my highest recommendation and I encourage your consideration of his application. Please feel free to contact me. My direct line is (425) 744-6804.

Sincerely,

  
Carol A. McRae

THE MUNICIPAL COURT OF SEATTLE

Steve Rosen

Judge



December 14, 2012

King County Council  
516 Third Avenue, Room 1200  
Seattle WA, 98104

Re: Rick Leo's application for appointment to King County District Court

Dear Councilmembers:

It is my great pleasure to recommend Mr. Leo for appointment to the King County District Court bench. Mr. Leo has practiced in front of me for several years. He is a knowledgeable and bright attorney who clearly cares about the law and what is just. I have reviewed several of his legal briefs as issues have arisen in past cases. He is an excellent writer who clearly expresses himself. This is a great attribute for any judge.

He is well liked by his peers in the criminal defense bar and also respected by the prosecutors he routinely works with. Mr. Leo also possesses a very calm yet intelligent demeanor which would make him an outstanding addition to the bench. Accordingly, he is routinely asked to be a Pro Tem judge in the Puget Sound area.

If you need any further information, please don't hesitate to contact me.

Sincerely,

Steven Rosen

Judge

Seattle Municipal Court



**Steven M. Clough**  
Judge

**Patricia L. Lyon**  
Judge

(360) 805-6776  
FAX (360) 805-6755

14414 179th Ave. S.E.  
Monroe, WA 98272

December 10, 2012

King County Council  
516 Third Avenue Room 1200  
Seattle, WA 98104

To The King County Council:

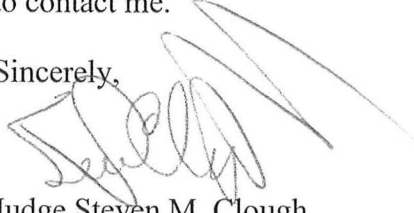
I strongly recommend that you consider Rick Leo for the open position on the King County District Court bench. He has my full support for the position.

Mr. Leo has appeared before me for the better part of fifteen years. He first appeared before me as a public defender, then as state prosecutor, and finally as a private defense attorney. While Mr. Leo's roles may have changed over the years, the one thing that never changed was Mr. Leo's professionalism. He always performs his role in my courtroom exceptionally and with the utmost respect for the court system, his clients, the prosecutors, the police officers, alleged victims, the court staff, and me. I believe this comes from his overall knowledge of each of the different roles in the court room and his direct experience with them. It was abundantly clear to me when Mr. Leo was in front of me as a public defender and also as a prosecutor that he had complete control over his extremely large caseload and was always prepared to move forward on his cases. Over the years I would always find Mr. Leo in my chambers asking for advice on cases, legal issues, his performance, and how to be a better advocate. These are things that I don't often see with today's new attorneys.

When I heard that Mr. Leo was acting as a pro tem in our other district courts in Snohomish County I without hesitation agreed to use him in my court room as a substitute for me. And while Mr. Leo is very respectful of the particulars in my courtroom, he clearly is his own person as a judge. I would not have expected anything different either. He has shown that he can handle any situation thrown at him on the bench and handle it with the experience of a seasoned judge. He is always willing to help out in any way he can while he is here for the day, be it signing off on a search warrant while an officer is present, or looking at requests filed by attorneys. I have heard nothing but praise from both my court supervisor and my court staff in working with Mr. Leo and he quickly became a favorite pro tem choice.

Mr. Leo is ready to be a full time member of the bench and he would be a valuable addition to the King County District Court. Again, he has my full support for this position. Please feel free to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Steven M. Clough", with a large, sweeping flourish extending upwards and to the right.

Judge Steven M. Clough



## Snohomish County

### District Court - Evergreen Division

Steven M. Clough  
*Judge*

Patricia L. Lyon  
*Judge*

December 11, 2012  
King County Council  
516 3<sup>rd</sup> Ave., Rm 1200  
Seattle, WA 98104

14414 179th Ave. S.E.  
Monroe, WA 98272-0625  
(360) 805-6776  
FAX (360) 805-6755

RE: Rick Leo, Candidate for District Court Judge

Dear Council Members,

I am writing to give my strong support for Rick Leo for the position of District Court Judge. I have known Mr. Leo for over 14 years and have worked with him in various capacities. When I was a young deputy prosecuting attorney here in Snohomish County, Mr. Leo worked at the Snohomish County Public Defenders' Office and we represented opposing sides in a number of cases. Then, Mr. Leo went to work at the Snohomish County Prosecutor's office around the time I was elected to the District Court bench in 2002. Later, he went into private practice and has handled a wide variety of cases. Over the past 10 years he has appeared before me countless times and I consider him to be an outstanding attorney.

Here are the qualities that I think make an exceptional judge: a strong work ethic and knowledge of the law, an innate sense of fairness and an ability to strike the proper balance between compassion and accountability, integrity that is unquestioned, a genuine sense of caring about the people who appear before the bench, and a passion for justice. Mr. Leo has all of these attributes in abundance and would be a tremendous asset to the King County Bench.

The strongest endorsement I can give to Mr. Leo as a judicial candidate is to use his services regularly as a pro tem judge in my courtroom, and I do so. As an elected judge, I feel a strong responsibility to the citizens of my district to use only the best pro tem judges, and he is always one of our first choices.

It is my pleasure to recommend Mr. Leo as a candidate for a full-time judicial position. If I can be of further assistance, please do not hesitate to call me at (360) 805-6723.

Very Truly Yours,

PATRICIA LYON, Judge

Snohomish County District Court, Evergreen Division



## Snohomish County

### District Court Cascade Division

Jay F. Wisman, Judge  
Anthony E. Howard, Commissioner

415 E Burke St.  
Arlington, WA 98223  
(425) 388-3331  
FAX (360) 435-0873

To the King County Council:

I strongly recommend that you appoint Rick Leo as the next King County District Court Judge.

Mr. Leo and I have been practicing law in Snohomish County alongside each other for more than a decade. Over the past several years, we have been serving as judges *pro tem* throughout Snohomish County. I was appointed to the bench in November 2011 as Snohomish County's District Court Commissioner. Mr. Leo has been one of our primary *pro tem* judges in Cascade District Court.

Mr. Leo has demonstrated – through both his advocacy and his time on the bench – that he has the skill, experience, and temperament to be a distinguished judge. I have observed Mr. Leo in multiple roles: he and I were colleagues; we were adversaries when he was a prosecutor; I have advocated before him when he was performing his *pro tem* duties; and he has been an advocate in front of me. Mr. Leo excelled in every role. His success throughout the justice system is impressive and will serve him well from the bench.

In addition to his professional accomplishments, Mr. Leo's social abilities should not be overlooked. He is, quite simply, a joy to be around. My court staff admires Mr. Leo and enjoys working with him very much; of the many *pro tem* judges we utilize in my court, my staff prefers Mr. Leo because of his friendly disposition and respect for the valuable role that the court staff has in the efficient operation of our judicial system.

Perhaps more significant, Mr. Leo's disposition from the bench is extraordinary. Judges serve the public, and it is vitally important to our profession that litigants be treated fairly and with respect – in particular when they are wrong on the legal issues. I have witnessed Mr. Leo rule against litigants in a way that is respectful and kind, yet decisive and based on legal principles that he thoughtfully explained. Litigants leave his courtroom with appreciation for our system and a sense of justice. To me, this is the hallmark of a good judge.

I recommend that you appoint Rick Leo to the King County District Court bench. Feel free contact me if you would like more information at (360) 435-7732 or [Anthony.Howard@co.snohomish.wa.us](mailto:Anthony.Howard@co.snohomish.wa.us).

Respectfully,

Anthony E. Howard  
District Court Commissioner

November 30, 2012

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# **Zachor & Thomas, Inc., P.S.**

Prosecuting Attorneys

The Sunset Building  
23607 Highway 99, Suite 1D  
Edmonds, WA 98026  
Tel. 425.778.2429  
FAX 425.778.6925

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December 3, 2012

Dear Council Member  
516 Third Ave., Rm. 1200  
Seattle, WA 98104

It is with great pleasure that I write this letter of support for Rick Leo for the Northeast District Court bench. It is important for a judge to be knowledgeable in the law, understanding of the court process, and to have a temperament and demeanor which will instill confidence from the bench. I have had the opportunity to work with Rick for the past 10 years as a colleague, advocate, and judge. You will not find a more qualified candidate for this position. Not only does Rick possess the required temperament and demeanor of a judge, he has all of the necessary skills to serve as a judge.

Rick's legal practice has prepared him well for this position. He has extensive experience including his work as a public defender, prosecutor and private defense attorney. He will bring to the bench a unique perspective having worked with indigent clients, law enforcement, prosecutors, defense attorneys and private clients. Each role brings with it its own challenges that often manifest themselves in court and judges need to be both mindful and empathetic to those issues. Having this vast experience will be a continued asset to the bench.

In addition to his role as advocate, Rick has been sitting as judge pro tem in our district and municipal courts presiding over criminal and civil court proceedings. I have had numerous occasions to witness Judge Pro Tem Rick Leo and it is my opinion that our King County community will be best served with Rick Leo as Northeast District Court Judge. Rick's demeanor on the bench is what judges should strive to emulate. He is always courteous to the participants in court and delivers his decisions in such a way that those not familiar with the legal process can understand. He is personable yet firm and can make the hard decisions when asked. Most recently as judge, Rick had to declare a mistrial in a complex trial due to circumstances beyond his control. These decisions are not easy but it is clear that Rick possesses the necessary skills to make these difficult decisions.

Having been recently appointed as Judge for the City of Black Diamond, I know that Rick has the professional qualities, personal attributes, and innovative and critical thinking skills that will serve King County well as Judge. I would be honored to have him as a colleague. Rick Leo has my full support and I encourage you to appoint him as Judge in Northeast District Court.

Sincerely,



Melanie Thomas Dane

Yelena I. Stock  
Zachor & Thomas, Inc., P.S.  
23607 Highway 99, Suite 1D  
Edmonds, Washington 98026

December 19, 2012

King County Council  
516 Third Avenue, Room 1200  
Seattle, Washington 98104

Dear King County Council:

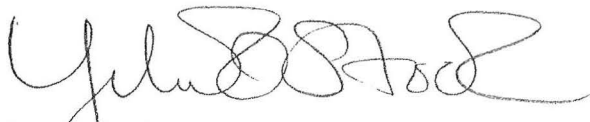
Two words describe Rick Leo: Fair and Professional. For the past three plus years, I have appeared before Rick Leo on various calendars, while he protomed for Snohomish County District Court South Division, ranging from Arraignment, Motion, Pretrial, to Review calendars. As a prosecutor it is imperative to know what type of judge you're appearing before. Rick Leo is a judge that a prosecutor and defense attorney desires to see on the bench. He is knowledgeable of rules and case law and is consistent in his rulings.

Fair: I never find myself walking out of the court room thinking, "What just happened?" I walk with a sense that justice has been served appropriately and fairly. Rick Leo is conscious of economic and social classes of defendants, while balancing the need for justice for the city. He gives appropriate time for the city to state their recommendations and to defense counsel for mitigating circumstances during sentencing.

Professional: Rick Leo addresses every person, counsel, defendant, and court staff with courtesy and respect. He is stern when necessary, yet I have not witness him ever raise his voice, even in most sever circumstances. I have had many cases also where he has appeared as defense counsel, to which he has been early and prepared for each case. He is always with a smile and a great sense of humor.

It would sadden me to see Rick Leo no longer as a protom in Snohomish County, but elated that he would be in King County as a judge. He is the right man for the job.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Yelena I. Stock'.

Yelena I. Stock  
WSBA No. 41248  
Lead Deputy Prosecuting Attorney for the  
City of Mill Creek, Woodway, and Lynnwood

November 26, 2012

To Whom It May Concern:

I am writing this letter to express my support for Rick Leo as a District Court judicial candidate. As a prosecutor for over six years and supervising attorney in District court I have years of experience working with Rick Leo and believe he would be an excellent addition to the bench.

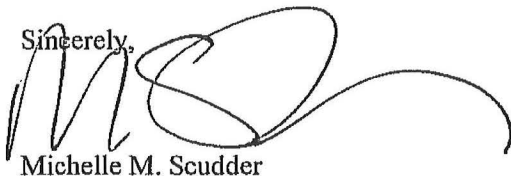
I first met Rick when I was working in District Court as a Deputy Prosecuting Attorney for King County. A significant portion of my job involved handling DUI cases from filing to trial. I regularly encountered Rick in court when he was representing clients whom our office was prosecuting. What often struck me about Rick was that he was always courteous and professional to both prosecutors and court personnel while still being an excellent advocate for his clients. He was always well prepared and demonstrated a thorough understanding of the legal issues in a case. Rick clearly paid close attention to detail and would often find weaknesses in a case that myself or others would overlook. Because of this, Rick was well respected by the prosecutors he dealt with. He always managed to zealously advocate for his clients while also maintaining his credibility and professionalism.

As a supervising attorney in District Court, Rick negotiated a large number of cases with me. I was always impressed how well liked and respected he was with the prosecutors in our office. In court, it was clear that he was also well respected and liked by the other attorneys and judges.

It is both my professional and personal opinion that Rick Leo would be an excellent District Court judge. Rick possesses the important qualities that make a superior judicial candidate. He is well versed in the law and practice in District Court but is also extremely fair minded and impartial. I have no question that Rick Leo would be fair and respectful to either side of an issue and that he possesses the patience and temperament to it requires to be a District Court judge. I believe wholeheartedly in the importance of maintaining a high bar for individuals who serve on the bench, which is why I have no difficulty in putting my support behind Rick Leo for District Court Judge.

Please feel free to contact me if you have any additional questions. I would be happy to speak with you further about the reasons for my support for Rick.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michelle M. Scudder', with a long, sweeping horizontal line extending to the right.

Michelle M. Scudder

**Douglas Cowan**  
**William Kirk**  
**J. Eric Gaston**  
**Matthew C. Knauss**

**Aaron J. Wolff**  
*Of Counsel*

**Christopher Kattenhorn**  
*Of Counsel*

**Theodore W. Vosk**  
*Of Counsel*

**Jonathan D. Rands**  
*Of Counsel*

King County Council  
516 3<sup>rd</sup> Avenue  
Room 1200  
Seattle, WA 98104

RE: Letter of Recommendation for Rick Leo  
King County District Court Judge Appointment

To Councilmember Dunn,

It is without reservation that I write this letter on behalf of Rick Leo in support of his appointment as a Judge in King County District Court.

I first met Rick when he was working as a prosecutor for Snohomish County. I was, and still am, a defense attorney at the time and was always thoroughly impressed with the manner in which Rick handled his cases: he was always prepared, he was always articulate, and he was always able to see the forest from the trees. I believe Rick's background as a public defender allowed him to uniquely see that his role as a prosecutor was not to "get a conviction" but to see that justice was done. More often than not, this ethos lead to convictions, but Rick was always able to remove ego from the equation and do the right thing when the law demanded it. This quality, and his ethics, have served him well over the years, and would make him an asset to the bench.

I was so impressed with Rick's skillset that I asked Rick to join my law firm in private practice. My law firm was focused exclusively on criminal defense, and primarily upon the defense of DUI and other traffic related criminal matters. It is a demanding practice, with a clientele who are often for the first time in their lives facing a criminal system that they know nothing about. From the very first day, Rick became an integral part of our team. Rick has an uncanny ability to empathize with almost anybody that he encounters. His focus, coupled with his ability to put people at ease, made him as successful in the private practice as he was in his public service.

As a member of my firm, Rick needed very little supervision, and nobody in the firm was surprised with the success he had in court, nor the accolades he garnered from Judges, colleagues, and client's whom he shepherded through the minefield of a criminal prosecution. Another thing that impressed me in the time that I worked with Rick was his refusal to take a shortcut or cut corners on his cases – ever. He embraced his role as the last line of defense

between his client and the criminal system, and truly felt duty bound to make sure the system worked the way it was supposed to. He saw his job as ensuring that the police, the prosecutors, and the judges did their job the right way – and I never once doubted that the clients at our firm were getting everything Rick had to offer, every day.

When I left my firm to join another law firm, Rick eventually opened his own practice. I am thrilled that Rick has found satisfaction as the captain of his own ship, and it does not surprise me in the least that he has been such a success. I have had occasion to refer cases to Rick, and I do so with the confidence of knowing that these clients will be well taken care of – always. When Rick told me that he was eager to open another chapter in his life and become a Judge, it made perfect sense to me: Rick has always had a passion for service, and it seems appropriate that he would be called back to serve the public again – this time in a position that affords him an even greater ability to ensure that the criminal justice system works as it should.

In his capacity as a Judge Pro Tem, I have appeared in front of Rick on numerous occasions. The first time I appeared in front of Rick I was not at all surprised to see him bringing his same ability to put people at ease to bear in the courtroom that he was presiding over. His demeanor was both judicial, and at the same time compassionate. He took the time and effort to make sure that every defendant in his courtroom understood the process and I have no doubt that every one of them left his courtroom struck by a sense of his impartiality.

I have no doubt that Rick Leo takes his role as Judge very seriously. I have no doubt that Rick Leo has the ability to embody all of the best qualities in a Judge: intelligence, integrity, and compassion. I have no doubt that Rick Leo wants to be a judge because he thinks he can help make our Courts better. It is without reservation, and with no small amount of pride, that I whole heartedly recommend Rick Leo for your consideration for appointment as a Judge in King County District Court. Rick will bring his passion, his unique skill set, and his experience to a bench that will be made better by his inclusion.

Very Sincerely,



J. Eric Gaston

# FOX LAW FIRM

December 3, 2012

## VIA FIRST CLASS MAIL

Councilmember Larry Gossett  
Council District 2  
516 Third Avenue, Rm 1200  
Seattle, WA 98104

Dear Councilmember Larry Gossett,

I write in support of Rick Leo for a position on the King County District Court bench. I've observed Rick as he performed different functions, from prosecutor to defense attorney, and as a judge pro-tem. Without hesitation I will say that Rick will make an excellent judge. He has a broad base of experience that will inform his excellent knowledge of the law. Rick brings together a perspective likely much broader than most judicial candidates because he has "been there" as a prosecutor, defense attorney and judge pro-tem. His legal experience spans beyond King County since he has appeared in an number of district courts in other counties. As such, Rick has a uniquely broad perspective about courtroom operations that would serve the bench here in King County.

I have only appeared before Judge Pro-Tem Leo on a couple of occasions but each time I was struck with his courtroom demeanor: Every person appearing before him undoubtedly leaves the courtroom feeling that they have been given a fair hearing and the ruling that was based in the law.

Rick Leo will make a fine judge. I hope you will feel free to call me if additional information would be helpful.

Respectfully submitted,



Jon Scott Fox

December 3, 2012

Dear Council Member Gossett,

I am writing in support of Rick Leo for a judicial position with the King County District Court. I have had the privilege of knowing Mr. Leo professionally for almost thirteen years and have seen his work as a public defender, private defense attorney, prosecutor, and pro tem judge. Mr. Leo's experience in every role of the criminal justice system and in multiple counties and courts makes him uniquely qualified to be a judge in King County District Court. This extensive experience has also earned Mr. Leo respect from both defense attorneys and prosecutors throughout the area.

I have been consistently impressed with the way Mr. Leo has been able to embrace each of his various roles in the criminal justice system with passion and professionalism. He has brought a sharp mind, a willingness to work hard and good instincts to his roles as defense attorney and prosecutor to be an effective and caring advocate for his clients.

Appearing before Mr. Leo as a pro tem judge has been a pleasure. Each time, I am reminded how effective Mr. Leo's judicial presence and demeanor is. When on the bench, Mr. Leo makes it clear he is one hundred percent engaged with the cases and parties appearing before him. He routinely remembers cases and defendants and communicates effectively with the parties to make sure he has a full understanding of what has happened on a case and what needs to happen next. He treats all parties appearing before him with a great deal of respect and goes out of his way to make sure that defendants feel they are heard by the court, understand what is happening, and understand what is expected of them. Perhaps most importantly, Mr. Leo is able to accomplish this while efficiently managing a heavy calendar.

Thank you for your time and consideration of my letter supporting Mr. Leo. I am happy to answer any questions or discuss Mr. Leo's qualifications further at any time. Please feel free to contact me at 206-467-3190 or [patricia@glblaw.com](mailto:patricia@glblaw.com).

Regards,



Patricia Fulton

Attorney



January 27, 2013

Council Chair Larry Gossett  
Metropolitan King County Council  
516 Third Ave., Room 1200  
Seattle, WA 98104

Re: Attorney Rick Leo's consideration for District Court

Dear Council Chair Gossett:

As an attorney who has spent almost 25 years defending the accused in municipal and district courts throughout Washington, I wholeheartedly endorse and support Mr. Leo's efforts to be appointed to the open position on the King County District Court bench.

For the vast majority of our citizenry, their only exposure to our judicial system is via the municipal and district courts where they appear as jurors or as individuals contesting infractions, seeking protective orders, seeking name changes, or as defendants facing misdemeanor and gross misdemeanor charges. The way people feel they were treated by the judiciary and the judicial process goes far to color their perceptions of our government and our system of laws. Thus, in my opinion, both demeanor and an appearance of absolute fairness are critical criteria for any judge sitting in these courts.

I have witnessed first hand Mr. Leo's demeanor and fairness on the bench when he has appeared as a pro tem judge. I am in court, before sitting and pro tem judges, on almost a daily basis. I can say, without hesitation or reservation, that Mr. Leo's demeanor and appearance of fairness from the bench is as good as I have ever seen.

Further, I have also witnessed Mr. Leo's legal work in court on behalf of his clients. In every instance witnessed, his preparation, legal analysis, ability to articulate clear, cogent arguments, and respect for the court, court personnel, and opposing counsel were excellent.

I urge the counsel to give Mr. Leo's application serious consideration. As a former member of the King County Bar's Judicial Screening Committee, I can say without reservation, that Mr. Leo's legal skills, intellect, and demeanor are as solid as any candidate I ever screened. Without question, the addition of Mr. Leo to the King County District Court bench will elevate the quality of that bench in every respect.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'V. A. Smith'.

Vernon A. Smith

3301 HOYT AVE., STE A  
EVERETT, WA 98201

**THE SHIELDS**  
**LAW FIRM**  
PLLC

PHONE: 425-263-9798  
FAX: 425-263-9978

November 19, 2012

King County Council  
516 3<sup>rd</sup> Avenue  
Room 1200  
Seattle, WA 98104

Re: Letter of Recommendation for Rick Leo  
King County District Court Judge Appointment

To Whom It May Concern,

By way of a short background, I am an attorney practicing in Snohomish County, Washington, and I was admitted to the bar in 1996. While attending law school, I was an intern/law clerk for the United States District Court, Eastern District of Washington. Upon graduation, I was hired as a law clerk in Snohomish County Superior Court. I mention these posts as they gave me an opportunity to work behind the scenes with several different judges during and after attending law school. Subsequent to those positions, I began to work for the Snohomish County Prosecuting Attorney's Office. It was at that time that I first met Rick Leo, who was a public defender in Snohomish County.

Mr. Leo and I worked in the same division of Snohomish County District Court. I had the opportunity to work with many attorneys during that time and I can say, without question, Mr. Leo demonstrated he was a person of the highest ethical standards who acted professionally and with an earnest desire to obtain the best possible result he could for his clients. He was an extremely effective advocate, always meticulously prepared, and dedicated to all of his clients.

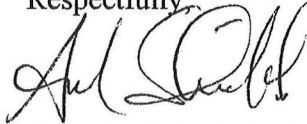
Shortly after I left the Prosecuting Attorney's office and began working in criminal defense, Mr. Leo became employed with the Snohomish County Prosecuting Attorney's Office as a Deputy Prosecutor. At that point, we had effectively switched

hats, but again Mr. Leo, in his capacity as Deputy Prosecuting Attorney, continued to maintain the highest ethical and professional standards in dealing with the courts, counsel, and the general public. After his period of work with the Snohomish County Prosecuting Attorney's Office, Mr. Leo too entered into private practice, first as an associate at a well known firm and then opening his own office, the Leo Law Office. I have continued to admire Mr. Leo's knowledge of the law as well as his dedication to and preparation of his cases. He is, at all times, pleasant and courteous to and has an uncanny ability to effectively navigate the criminal justice process in a manner that engenders respect from clients, colleagues and opposing counsels.

Mr. Leo also sits as a pro tem judge in the District Courts of Snohomish County. I've had the opportunity to appear before Mr. Leo on numerous occasions. His demeanor on the bench and his knowledge of the law exceed the high standards I expect in a judge. Mr. Leo is respectful of all those who appear before him, fair and rational in his decisions, and able to control the courtroom in a manner that is respected and appreciated by counsel as well as the litigants who appear before him. I believe he truly listens to, respects, and cares for all the individuals in his courtroom.

I am confident that the council's appointment of Mr. Leo to the King County District Court bench will be the best choice. I recommend Rick Leo's appointment without reservation or hesitation.

Respectfully,

A handwritten signature in black ink, appearing to read 'Aaron L. Shields', written in a cursive style.

AARON L. SHIELDS

December 17, 2012

Re: Judicial Candidate Rick Leo

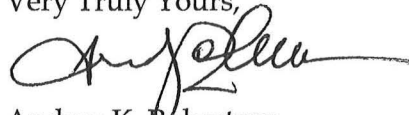
To Whom it May Concern,

I am writing in support of Rick Leo, who is seeking the judicial position vacated by Frank LaSalata, a big pair of shoes to fill. Frank was a passionate and caring judge, who wanted justice for anyone appearing before him. Rick shares the same qualities.

I first met Rick at the Snohomish County Public Defender, where he was tasked with training and supporting me as I learned the ropes. What struck anyone who worked with Rick was his energy and attention to detail. He was (and is) energetic and insightful about what he does. He was a skillful negotiator and judges and juries alike appreciated his energy and his ability to distill complex legal matters to real-world language. Rick went on to become a prosecutor in Snohomish County, learning the "other side" of the justice system, and advocated with as much passion, energy, and intensity. After that, he went into private practice with a boutique defense firm. Finally he struck out on his own, and has developed a successful solo practice. He's also been a pro tem for several years now. I am a regularly practicing criminal defense attorney, and I have heard wonderful things about his time on the bench.

You would be hard-pressed to find a candidate with such a well rounded background, with the benefit of having worked on all sides of the criminal justice system. He's meticulous and energetic and I think he would make an excellent judge.

Very Truly Yours,



Andrea K. Robertson  
Attorney at Law



## JOHN PATRICK MUCKLESTONE

JOHN PATRICK MUCKLESTONE

GAIL JENSEN  
LEGAL ASSISTANT

ATTORNEY AT LAW  
PO BOX 982  
WOODINVILLE, WASHINGTON 98072  
TEL.: (206) 399-6139 FAX: (425) 354-4789  
e-mail: johnpatrickmucklestone@comcast.net

JOHN P. MUCKLESTONE  
(2003)

PATRICIA J. MUCKLESTONE  
(2008)

January 9, 2013

Re: Enrico Salvatore (Rick) Leo  
Judicial Candidate

### TO WHOM IT MAY CONCERN:

The purpose of this letter is to commend to your favorable attention, and fully endorse, without reservation, Rick Leo for any judicial position which is now, or ever may become available in Washington.

I have been practicing law in the State of Washington since 1990. My Father, Mother, Brother, Sister, an Uncle and two cousins are (or have been prior to death) lawyers. I spend most of my time each day in the Courtrooms of various Courts throughout the State of Washington. While I was growing up as a child, I would attend Court from the time from the age of about 4 years old (I am 53 years old now), and watch my parents argue (and preside) in court. I have had the opportunity to observe hundreds of Judges in action. My Father, Mother, and Sister have sat on the bench as Pro Tem Judges.

Qualities which I feel are most important in a good Judge include, but are not limited to (in random order): Good Character, Integrity, Fairness, Patience, Intellect, Experience in private practice with clients of their own, Personality, Demeanor, Presentation, a sense of humor, and the courage to make the tough calls.

I have had the pleasure of knowing Mr. Leo for at least ten years. As a private practitioner, he is my competitor. I know him to be a knowledgeable and extremely competent attorney – and Judge. He is always courteous to others, and has a great sense of humor. Rick Leo possesses all of the above stated qualities and more.

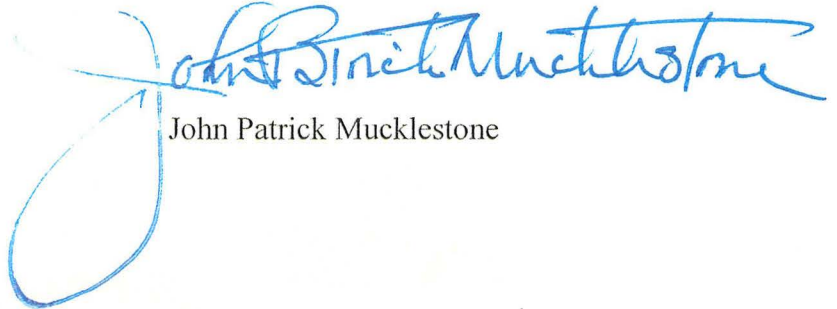
I have had the pleasure of appearing before Judge Pro Tem Leo on numerous occasions within the last couple of years, and fully approve of his performance. Although I have not always fully agreed with some of his decisions (ones that are adverse to my clients), I am able to accept his legal reasoning because I believe it to be well grounded, and well presented.

RE: Judge Rick Leo  
January 9, 2013  
Page 2

Please do not hesitate to contact me if you have any further questions regarding this recommendation. Your thoughtful consideration is greatly appreciated. Thank you.

Yours very truly,

**JOHN PATRICK MUCKLESTONE**

A handwritten signature in blue ink, reading "John Patrick Mucklestone". The signature is fluid and cursive, with a large loop at the end of the last name. It is positioned above the printed name "John Patrick Mucklestone".

JP/bh

**JON SCOTT LAW, PLLC**  
**3206 Wetmore Ave., Ste. 13**  
**Everett, WA., 98201**

PH (425) 258-6751  
FX (425) 258-0489

December 4, 2012

TO: King County Council  
516 Third Avenue, Room 1200  
Seattle WA, 98104

RE: Appointment of District Court Judge Position

Honorable Council Members,

I was sad to hear of Judge LaSalata's passing. I had the pleasure of practicing in his court, and I always found him to be an engaged and fair Jurist. His presence will be missed on the bench.

I understand that the Council now bears the responsibility of appointing a replacement to serve the remainder of Judge LaSalata's term, and I would like to extend a recommendation to the council. I have been practicing in District and Superior Courts for 13 years. I have appeared before many different judges, in different courts, and in different counties, and I have thus had the opportunity to see many different judicial styles at work. Given my experience, I would strongly recommend that the Council appoint attorney Rick Leo to fill Judge LaSalata's position.

Simply put, Mr. Leo has the kind of unique experience that allows him to be a good judge. His service as both a public defender and as a prosecutor evidences a versatility and understanding of district court issues that would benefit the court greatly. These experiences also point to a genuine commitment to public service that should be expected from members of the bench. That public service commitment has continued in Mr. Leo's private practice as he has taken a great deal of his time to serve as a Judge Pro Tempore in various courts in King and Snohomish counties.

I have had occasion in my practice to appear before Mr. Leo during his time as a Judge Pro Tempore, and I have found his Judicial demeanor and style to be a perfect fit for the district court setting. He is direct, honest, and fair to the parties. Perhaps most importantly (from the perspective of a practicing attorney) is the obvious effort Mr. Leo has taken to understand the dynamics of courtroom procedures such that he can move through a calendar efficiently and effectively. The value of these pragmatic skills cannot be overrated. Any Judge that can handle an ever-bulging district court calendar in a fair, efficient, and reasonable way will quickly earn the respect and admiration of both sides of the aisle. Mr. Leo has already demonstrated these abilities, and attorneys who practice in his court would be quick to praise your appointment of him to the bench.

You have a difficult job in filling Judge LaSalata's chair, and you will undoubtedly have many qualified candidates to consider, and probably many peripheral considerations to wade through. But the bottom line is this: Mr. Leo is ready to step into the job, and he would do the job very well. Those are the considerations that should matter most, and his appointment would reflect well on the Council.

Thank you for considering my recommendation.

Very Truly,

Jon T. Scott

*Attorney at Law*

JON SCOTT LAW, PLLC

3206 Wetmore Ave., Ste. 13

Everett, WA. 98201

PH: (425)258-6751 / FX: (425)258-0489

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# THE WASHINGTON STATE GOVERNOR'S OFFICE UNIFORM JUDICIAL EVALUATION QUESTIONNAIRE<sup>1</sup>

Position Sought (Court/Division/District): King County District Court Judge, East Division

By Appointment: ☒ By Election:

## Personal Information

1. 

Mitchell	Richard	Lawrence	21606
Last Name	First Name	Middle Name	WSBA Bar Number
2. Business Address: 

City of Redmond Prosecuting Attorney's Office			
Business Name			
8701 160 <sup>th</sup> Avenue NE, P.O. Box 97010			
Street or P.O. Box			
Redmond	WA	98073-9710	
City	State	Zip	

Business Phone No. 425-556-2108  
Work e-mail address: lrmitchell@redmond.gov

## Prior Evaluation / Application History

7. Please state the date of all other judicial evaluations you sought, bar polls you participated in, and appointment applications you submitted. Please specify whether you sought appointment or election for each, from whom the evaluation was sought, the position sought, and the outcome.

In 2010 I sought appointment by the King County Council to a judicial position for King County District Court, East Division. I was not appointed and subsequently ran for an open judicial position on King County District Court, East Division and was not elected.

<sup>1</sup> The Governor's Office uses this questionnaire exclusively for candidates seeking judicial appointment. The Washington State Bar Association and other state bar associations noted on the last page also accept this questionnaire in their judicial evaluation process. The Governor's Office reserves the right to update this questionnaire and will post updated versions of the questionnaire on the Governor's webpage. Please direct all questions about the questionnaire to the Governor's Office of General Counsel.

<sup>2</sup> Only include your social security number on the copy of the questionnaire forwarded to the Governor's Office.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

I received the following ratings in connection with appointment and election.

11-30-2009	King County Bar Association	Exceptionally Well Qualified.
09-30-2009	Latina/o Bar Association	Well Qualified
01-13-2010	GLBT Bar Association of Washington	Well Qualified
01-13-2010	Joint Asian Judicial Evaluation Committee	Well Qualified
12-23-2009	Loren Miller Bar Association	Qualified
01-15-2010	Washington Women Lawyers	Exceptionally Well Qualified

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The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

**Professional History**

8. Year admitted to practice law in Washington: 1992

9. Employment History (in reverse chronological order):

a. Start Date: 1995 End Date: Still employed

Organization: City of Redmond, WA

Address: 8701 160<sup>th</sup> Avenue NE, P.O. Box 97010, Redmond, WA 98052

Phone No.: 425-556-2108

Position/Title: Prosecuting attorney

Supervisor: Jane Christensen

Nature of Practice (including frequency of court appearances):

Prosecution of state and city criminal misdemeanor statutes; prosecution of state and city civil traffic infractions; prosecution of city civil code enforcement violations. Appear in court on 4-5 days per week. All criminal and infraction cases filed and prosecuted in King County District Court. Civil code enforcement appeal hearings heard by City Hearing Examiner.

Reason for leaving: Still employed

b. Start Date: 1993 End Date: 1995

Organization: City of Redmond, WA

Address: 8701 160<sup>th</sup> Avenue NE, P.O. Box 97010, Redmond, WA 98073-9710

Phone No.: 425-556-2108

Position/Title: Deputy prosecuting attorney

Supervisor: Christy Bonilla

Nature of Practice (including frequency of court appearances):

Same as above

Reason for leaving: Promoted to prosecuting attorney

c. Start Date: 1991 End Date: 1993

Organization: City of Redmond, WA

Address: 15670 NE 85<sup>th</sup> Street, P.O. Box 97010, Redmond, WA 98073-9710

Phone No.: 425-556-2108

Position/Title: Code enforcement officer

Supervisor: James Roberts

Nature of Practice (including frequency of court appearances):

Investigated and prosecuted city civil code violations. The City Hearing Examiner heard code violation appeals were so no court appearances were made.

Reason for leaving: Applied for and was hired as City of Redmond deputy prosecuting attorney

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

d. Start Date: 1979 End Date: 1989

Organization: Richard Lawrence Mitchell, Attorney at Law

Address: various locations

Phone No.:

Position/Title: Solo practitioner

Supervisor: Self employed attorney

Nature of Practice (including frequency of court appearances):

Part time attorney handling wills, divorce actions, and collection matters with infrequent court appearances

Reason for leaving: Relocated to Washington state

e. Start Date: 1972 End Date: 1989

Organization: Eastern Airlines

Address: Atlanta International Airport, Atlanta, GA

Phone No.:

Position/Title: Customer service representative

Supervisor:

Nature of Practice (including frequency of court appearances): n/a

Reason for leaving: Company went bankrupt and shut down

f. Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_

Organization: \_\_\_\_\_

Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Position/Title: \_\_\_\_\_

Supervisor: \_\_\_\_\_

Nature of Practice (including frequency of court appearances):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Reason for leaving: \_\_\_\_\_

\_\_\_\_\_

Please continue, if necessary, on a separate piece of paper in the above format as needed.

10. Please list all other courts and jurisdictions in which you have been admitted to practice law and the dates of admission. Please provide the same information for administrative bodies having special admission requirements.

State of Georgia, 1979 – All state trial and appellate courts

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

11. Please list all bar associations and professional societies of which you are a member and give the titles and dates of any offices that you have held in such groups.

State Bar of Georgia - 1979

Washington State Bar Association - 1992

12. Are you in good standing in every bar association of which you are a member? Yes If you answered "no", please explain.
13. If you have ever been a judge, please identify any court committees on which you have served or administrative positions you have held. Please state the dates of service for each.

I was certified as a judge pro tem for King County District Court in 2010. I have not served on any court committees or held administrative positions as a judge.

14. Please list up to five of your most significant professional accomplishments. (If applicable, please provide the case and court name and the citation if a case was reported (and copy of the opinion).

Briefed and argued the following cases for the City of Redmond in the Washington Supreme Court:

Opinions in cases cited below available at [www.legalwa.org](http://www.legalwa.org)

City of Redmond v. Arroyo-Murillo, 149 Wn.2d 607 (2003) – City prevailed

City of Redmond v. Moore, 151 Wn.2d 664 (2004) – Defendant prevailed

City of Redmond v. Bagby, 155 Wn.2d 59 (2005) - City prevailed

Several years ago I was standing in a parking lot speaking with a friend. A woman approached me and identified herself as a victim in a domestic violence case that I had prosecuted. I did not recall then (nor do I now) the case she referred to nor did I remember her. She told me that at the time she did not want the defendant to be charged and was very angry that the City went forward with prosecution. Although she did not mention the outcome she thanked me for disregarding her wishes and proceeding with the case. She stated that the City's effort to hold her abuser accountable for his behavior made her realize that she was free to make choices and that she did not have to remain in a domestic abuse situation. She said she had ended her relationship with the defendant and went on to build a healthier and better life for herself. She again thanked me for my work, told me that the case had been a turning point in her life, wished me well, and walked away. Hearing her speak of the positive effect the City's prosecution had for her is one of the most gratifying moments of my professional career.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

15. Please summarize up to eight of the most significant matters that you participated in as an advocate. Please include the dates of your participation and the reason each was significant to you. Please provide the citation if a case was reported. If you have been a judge, please include some cases that have been tried before you.

See response to Item 14 above referencing the cases decided by the Washington Supreme Court. Each of them addressed due process issues attendant to the suspension/ revocation of a driver's license/privilege to drive. Arroyo-Murillo involved the method used by the Washington Department of Licensing (DOL) to establish and update an address of record for a Washington driver and due process requirements in connection with a notice of suspension/revocation mailed by DOL to that address. Moore addressed the question of whether a driver was entitled to a pre- or post-suspension hearing at DOL for the purpose of challenging the suspension of a driver's license/privilege to drive as a result of DOL administrative action taken pursuant to information received from a court mainly affecting a person charged with violating RCW 46.20.342(1)(c), driving while license suspended in the third degree. Bagby addressed a similar question involving whether a driver who was convicted of a criminal offense and suffered a mandatory suspension/revocation of license/privilege to drive as a direct consequence of such conviction was entitled to an administrative hearing at DOL to challenge the suspension/revocation.

In 2001 a trial judge in King County District Court granted a defense motion to suppress breath test results in nine separate driving under the cases based upon a statistical analysis of the operation DataMaster instrument used by the Redmond Police department. The suppression did not result in the dismissal of any of the cases but did impair the City's ability to prosecute the nine separate defendants. None of the nine tests at issue showed any indication of an instrument malfunction or any irregularity. Since the judge's order was interlocutory the City was unable to file a RALJ appeal as a means of challenging the suppression. The City applied for and a writ of review was issued in King County Superior Court in case number 01-2-03839-7. After several months of preparation and argument the City was able to obtain in Superior Court a reversal of the lower court's suppression order. As a result the City was able to present important breath test evidence in all of the cases at the trial court level. The case was significant because an application for a writ of review is not often granted for matters originating in district court

In 2012 my office prosecuted an individual in King County District on a variety of domestic violence charges. The allegations included assault 4<sup>th</sup> degree against his wife, harassment for a threat to kill her, reckless endangerment for leaving a loaded handgun in his home within reach of his toddler son, and multiple violations of court orders. The evidence in the case indicated that he and his wife were married in a foreign country after a brief acquaintance. They emigrated to the United States where they had a child and he worked in software development for a large corporation. The wife (educated as an architect) did not work outside the home and was dependent on him financially. She had no local support from family members. They underwent financial stress when he left his initial employment and went to work for an unsuccessful start-up company. She alleged that he would not allow her to touch his handgun in the home whether he was present or not. She stated that she was concerned for her son's safety because the loaded weapon at times was within his reach. As the case progressed orders prohibiting contact were issued which he violated by repeatedly making contact with her. The City noted in excess of 50 potential order violations it could have filed against him but eventually elected to file 9 in exchange for his pleas to those charges and dismissal of others. He was sentenced to 9 months in jail. It is alleged that he attempted to contact his wife while incarcerated and he has been charged in King County Superior Court with two felony protection order violations. He has an Immigration and Customs Enforcement detainer placed against him should he be released from state custody. This case is significant in that it appeared that the potential for lethality was high given the following factors: involvement of a weapon, the wife's dependence on him for support, her isolation from family members (many of whom are apparently sympathetic to the husband), repeated protection order violations, unreported history of domestic violence, and a pending divorce. See King County District Court defendant case history for case numbers CR38557, CR38555, CR37945, CR37944, CR37942 and King County Superior Court case number 12-1-05542-1.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

**Educational Background**

16. Please list all undergraduate and graduate (non-law school) colleges and universities attended, years of attendance, degree awarded and reason for leaving if no degree was awarded.

Georgia Tech	1970 - 1975	BS Industrial Mgmt
College/University	Dates of Attendance	Degree
College/University	Dates of Attendance	Degree

17. Please list all law schools attended, years of attendance, degree awarded and reason for leaving if no degree was awarded.

John Marshall Law School	1976 - 1979	Juris Doctor
Law School	Dates of Attendance	Degree

**Professional Experience**

18. Please summarize, briefly, the general nature of your current law practice.  
Criminal prosecution of misdemeanor cases in King County District Court handling all types of hearings including arraignments, pretrials, motions, bench and jury trials, sentencing and review hearings and appeals. Serve as legal advisor to Redmond Police Department and provide training to city police officers. Also prosecute civil traffic infractions in District Court and civil code violations before City Hearing Examiner. Occasionally represent the City in drug forfeiture hearings.
19. If you are in practice, please describe your typical clients and any areas of special emphasis within your practice.  
See response to 18 above.
20. If your present law practice is different from any previous practice, please describe the earlier practice, including the nature of your typical clients and any area of special emphasis within your practice.  
Part time private practice doing wills and divorce cases.
21. Within the last 5 years, did you appear in trial court:  
☒ Regularly                      ☐ Occasionally                      ☐ Infrequently
22. Within the last 5 years, did you prepare appellate briefs and appear before appellate courts:  
Regularly                      ☒ Occasionally                      ☐ Infrequently

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23. Within the last five years, how often did you appear in the court for which you are applying:

☒ Regularly

☐ Occasionally

☐ Infrequently

24. Career Experience

(a) What percentage of your appearances in the last five years was in:

(1) Federal appellate courts	<u>0</u> %
(2) Federal trial courts	<u>0</u> %
(3) State appellate courts	<u>5</u> %
(4) State trial courts	<u>0</u> %
(5) Municipal courts	<u>0</u> %
(6) District courts	<u>90</u> %
(7) Administrative tribunals	<u>0</u> %
(8) Tribal courts	<u>0</u> %
(9) Other	<u>5</u> %
TOTAL	100%

(b) What percentage of your practice in the last five years was:

(1) Civil litigation (excl. family law)	<u>15</u> % (traffic infractions and code enforcement)
(2) Criminal litigation	<u>85</u> %
(3) Family law litigation	<u>0</u> %
(4) Non-litigation	<u>0</u> %
TOTAL	100%

(c) What percentage of your trials in the last five years were:

(1) Jury trials	<u>70</u> %
(2) Non-jury trials	<u>30</u> %
TOTAL	100%

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- (d) State the number of cases during your total career that you have tried to verdict or judgment (rather than settled) in the following courts, and indicate for each court the following percentages: trials in which you were sole counsel or chief counsel, jury trials, and trials where you were the arbiter/decision maker.

Number	Court	% as Sole / Chief Counsel	% Jury	% as the Arbiter
0	Municipal			
450	State Dist.	100 (criminal)	35	
0	State Superior			
0	Federal Dist.			
0	Administrative			
0	Tribal Courts			
3000	Other	100 (traffic infraction in state district)		

- (e) State the number of appellate cases during your total career where you appeared as counsel of record in the following courts, and indicate for each court the following percentages: cases where you were sole counsel or chief counsel, and cases where you were the arbiter/decision maker (if applicable).

Number	Court	% as Sole / Chief Counsel	% as the Arbiter
90	State Superior Court	100	
2	WA. Div. I COA	50	
0	WA. Div. II COA		
0	WA. Div. III COA		
3	WA. Supreme Court	100	
0	Fed. Cir. COA		
0	U.S. Supreme Court		

- (f) Briefly describe no more than five significant litigation matters that you directly handled as the sole counsel. For each, please provide the name and telephone number of opposing counsel, the name of the judge or other judicial officer, and the citation (if applicable).

See responses to numbers 14 and 15 which include the citations for Arroyo-Murrillo and Moore.  
Opposing counsel in those matters: Judge Donna Tucker, 425-423-6622, 206-255-9753; Cherylyn Church, 206-624-8105, x361.

Opposing counsel in the writ (case no. 01-2-03839-7): William Kirk, 425-822-1220

- (g) State in detail your experience in adversary proceedings before administrative boards or commissions during the last five years. Did not participate in such proceedings.

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25. Please briefly describe any legal non-litigation experience that you feel enhances your qualifications to serve as a judge.

I served as a City of Redmond civil code enforcement officer for 30 months which required that I conduct independent investigation of civil code violations and interpretation of Redmond Municipal Code and Redmond Community Development Guide. In addition I served as sign permit coordinator responsible for interpreting the city sign code and issuance of sign permits. I also reviewed business license applications to insure compliance with city zoning laws.

26. If you are now an officer or director of any business organization or otherwise engaged in the management of any business enterprises, please provide the following: the name of the enterprise, the nature of the business, the title of your position, the nature of your duties, and the term of your service. If you are appointed and do not intend to resign such position(s), please state this below along with your reasons for not resigning.

I am not an officer, director, or manager of any private business organization or enterprise.

27. Please list all chairmanships of major committees in bar associations and professional societies and memberships on any committees that you have held and believe to be of particular significance.

I have not served as chairman of any major committees.

**Judicial Interest and Experience**

28. In 50 words or less, please describe why you should be appointed / elected and are seeking a judicial position.

I have developed a good knowledge of the law and a sense of justice that I will use in deciding issues that come before me. A judge's action can have a profound effect on people's lives. I have the experience and maturity to make fair and responsible decisions.

29. In 50 words or less, please describe your judicial philosophy.

Parties before the court are entitled to a fair hearing and respectful treatment. Each case must be decided solely on the evidence and the law. For a defendant who is convicted the court must impose a sentence which protects the community and provides a defendant a reasonable opportunity for rehabilitation.

30. Have you ever held a judicial office or have you ever been a candidate for such office?  
In 2010 I ran for election to a seat on King County District Court, East Division, against Donna K. Tucker. I was not elected.

If you answered "yes", please provide details, including the courts involved, whether elected or appointed, and the periods of your service.

31. Have you ever held public office other than a judicial office, or have you ever been a candidate for such an office?

No. If you answered "yes", please provide details, including the offices involved, whether elected or appointed, and the length of your service.

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32. Please briefly identify all of your experience as a neutral decision-maker (e.g. judge (permanent or pro tem) in any jurisdiction, administrative law judge, arbitrator, hearing officer, etc.). Give courts, approximate dates, and attorneys who appeared before you.

I was certified as a judge pro tem for King County District Court in 2010. I served as a judge pro tem in King County District Court, Shoreline Division, several times in the summer and fall of 2011 on mitigation and contested hearing calendars.

**Community and Civic Activities**

33. Please list your community and civic activities, including dates and leadership roles held, over the last 10 years.

No civic activities, efforts have been focused on work and family.

**Discipline and Disputes**

34. Have you ever been held, arrested, charged or convicted by federal, state, or other law enforcement authorities for violation of any federal law, state law, county or municipal law, regulation or ordinance? Yes. If you answered "yes", please provide details. (Do not include traffic violations for which a fine of \$150.00 or less was imposed.) Please feel free to provide your view of how it bears on your present fitness for judicial office.

While in college in 1971 I was arrested with several fellow students and accused of attempting to steal four cinder blocks from a parking lot. The case was dismissed with no adverse finding having been made. It was certainly an unpleasant episode and I was never involved in a similar incident again.

35. Has a client ever made a claim or suit against you for malpractice? No. If you answered "yes", please provide details and the current status of the claim and/or suit.

36. Please describe your direct experience, if any, with domestic violence and sexual harassment.

Other than prosecuting domestic violence cases I have not had any direct experience with domestic violence and sexual harassment.

37. Have you been a party in interest, witness, or consultant in any legal proceeding? Yes. If you answered "yes", please provide details. Do not list proceedings in which you were merely a guardian ad litem or stakeholder.

While serving as city code enforcement officer I testified as a witness one time in King County District Court in a code violation case. I do not recall details.

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38. Have you ever been the subject of a complaint to any bar association, disciplinary committee, court, administrative agency or other professional group? Yes. If you answered "yes", please provide details.

My office prosecuted a criminal defendant in the 1990s in several domestic violence matters. He was convicted and spent a considerable amount of time in jail. In 1996 he filed a grievance with the Washington State Bar Association against me and a fellow prosecutor. The complainant alleged that I had acted to unjustly deny him the services of a public defender in a City of Redmond case. WSBA investigated and dismissed the grievance, stating that neither my fellow prosecutor nor I had acted unethically. See WSBA file numbers 9600160 and 9600161.

In 2012 my office prosecuted an individual on a variety of domestic violence charges including assault 4<sup>th</sup> degree, harassment, reckless endangerment, and multiple violations of protection and no contact orders. He eventually pled guilty to nine order violations. While incarcerated he filed a grievance against me and a fellow prosecutor with the Washington State Bar Association alleging a number of ethical and unprofessional conduct violations. The Bar Association initially dismissed his complaint and he appealed. A bar committee reconsidered his complaint and again dismissed it on 21 September 2012. The matter is now closed. See WSBA file number 12-01084.

39. Have you ever been disciplined or cited for breach of ethics or unprofessional conduct? No. If you answered "yes", please provide details.
40. If you have served as a judge, commissioner, or in any judicial capacity, has a complaint for misconduct in that capacity ever been made against you? No. If you answered "yes", please provide details.

**Miscellaneous**

41. Are you aware of anything that may affect your ability to perform the duties of a judge? No. If you answered "yes", please provide details.
42. Have you published any books or articles in the field of law? If so, please list them, giving the citations and dates. Also, please give the dates and forums of any Continuing Legal Education presentations that you have made.

I have not published any books or articles in the field of law. I have made several presentations to the Washington Association of Code Enforcement (WACE) on code violation issues since I assumed my present duties as city prosecutor most recently at the state WACE convention on 13 September 2012 in Leavenworth, WA.

43. Please list any honors, prizes, awards or other forms of recognition that you have received and whether they were professional or civic in nature.

I have twice been recognized as departmental employee of the year by the City of Redmond, once while serving as code enforcement officer and once as prosecuting attorney.

44. Are you aware of anything in your background or any event you anticipate in the future that might be considered to conflict with the Code of Judicial Conduct? No. If you answered "yes", please explain.

The Governor's Office's  
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45. Please provide a writing sample of your work (between 5 and 10 pages long), written and edited solely by you, within the last 4 years. Sample attached.

**Access to Justice**

46. Please describe activities that you have engaged in to eliminate bias or improve access to the judicial system for indigent populations and ethnic, racial and sexual minorities. As a member of the bench, what, if any, role do you believe a judge has to enhance equal access to justice?

As a prosecutor I have conducted myself professionally and ethically, providing equal treatment to defendants, witnesses, fellow attorneys and judges regardless of race, creed, ethnicity, sexual orientation, or economic status. A judge is in a unique position to encourage volunteerism among members of the bar to provide pro bono legal assistance to indigent persons and should do so. By serving on community and bar committees a judge may be able to identify and marshal resources that can be dedicated to educating economically disadvantaged persons/members of ethnic/racial/sexual minorities about the legal system and providing them with assistance when they are confronted with legal problems. Certainly in individual cases a judge can appoint counsel where appropriate and provide information to defendants about the workings of the court system. A judge, in making decisions, must act to ensure that bias or prejudice does not interfere with the administration of justice.

47. Please describe the frequency, time commitment and substantive nature of your direct participation of free legal services to indigent populations, and ethnic, racial and sexual minorities.

I have served as a volunteer lawyer for the Eastside Legal Assistance Program (ELAP) for approximately eighteen years. Four or five times a year each volunteer attorney meets with low income clients during a two hour block of time to provide free legal advice on issues that have legal implications for them. Some of their legal problems are relatively simple and can be handled on the spot; more complex situations require referrals to attorneys who will work pro bono or to social welfare organizations that serve indigent population. My client meetings have taken place at the City of Redmond Senior Center.

**Diversity in the Legal Profession**

48. Please briefly describe your understanding of the issue of "diversity within the legal profession."

Diversity within the legal profession means that those who work within it should reflect the character and views of the persons it serves. Ideally the members of the legal profession should proportionally represent the racial and ethnic makeup of the population in the local area. If the profession does not have such diversity there is a danger that the legal system may be perceived as being unable to fairly dispense justice. Lack of diversity can result in a lack of understanding of a community and through ignorance can cause a systemic denial of justice to accused persons who find themselves in court. True diversity within the legal profession carries the promise of justice for all based on a thorough understanding of all people and cultures and equal application of the law

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**References**

It is useful for evaluators to speak with attorneys and non-attorneys who are familiar with you. One or more participants in the evaluation process may contact each of your references. All telephone numbers should be current and legible. If a reference is unreachable, your rating/evaluation may be delayed. **Please use a separate piece of paper for each list.** You may contact references in advance if you so desire. Individuals not listed by you as a reference may be contacted to obtain information about you.

49. If you have been in practice within the past fifteen years, list the names and phone numbers of ten opposing counsels who know you best, including at least three opposing counsels on cases that went to trial. See attached list.
50. If you have been a judge or otherwise have served as a neutral decision-maker within the past fifteen years, please list the names and phone numbers of the last ten attorneys who have appeared before you. I have served in a limited capacity as a judge pro tem since 2010 but have not handled any trial matters in which attorneys appeared.
51. List the names and phone numbers of up to six non-attorney references whose opinions or observations – particularly with respect to your commitment to improving access to the judicial system for indigent populations, people of color, and disenfranchised communities – would assist in the consideration of your application. See attached list.
52. For the last five trials in which you participated (whether as trial lawyer or decision-maker), list as appropriate the following for each: case name, subject matter, court, judge (w/ phone number), and opposing counsel or counsel appearing before you (w/ phone number). See attached list.
53. List the names and phone numbers of ten additional attorneys familiar with your professional qualifications, skills, experience or attributes. See attached list.

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**NOTE:** The Governor's Office requires individuals seeking judicial appointment to utilize, to the fullest extent possible, the ratings processes from state, county, and minority bar organizations. Contact information for the minority bar associations can be found on the Washington State Bar Association's website at (<http://www.wsba.org/public/links/minoritybars.htm>). It is the applicant's responsibility, however, to obtain these evaluations in a timely manner, and to forward evaluations received to the Governor's Office. To that end, all applicants are strongly encouraged to commence the evaluation process with the various bar associations as soon as possible. To facilitate the process, the following organizations have agreed to accept this questionnaire as the principal application in their evaluation process and may also require candidates to complete an additional supplement questionnaire:

**State Bar Association**

☐ Washington State Bar Association (WSBA) (appellate court evaluations only)

**County Bar Associations**

- ☒ King County Bar Association (KCBA)
- ☐ Spokane County Bar Association (SCBA)
- ☐ Tacoma-Pierce County Bar Association (TPCBA)

**Minority Bar Associations**

- ☒ Latina/o Bar Association of Washington (LBAW)
- ☒ Loren Miller Bar Association (LMBA)
- ☒ The Joint Asian Judicial Evaluations Committee of Washington<sup>3</sup>
- ☐ Pierce County Minority Bar Association (PCMBA)
- ☒ Q-Law / GLBT (Gay Lesbian Bisexual Transgender) Bar Association
- ☒ Washington Women Lawyers<sup>4</sup> (WWL)

As of the date of your certification below and submission of this questionnaire to the Governor's Office, please check beside each of the above organizations you have contacted to evaluate you for the position for which you seek.

**Certification**

54.

By signing below, I declare under penalty of perjury under the laws of the State of Washington that the information provided by me in responding to this questionnaire is true and correct to the best of my knowledge.

Date: 11-04-2012

Signature:

Richard Lawrence Mitchell  
Richard Lawrence Mitchell

<sup>3</sup> A joint committee of the Asian, Korean, South Asian and Vietnamese American Bar Associations of Washington.

<sup>4</sup> Washington Women Lawyers has approved the use of the Governor's Uniform Judicial Evaluation Questionnaire for its statewide and all county chapters.

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Question 45 – writing sample

KING COUNTY DISTRICT COURT  
EAST DIVISION, REDMOND COURTHOUSE

CITY OF REDMOND,	)	
	)	
Plaintiff,	)	NO. CR31957/CR31958
	)	
vs.	)	CITY'S RESPONSE TO DEFENSE
	)	MOTION TO SUPPRESS
COLE VREELAND,	)	
	)	
Defendant.	)	

**A. STATEMENT OF THE CASE**

On March 7, 2009, Redmond Police Officer Jamin Palmer observed a vehicle, Washington license plate 528 WSF, traveling over 100 miles per hour in a residential area of Redmond. Officer Palmer stopped the vehicle and upon contacting the defendant, detected the odor of intoxicants on Mr. Vreeland's breath. Officer Palmer noted that defendant's eyes were droopy and his cheeks were flushed. Defendant refused to perform voluntary field sobriety tests or complete a preliminary breath test. Officer Palmer arrested defendant for reckless driving and driving under the influence (DUI). Marijuana, a grinding mechanism, rolling paper, and a glass pipe were located in a center console during a search of the vehicle incident to arrest. Following that the defendant was charged with minor operating a motor vehicle after consuming alcohol, reckless driving, possession of marijuana, and possession of drug paraphernalia.

## **B. ISSUE**

Does the United States Supreme Court decision in Arizona v. Gant prohibit the warrantless search of a vehicle incident to the arrest of an occupant under Article I, Section 7 of the Washington Constitution?

## **C. ARGUMENT**

The recently decided case of Arizona v. Gant, No. 07-542, 566 U. S. \_\_\_\_ (2009) changed the law with respect to a search of a vehicle incident to the arrest of a vehicle occupant. As a general rule, following the United States Supreme Court decision in New York v. Belton, 453 U.S. 454 (1981), police officers in most jurisdictions have been able to search without a warrant the passenger compartment of a vehicle following the arrest of an occupant. The Belton court held that “when an officer lawfully arrests ‘the occupant of an automobile, he may, as a contemporaneous incident of that arrest search the passenger compartment of the automobile’ and any containers therein.” Arizona v. Gant, No. 07-542, 566 U.S. \_\_\_\_, at 7, citing New York v. Belton, 453 U.S. 454, 460 (1981). The Gant court, however, announced a new rule: “Police may search a vehicle incident to a recent occupants arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee’s vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies.” Gant v. Arizona, No. 07-542, 566 U.S. \_\_\_\_, at 18. The case was decided based on an analysis of the Fourth Amendment to the United States Constitution which prohibits unreasonable searches and seizures: “The right of the people to be secure in their persons, houses, papers, and effects, against

unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

Modern Washington search and seizure law is largely based on Article I, Section 7 of the Washington State Constitution: “No person shall be disturbed in his private affairs, or his home invaded, without authority of law.” In State v. Stroud, 106 Wn.2d 144 (1986), an automobile search case, the Washington Supreme Court stated, “If we were to decide this case merely by following United States Supreme Court precedent, the search of the car incident to a lawful arrest would clearly be valid. We decline to do so, however, based on our belief that our Washington State Constitution affords individuals greater protections against warrantless searches than does the Fourth Amendment.” Stroud, at 148. In that case Billy Stroud and codefendant Caywood were contacted by police early one morning at a closed gas station. Officers determined that the suspects were in the process of stealing money from a vending machine on the premises and arrested both of them. Caywood was standing next to their vehicle (with its engine running) prior to his arrest. Once they were handcuffed and placed in a patrol car the police searched the vehicle and found a sawed off shotgun, drugs, and drug paraphernalia. They were charged and subsequently convicted of possession of heroin, possession of methamphetamine, and being felons in possession of a firearm. On appeal they argued that the trial court should have suppressed the evidence found in the warrantless search of their automobile. This was the issue presented to the Washington Supreme Court.

The court stated that it made its decision on Stroud solely on Washington state law: "We wish to make clear that our subsequent determination in this case is not based on prior federal case law, and that we decide this case solely on independent state grounds." State v. Stroud, 106 Wn.2d at 149. In deciding the case the court overruled part of its decision in an earlier automobile search case, State v. Ringer, 100 Wn.2d 686 (1983). Essentially, the Ringer court held that a warrantless search based on probable cause of a vehicle incident to the arrest of an occupant is not justified unless emergencies or exigencies exist which result in the police not having a reasonable time to apply for and obtain a warrant. See State v. Ringer, 100 Wn.2d 686, 701-702. The Stroud court, in overruling this part of the holding in Ringer, stated, "We cannot agree with all of the reasoning used in Ringer, and agree this part of the opinion must be overruled. The Ringer holding makes it virtually impossible for officers to decide whether or not a warrantless search would be permissible. Weighing the 'totality of the circumstances' is too much of a burden to put on police officers who must make a decision to search with little more than a moment's reflection." State v. Stroud, 106 Wn.2d at 151. Consequently the court announced the rule which has governed automobile searches incident to arrest of an occupant in Washington for more than twenty years: "During the arrest process, including the time immediately subsequent to the suspect's being arrested, handcuffed, and placed in a patrol car, officers should be allowed to search the passenger compartment of a vehicle for weapons or destructible evidence. However, if the officers encounter a locked container or locked glove compartment, they may not unlock and search either container without obtaining a warrant." Stroud, at 152.

Defense argues that the decision in Gant requires that Washington law return to the State v. Ringer, 100 Wn.2d 686 (1983) analysis under Article 1, Section 7. The City disagrees. Stroud was decided based on the heightened privacy interest afforded under Article 1, Section 7 rather than on cases determined by federal case law centered on Fourth Amendment analysis. "Furthermore, the rule we set regarding the automobile exception to the search warrant requirement is not based on federal precedent, as we have independently weighed the privacy interests individuals have in items within their automobile and the dangers to the officers and law enforcement presented during an arrest of an individual inside an automobile." State v. Stroud, 106 Wn.2d 144, 149-150 (1986). There is no logical basis to believe that Arizona v. Gant requires a return to the warrant requirement for an automobile search incident to an arrest of a vehicle set forth in State v. Ringer, supra, when that part of the Ringer decision was overruled on independent state grounds in State v. Stroud, supra. While Gant, as previously noted, restricts an officer's ability to search for weapons unless the arrestee is within reaching distance of the vehicle passenger compartment at the time of the search, it does not restrict an officer's ability to search the passenger compartment if "it is reasonable to believe the vehicle contains evidence of the offense of arrest". Arizona v. Gant, No.07-542, 566 U.S. \_\_\_\_\_, at 18 (2009). It seems reasonable then to apply the decision announced in Gant to the vehicle rule set forth in Stroud with the same limitations. With that in mind Officer Palmer properly searched defendant Vreeland's vehicle for evidence of the offense of arrest (DUI) as it was reasonable for him to believe that he might find containers of alcohol and/or drugs which would support his belief that the defendant had been driving under the influence.

#### D. CONCLUSION

The Fourth Amendment to the United States Constitution provides a minimal standard of protection for all citizens from unreasonable searches by the police. The new rule announced in Gant permits an officer to search a vehicle passenger compartment incident to the arrest of an occupant only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. The Washington State Supreme Court in deciding Stroud overruled State v. Ringer in part because of the burden the decision placed on officers in the field to decide if a warrantless search was justified. Stroud set forth the rule which allowed officers in this state to search a vehicle passenger compartment incident to arrest of an occupant. The Gant decision certainly restricts the scope of an auto search permitted pursuant to Stroud but in no way alters the Washington Supreme Court's basis for overruling Ringer. Therefore the search of Mr. Vreeland's vehicle by Officer Palmer should be upheld both under Gant and Stroud. The City requests that the defense motion to suppress be denied.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Respectfully submitted,

\_\_\_\_\_  
R. L. Mitchell  
Redmond Prosecuting Attorney, WSBA #21606

Question 49. Names of attorneys who know me best, including at least three opposing counsel in trial matters.

Patricia Fulton (206-467-3190)

Peter Peaquin (206-633-3000)

Stephen Hayne (425-450-6800)

Jennifer Diggdon (206-683-0915)

Douglas Cowan (425-822-1220)

Ted Barr (425-462-4224)

Stefanie Snow (425-556-2901, 425-653-3138)

Diego Vargas (425-283-0516)

Jill Klinge (425-556-2115)

Nathaniel Wiley (206-230-4900)

Question 51. Names of non-attorney references.

Kathy Van Tassel

Teresa Keogh

Merdie Muller

Lillian Hawkins

Jane Christenson

Kathy Orozco

Question 52. Trials

1. Redmond v. John F. Meuret, King County District Court case no. CR37768 – Driving under the influence

Opposing counsel – Diego Vargas 425-283-0516  
Judge - Judge Pro Tem Vicki Toyohara 206-200-2200

2. Redmond v. Christopher A. Howard, King County District Court case no. CR38527 – Driving under the influence

Opposing counsel – James McKain 425-967-5039  
Judge – The Honorable Linda K. Jacke 206-296-3660

3. Redmond v. Kellie R. Hoerth, King County District Court case no. CR34303 – Driving under the influence

Opposing counsel – Kennet Phillipson 425-440-3930  
Judge – The Honorable Linda K. Jacke 206-296-3660

4. Redmond v. David P. Vronay, King County District Court case no. CR33209 – Driving under the influence

Opposing counsel – Hussein Karmali 425-629-6300  
Judge – The Honorable Michael J. Finkle 425-208-6915

5. Redmond v. Alyson M. Moore, King County District Court case no. CR33290 – Driving under the influence

Opposing counsel – Mark Blair 206-622-6562  
Judge – The Honorable Michael J. Finkle 425-208-6915

Question 53. Names of additional attorneys who know me.

Judge J. Wesley Saint Clair (206-296-9165)

Judge Michael J. Finkle (425-208-6915)

Chuan-Yi Phillip Su (425-227-7729)

Scott Leist (206-219-5557)

James Haney (206-447-7000)

Aaron Wolff (425-822-1220)

Chris Matson (206-632-2922)

Jon Fox (425-274-9190)

Albert Rinaldi Jr. (206-621-9400)

Gabriel Banfi (425-454-7721)

149 Wn.2d 607, City of Redmond v. Arroyo-Murillo

[No. 72599-3, En Banc.]

Argued February 13, 2003. Decided June 12, 2003.

THE CITY OF REDMOND, *Petitioner*, v. JUAN ARROYO-Murillo, *Respondent*.

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CHAMBERS and SANDERS, JJ., concur by separate opinion

June 2003 City of Redmond v. Arroyo-Murillo 609  
149 Wn.2d 607

*Richard L. Mitchell*, City Attorney, for petitioner.

*Donna K. Tucker*(of Tucker & Stein, Inc., P.S.), for respondent.

BRIDGE, J. - The City of Redmond (City) challenges a superior court decision holding that due process is not satisfied when the Department of Licensing (DOL) mails a license revocation notice to an address obtained from a traffic ticket rather than the address provided to the DOL by the license holder. RCW

46.20.205 requires the holder of a driver's license to notify the DOL of an address change, but also allows the DOL to change a license holder's address by "other means as designated by rule of the department." RCW 46.20.205(1). Due process requires that the holder of a driver's license be given notice and an opportunity for a hearing prior to revocation. *Bell v. Burson*, 402 U.S. 535, 542, 91 S. Ct. 1586, 29 L. Ed. 2d 90 (1971). The superior court upheld the district court's dismissal of the charges, finding that mailing the notice to an address other than the one provided by the license holder did not comply with due process as set forth in *State v. Dolson*, 138 Wn.2d 773, 982 P.2d 100 (1999). We reverse.

1

In February 1998, the DOL revoked Juan Arroyo-Murillo's driver's license for five years on the grounds that

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he was a habitual traffic offender. The DOL notified Arroyo-Murillo by sending him an order of revocation and a hearing request form. The DOL sent the documents to Arroyo-Murillo's address of record, «1» 921 139th Avenue NE, #A4-115, Bellevue, WA 98005 (the "921" address), by certified mail. The notification was signed for at the "921" address, but the parties disagree over the legibility of the signature, with the City maintaining that it reads "Veronica Arroyo" and Arroyo-Murillo arguing that it is illegible. «2»

The DOL had obtained the "921" address and updated its records accordingly based on a traffic ticket dated May 27, 1997, that was issued to Arroyo-Murillo and forwarded to the DOL by the King County District Court, Bellevue Division. «3» Arroyo-Murillo signed the ticket, but the box entitled "new address" was not checked. Prior to this incident, Arroyo-Murillo's address of record was based on the identicard application that he submitted to the DOL, which listed his address as 15500 NE 11th Street, #D312, Bellevue, WA 98007 (the "155" address). When the DOL revoked his license, it sent

the order of revocation only to the "921" address. The record does not indicate whether Arroyo-Murillo in fact received the notice. «4»

«1» The address of record is the address that the DOL has on file for a license holder in its records. See *Dolson*, 138 Wn.2d at 776 (stating that the address of record is the official address as maintained by the DOL).

«2» According to the record before this court, the parties did not address this issue at oral argument before the district court. Although the City asserted in its superior court brief that the notice was received by Veronica Arroyo, Arroyo-Murillo did not address the issue in his brief. However, in his brief to this court, he now contests the issue, asserting that the signature is illegible. Regardless of who signed for the notice at the "921" address, it is clear that someone received it, as it was not returned to the DOL as undeliverable. Thus, whether or not the notice was signed for by someone bearing the last name "Arroyo," Arroyo-Murillo may have received it.

«3» It is unclear from the record whether Arroyo-Murillo told the officer who issued the ticket that the "921" address was his current address. Even if he did not provide it, he signed the ticket, therefore attesting that it was his correct address.

«4» Before this court, Arroyo-Murillo asserted that he did not receive the notice and that he had argued accordingly before both the district and superior courts. However, there is no evidence in the record that Arroyo-Murillo presented this argument to the district court. In his brief to the superior court, Arroyo-Murillo stated that "any evidence about whether or not Mr. Arroyo-Murillo did or did not receive the notice of revocation is unknown." Clerk's Papers (CP) at 16. According to his superior court brief, the uncertainty regarding the receipt of notice is a result of the fact that the City only requested a partial transcript of the district court proceedings, which does not include any witness testimony. If Arroyo-Murillo wished to have more of the record available for this court's consideration, he could have so requested pursuant to RAP 9.6(a).

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On March 4, 2001, Arroyo-Murillo was stopped by a police officer for failing to signal a lane change. Upon checking his driver's license, the officer saw that his license had been revoked by the DOL. The officer cited him and the City of Redmond later charged him with driving while license suspended/revoked in the first degree.

A bench trial was held before the Honorable David S. Admire in King County District Court, Northeast Division, on August 14, 2001. Arroyo-Murillo argued that his due process rights were violated because the DOL sent notice of the revocation only to the "921" address, which the DOL had obtained from the 1997 traffic ticket. Arroyo-Murillo asserted that the order should have been sent to both the "921" and the "155" addresses in order to comply with due process. Judge Admire agreed and dismissed the charge.

The City appealed to the King County Superior Court. On May 3, 2002, the Honorable Douglass A. North affirmed the trial court's dismissal of the case. In its entirety, Judge North's opinion reads:

The trial court properly held that the revocation notice mailed by [DOL] to an address other than the one provided by the defendant pursuant to RCW

46.20.205 did not comply with due process as set forth in *Dolson*. The evidence showed that the notice was mailed to an address other than the one provided by the Defendant. The burden was then upon the City to prove that the driver received the notice even though the [DOL] was authorized by WAC 308-104-018 to update the driver's address of record by other means. The court finds WAC 308-104-018 inconsistent with RCW 46.20.205 as interpreted by *Dolson*.

Clerk's Papers (CP) at 17.

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The City filed a motion in this court for direct discretionary review pursuant to RAP 4.2(a), which was granted on October 4, 2002.

## II

A driver's license cannot be revoked without due process of law. *Dolson*,

138 Wn.2d at 776-77 (citing *Bell*, 402 U.S. 535). Due process requires that the license holder be given notice and an opportunity to be heard prior to the revocation. *Dolson*, 138 Wn.2d at 777; *State v. Rogers*, 127 Wn.2d 270, 275, 898 P.2d 294 (1995). The notice must be "reasonably calculated to inform the affected [sic] party of the pending action and of the opportunity to object." *Dolson*, 138 Wn.2d at 777. The State bears the burden of proving that the revocation complied with due process. *Id.* If the revocation does not comply with due process, it is void. *Id.*

*Statutory Requirements*

The legislature has codified the constitutional due process requirements with regard to license revocations for habitual offenders in RCW 46.65.065:

Whenever a person's driving record, as maintained by the department, brings him or her within the definition of an habitual traffic offender, as defined in RCW 46.65.020, the department shall forthwith notify the person of the revocation in writing by certified mail at his or her address of record as maintained by the department.

RCW 46.65.065(1). A driver's address of record is maintained by the DOL pursuant to RCW 46.20.205, which requires the holder of a driver's license or identicard to notify the DOL of an address change within 10 days. RCW 46.20.205(1) further states: "The written notification, or other means as designated by rule of the department, is the exclusive means by which the address of record maintained by the department concerning the licensee or identicard

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holder may be changed." (Emphasis added.)<sup>5</sup> The applicable department rule provides that the DOL may change a license holder's address of record upon:

(b) Receipt of written documentation or electronic communication concerning the driver or identicard holder, where such documentation or communication includes an address that differs from the one maintained by department and is:

- (i) Signed by the driver or identicard holder;
- (ii) Filed at the request of the driver or identicard holder;
- (iii) Filed by a public official or governmental agency.

WAC

308-104-018(1). Neither the RCW nor the WAC requires the DOL to notify the license holder when it updates an address of record pursuant to WAC 308-104-018. Furthermore, RCW 46.20.205(1)(b) provides that a revocation notice sent to a license holder's address of record is effective even if the license holder does not receive it.

The City argues that there was no due process violation because the DOL complied with the statutory requirements by sending notification of Arroyo-Murillo's license revocation to his address of record as required by RCW 46.65.065. Pursuant to RCW 46.20.205 and WAC 308-104-018, the DOL was authorized to update Arroyo-Murillo's address based on the traffic ticket because it was written documentation that was signed by the driver and it was filed by a governmental agency, the King

County District Court. Furthermore, because Arroyo-Murillo signed the traffic ticket listing his address as the "921" address, he averred that it was his correct address.

Arroyo-Murillo claims his due process rights were violated because the DOL sent the notice of his license revocation and opportunity for a hearing to an address other than the one that he provided to the DOL on his identicard application. Not only did he not provide the "921"

«5» The italicized language was added in 1996. RCWA 46.20.205 Historical and Statutory Notes, "Severability - Effective date - 1994" at 355 (West 2001). Before that, written notification by the driver was the sole means by which an address of record could be updated.

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address to the DOL as his current address, he argues, but he had specifically changed his address from the "921" to the "155" address with the DOL in August 1996, when he applied for his identicard. He implies that the DOL should have known that the "921" address was incorrect since he had changed it once in the past. When the DOL received the 1997 traffic ticket, it changed his address back to the "921" address without notifying Arroyo-Murillo of the change. Arroyo-Murillo argues that in order to comply with due process, the DOL should have mailed the revocation notice to both addresses.

The district court agreed, dismissing the charges against Arroyo-Murillo. The superior court upheld the district court, stating that "the revocation notice mailed by [DOL] to an address other than the one provided by the defendant pursuant to RCW

46.20.205 did not comply with due process as set forth in *Dolson*." CP at 17. However, *Dolson* did not hold that due process requires notice to be sent to the address provided by the license holder, nor have any other cases from this court so held.

Like Arroyo-Murillo, *Dolson* defended the charge of driving while his license was suspended by arguing that the DOL had violated due process by sending notification of the revocation to the wrong address. *Dolson*, 138 Wn 2d at 776. The DOL sent the notice to an address obtained from a traffic ticket, which was not the address listed on *Dolson*'s driver's license. *Id.* Nor was it *Dolson*'s official address of record according to DOL records. *Id.* This court held that the DOL was required to follow the statutory procedure set forth by the legislature, which at the time required the DOL to rely on the address provided by the license holder. *Id.* at 779.

*Dolson* is distinguishable from the case at bar. When *Dolson*'s license was revoked, RCW 46.20.205 provided that the only way for a license holder's address of record to be updated was by written notification from the license holder. *Id.* at 777. As discussed above, RCW 46.20.205 now provides that an address of record may be updated by the

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licensee or by DOL rule. The *Dolson* court found a due process violation because the DOL failed to comply with the statute as enacted at the time of the revocation, stating:

[A] notice procedure that contradicts a licensee's legal expectations cannot be reasonably calculated to provide notice. DOL's decision to send notification to an address other than the address of record did not comply with the spirit of the statute because it conflicted with the statutory objective to put control over the notification process in the hands of the licensee.

*Id.* at 780. In contrast, when the DOL mailed the notice to Arroyo-Murillo's address as updated from the traffic ticket, it was complying with the statute and the WAC as they now read.«6»

Neither the district nor the superior court found that the DOL failed to comply with the statutory requirements. The superior court found that even though the DOL mailed the revocation notice to Arroyo-Murillo's address of record, it did not comply with due process as established in *Dolson* because the notice was not mailed to the address provided by Arroyo-Murillo. The superior court apparently views the holding of *Dolson* to be that the DOL must send the notice to the address provided by the license holder in order to comply with due process. However, *Dolson* held that the DOL cannot reject the notification procedure established by the legislature, not that any particular notice procedure must be followed to comply with due process. *Dolson*,

138 Wn.2d at 779. In fact, the *Dolson* court stated that "there is no inherent constitutional problem with sending notice of license revocation to a licensee's last known address." *Id.* at 778.

The superior court's decision failed to take account of the legislature's revision to RCW 46.20.205. As discussed above, *Dolson* was decided under the statute before it was

«6» *Dolson* is also distinguishable from the case at bar because in *Dolson* it was clear that the license holder did not receive the notice as it was returned to the DOL marked "Not Deliverable as Addressed, UNABLE TO FORWARD." « *Dolson*, 138 Wn.2d at 776. The notice sent to Arroyo-Murillo, in contrast, was signed for and accepted by someone at the "921" address.

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amended to include the phrase "or other means as designated by rule of the department." RCW

46.20.205(1). This additional phrase now allows the DOL to change an address of record by a means other than the written notice of the license holder. Therefore, according to the *Dolson* court's holding, there is no due process violation because the DOL complied with the statutory requirements when it sent the notice to Arroyo-Murillo's address of record as updated by the DOL based on the traffic ticket.

When it revised RCW 46.20.205, the legislature chose to give the DOL the discretion to update a license holder's address of record according to department rule. In determining the meaning and scope of a statute, it is this court's obligation to determine and carry out the intent of the legislature. *State v. Chester*, 133 Wn.2d 15, 21, 940 P.2d 1374 (1997). Here, RCW 46.65.065 clearly states that revocation notices are to be sent to the license holder's address of record while RCW 46.20.205 provides that the address of record must be obtained from the license holder or by other means as specified by department rule. There is nothing in either of these statutes that requires the DOL to send the notice to addresses other than the address of record. We assume the legislature meant what it said when it provided that a license holder's address of record could be updated by DOL rule.«7»

In sum, the *Dolson* court held that notice that does not follow the procedure mandated by statute is defective, not that all notices sent to a license holder's last known address violate due process. Here, the DOL complied with the statutory requirements. We therefore reverse the superior court's holding that WAC 308-104-018 conflicts with RCW 46.20.205 as interpreted by *Dolson*.

#### *Constitutional Requirements*

Even if an agency complies with the statutory require

«7» Nor does Arroyo-Murillo make any argument in his briefs that WAC 308-104-018 is ultra vires. In fact, at oral argument, his attorney conceded that it was within DOL's authority to promulgate such a rule under RCW 46.20.205.

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ments, a license holder may bring a constitutional challenge to a statute on due process grounds. However, Arroyo-Murillo does not present the necessary argument that either WAC

308-104-018 or RCW 46.20.205 is unconstitutional. In fact, when questioned at oral argument, Arroyo-Murillo's attorney conceded that neither the regulation nor the statute violates constitutional due process requirements.«8»

Nevertheless, Arroyo-Murillo asserts that sending notice only to his last known address did not amount to providing notice reasonably calculated to inform him of the revocation and right to a hearing. In *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950), the United States Supreme Court stated that "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." In *Mullane*, the notice given was not reasonably calculated to inform the known beneficiaries of a trust because it was published in a newspaper rather than being sent to their known places of residence. *Id.* at 319-20.

In support of his position, Arroyo-Murillo argues that the *Dolson* court held that notice sent to an address on a traffic ticket was not reasonably calculated to provide notice. As discussed above, this is a misstatement of the holding, as *Dolson* held that notice that fails to follow the notification procedure established by the legislature is not reasonably calculated to provide notice. *Dolson*, 138 Wn 2d at 779.

«8» Arroyo-Murillo also fails to raise an as applied challenge by arguing that the DOL's notice procedure was defective in his case. In *State v. Smith*, 144 Wn.2d 665, 677, 30 P.3d 1245 (2001), this court stated: "[T]o establish a violation of due process, the defendant must at least allege DOL failed to comply with the statute and this failure deprived the defendant of notice or the opportunity to be heard." See also *State v. Storhoff*, 133 Wn.2d 523, 527-28, 946 P.2d 783 (1997). Here, Arroyo-Murillo failed to allege to either the district or superior court that he did not receive the notice. In contrast to *Dolson*, the notice that was sent to the "921" address was not returned to the DOL as undeliverable; rather, it was signed for by someone at that address. Thus, it is possible that Arroyo-Murillo received it.

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Arroyo-Murillo also cites *State v. Baker*,

49 Wn. App. 778, 782, 745 P.2d 1335 (1987), in which the Court of Appeals held that sending notice to the address provided by the license holder was inadequate when the DOL was aware of a more recent address due to a traffic ticket. Applying a balancing test, the court stated: "Mr. Baker's interest outweighs the small inconvenience to the Department in reviewing his file and sending notices, at a minimum, to the most recent address listed on any of the papers in its possession, as well as to the original address provided by him." *Id.* However, *Baker* did not hold that sending notices to both addresses was constitutionally required. When *Baker* was decided, RCW 46.20.205 did not allow the DOL to update a license holder's address of record by department rule. Thus, it makes sense that the *Baker* court would require the notices to be sent to both addresses since the DOL could not have updated a driver's address of record based on the current information. Further, although the inconvenience of sending multiple notices to one license holder may be minimal, the cumulative effect of requiring the DOL to do so for all revocation notices would be onerous.

RCW 46.65.065 specifies that the notice must be sent to the driver's address of record. Considering the means by which the address of record can be updated, it can be argued that this does not constitute notice reasonably calculated to reach the license holder as required by *Mullane*.

The *Dolson* court discussed the importance to license holders, particularly transient ones, of being able to rely on the DOL maintaining the addresses provided by them as their addresses of record. 138 Wn.2d at 779. Because a driver's address of record can be updated under WAC 308-104-018 by the DOL without any request by or notice to the driver, drivers cannot be sure what address the DOL will use for its mailings. Drivers also cannot control which address the DOL chooses to keep on file, except by using their permanent addresses in all transactions. As a practical matter, some people do not always do so, as in the case of students or those without stable residences.

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On the other hand, when it revised RCW

46.20.205 to allow the DOL to update drivers' addresses of record by department rule, the legislature presumably weighed the costs and benefits and decided in favor of allowing the DOL to exercise some discretion in this matter. Under RCW 46.01.030(3), the DOL is responsible for maintaining correct and current driver records, and the legislature may have concluded that allowing the DOL to use some common sense to increase accuracy was warranted. As the City argues, it is reasonable for the legislature to have granted the DOL discretion in this matter, as license holders often fail to notify the DOL of their address changes when they move and fail to renew their licenses after they expire. In many cases, perhaps even in most cases, notice will be more likely to reach the license holder if sent to an address obtained from an outside source rather than to the address provided by the license holder. We therefore hold that allowing the DOL to update addresses based on certain reliable evidence that it receives is in fact reasonably calculated to provide notice as required by due process.

### III

The superior court has misinterpreted our holding in *Dolson*. In *Dolson*, we held that notice that does not follow the statutory requirements is not reasonably calculated to provide notice and therefore fails to satisfy due process requirements. We did not, however, hold that notice sent to the license holder's last known address is constitutionally defective. Accordingly, we now hold that notice sent to a license holder's last known address provides notice reasonably calculated to advise the license holder. We therefore reverse the superior court's dismissal of the charges and remand to the King County District Court, Northeast Division, for trial.

ALEXANDER, C.J., and JOHNSON, MADSEN, IRELAND, OWENS, and FAIRHURST, JJ., concur.

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CHAMBERS, J. (concurring) - I concur with the majority in result. Juan Arroyo-Murillo got what process was due. However, I write separately to point out that the regulation at issue does not meet the statutory requirements. «9»

As the majority rightly rules, "A driver's license cannot be revoked without due process of law." Majority at

612 (citing *State v. Dolson*, 138 Wn.2d 773, 776-77, 982 P.2d 100 (1999)). The irreducible core of procedural due process is meaningful notice and meaningful opportunity to comment. *Dolson*, 138 Wn.2d at 777; *State v. Smith*, 144 Wn.2d 665, 677, 30 P.3d 1245, 39 P.3d 294 (2001). I agree with the majority that " 'there is no inherent constitutional problem with sending notice of license revocation to a licensee's last known address.' " Majority at 615 (quoting *Dolson*, 138 Wn.2d at 778). Further, I agree that the Department of Licensing (DOL) did not violate due process by updating its databank with addresses provided by drivers. *But cf. Dolson*, 138 Wn.2d at 779.

I write separately because DOL's rule does not comply with the statute, read as a whole. The statute says in relevant part:

(1) Whenever any person after applying for or receiving a driver's license or identicard moves from the address named in the application or in the license or identicard issued to him or her, the person shall within ten days thereafter notify the department of the address change. The notification must be in writing on a form provided by the department and must include the number of the person's driver's license. The written notification, or other means as designated by rule of the department, is the exclusive means by which the address of record maintained by the department concerning the licensee or identicard holder may be changed.

(a) *The form must contain a place for the person to indicate that the address change is not for voting purposes.*

"9" I recognize that this is not squarely before this court because appellate counsel conceded the department's authority to promulgate WAC 308-104-018 under RCW 46.20.205. However, we may consider such issues even when not raised by the parties if we deem it appropriate to reach a proper decision. See *Alverado v. Wash. Pub. Power Supply Sys.*, 111 Wn.2d 424, 429, 759 P.2d 427 (1988) (citing *Slegler v. Kuhlman*, 81 Wn.2d 448, 502 P.2d 1181 (1972)).

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RCW

46.20.205(1) (emphasis added). Fairly read, RCW 46.20.205 authorized DOL to promulgate new ways for the public to notify DOL of address changes. Likely, the 1996 legislature was paving the way for rules that would allow Washington residents to use the Internet for such purposes. Cf. WAC 308-104-018(1)(b). However, a citation is not a form containing a "place for the person to indicate that the address change is not for voting purposes." Therefore, it does not comply with the statute.

How to notify licensees that the State intends to suspend their licenses has been the subject of ongoing dispute. At one point, Washington courts required DOL to make a searching inquiry of its records for the most recent address. See, e.g., *State v. Baker*, 49 Wn. App. 778, 781, 745 P.2d 1335 (1987). The legislature implicitly disapproved of this approach by declaring as a matter of law that the licensee would be deemed to have received notice mailed to the address of record. LAWS OF 1989, ch. 337, § 6, *codified as* RCW 46.20.205. The law then was very clear. "[T]he exclusive means by which the address of record maintained by the department concerning the licensee . . . may be changed" was in a writing "on a form provided by the department." *Id.* The 1996 legislature gave DOL more flexibility in data collection. LAWS OF 1996, ch. 30, § 4. However, the 1996 legislature did not change the other requirements imposed on the agency in data collection. The 1996 change does nothing to change the underlying obligation on the citizen to provide the address of record through some positive, knowing act. And given that the legislature had effectively overruled a case that required DOL to send notice to the address on a traffic citation if it was the last known address, it would be somewhat surprising that they would then allow the agency to do the very thing it discouraged them from doing previously.

In this case, I find no due process violation because, again, the core of due process is the notice and opportunity to comment. The notice was sent to and signed for at an address provided by Arroyo-Murillo. He must do more than

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simply allege he did not receive the notice to put due process in play. *Smith*,

144 Wn.2d at 677.

Therefore, I respectfully concur.

SANDERS, J., concurs with CHAMBERS, J.

**151 Wn.2d 664, City of Redmond v. Moore**

[No. 72614-1. En Banc.]

Argued February 12, 2003. Decided June 3, 2004.

THE CITY OF REDMOND , *Appellant* , v. DEAN A. MOORE , *Respondent* . THE CITY OF REDMOND , *Appellant* , v. JASON D. WILSON , *Respondent* .

[1] Statutes - Construction - Review - Standard of Review. Issues of statutory construction are reviewed de novo.

[2] Statutes - Validity - Question of Law or Fact - Standard of Review. The constitutionality of a statute is a question of law that is reviewed de novo.

[3] Statutes - Validity - Challenge - As-Applied or Facial Challenge - Distinction. An as-applied challenge to the constitutional validity of a statute is characterized by the challenger's allegation that application of the statute in the specific context of the challenger's actions or intended actions is unconstitutional. Holding a statute unconstitutional as-applied prohibits future application of the statute in a similar context, but the statute is not totally invalidated. By contrast, a successful facial challenge is one where no set of circumstances exists in which the statute, as currently written, can be constitutionally applied. Holding a statute facially unconstitutional renders the statute totally inoperative.

[4] Statutes - Validity - Facial Challenge - What Constitutes. An argument that a statute violates due process of law in all cases and not just in the particular case before the court constitutes a facial challenge to the statute's validity, not an as-applied challenge.

[5] Automobiles - Operator's License - Driving Without a License - Invalid Suspension or Revocation - Effect. A motorist may not be convicted of driving with a suspended or revoked driver's license if the suspension or revocation violates due process of law.

[6] Constitutional Law - Due Process - Procedural Due Process - Requirements - Meaningful Opportunity To Be Heard. Though the procedures required by due process of law may vary according to the interest at stake, the fundamental requirement of due process of law is the opportunity to be heard at a meaningful time and in a meaningful manner.[7] Constitutional Law - Due Process - Procedural Due Process - Scope - Factors. Determining what process is constitutionally due in a particular case requires consideration of (1) the nature and weight of the private interest involved; (2) the risk that the current procedure will erroneously deprive a party of that interest and the probable value, if any, of additional or substitute

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safeguards; and (3) the governmental interest involved, including the function involved and the fiscal and administrative burdens that additional or substitute procedural requirements would entail.

[8] Automobiles - Operator's License - Retention by Driver - Due Process. A driver's interest in his or her driving privileges is a substantial one.

[9] Constitutional Law - Due Process - Deprivation - Property - Duration - Effect. The duration of any potentially wrongful deprivation of a property interest is an important factor in assessing the impact of official action on the private interest involved.

[10] Statutes - Validity - Invalidity - Proof - Descriptions of Nonparty Experiences - Admissibility - Test. In assessing a challenge to the validity of a statute, a court may consider documentary descriptions of the experiences nonparties have had with the statute, even though the descriptions may not be considered as evidence of actual events because they relate to experiences of persons who are not before the court, if the descriptions are material to the ultimate fact to be proved and are shown to be substantially alike to the matter at issue.

[11] Constitutional Law - Due Process - Deprivation - Alternative Remedies - Effect. A statute that allows the State to deprive a person of a substantial interest without a hearing is not saved from a due process challenge by the fact that the person may apply to a court for relief from judgment due to a clerical error under CrRLJ 7.8, for a writ of review, for a writ of mandamus, or for an injunction against the State as these methods are costly, time consuming, and burdensome.

[12] Automobiles - Operator's License - Suspension - Failure To Respond to Infraction or To Appear in Court - Statutory Provisions - Validity. RCW 46.20.289 , which requires the Department of Licensing to suspend the driver's license of a motorist

upon notice from a court that the motorist has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or failed to comply with the terms of a notice of traffic infraction or citation, other than for a standing, stopping, or parking violation, and RCW 46.20.324 (1), which denies to the motorist a formal hearing regarding the suspension, are unconstitutional in that they do not provide adequate procedural safeguards as required by due process of law to ensure against erroneous deprivations of the motorist's interest in the continued use and possession of his or her driver's license.

BRIDGE , IRELAND , OWENS , and FAIRHURST , JJ., dissent by separate opinion.

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Nature of Action: Prosecutions for driving while license suspended. Each defendant had previously been issued an order suspending driver's license by the Department of Licensing for failure to appear, pay, or comply with a traffic infraction notice.

District Court: The King County District Court, Nos. CR20447 and CR16879, David S. Admire, J., dismissed the charges on August 20 and April 9, 2002, ruling that the defendants were denied due process of law because the Department of Licensing did not provide them with an opportunity for an administrative hearing either before or after the effective dates of their license suspensions.

Supreme Court: Holding that the statutory provisions under which the defendants' licenses were suspended violate due process of law and are invalid, the court *affirms* the dismissal orders.

*Richard L. Mitchell* , City Attorney, for appellant .

*Cherilyn G. Church* and *Donna K. Tucker* , for respondents .

*Christine O. Gregoire* , Attorney General, and *Sharon S. Eckholm* , Assistant, on behalf of Department of Licensing, amicus curiae.

SANDERS , J . - This case consolidates direct review of two separate district court orders dismissing charges against Dean Moore and Jason Wilson for driving while license suspended. In both cases the district court concluded mandatory suspension of their licenses pursuant to RCW 46.20.289 violated procedural due process because Moore and Wilson were not afforded an administrative hearing by the Department of Licensing (DOL) before or after the

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effective date of the suspensions. By implication the district court's orders also invalidated RCW 46.20.324 (1), which provides that a person *shall not* be entitled to an administrative hearing when the license suspension or revocation is mandatory. We affirm the district court and hold RCW 46.20.289 and .324(1) violate due process.

#### FACTS

DOL issued Wilson an "Order of Suspension" on December 23, 1998, effective January 22, 1999, for failure to appear, pay, or comply with a traffic infraction notice for speeding. The order provided:

TO AVOID SUSPENSION, YOU MUST RESOLVE ALL CHARGES ON THIS CITATION WITH THE COURT INDICATED BELOW AND THE DEPARTMENT MUST RECEIVE PROOF FROM THE COURT BEFORE 01-22-1999 THAT THE CHARGE(S) HAVE BEEN RESOLVED. QUESTIONS REGARDING THE CITATION AND/OR FINE SHOULD BE DIRECTED TO THE COURT LISTED BELOW.

Clerk's Papers (CP) at 68. The City of Redmond (City) Police Department cited Wilson on March 18,

1999, for driving while license suspended.

On November 17, 1999, DOL issued Moore an order of suspension for failure to appear, pay, or comply with a traffic infraction notice for driving without liability insurance, effective December 17, 1999. His order contained the same language cited above. Moore was cited on May 3, 2001, for driving while license suspended.

The City charged both Wilson and Moore with driving while license suspended in violation of RCW 46.20.342 (1) (c). Although Moore and Wilson filed separate motions to dismiss the charges, they appeared before the same district court, were represented by the same counsel, and raised identical arguments. The district court held a hearing on April 9, 2002, to consider both motions. Concluding the suspensions did not comply with due process because DOL failed to provide an opportunity for an administrative

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hearing either before or after the effective date of the suspensions, the court dismissed the charges.

The City sought and received this court's direct review of the consolidated cases.

#### STANDARD OF REVIEW

[1, 2]We review issues regarding statutory construction de novo. *State v. J.M.*, 144 Wn.2d 472, 480, 28 P.3d 720 (2001). Constitutional challenges are questions of law and are also reviewed de novo. *Weden v. San Juan County*, 135 Wn.2d 678, 693, 958 P.2d 273 (1998).

#### ANALYSIS

DOL suspended both Moore and Wilson's driver's licenses pursuant to RCW 46.20.289. That statute provides in relevant part:

The department shall suspend all driving privileges of a person when the department receives notice from a court . . . that the person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, other than for a standing, stopping, or parking violation. A suspension under this section takes effect thirty days after the date the department mails notice of the suspension, and remains in effect until the department has received a certificate from the court showing that the case has been adjudicated.

Additionally RCW 46.20.324 (1) provides:

A person shall not be entitled to a driver improvement interview or formal hearing as hereinafter provided:

(1) When the action by the department is made mandatory by the provisions of this chapter or other law.

[3]As a threshold matter we must first determine whether Moore and Wilson present a facial or an as-applied challenge to the constitutionality of RCW 46.20.289 and .324(1). An as-applied challenge to the constitutional valid

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ity of a statute is characterized by a party's allegation that application of the statute in the specific context of the party's actions or intended actions is unconstitutional. *Wash. State Republican Party v. Wash. State Pub. Disclosure Comm'n*, 141 Wn.2d 245, 282 n.14, 4 P.3d 808 (2000). Holding a statute unconstitutional as-applied prohibits future application of the statute in a similar context, but the statute is not totally invalidated. *Id.* In contrast, a successful facial challenge is one where no set of circumstances exists in which the statute, as currently written, can be constitutionally applied. *Id.* (citing *In re Det. of Turay*, 139 Wn.2d 379, 417 n.27, 986 P.2d 790 (1999)). The remedy for holding a statute facially unconstitutional is to render the statute totally inoperative. *Turay*, 139 Wn.2d at 417 n.27.

[4]Here Moore and Wilson contend that mandatory suspension of a driver's license, pursuant to RCW 46.20.289, without granting an administrative hearing violates due process. They argue due process requires DOL provide the opportunity for an administrative hearing to resolve potential ministerial errors in the record, such as misidentification, miscalculation of the fine, or errors in the conviction form. They also do not challenge the factual basis for their suspensions.<sup>«1»</sup>The essence of their argument is that RCW 46.20.289 violates due process because it fails to afford any driver facing a suspension of his or her license under that statute an opportunity for an administrative hearing with DOL prior to or after such suspension. Accordingly, Moore and Wilson challenge the constitutionality of RCW 46.20.289, and by extension, .324(1).

<sup>«1»</sup>Moore and Wilson do, however, contest the factual basis for two prior suspension orders they received from DOL. Moore argues DOL had no statutory authority to issue a May 11, 1994 order suspending his license for failure to pay a fine because RCW 46.20.289 does not authorize DOL to suspend a license for failure to pay a criminal fine. Wilson argues DOL exceeded its authority when it issued its November 3, 1998, order of suspension because the suspension was issued due to his failure to appear at a scheduled pretrial hearing, and prior to 1999 DOL did not have the authority to suspend licenses for failing to appear at a scheduled court hearing. Neither of these suspension orders is currently before this court, as we are concerned only with the November 17, 1999, and December 23, 1999, orders deemed invalid by the district court.

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[5, 6]It is well settled that driver's licenses may not be suspended or revoked " 'without that procedural due process required by the Fourteenth Amendment.' " *Dixon v. Love*, 431 U.S. 105, 112, 97 S. Ct. 1723, 52 L. Ed. 2d 172 (1977) (quoting *Bell v. Burson*, 402 U.S. 535, 539, 91 S. Ct. 1586, 29 L. Ed. 2d 90 (1971)); *City of Redmond v. Arroyo-Murillo*, 149 Wn.2d 607, 612, 70 P.3d 947 (2003). An important corollary to this rule is that a driver cannot be convicted of driving while his or her license is suspended or revoked if the suspension or revocation violates due process. *State v. Dolson*, 138 Wn.2d 773, 783, 982 P.2d 100 (1999). Though the procedures may vary according to the interest at stake, "[t]he fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.' " *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965)).

[7]To determine whether existing procedures are adequate to protect the interest at stake, a court must consider the following three factors:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

*Mathews*, 424 U.S. at 335, cited in *Tellevik v. Real Property*, 120 Wn.2d 68, 78, 838 P.2d 111 (1992).

[8]The first *Mathews* factor requires identification of the nature and weight of the private interest affected by the official action challenged. The private interest in this case is the driver's interest in the continued use and possession of a driver's license. Depriving a person of the use of his or her vehicle can significantly impact that person's ability to earn a living. See *Bell*, 402 U.S. at 539. Moreover the State "will not be able to make a driver whole for any personal

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inconvenience and economic hardship suffered by reason of any delay in redressing an erroneous suspension through postsuspension review procedures." *Mackey v. Montrym*, 443 U.S. 1, 11, 99 S. Ct. 2612, 61 L. Ed. 2d 321 (1979). As such, the United States Supreme Court has made clear that a driver's interest in his or her driving privileges "is a substantial one." *Id.*; *Dolson*, 138 Wn.2d at 776-77 (recognizing "[a] driver's license represents an important property interest").

[9]Additionally "[t]he duration of any potentially wrongful deprivation of a property interest is an important factor in assessing the impact of official action on the private interest involved." *Mackey*, 443 U.S. at 12. Under RCW 46.20.289 a person whose license has been erroneously ordered suspended receives notice that his or her license will be suspended 30 days from the date of the notice. He or she is not, however, offered any procedure to contest the suspension other than being instructed by the notice to resolve the matter with the court. The public is left to its own devices to secure a timely hearing from a court to reverse the error before the suspension takes effect. The statute, however, provides no guaranty such a hearing will take place promptly. See RCW 46.20.289. Once a suspension takes effect, it remains in effect until the driver can resolve the matter with the court. *Id.* Thus the duration of an erroneous suspension under RCW 46.20.289 is dependent on the time it takes to get a court to reverse the error.

The second *Mathews* factor is the risk of erroneous deprivation of the interest at stake through the procedures used and the probable value, if any, of additional or substitute safeguards. *Warner v. Trombetta*, 348 F. Supp. 1068 (M.D. Pa. 1972), *aff'd*, 410 U.S. 919, 93 S. Ct. 1392, 35 L. Ed. 2d 583 (1973), cited by both parties, is directly on point. There the plaintiff pleaded guilty to hit and run. *Id.* at 1070. Pursuant to a Pennsylvania statute that required the department of transportation to suspend a driver's license upon proof the driver had been convicted of hit and run driving, the plaintiff's license was revoked for one year. *Id.*

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After the one-year period expired the Pennsylvania Department of Transportation refused to reinstate his license because he could not show he was financially capable of paying for car insurance. *Id.*

The plaintiff sought to invalidate the statute under which his license had been revoked because it did not require the agency to offer an administrative hearing. *Id.* at 1069. The Pennsylvania Department of Transportation argued procedural due process does not necessitate an administrative hearing prior to suspension where suspension is mandated regardless of fault. *Id.* at 1071. The court rejected this argument, noting that even if the underlying conviction itself cannot be contested, there still remained the possibility of error, including misidentification of the infractor, miscalculation of the fine by the court, and errors on the report of conviction form. *Id.* It concluded:

The fatal defect in the statute at bar is that there is no provision made for any type of *administrative hearing* with notice and an opportunity to be heard before the revocation action becomes effective. Hence, the possibility exists that error in a conviction record could result in the revocation of the license of an innocent motorist. Under these circumstances, we conclude that the essentials of due process require the opportunity for some sort of meaningful

*administrative hearing prior to the revocation of an operator's license.*

*Id.* (emphasis added). However, *Warner* limited the scope of the administrative hearing to ministerial matters; the department of transportation was not required to provide a party an additional opportunity to dispute guilt. *Id.*

[10] Wilson and Moore argue RCW 46.20.289, like the statute invalidated in *Warner*, subjects drivers to unreasonable risks of error. In their respective motions to dismiss they attached as exhibits documents pertaining to nonparties to illustrate the difficulties facing drivers when there is no opportunity for an administrative hearing. «2»

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«2» The exhibits may not be considered as evidence of actual events because they relate to experiences of persons who are not before the court. ER 901(a) ("The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims."). But they may be considered as illustrative examples of the difficulties a person may encounter under the current statutory scheme, provided they are both material to the ultimate fact to be proved and shown to be substantially alike to the thing in issue. *State v. Gray*, 64 Wn.2d 979, 983, 395 P.2d 490 (1964). Both factors are met here: they are relevant to the issue of unreasonable risk of error and similarly related to mandatory suspensions of driver's licenses under RCW 46.20.289. The City of Redmond does not appeal the trial court's order denying its objection to the exhibits and discusses the exhibits at length.

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These exhibits provide telling examples of the significant risk of error under RCW 46.20.289.

The record indicates DOL erroneously suspended the driver's license of one person for eight months after it was misinformed by the court that he had been convicted of driving under the influence. The record also indicates another person had his license erroneously suspended after having been falsely identified by the court as the recipient of an unpaid speeding ticket. Despite his best efforts, the wrongly suspended driver could not get a hearing from the court to correct the matter until over a month after his license had been suspended. «3»

What is more, unlike chapter 46.20 RCW, the statute invalidated in *Warner* provided a postdeprivation right to appeal from suspension. See former 75 PA. STAT. ANN. § 620 ("Any person whose operator's license or learner's permit has been suspended, or who has been deprived of the privilege of applying for an operator's license or learner's permit under the provisions of this act, shall have the right to file a petition, within thirty (30) days thereafter, for a hearing in the matter in the court of common pleas of the county in which the operator or permittee resides . . ."), *repealed by Act 1967, June 17, P.L. 162 (July 1, 1977)*. Parties could obtain a stay of suspension until the appeal had been heard. See, e.g., *Commonwealth v. Scavo*, 206 Pa.

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«3» The dissent discounts the importance of these two illustrative examples, noting that because the mistakes were due to court rather than DOL errors, under the current statutory scheme an administrative hearing alone would not have provided either driver relief. Dissent at 686. The dissent's argument, however, misses the mark as the issue before this court is not whether DOL could have cured ministerial errors of its own accord but whether the statute provides due process of law.

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Super. 544, 214 A.2d 309 (1965) (upon notice of appeal, driver obtained an order of supersedeas to

stay suspension of his license pending outcome of appeal); see also *In re Turney*, 44 Pa. Commw. 333, 403 A.2d 1350, 1351 (1979) (noting the driver's notice of suspension provided the following guaranty: " 'You have the right of Appeal to the Court of Common Pleas of the County wherein you reside within thirty (30) days of receipt of this notice. Notice to this Department of timely Appeal will stay the action herein set forth pending final outcome of the Appeal.' "). RCW 46.20.289 provides no such appeal process and even if a court schedules a hearing to correct an alleged error, it is unclear whether it has the authority to stay the suspension pending the outcome of the hearing. Thus, the challenged provisions of the statute in this case offer far fewer procedural guaranties of due process than the statute invalidated in *Warner*.

With regard to risk of error, DOL notes it issued 386,114 notices of suspension in 1999, 401,471 in 2000, and 391,265 in 2001, based on information it received from the courts. Although the record does not include statistical evidence of the rate of error, the record does provide the illustrative examples of errors discussed above. Those examples, taken in conjunction with the sheer volume of information DOL receives from the courts, weigh heavily in favor of Moore and Wilson's argument that the risk of error under the current legislative scheme is substantial.«4»

Nevertheless the City maintains there was no due process violation because Moore and Wilson, like all drivers who have their license suspended under RCW 46.20.289, had an opportunity to be heard at their respective court hearings on the underlying violation. But as Moore and

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«4»The dissent's contrary conclusion relies primarily on *Dixon*, 431 U.S. at 113. Dissent at 683, 685. *Dixon* upheld the provision of the Illinois driver licensing law which empowers the secretary of state to suspend or revoke, without a preliminary hearing, a license of a driver who had repeatedly been convicted of traffic offenses. *Dixon*, 431 U.S. at 115. But *Dixon* is unhelpful here as the statute at issue in that case allowed a licensee to request a full evidentiary hearing at a date "as early as practical." *Id.* at 109-10.

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Wilson argued below, that court hearing does not address ministerial errors that might occur when DOL processes information obtained from the courts pertaining to license suspensions and revocations, e.g., misidentification, payments credited to the wrong account, the failure of the court to provide updated information when fines are paid. They argue the State would not be unduly burdened if either DOL provided administrative hearings or the legislature amended the statute to authorize courts, rather than DOL, to suspend or revoke a driver's license pursuant to a conviction.

The City argues the types of errors raised are to be anticipated in any clerical action, and procedural due process does not require procedures " 'so comprehensive as to preclude any possibility of error.' " Br. of Pet'r at 13 (quoting *Mackey*, 443 U.S. at 13). The City cites *Mackey* for the proposition that the mere possibility of error does not constitute a violation of due process. However, *Mackey* is inapposite.

*Mackey* upheld a Massachusetts statute mandating suspension of a driver's license for refusing to take a breath-analysis test upon arrest for operating a motor vehicle while under the influence of intoxicating liquor. *Mackey*, 443 U.S. at 19. But there the statute entitled the driver to an *immediate postsuspension* hearing before the Registrar of Motor Vehicles to correct clerical errors and to seek prompt resolution of any factual disputes as to the accuracy of the officer's report. *Id.* at 7 n.5. Unlike the statute in *Mackey*, chapter 46.20 RCW does not authorize DOL to provide any administrative hearings to persons subject to a mandatory suspension or revocation of their license.

The City further suggests the current statutory scheme provides persons subject to an allegedly erroneous license revocation or suspension an opportunity to be heard because they may request a

record review or informal hearing before DOL. However it acknowledges DOL cannot alter its order of suspension or revocation until it receives updated information from the district court. Moreover, an adverse

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decision in an informal hearing is not an appealable action. *Cf.* RCW 34.05.570.

[11]The City also argues such persons may apply to the court for relief from a judgment due to a clerical error under CrRLJ 7.8, file a writ of review, a writ of mandamus, or seek an injunction against DOL. Although these methods may bring relief from clerical errors and misidentification, they are costly, time consuming, and burdensome, and should be discounted. *See Fuller v. Oregon*, 417 U.S. 40, 54, 94 S. Ct. 2116, 40 L. Ed. 2d 642 (1974) (noting imposition of a cost upon the exercise of the right to a hearing is impermissible if it has the primary purpose of penalizing those who choose to exercise their constitutional rights). Moreover, the notices of suspension do not advise the drivers of the alternative procedures or remedies the City suggests.

Finally, the third *Mathews* factor requires consideration of the State's interest in the fiscal and administrative burden that additional or substitute procedural requirements would entail. *Nguyen v. Dep't of Health Med. Quality Assurance Comm'n*, 144 Wn.2d 516, 532, 29 P.3d 689 (2001). Rather the City cites *Stauffer v. Weedlun*, 188 Neb. 105, 195 N.W.2d 218 (1972), for the proposition that a State's interest may be sufficient to overcome the risk of wrongly terminating a driver's license.

In *Stauffer* the Nebraska Supreme Court upheld the constitutionality of a statute which provided for mandatory revocation of a driver's license upon accumulation of 12 or more traffic violation points, without providing prior notice and a hearing. 195 N.W.2d at 221. The court upheld the statute reasoning the risk of erroneous deprivation was minimal because the statute provided for an immediate appeal in district court and authorized the judge to stay revocation pending the outcome of the appeal. *Id.* at 223. The court found, on the other hand, that the State had a "compelling public interest in removing from the highways those drivers whose records demonstrate unsafe driving habits." *Id.* at 224. The minimal risk of error combined with the compelling State interest in promoting public safety, the

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court reasoned, outweighed the need for notice and a hearing prior to the revocation. *Id.*

The public safety interest present in *Stauffer* is not at issue here. The State's interest in suspending an individual's driver's license for failing to appear, pay, or comply with a notice of traffic infraction is in the efficient administration of traffic regulations and in ensuring offending drivers appear in court, pay applicable fines, and comply with court orders. Although undoubtedly important, this interest does not rise to the level of the State's compelling interest in keeping unsafe drivers off the roadways. Simply put, failing to resolve a notice of traffic infraction does not pose the same threat to public safety as habitually unsafe drivers do.

In its amicus brief DOL claims it will incur significant fiscal and administrative burdens if it is required to provide an administrative hearing for drivers who receive suspension notices under RCW 46.20.289. The potential cost to the State is not proved on this record, although DOL alleges that providing an opportunity for such a hearing would increase its workload and mandate the hiring of additional staff to process the hearings. While this may be true, the burden on the State is worthy of consideration but in itself not controlling. We are not persuaded that the burden of providing hearings to those individuals whose licenses have been ordered suspended under RCW 46.20.289 outweighs the risk of error and the benefit of providing hearings with DOL to correct potential ministerial errors.

[12]Therefore we hold RCW 46.20.289 and .324(1) are contrary to the guaranty of due process because they do not provide adequate procedural safeguards to ensure against the erroneous deprivation of a driver's interest in the continued use and possession of his or her driver's license. As such, because a driver cannot be convicted of the offense of driving while license suspended where the suspension violates due process, *Dolson*, 138 Wn.2d at 783, the trial court properly dismissed the charges against Moore and Wilson.

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### CONCLUSION

The district court is affirmed.

ALEXANDER, C.J., and JOHNSON, MADSEN, and CHAMBERS, JJ., concur.

BRIDGE, J. (dissenting) - The majority seizes upon the scant record in these cases to answer a question that has not been raised by any party and in so doing stretches the requirements of due process beyond precedent and common sense - establishing no clear benefit to licensees and burdening an administrative system designed by the legislature to provide swift determination for the protection of the motoring public.

There are three potential categories of license holders affected by license suspensions under RCW 46.20.289: (1) those whose licenses are lawfully suspended because they have failed to respond to notice of a traffic infraction or citation, including Dean Moore and Jason Wilson; (2) those whose licenses are suspended erroneously due to a ministerial error committed by the Department of Licensing (DOL) because of erroneous transfer of information into DOL records; and (3) those whose licenses are suspended erroneously due to an error committed by the court, including misidentification, miscalculation of fines, or clerical error in information transferred from the court to DOL. The district court in this case did not hold that due process requires a *judicial* hearing as to whether a driver actually failed to appear, pay, or comply prior to suspension, nor do Moore and Wilson assert such a right before this court. Moore and Wilson contend only that DOL should be required to provide administrative hearings before a license may be suspended pursuant to RCW 46.20.289 and .324(1) - a procedure which could impact only the second category of suspended licenses, to which Moore and Wilson do not belong. Thus, the only issue presented in this case is whether DOL violated due process by failing to provide an *administrative* hearing prior to suspension of a license.

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based on the failure to appear, pay, or comply. Under the *Eldridge* balancing test, resolution of this issue depends in part upon the degree to which presuspension DOL hearings would actually benefit licensees. *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

Neither the majority nor the parties have explained how DOL, as an executive agency, could have the power to correct *court* error. Even if DOL could ignore a court judgment and stay suspension until resolution of the error, Moore and Wilson have presented only two anecdotal examples of drivers who may have benefited from such a stay. Given the very high burden that a challenger must overcome to render a statute facially unconstitutional, Moore and Wilson have not established that there exists sufficient risk of error to justify the opportunity for a DOL hearing for all drivers who face impending license suspension for failure to appear, pay, or comply. Therefore, I cannot agree with the majority's conclusion that the application of the *Eldridge* balancing test results in the facial unconstitutionality of RCW 46.20.289 and .324(1). «5»

Application of the *Eldridge* Test

This court applies a very high burden to facial constitutional challenges.<sup>«6»</sup> Statutes must be shown to be unconsti

«5» The result might be different if an as applied challenge were brought by drivers whose licenses had actually been suspended as the result of DOL error and who were able to present enough evidence of widespread error to tip the *Eldridge* scale.

«6» The majority concludes that Moore and Wilson have launched facial rather than as applied challenges to RCW 46.20.289, stating that "[t]he essence of their argument is that RCW 46.20.289 violates due process because it fails to afford any driver facing a suspension of his or her license under that statute an opportunity for an administrative hearing with DOL prior to or after such suspension." Majority at 689. I cannot agree with this conveniently broad characterization of Moore and Wilson's argument. The trial court did not hold that RCW 46.20.289 was unconstitutional on its face. Moore and Wilson's brief offers no clear indication that they have ever argued a facial challenge to the statute; in fact, their analysis consistently discusses the statute's application to their own cases. Br. of Resp't at 18, 19, 21, 25 ("There was no opportunity provided to the Respondents by DOL for even a limited hearing prior to or subsequent to suspending his driving privileges."). When questioned at oral argument, Moore and Wilson's attorney initially responded that the statute was constitutional, becoming less certain only after being pressed by the court. Therefore, I would conclude that Moore and Wilson have challenged RCW 46.20.289 only as it was applied to them; despite the less strenuous burden applied to such challenges, applying the *Eldridge* balancing test to the facts of Moore's and Wilson's cases would render RCW 46.20.289 constitutional as applied to them.

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tutional beyond a reasonable doubt. *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 631, 71 P.3d 644 (2003). Washington has adopted the rule that "a facial challenge must be rejected if there are any circumstances where the statute can constitutionally be applied." *Wash. State Republican Party v. Wash. State Pub. Disclosure Comm'n*, 141 Wn.2d 245, 282 n.14, 4 P.3d 808 (2000); *Tunstall v. Bergeson*, 141 Wn.2d 201, 221, 5 P.3d 691 (2000) (quoting *In re Det. of Turay*, 139 Wn.2d 379, 417 n.27, 986 P.2d 790 (1999)). Thus, in order to hold that a statute is facially unconstitutional, this court must be convinced beyond reasonable doubt that there exists no set of circumstances under which the statute in question would be constitutional. *Citizens*, 149 Wn.2d at 631; *Tunstall*, 141 Wn.2d at 221. Assumptions or hypotheses about the potential unconstitutionality of a statute are not enough.

When the State seeks to deprive a person of a property interest, due process requires that pursuant to RCW 46.20.289 an individual receive notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *Eldridge*, 424 U.S. 319. The record in this case shows that drivers (including these drivers) receive notice of a pending suspension for failure to appear, pay, or comply on a citation in the form of a letter from DOL. The letter provides a 30-day grace period before the suspension takes effect. The letter also gives an address and phone number of the applicable municipal court so that the driver can contact the court with questions regarding the citation or the fine.<sup>«7»</sup> Finally, the letter provides the phone number for

«7» Both the Infraction Rules for Courts of Limited Jurisdiction and the Criminal Rules for Courts of Limited Jurisdiction provide for the filing of a motion for relief from judgment, which can be granted on the basis of court error. IRLJ 6.7; CrRLJ 7.8(b)(1). There are also provisions for correction of simple clerical mistakes. CrRLJ 7.8(a).

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the DOL agent handling the case. Moore and Wilson argue that these avenues for error correction are insufficient, and they were also entitled to an opportunity for a DOL hearing on the issue of their failure to appear, pay, or comply, prior to any suspension.

The *Eldridge* balancing test is applied to determine whether RCW 46.20.289 and .324(1) are facially unconstitutional because they do not provide for a DOL presuspension hearing. See *Eldridge*, 424 U.S. at 335; *In re Det. of C.W.*, 147 Wn.2d 259, 277, 53 P.3d 979 (2002) (applying the *Eldridge* test). Under *Eldridge*, courts must balance three factors to determine the process due in a particular situation: (1) the private interest that will be affected by the governmental action, (2) the risk of erroneous deprivation and the probable value of requiring additional procedural safeguards, and (3) the government's interest, including the fiscal and administrative burdens that additional procedural safeguards would entail. 424 U.S. at 335.

*Private Interest*: Under the first *Eldridge* factor, we consider the nature of the individual's interest at stake. *Id.* A driver's interest in continuing to hold a valid license is undoubtedly strong. In *Mackey v. Montrym*, 443 U.S. 1, 11-12, 99 S. Ct. 2612, 61 L. Ed. 2d 321 (1979), the United States Supreme Court recognized that a driver's interest in the continued possession and use of his or her license is a "substantial one." However, the length of the suspension is a factor to be considered in determining the strength of the interest. *Id.* at 11-12. Under RCW 46.20.289, the length of the suspension is not fixed, but instead it ends either when the license holder adjudicates the case or pays the fine, or when a mistake is corrected, causing the court to issue a certificate to DOL indicating that the case has been resolved. Furthermore, the existence of a strong individual interest is not determinative; even where a strong interest exists, courts have been willing to hold that the other *Eldridge* factors outweigh the first, such that additional procedural safeguards are not necessary to satisfy due

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process. See, e.g., *Mackey*, 443 U.S. at 11-19; *Mentor v. Nelson*, 31 Wn. App. 615, 619-20, 644 P.2d 685 (1982) (holding additional administrative hearing was not necessary before driver's license could be suspended where adequate safeguards were already in place).

*Risk of Erroneous Deprivation*: The second *Eldridge* factor considers the risk of erroneous deprivation and the likely value of additional procedural safeguards. *Eldridge*, 424 U.S. at 335. Moore and Wilson do not claim that they were erroneously deprived of their licenses as the result of any court or DOL mistake; they do not challenge the factual basis for their suspensions. Majority at 669. Instead, they argue that errors occur routinely in court records, DOL records, and the transfer of information between the courts and DOL, which in turn lead to erroneous deprivation of driver's licenses.

Other courts have considered the risk of error in license suspension cases. In *Dixon v. Love*, 431 U.S. 105, 97 S. Ct. 1723, 52 L. Ed. 2d 172 (1977), the United States Supreme Court considered a statutory and regulatory scheme for license suspensions in Illinois that is similar to the system at hand.<sup>88</sup> Under the Illinois system, a driver's license had to be suspended if the licensee accumulated a certain number of points for traffic offenses within a particular time period. *Id.* at 109. The Court found a low risk of error because the suspensions, which were mandatory for drivers with repeated traffic offense convictions, were "largely automatic." *Id.* at 113. Although the Court recognized that clerical errors might occur, it concluded that an administrative hearing was not the appropriate remedy because a written objection by the license holder would suffice to bring the mistake to the secretary of state's attention. *Id.*

<sup>88</sup>The regulations in *Dixon* differ from the case at bar, in that they provided for postsuspension hearings and permitted drivers to obtain restricted permits for commercial use or in case of hardship. 431 U.S. at 109-10. Here, although the statutory scheme

does not mandate that DOL must provide a postsuspension hearing, it does provide the 30-day period between notice to the license holder and suspension during which any errors may be corrected.

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Similarly, in *Stauffer v. Weedlun*, 188 Neb. 105, 195 N.W.2d 218, *appeal dismissed*, 409 U.S. 972, 93 S. Ct. 307, 34 L. Ed. 2d 236 (1972), the Nebraska Supreme Court reviewed a revocation procedure based on the accumulation of points for traffic violations. The court held that due process did not require notice and a hearing before the revocation because the essential facts had already been determined in the judicial proceedings for the traffic offense. *Id.* at 223. Thus, the court concluded: "In a very real sense the Director acts only ministerially. The result - the revocation - flows from the operation of the statute upon the already judicially determined facts, that is, the series of convictions of traffic offenses." *Id.* Recognizing that some errors might occur, the court nonetheless concluded that the risk was not high because the system contained "no latitude for discretion nor does it require any factual determinations in the judicial, quasi-judicial, or administrative law sense." *Id.*

With regard to potential DOL error in this case, Moore and Wilson present no evidence that speaks to the risk of ministerial error by DOL in processing information sent by the court. Of course, there is always some risk of DOL error; but because suspension pursuant to RCW 46.20.289 is largely a ministerial act, courts have recognized that the risk of such error is small. *Dixon*, 431 U.S. at 113; *Stauffer*, 195 N.W.2d at 223. If DOL errors were to occur, they could be corrected by contacting DOL. In fact, the United States Supreme Court has discounted the risk of deprivation because of clerical error where the administrative agency can be notified of the error in writing. *Dixon*, 431 U.S. at 113. Moreover, Moore and Wilson give no examples of DOL error that have not been corrected within the 30-day grace period. Thus, the minimal risk of erroneous deprivation of a license because of DOL error simply does not support a conclusion that RCW 46.20.289 is unconstitutional beyond a reasonable doubt.

With regard to court error, Moore and Wilson present anecdotal evidence regarding only two drivers, Barrionuevo

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and Seals, whose licenses were allegedly suspended because of court error. First, Mr. Barrionuevo's license was suspended for several months because of an error in the information sent from the court to DOL. Second, Mr. Seals' license was suspended because a driver had given Seals' name, instead of his own, upon a traffic stop. Mr. Seals' notification letter from DOL was issued on January 13, 2000, explaining that license suspension would take effect on February 12. He called the court on January 14 to explain that his brother had used his name when pulled over for speeding. Seals filed a letter requesting an identification hearing on January 21. The judge consulted with the deputy prosecuting attorney and then set the hearing for February 22. Because the arresting officer had scheduled a vacation, the hearing was continued until March 17. At the hearing, the officer testified that Mr. Seals was not the correct defendant, and DOL was notified by e-mail on March 20, 36 days after suspension took effect. Thus Seals' 36-day erroneous suspension was a result of an error on the face of the court's judgment.

Neither the parties nor the majority explains how DOL could correct court error, a point I return to later in this opinion. Yet, even if we assume for the sake of argument that DOL could somehow ignore the court's judgment and stay suspension of a driver's license where DOL believed *the court* had made a mistake, the Barrionuevo and Seals cases leave us with very little evidence in the record that speaks to the true risk of erroneous deprivation based on court error. While these erroneous suspensions are regrettable, we have no way of knowing how widespread such errors really are, an analysis compelled

by *Eldridge*. In addition, Moore and Wilson present no evidence as to how frequently municipal courts fail to rectify such errors before the 30-day grace period has elapsed. See IRLJ 6.7; CrRLJ 7.8(b)(1); CrRLJ 7.8(a). The United States Supreme Court has held that due process does not require that the State provide a perfect, error-free process, *Mackey*, 443 U.S. at 13, so the mere existence of some error is not enough. See also

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*Eldridge*, 424 U.S. at 344 (due process requirements are determined by the overall risk of error in the proceeding at issue, not by the rare exceptions that occur). Given the exacting "beyond a reasonable doubt standard" for finding a statute facially unconstitutional, the anecdotal evidence here is particularly thin. Mere possibility of error is not enough. *Mackey*, 443 U.S. at 13.

*Probable Value of Providing a DOL Hearing*: In a case like Moore's or Wilson's, where the court has entered a valid judgment on the failure to appear, pay, or comply, and no clerical error has occurred, a DOL presuspension administrative hearing would provide no benefit at all. Further, when we consider the value of a DOL hearing in cases where suspension is pending as the result of a DOL error in processing information received from the courts, the type of error that could legitimately be resolved by a DOL administrative hearing, Moore and Wilson present no evidence to suggest that the opportunity for such a hearing would actually benefit drivers. Currently, if the driver receives notice of impending suspension because of DOL error, the licensee can contact DOL by calling the number provided in the notification letter, and presumably the error could easily be confirmed by comparison with the municipal court's judgment. Moore and Wilson have presented no examples of any failure to rectify DOL error before expiration of the 30-day grace period. See *Dixon*, 431 U.S. at 113 (noting that a written objection by the license holder would suffice to bring mistake to the secretary's attention). Therefore, Moore and Wilson fail to show any added value in requiring DOL to conduct presuspension hearings. Given the high standard for finding a statute to be facially unconstitutional, how can we conclude that an opportunity for DOL hearing to correct its own error would truly benefit drivers, i.e., that such a process is "due?"

Moore and Wilson rely on *Warner v. Trombetta*, 348 F. Supp. 1068 (M.D. Pa. 1972), *aff'd*, 410 U.S. 919, 93 S. Ct. 1392, 35 L. Ed. 2d 583 (1973), to support their argument that a full administrative hearing is required even if the

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suspension is mandatory and the only possible errors are ministerial. In *Warner*, the district court held that a mandatory suspension of a driver's license for one year upon conviction of leaving the scene of an accident violated due process if no administrative hearing was provided. *Id.* at 1071. But *Warner* is distinguishable from the case at bar as the statute involved in it provided for the *immediate* suspension of the license, thus providing the license holder with no opportunity to resolve his or her case prior to suspension. *Id.* at 1070 n.2. In contrast, RCW 46.20.289 provides a 30-day grace period. In addition, the statute in *Warner* provided that the suspension would be for one year. *Id.* Under RCW 46.20.289, the length of the suspension is not fixed, ending when the license holder resolves the situation. Finally, *Warner* was decided before the United States Supreme Court adopted the balancing test set forth in *Eldridge*. Although *Warner* has not been overruled, it was decided without the benefit of the balancing test analysis that is now used in procedural due process cases.

In the case of potential court error, the majority fails to explain how a DOL hearing would have aided drivers like Seals or Barrionuevo. Neither the majority nor the parties have explained how, in light of the separation of powers doctrine, DOL could have the power to overturn or even ignore a court judgment. See, e.g., *Carrick v. Locke*, 125 Wn.2d 129, 135, 882 P.2d 173 (1994) (one branch of government may not invade the prerogatives of another). Any assumption that DOL could somehow do more than

correct its own error remains unsupported.

In Seals' case, if there had been a DOL hearing and DOL had determined that Seals was not the one cited, it is unclear how DOL could have used this information to rectify the situation. Likewise, even if DOL had conducted a hearing, it still would have been powerless to change the nature of Barrionuevo's conviction without receiving verification from the court. DOL is not authorized to modify information received from a court of law. RCW 46.20.289 (allowing DOL to lift a suspension only after certification

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from the court). A DOL hearing would have been of no benefit to either Seals or Barrionuevo.

In sum, the second *Eldridge* factor weighs against a finding of facial unconstitutionality. The risk of erroneous deprivation resulting from the alleged due process violation in this case, namely the denial of a presuspension DOL hearing, is, on this record, slight. In fact, Moore and Wilson present no statistical or anecdotal evidence of ministerial errors that could be remedied by a DOL hearing. Furthermore, the added protection that would result from an opportunity for a DOL hearing is equally slight given that such a hearing could remedy only DOL mistakes. The minimal risk of erroneous deprivation in the absence of a DOL hearing and the equally limited value that a DOL hearing would provide simply do not support a conclusion that we should hold RCW 46.20.289 unconstitutional beyond a reasonable doubt.

*Burden of Additional Procedure* : The third *Eldridge* factor considers the government's interest, including the fiscal and administrative burden of providing additional procedural safeguards. 424 U.S. at 335. The State has an interest in the efficient and cost-effective administration of its driver's license system, including suspensions. The State also has an interest in ensuring that offending drivers appear in court, pay any applicable fines, and comply with the terms of court orders.

In its amicus brief, DOL asserts that it will incur significant fiscal and administrative burdens if it is required to offer hearings to all drivers who receive suspension notices pursuant to RCW 46.20.289 . For example, in 2001, DOL issued 391,265 notices of suspension pursuant to RCW 46.20.289 . Being required to offer hearings would mean that DOL would have to notify all of these drivers of their right to a hearing. Of those who received suspension notices, DOL suspended 268,331 licenses in 2001. If as few as five percent of those suspended in 2001 requested hearings, DOL would be responsible for conducting over 13,000 hearings. However, Moore and Wilson present no

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evidence as to how many of those hearings would actually prevent the erroneous deprivation of a driver's license, especially given the limited power of DOL to alter court judgments.

This court should find a statute facially unconstitutional only where it can do so beyond a reasonable doubt. *Citizens* , 149 Wn.2d at 631 . At best, Moore and Wilson have shown that two driver's licenses have been erroneously suspended under the current system. Yet, due process does not require an error-free system. Furthermore, Moore and Wilson have presented no evidence of the extent of ministerial error that could be rectified by the hearing that they request. Although the burden on the State is not controlling, it must be weighed against the value of providing additional safeguards and the risk of erroneous deprivation as discussed above. Here, the burden of providing hearings to all license holders who request them outweighs the slight risk of error and the limited value of providing DOL hearings to correct potential ministerial errors, even considering the strong individual interest in an uninterrupted driver's license. The statutory scheme at issue here allows for a 30-day grace period in which drivers can resolve DOL ministerial errors through informal procedures. I would hold that such a scheme satisfies the requirements of due process.

IRELAND , OWENS , and FAIRHURST , JJ ., concur with BRIDGE , J .

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[No. 73249-3. En Banc.]

Argued March 17, 2005. Decided August 11, 2005.

THE CITY OF REDMOND, *Petitioner*, v. CLUSSIE BAGBY, JR., et AL., *Respondents*.

[1] Automobiles - Operator's License - Due Process - Property Interest. A driver's license constitutes a property interest that may not be suspended or revoked absent some procedural due process of law.

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[2] Constitutional Law - Due Process - Procedural Due Process - Scope - Factors. A determination of what process is due in a particular case requires a balancing of (1) the private interest affected by the government action; (2) the risk of erroneous deprivation of the private interest, including additional procedural safeguards in place; and (3) the governmental interest, including the function involved and the fiscal and administrative burdens that alternative procedural requirements would entail.

[3] Automobiles - Operator's License - Due Process - Private Interest. A driver's license is a substantial private interest.

[4] Automobiles - Operator's License - Suspension - Conviction of Crime - Mandatory Suspension - Validity - Due Process. A criminal defendant is not denied procedural due process of law by a statute that requires the defendant to surrender his or her driver's license for a certain period of time immediately upon conviction of an enumerated crime, without an opportunity for a pre- or postsuspension hearing by the Department of Licensing. Where the suspension is based on a final criminal conviction, the defendant receives all of the process that is due.

SANDERS and CHAMBERS, JJ., dissent by separate opinion.

Nature of Action: Prosecutions of several defendants for either first or second degree driving while license suspended. In each case, the defendant's license had previously been suspended upon conviction of a criminal traffic offense. The suspensions were mandated by statute, with no opportunity for a pre- or postsuspension hearing by the Department of Licensing.

District Court: The King County District Court dismissed the charges, ruling that the defendants' due process rights were violated.

Superior Court: The Superior Court for King County, Nos. 01-1-03890-3, 01-1-03891-1, 01-1-03892-0, 01-1-03893-8, 01-1-03894-6, 01-1-03895-4, 01-1-03896-2, 01-1-03897-1, 01-1-03898-9, 01-1-03899-7, 01-1-03900-4, 01-1-03901-2, 01-1-03902-1, and 01-1-03903-9, Stephen G. Scott, J., *affirmed* the dismissal orders on November 1, 2002. Supreme Court: Holding that the defendants did not have a due process right to a pre- or postsuspension hearing by the Department of Licensing before their drivers' licenses could be revoked upon their criminal traffic offense

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convictions, the court *reverses* the decision of the superior court and the dismissal orders and *remands* the cases to the district court for further proceedings.

Richard L. Mitchell and Jill A. Klinge, for petitioner.

Donna K. Tucker and Cherilyn G. Church, for respondents.

Robert M. McKenna, Attorney General, and Masako Kanazawa, Assistant, on behalf of Department of Licensing, amicus curiae.

*Daniel B. Heid* on behalf of Washington State Association of Municipal Attorneys, amicus curiae.

¶1 C. JOHNSON, J. - This case involves a challenge to the mandatory driver's license suspension/revocation procedures upon conviction of certain criminal traffic offenses. The statutes at issue include those that require a mandatory license suspension/revocation upon criminal conviction, with no opportunity for either a presuspension or postsuspension hearing by the Department of Licensing (Department).

¶2 A conviction under these statutes<sup>«1»</sup> requires the Department to revoke the person's license for varying lengths

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<sup>«1»</sup>Though dealing with specific statutes here, the broader challenge would include any statute that contains a requirement that the Department revoke a driver's license for a certain period of time after the conviction, which includes the following offenses: failure to stop ( RCW 46.20.285 (5)); felonies committed by using an automobile ( RCW 46.20.285 (4)); perjury to the Department related to car ownership or operation ( RCW 46.20.285 (6)); vehicular assault ( RCW 46.20.285 (2)); vehicular homicide ( RCW 46.20.285 (1)); racing or reckless driving ( RCW 46.20.285 (7)); driving while license suspended ( RCW 46.20.342 (1)); eluding police ( RCW 46.61.024 (3)); driving while under the influence ( RCW 46.20.285 (3)); implied consent test refusal ( RCW 46.20.308 (2)); reckless endangerment of roadway workers ( RCW 46.61.527 (5)); unattended child in a running vehicle ( RCW 46.61.685 (2)); minor in possession of alcohol, drugs, or a firearm ( RCW 46.20-.265(1)); or theft of motor fuel ( RCW 46.61.740 (2)).

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of time. As to the individual respondents<sup>«2»</sup> in this case, the convictions that apparently triggered their mandatory suspensions include reckless driving, under RCW 46.61.500 ; driving while license invalidated, under RCW 46.20.342 ; vehicular homicide, under RCW 46.61.520 ; and minor in possession of alcohol, under RCW 66.44.270 (2). Clerk's Papers (CP) at 1-199. The respondents in these consolidated cases were all charged by the city of Redmond with driving while license suspended, in either the first or second degree. They moved to dismiss the charges, challenging their original suspensions on the basis that they were unconstitutionally denied a presuspension or postsuspension hearing by the Department.

¶3 The King County District Court judge granted the motion, holding that the respondents' due process rights were violated. The city of Redmond appealed, and the King County Superior Court affirmed. We granted direct review and reverse.

## DISCUSSION

[1]¶4 Procedural due process requirements exist for persons who have property interests, including a driver's license. *Dixon v. Love* , 431 U.S. 105, 112, 97 S. Ct. 1723, 52 L. Ed. 2d 172 (1977). We recently analyzed a similar argument in *City of Redmond v. Moore* , 151 Wn.2d 664 , 91 P.3d 875 (2004). In *Moore* , we held that those who failed to resolve minor traffic tickets, thereby causing an automatic license suspension, cannot have their license suspended by the Department without first having an opportunity for a hearing on the matter. *Moore* , 151 Wn.2d at 677 . The respondents in this case argue that these due process

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<sup>«2»</sup>Clussie Bagby, Jr., Robert J. Brim, Tony L. Clenney, William R. Duerr, James W. Hawkins, Joseph R. Lacasee, Phillip McGahey, Dave J. Miller, Sean Scarbrough, Mark Thompson, and Oswald Trent (respondents).

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requirements should apply to cases where criminal convictions result in mandatory license suspensions.

[2]¶5 While the city of Redmond acknowledges that a person has a right to due process prior to the suspension of his or her driver's license, they argue that sufficient due process has been afforded the respondents under the statutes at issue here. Both parties agree that the *Mathews* three-part balancing test should be used. *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). The United States Supreme Court determined that under the Fourteenth Amendment, «3»the *Mathews* test is applied to determine when sufficient due process has been afforded. This test addresses, first, the private interest affected by the government action; second, the risk of erroneous deprivation of that private interest, including additional procedural safeguards in place; and third, the governmental interest, including the function involved and the fiscal and administrative burdens that alternative procedural requirements would entail. *Moore*, 151 Wn.2d at 670 (citing *Mathews*, 424 U.S. at 335).

[3]¶6 First, in *Moore* we concluded that the defendants' personal interest in their license was substantial, since a license could impact their ability to make a living. *Moore*, 151 Wn.2d at 670 -71. The case at hand is no different. A driver's license is a substantial private interest.

¶7 Second, we held that since the defendants in *Moore* had no access to a hearing prior to notice of revocation by the Department, there was increased potential for prolonged erroneous deprivation of this private interest. We found that there was a risk of error when a license is revoked with no opportunity for an administrative hearing. *Moore*, 151 Wn.2d at 675 -76.

[4]¶8 Here, conversely, there is minimal risk that a criminal defendant will be erroneously deprived of their driver's license. No errors exist in the records of the

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«3»"No state shall . . . deprive any person of life, liberty, or property, without due process of law . . . ." U.S. CONST. amend. XIV, § 1.

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respondents in this case. For example, it is unlikely that a defendant, like the respondents in this case who were originally convicted of driving under the influence of alcohol, would have their license incorrectly suspended by a judge who is imposing a sentence upon conviction. As such, the likelihood of erroneous deprivation does not exist in this case, since a criminal proceeding which results in a conviction provides sufficient due process protections.

¶9 Also, we note that in these cases, RCW 46.20.270 provides additional safeguards that did not exist in *Moore*. In *Moore*, the defendants never appeared before a judge; they simply had their license suspended by the Department after not resolving traffic infractions. *Moore*, 151 Wn.2d at 669. RCW 46.20.270 requires that anyone convicted of certain offenses must have his or her license forfeited to the court at the time of conviction.

¶10 RCW 46.20.270 (1) states:

Whenever any person is convicted of any offense for which this title makes mandatory the suspension or revocation of the driver's license of such person by the department, the privilege

of the person to operate a vehicle is suspended until the department takes the action required by this chapter, and *the court in which such conviction is had shall forthwith secure the immediate forfeiture of the driver's license of such convicted person and immediately forward such driver's license to the department*, and on failure of such convicted person to deliver such driver's license the judge shall cause such person to be confined for the period of such suspension or revocation or until such driver's license is delivered to such judge . . . .

(Emphasis added.)

¶11 Defendants are required to personally appear in criminal proceedings. They are afforded all constitutional protections in those proceedings, including the right to appeal. Under RCW 46.20.285, the license suspension is stayed until the conviction becomes final. Perhaps, most importantly, under both RCW 46.20.265 and RCW 46.20-.270, the suspension or revocation occurs as a result of the defendant's conviction, where every defendant person

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ally appears for imposition of sentence. For driving violations that mandate a license suspension, RCW 46.20.270 requires the judge to physically take the defendant's license. For other juvenile convictions that mandate a license suspension under RCW 46.20.265, RCW 66.44.365 (1) requires the judge to notify the Department within 24 hours of the suspension. Despite the submission that isolated administrative errors may have occurred in some situations, the risk of possible erroneous deprivation after the suspension is entered by the court and then administered by the Department is insignificant.

¶12 Third, we held that the government interest of public safety was limited in *Moore*. That is, the interest in the simple administration of justice by having people resolve minor ticket infractions "does not rise to the level of the State's compelling interest in keeping unsafe drivers off the roadways." *Moore*, 151 Wn.2d at 677 (emphasis added). In this case, under this third *Mathews* factor, the government's interest is higher than existed in *Moore*.

¶13 In *Moore*, we implicitly recognized that governmental interest is significantly higher in cases involving criminal offenses. *Moore*, 151 Wn.2d at 677. The legislature has determined that those who commit criminal driving violations are a threat to public safety, since suspended drivers are "more likely to be involved in causing traffic accidents, including fatal accidents, than properly licensed drivers, and pose a serious threat to the lives and property of Washington residents." LAWS OF 1998, ch. 203, § 1. In fact, due to this apparent danger, the legislature has directed the courts to secure the immediate forfeiture of the driver's license of such a convicted person. RCW 46.20.270 (1). We were careful in *Moore* to distinguish between drivers who had their license suspended in an effort to effectuate the resolution of traffic tickets and those who are "habitually unsafe." *Moore*, 151 Wn.2d at 677.

¶14 Some of the respondents in the case before us have been convicted of reckless driving, vehicular homicide, eluding police, and multiple DUIs (driving under the influ

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ence). CP at 102-79. Though the severity of crimes<sup>4</sup> that trigger a mandatory suspension vary, a significantly greater government interest exists in keeping those convicted of crimes off the road, rather than those who have failed to resolve traffic infractions. Thus, a heightened government interest exists in cases where a driver's license is suspended based on a criminal conviction.

#### CONCLUSION

¶15 Sufficient due process requirements exist for those who have their driver's license suspended

based on a criminal conviction. The statutes that require a mandatory suspension based on a conviction provide a heightened government interest in highway safety and a decreased likelihood of erroneous deprivation. Accordingly, we find the statutes constitutional as applied to the respondents. We reverse and remand to the district court for further proceedings.

ALEXANDER , C.J., and MADSEN , BRIDGE , OWENS , FAIRHURST , and J.M. JOHNSON , JJ., concur.

¶16 SANDERS, J. (dissenting) - The majority upholds statutes<sup>«5»</sup> mandating suspension or revocation of a driver's license upon criminal conviction absent the right to any hearing. I dissent because due process requires a hearing be made available to diminish clerical error and inaccuracy.

¶17 Property interests, including driver's licenses, are protected from deprivation by due process. *Dixon v. Love* , 431 U.S. 105, 112, 97 S. Ct. 1723, 52 L. Ed. 2d 172 (1977). The test set forth in *Mathews v. Eldridge* , 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), governs whether the

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«4» See *supra* note 1.

«5» The statutes at issue in this case are: RCW 46.61.500 (reckless driving); RCW 46.20.342 (driving with invalidated license); RCW 46.61.520 (vehicular homicide); RCW 66.44.270 (2) (minor in possession of alcohol). RCW 46.20.270 prescribes the procedure to be followed when revoking the licenses because of a criminal conviction.

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process the government provides is sufficient. The test references three factors: (1) the private interest involved, (2) the risk of error and the efficacy of additional procedural safeguards, and (3) the government's interest in the added administrative burden and cost. *Id.* at 335.

¶18 We applied this standard to a similar statute in *City of Redmond v. Moore* , 151 Wn.2d 664 , 91 P.3d 875 (2004). The statute ( RCW 46.20.289 ) in *Moore* required suspension for drivers who failed to respond to a notice of a traffic infraction. A corollary statute ( RCW 46.20.324 (1)) denied the driver the possibility of a hearing to correct any errors. Applying the *Mathews* test, we found the statutes violated due process "because they do not provide adequate procedural safeguards to ensure against the erroneous deprivation of a driver's interest in the continued use and possession of his or her driver's license." *Moore* , 151 Wn.2d at 677 . The same reasoning applies here.

¶19 The majority admits a driver's license is a significant property interest. Majority at 63. Indeed, as we noted in *Moore* , "[d]epriving a person of the use of his or her vehicle can significantly impact that person's ability to earn a living." *Moore* , 151 Wn.2d at 670 (citing *Bell v. Burson* , 402 U.S. 535, 539, 91 S. Ct. 1586, 29 L. Ed. 2d 90 (1971)), see also *Dixon* , 431 U.S. at 113 ("[A] licensee is not made entirely whole if his suspension or revocation is later vacated."). The importance of a driver's license to an individual's well-being cannot be overstated in today's mobile society. Few people live proximately to their place of business or to other essential venues, rendering them dependent on private transportation.

¶20 The second factor is the risk of erroneous deprivation and the value of additional safeguards. *Mathews* , 424 U.S. at 335. The risk here is substantial. The majority distinguishes *Moore* by emphasizing that conviction and sentencing procedures adequately protect against errors. Majority at 63. While the defendant may be required to surrender his license to the court, notice must still be sent to the Department of Licensing (DOL). See RCW 46.20.285 ,

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.291, .265(1). It is here that errors may occur. Judge David S. Admire convincingly reasoned errors *would* occur:

The court is going to indicate that what I have to continue to look at is in this court in Northeast Division we had 35,000 cases filed, over 35,000 another over 35,000 this year. The numbers alone with the staff that we have, there are going to be mistakes found. There are going to be mistakes in how it was transmitted to DOL. There's going to be mistakes due to the sheer number of cases transmitted to DOL that DOL's going to make mistakes in inputting . . . . The potential harm that can come to an individual without giving him the opportunity to say look it [sic] 1) you have the wrong person, 2) I wasn't convicted of that, 3) you're suspending me for the wrong amount of time, whatever, the potential is there to those individuals that can be disastrous.

Verbatim Report of Proceedings (Nov. 5, 2001) at 31-32. Mistakes in the notice sent to DOL could result in a person's driver's license being wrongfully suspended, or DOL could make its own mistakes. Nevertheless, that person has no opportunity to challenge the suspension in a hearing. The risk of erroneous deprivation of this important property interest is significant.<sup>«6»</sup>

¶21 In *Moore* we relied on *Warner v. Trombetta*, 348 F. Supp. 1068 (M.D. Pa. 1972), *aff'd*, 410 U.S. 919, 93 S. Ct. 1392, 35 L. Ed. 2d 583 (1973), and again it is precisely on point. See *Moore*, 151 Wn.2d at 671 -73. The case merits a lengthy quote:

"[E]ven if the convictions cannot be contested, there still remain the possibilities, among others, that the convictions were those of another person with the same name; that the fines and costs were paid on an information at variance with that for which the minor judiciary entered a conviction as plaintiff contends occurred in this case; . . . or that there were errors on the report of conviction form. In none of these instances is there a provision for a hearing before suspension even though notice of the assessment of points is given. Notice without opportunity to rectify error obviously is not sufficient."

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<sup>«6»</sup> Especially since the license is not restored until DOL takes the appropriate action under chapter 46.20 RCW.

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348 F. Supp. at 1071 (quoting *Reese v. Kassab*, 334 F. Supp. 744, 747 (W.D. Pa. 1971)). As we approvingly quoted in *Moore*, the *Warner* court then concluded:

The fatal defect in the statute at bar is that there is no provision made for any type of administrative hearing with notice and an opportunity to be heard before the revocation action becomes effective. Hence, the possibility exists that error in a conviction record could result in the revocation of the license of an innocent motorist. Under these circumstances, we conclude that the essentials of due process require the opportunity for some sort of meaningful administrative hearing prior to the revocation of an operator's license.

*Id.* The majority's protestation that administrative errors will be "isolated" and the risk of error "insignificant," majority at 65, places greater faith in clerical or administrative accuracy than is justified. The risk of erroneous deprivation is substantial.

¶22 An available hearing would diminish the potential for error. DOL could confirm it is revoking or

suspending the license of the correct person, and any errors in identity or reporting could be brought to light. Thus, additional safeguards are highly efficacious and are reasonable means to protect the individual's substantial interest in his driver's license.

¶23 Finally, we consider the government's interests. *Mathews*, 424 U.S. at 335. The majority considers the government's interest to be keeping unsafe motorists off the road. Majority at 65. That is an admittedly important interest but not an interest cognizable under *Mathews*, which relates to the additional burden further procedure would impose on the government. The State's interest in public safety does not influence whether a hearing should be provided to minimize administrative errors in the revocation process. Rather, as relevant here, the State's interest is avoiding the additional cost of providing the opportunity for a hearing. See *Moore*, 151 Wn.2d at 676 ("[T]he third *Mathews* factor requires consideration of the State's inter

70 City of Redmond v. Bagby Aug. 2005  
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est in the fiscal and administrative burden that additional or substitute procedural requirements would entail.").

¶24 The State can revoke the license of a dangerous driver; it merely needs to provide the potential for a hearing to minimize clerical and administrative errors. The cost of such a hearing is minimal compared to the disastrous consequences to a person whose driver's license is erroneously deprived. Due process requires a hearing to diminish the prospect of error.

¶25 I would affirm the trial court, and therefore dissent.

CHAMBERS, J., concurs with SANDERS, J.

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**KING COUNTY BAR ASSOCIATION**  
**Supplemental Questionnaire for Candidates Seeking Appointment**  
**or Election to Judicial Office**

**COVER SHEET**

<u>NAME</u> Mitchell	Richard	Lawrence
(Last)	(First)	(Middle)

Business Address: 8701 160<sup>th</sup> Avenue NE, P.O. Box 97010

Redmond, WA 98073-9710

Telephone: 425-556-2119, 425-556-2108

Business Email: lmittell@redmond.gov

Position Sought:

By Election

By Appointment x

- ☐ \_\_\_\_\_ Municipal Court
- ☒ x King County District Court (East Division)
- ☐ \_\_\_\_\_ King County Superior Court
- ☐ \_\_\_\_\_ Washington State Court of Appeals, Div.I
- ☐ \_\_\_\_\_ Washington State Supreme Court

**PLEASE NOTE:** In the process of determining judicial ratings, the Judicial Screening Committee of the King County Bar Association uses the Washington State Governor's Office Uniform Judicial Evaluation Questionnaire and this Supplemental Questionnaire, as well as reference checks, candidate interviews and other sources of information. (See Judicial Screening Rules and Procedures.)

The responses to the following questions on the Washington State Governor's Office Uniform Judicial Evaluation Questionnaire may be disclosed to persons other than the Judicial Screening Committee and, in the case of judicial elections, will be publicly available:

Position Sought, Name, Business Address, Business email  
Professional History: #8, 9, 10, 11, 12, 13, 14, 15,  
Educational Background: #16, 17  
Professional Experience: #18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32  
Community and Civic Activities: #33

At various times, groups not affiliated with KCBA have rated judicial applicants. The KCBA Judicial Screening Committee's bylaws preclude the Committee from disclosing the names of applicants seeking a rating for appointment to these other groups. However, if you are interested in obtaining the names and addresses of such other rating groups to request this information yourself, you may contact the Executive Director at the KCBA office, telephone: 206-267-7100.

**Include the following materials in your application packet:**

- Governor's Office Uniform Judicial Evaluation Questionnaire
- KCBA Supplemental Questionnaire
- A writing sample between 5-10 pages, as requested in question 45 of the Governor's questionnaire.

Please be advised that the Judicial Screening Committee may take into account the information provided in the questionnaire, the reference checks, the interview, and any other source of information available to it. Letters of recommendation will not be provided to the Committee and should not be solicited. Supplemental materials such as journal articles, legal research, motions, briefs or other documents that you have filed in court, other than the writing sample specifically called for in the Governor's Uniform Questionnaire, should not be included.

REFERENCES. The Committee finds it useful to speak with attorneys and non-attorneys who are familiar with you. One or more Committee members will attempt to contact each reference listed. All telephone numbers should be current and legible. You may contact references in advance if you so desire. The Committee may also call upon individuals not listed to obtain information.

(1) List the names and phone numbers of up to ten attorneys who have supervised you or who have reviewed and are familiar with your legal work, including your current supervisor and at least one other supervisor from your current workplace and at least one supervisor from each of your prior workplaces during the past fifteen years.

- a. Jane Christenson (425-556-2107) current supervisor (non-attorney)
- b. Briteney Mercer Redmond 206-622-8000
- c. James Haney (206-447-7000)
- d. Nathaniel Wylie (206-230-4900)
- e. Stephen Hayne (425-450-6800)
- f. Gene Piculell (425-453-9436)
- g. Jill Klinge (425-556-2115)
- h. Stefanie Snow (425-556-2901)
- i. Chris Matson (206-632-2922)
- j. Douglas Cowan (425-822-1220)
- k. Jennifer Diggdon (206-683-0915)
- l. Peter Peaquin (206-633-3000)

(2) For the last five appellate matters in which you participated (whether as lawyer or decision-maker), list as appropriate the following for each: case name, subject matter, court, judge (w/phone number), and opposing counsel or counsel appearing before you (w/ phone number).

- a. Case Name: City of Redmond v. Kya Aatai  
Subject Matter: appeal of obstructing conviction by defendant  
Court: King County Superior case no. 09-1-05329-1 SEA  
Judge: Ronald Kessler (206-296-9113)  
Plaintiff's Attorney: Richard Lawrence Mitchell  
Defense Attorney: Matthew Davis (206-203-6000)
- b. Case Name: City of Redmond v. Perez Vasquez  
Subject Matter: appeal of DUI sentence by City  
Court: King County Superior case no. 06-1-07475-7 SEA  
Judge: Regina Cahan (206-296-9220)  
Plaintiff's Attorney: Richard Lawrence Mitchell  
Defense Attorney: Yvonne Curtis (206-324-0111)
- c. Case Name: City of Redmond v. Iuliana Predescu  
Subject Matter: traffic infraction appeal by defendant  
Court: King County Superior case no. 09-2-40131-4 SEA  
Judge: Ronald Kessler (206-296-9113)  
Plaintiff's Attorney: Richard Lawrence Mitchell  
Defense Attorney: Matthew Russell (425-258-9103)

- d. Case Name: City of Redmond v. Jarrett, case no. 08-1-07438-9 SEA  
Subject Matter: DUI sentencing appeal by defendant  
Court: King County Superior  
Judge: Theresa Doyle (206-296-9140)  
Plaintiff's Attorney: Richard Lawrence Mitchell  
Defense Attorney: Jeffrey B. Goldman (253-383-4200)
- e. Case Name: City of Redmond v. Dragonov  
Subject Matter: Personal restraint petition, case no. 62785-6-1  
Court: Washington Court of Appeals, Division I  
Judge: Acting Chief Judge Stephen J. Dwyer  
Plaintiff's Attorney: Richard Lawrence Mitchell  
Defense Attorney: Mr. Dragonov pro se

I certify under penalty of perjury of the laws of the state of Washington that the above information is true, accurate and complete. I agree to notify KCBA if there are material changes in this information between the time the Uniform Questionnaire and this cover sheet are completed and the expiration of any rating received.

Richard Lawrence Mitchell  
Signature  
Richard Lawrence Mitchell  
Print Name  
11-04-2012  
Date

Washington State Bar Association  
Office of Disciplinary Counsel  
1325 Fourth Ave Suite 600  
Seattle, WA 98101

RE: WAIVER AND AUTHORIZATION TO RELEASE INFORMATION

I, Richard Lawrence Mitchell, WSBA No. 21606 have requested rating for judicial office by the King County Judicial Screening Committee.

Pursuant to ELC 3.4(c) I authorize and request the Washington State Bar Association, to disclose the record of disciplinary grievances filed against me and the status of otherwise confidential disciplinary investigations and proceedings and to provide copies of nonpublic information to the Judicial Screening Committee of the King County Bar Association, 1200 Fifth Avenue, Suite 600, Seattle, Washington 98101.

Dated this 4 of November, 2012

Richard Lawrence Mitchell

Signature

Richard Lawrence Mitchell

Print Name

21606

WSBA Number

I \_\_\_\_\_, WSBA No. \_\_\_\_\_, decline to authorize the release of confidential discipline information under RD 11.1(n) to the King County Bar Association Committee.

Dated this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_.

Signature

Print Name

WSBA Number

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# THE WASHINGTON STATE GOVERNOR'S OFFICE

## UNIFORM JUDICIAL EVALUATION QUESTIONNAIRE<sup>1</sup>

Position Sought (Court/Division/District): King County District Court East Division

By Appointment: x By Election: ☐

### Personal Information

1. Murphy- Richards, Kara Marie WSBA # 25080
2. Business Address: 1727 233<sup>rd</sup> Place NE  
Sammamish, WA 98074  
Cell: (206) 947-3852  
Fax: (425) 629-6345  
karamurphy@live.com
- 3.
- 4.
- 6.

### Prior Evaluation / Application History

7. Please state the date of all other judicial evaluations you sought, bar polls you participated in, and appointment applications you submitted. Please specify whether you sought appointment or election for each, from whom the evaluation was sought, the position sought, and the outcome.

**I have never run for any judicial position or political position. I recently submitted an application for the Puyallup Municipal Court appointment. Puyallup selected a candidate who resides in that jurisdiction. I am currently scheduling interviews with various bar associations and intend to have those ratings secured by the January deadline.**

---

<sup>1</sup> The Governor's Office uses this questionnaire exclusively for candidates seeking judicial appointment. The Washington State Bar Association and other state bar associations noted on the last page also accept this questionnaire in their judicial evaluation process. The Governor's Office reserves the right to update this questionnaire and will post updated versions of the questionnaire on the Governor's webpage. Please direct all questions about the questionnaire to the Governor's Office of General Counsel.

## Professional History

8. Year admitted to practice law in Washington: **1995**
9. Employment History (in reverse chronological order):

### **October 2009-Present- Judge Pro Tem**

I currently serve as a Judge Pro Tem in several District and Municipal Courts. I cover the following types of calendars: Photo Enforcement, Traffic Mitigation, Contested Traffic, Small Claims, Anti-harassment Orders, Name Changes, Criminal Pre-trials, Criminal Sentencing, Criminal Reviews, Criminal Trials and Felony Investigations. Below, please find the contact information for each of the courts where I Pro Tem regularly, the name(s) of the Judge(s) I cover for and the contact information for the Court Administrator. Please feel free to contact the judge and court administrators in any of these courts regarding my work as a Pro Tem.

King County District Court- Seattle Division  
516 3<sup>rd</sup> Ave, Seattle WA (206) 296-3640  
Pro Tem for Judges Chapman, Mahoney, Finkle, Kato and Chow  
Court Manager: Leeanna Young

King County District Court- Renton Division  
3407 NE 2<sup>nd</sup> Street, Renton (206) 205-2090  
Pro Tem for Judges Green, Meyer and Williams  
Court Manager: Tracy Smith

King County District Court- Burien Division  
601 SW 149<sup>th</sup> St, Burien WA (206) 296-0905  
Pro Tem for Judges Seitz, Eide, Christie and Stephenson  
Court Manager: Jane Fisher

Pierce County District Court  
930 Tacoma Ave So, Tacoma WA (253) 798-7788  
Pro Tem for Judges Ross, Jasprica, Nevin, Heller and Sussman  
Court Manager: Mary Ann Romo

Puyallup Municipal Court  
929 East Main, Ste 120, Puyallup WA (253) 841-5450  
Pro Tem for Judge Shelton  
Court Administrator: Tina Marusich

Federal Way Municipal Court  
33325 8<sup>th</sup> Ave S, Federal Way WA (253) 835-3026  
Pro Tem for Judges Larson and Robertson  
Court Administrator: Susanne White

Bonney Lake Municipal Court  
9002 Main St E, Ste 100, Bonney Lake WA (253) 447-4303

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Pro Tem for Judge Heslop  
Court Administrator: Kathy Seymour

Des Moines Municipal Court  
21630 11<sup>th</sup> Ave S, Ste C Des Moines WA (206) 878-4597  
Pro Tem for Judge Alicea-Galvan  
Court Administrator: Jennefer Johnson

Enumclaw Municipal Court  
1339 Griffin Ave Enumclaw WA (360) 825-7771  
Pro Tem for Judge Hamilton  
Court Administrator: Shelly Undin

Renton Municipal Court  
1055 Grady Way, Renton WA (425) 430-6551  
Pro Tem for Judge Jurado  
Court Supervisor: Sue Schirman

**September 2011- Present- Prosecuting Attorney**

City of Black Diamond- Prosecuting Attorney  
25510 Lawson St. Black Diamond WA (360) 886-7784  
Judge Melanie Dane (Previously Judge Bill Bowman)  
Court Administrator: Stephanie Metcalf  
Duties: Review police reports, make charging decisions, prepare calendars, research and argue legal issues, negotiate cases with opposing counsel, prepare cases for trial, etc.

**2006-2009**

Prior to my Prosecuting Attorney position with Black Diamond, I provided contract prosecution services to the following jurisdictions and will gladly provide any requested contact information: City of Kent, City of Renton, City of Sea Tac and numerous courts serviced by Moberly and Roberts PLC.

**2000-2006**

I served as the Domestic Violence Legal Advocates for several local cities including Issaquah, Sammamish, Snoqualmie, North Bend, Kenmore and Burien. Details of each of these contracts and contact information gladly provided upon request.

**1995-1998**

King County Prosecutors Office- Prosecuting Attorney  
King County Prosecutor's Office  
516 3<sup>rd</sup> Ave Seattle WA (206) 296-9000  
Left to stay home with young children

**1988-1992**

Juvenile Probation Officer- Family Abuse and Neglect Unit  
Douglas County Juvenile Probation  
Omaha, NE  
Left position to go to law school

The Governor's Office's  
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10. Please list all other courts and jurisdictions in which you have been admitted to practice law and the dates of admission. Please provide the same information for administrative bodies having special admission requirements.

**I am licensed in the state of Washington and have been licensed in this state since October 1995.**

11. Please list all bar associations and professional societies of which you are a member and give the titles and dates of any offices that you have held in such groups.

**Washington State Bar Association- member in good standing  
Eastside Legal Assistance Program- Pro Bono Attorney  
Issaquah Kiwanis**

12. Are you in good standing in every bar association of which you are a member? **YES**
13. If you have ever been a judge, please identify any court committees on which you have served or administrative positions you have held. Please state the dates of service for each. **N/A**
14. Please list up to five of your most significant professional accomplishments.  
**There are a number of accomplishments over the past 20+ years that I am very proud of:**
- a. I created, marketed and facilitated a Mock Trial Program for 5<sup>th</sup> Grade students in the Issaquah School District**
  - b. I was invited to serve and continue to serve as the Judge for the Saturday King County Superior Court Kids' Court- a program that prepares young children for their roles as witnesses in felony sexual assault trials.**
  - c. I secured a guilty verdict in a felony decline strangulation case with a victim who was convinced that a "jury would never believe a girl stupid enough to stay with a guy who beat her all the time."**
  - d. I have been on the campaign committees for numerous judicial candidates who are now well-respected members of the bench. (KCSC Judge Wesley St. Clair, SMC Judge Karen Donohue, SMC Judge Ed McKenna, KCDC Judge Susan Mahoney, KCSC Judge Bill Bowman, KCSC Judge Elizabeth Berns)**
  - e. My proudest, most recent and most relevant achievement during the past few years has been the opportunity to serve daily as a Pro Tem. At a time when the number of people interested in Pro Teming far exceeds the available jobs, I am honored to be busy every day. (my activity can be viewed at [www.my.calendars.net/pro\\_tem](http://www.my.calendars.net/pro_tem) )**

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

15. Please summarize up to eight of the most significant matters that you participated in as an advocate. Please include the dates of your participation and the reason each was significant to you. Please provide the citation if a case was reported. If you have been a judge, please include some cases that have been tried before you.

**Over the past 20+ years, I have served in many capacities as an advocate. I will highlight a few examples in each of these roles:**

**Probation Officer:** I had to testify in 23 termination of parental rights hearings after efforts to reunite families failed. While the cases which involved parents who simply didn't care were not difficult, it was gut wrenching to testify in cases where parents truly loved their children but lacked the mental and cognitive ability to parent them. Ultimately, the children in each of these cases were freed for adoption with families that would provide them with loving and nurturing homes.

**Domestic Violence Victim Advocate:** Each and every one of the hundreds of victims I worked with were "significant" to me. I was able to help these men and women navigate a complicated and sometimes insensitive legal system and give many of them a voice they did not feel that they had.

**Prosecutor:** I recall a child abuse case, a number of other DV cases and many drug and alcohol cases that I tried. But, some of the most significant cases were ones in which I doubted the credibility of the complaining witness and took the time and effort to really look into the merits of my case so that I did not proceed to trial with a defendant I believed might be innocent. I never lost sight of the significance of my position and the standard that prosecutors are held to in terms of doing justice.

**Defense Attorney:** While my defense experience is the most limited of all of the roles I have had in the courtroom, I take incredible pride in the representation I have provided to the clients I have had. While I have always sought the best possible outcomes for my clients, my focus has never been on "getting someone off". My goal has always been a "just result" and I feel strongly that every single one of my clients realized a just result.

**Pro Tem Judge:** I am able to calm outraged litigants. I am able to validate the pain of an injured victim. People who have laid awake for nights in anticipation of a contested hearing breathe a sigh of profound relief during my calendars. I have even had defendants say "thank you" as they are escorted to the local jail to serve a lengthy commitment. These comments are not meant to sound like bragging. I share these things because they illustrate the fact that I LISTEN. Each case I call is far more than a case number to me. Each is far more than a file. Each case has a face and a name and a family and a story. I firmly believe this story is important when deciding the type of sentence that factors in accountability and punishment with an offender's likelihood to reoffend and the issues underlying their criminal behavior.

**Educational Background**

16. Please list all undergraduate and graduate (non-law school) colleges and universities attended, years of attendance, degree awarded and reason for leaving if no degree was awarded.

**Saint Mary's College Notre Dame, Indiana 1984-88 BA in Social Work**

17. Please list all law schools attended, years of attendance, degree awarded and reason for leaving if no degree was awarded.

**University of Notre Dame Law School Notre Dame, Indiana 1992-95 JD**

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

**Professional Experience**

18. Please summarize, briefly, the general nature of your current law practice.  
**I currently serve as the Prosecuting Attorney for the City of Black Diamond. Court is held two mornings per month. The rest of my time is spent serving as a Pro Tem in courts throughout King and Pierce Counties.**
19. If you are in practice, please describe your typical clients and any areas of special emphasis within your practice.  
**Other than the occasional "friends and family" contested hearing, I no longer engage in private practice.**
20. If your present law practice is different from any previous practice, please describe the earlier practice, including the nature of your typical clients and any area of special emphasis within your practice.  
**Previous practice history outlined above.**
21. Within the last 5 years, did you appear in trial court:
- ☒ Regularly                      ☐ Occasionally                      ☐ Infrequently
22. Within the last 5 years, did you prepare appellate briefs and appear before appellate courts:
- ☐ Regularly                      ☐ Occasionally                      ☒ Infrequently
23. Within the last five years, how often did you appear in the court for which you are applying:
- ☐ Regularly                      ☒ Occasionally                      ☐ Infrequently
24. Career Experience
- (a) What percentage of your appearances in the last five years was in:
- |                              |            |
|------------------------------|------------|
| (1) Federal appellate courts | _____ %    |
| (2) Federal trial courts     | _____ %    |
| (3) State appellate courts   | _____ %    |
| (4) State trial courts       | _____ %    |
| (5) <b>Municipal courts</b>  | <b>50%</b> |
| (6) <b>District courts</b>   | <b>50%</b> |
| (7) Administrative tribunals | _____ %    |
| (8) Tribal courts            | _____ %    |
| (9) Other                    | _____ %    |
| TOTAL                        | 100%       |
- (b) What percentage of your practice in the last five years was:
- |  |             |
|--|-------------|
| (1) Civil litigation<br>(excl. family law) | <b>25%</b>  |
| (2) Criminal litigation                    | <b>70 %</b> |
| (3) Family law litigation                  | <b>5 %</b>  |
| (4) Non-litigation                         | _____ %     |
| TOTAL                                      | 100%        |

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

(c) What percentage of your trials in the last five years were:

(1)	Jury trials	<b>25%</b>
(2)	Non-jury trials	<b>75%</b>
	<b>TOTAL</b>	<b>100%</b>

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- (d) State the number of cases during your total career that you have tried to verdict or judgment (rather than settled) in the following courts, and indicate for each court the following percentages: trials in which you were sole counsel or chief counsel, jury trials, and trials where you were the arbiter/decision maker.

<u>Number</u>	<u>Court</u>	<u>% as Sole / Chief Counsel</u>	<u>% Jury</u>	<u>% as the Arbiter</u>
<u>10</u>	Municipal	<u>100%</u>	10%	
<u>40</u>	State Dist.	<u>100%</u>	50%	
	State Superior			
	Federal Dist.			
	Administrative			
	Tribal Courts			
	Other			

- (e) State the number of appellate cases during your total career where you appeared as counsel of record in the following courts, and indicate for each court the following percentages: cases where you were sole counsel or chief counsel, and cases where you were the arbiter/decision maker (if applicable). **I HAVE NOT APPEARED IN ANY OF THE COURTS BELOW.**

<u>Number</u>	<u>Court</u>	<u>% as Sole / Chief Counsel</u>	<u>% as the Arbiter</u>
	State Superior Court		
	WA. Div. I COA		
	WA. Div. II COA		
	WA. Div. III COA		
	WA. Supreme Court		
	Fed. Cir. COA		
	U.S. Supreme Court		

- (f) Briefly describe no more than five significant litigation matters that you directly handled as the sole counsel. For each, please provide the name and telephone number of opposing counsel, the name of the judge or other judicial officer, and the citation (if applicable).

The most recent trial I handled as a Prosecutor was in Sumner Municipal Court where I was contracted to handle the trial on a felony strangulation decline with an "unlovable witness". The first trial had ended in a mistrial and the judge and prosecutor recused themselves in the second trial. The case was City of Sumner v. Andre Phair. The opposing counsel was Mr. Kenneth Hershey (253) 939-7750. The Judge was Judge N. Scott Stewart (253) 653-9899

As a Pro Tem, I am routinely requested to handle matter involving aggressive and/or mentally sensitive defendants. A recent example of this was a Puyallup Case involving a Defendant by the name of Wooten. The Prosecutor was Ms. Tera Evans, the Defense Attorney was Mr. Kenneth Hershey. The court clerk was Ms. Colleen Dolan.

Beyond these two examples, I welcome you to call any member of any court staff where I appear to discuss my courtroom presence and demeanor.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

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- (g) State in detail your experience in adversary proceedings before administrative boards or commissions during the last five years. **N/A**

25. Please briefly describe any legal non-litigation experience that you feel enhances your qualifications to serve as a judge.

**My roles as social worker, probation officer and victim advocate give me a very unique perspective in the understanding of human behavior, addiction and mental health issues, available community resources, etc. My role as an active community volunteer indicates the value I place on service to the local community. My role as mother has refined my skills in conflict management.**

26. If you are now an officer or director of any business organization or otherwise engaged in the management of any business enterprises, please provide the following: the name of the enterprise, the nature of the business, the title of your position, the nature of your duties, and the term of your service. If you are appointed and do not intend to resign such position(s), please state this below along with your reasons for not resigning. **N/A**

27. Please list all chairmanships of major committees in bar associations and professional societies and memberships on any committees that you have held and believe to be of particular significance.  
**N/A**

**Judicial Interest and Experience**

28. In 50 words or less, please describe why you should be appointed / elected and are seeking a judicial position.

**Other than Defendant and Court Clerk, I have literally sat in every seat in the courtroom. My 25+ year career includes the roles of Probation Officer, Victim Advocate, Prosecutor, Defense Attorney and Judge. I can't imagine there is a more well-rounded candidate who can see a case from every single perspective.**

29. In 50 words or less, please describe your judicial philosophy.

**I firmly believe in offender accountability and victim/community safety. I believe that the best way to achieve this is to determine the issues underlying particular criminal behavior. I believe that the respectful treatment of every person in the courtroom is paramount to the administration of justice.**

30. Have you ever held a judicial office or have you ever been a candidate for such office? **NO**

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

31. Have you ever held public office other than a judicial office, or have you ever been a candidate for such an office? **NO**
32. Please briefly identify all of your experience as a neutral decision-maker (e.g. judge (permanent or pro tem) in any jurisdiction, administrative law judge, arbitrator, hearing officer, etc.). Give courts, approximate dates, and attorneys who appeared before you.  
**All of the courts in which I serve as a Pro tem are listed above. The attorneys who appear in front of me in those courts are listed on the appropriate reference list below.**

**Community and Civic Activities**

33. Please list your community and civic activities, including dates and leadership roles held, over the last 10 years.  
**Riviera Community Club HOA (Pierce County) President 2011-present**  
**Community Speaker on the topics of Domestic Violence and Womens' Issues 1997-present**  
**Issaquah Kiwanis Member 2011-present**  
**Eastside Legal Assistance Program- Pro Bono Attorney- 2011-present**  
**Sammamish Womenade- Founder 2000-2005**  
**Endeavour Elementary Mock Trial Program- Facilitator 2007-2008**  
**King County Superior Court Kids Court- Volunteer Judge 2010-present**  
**Timberlake Growth Groups- Leader and Facilitator 2010-present**  
**Issaquah School District- Active parent volunteer 2001-present**  
**Judicial Campaign Committee Member on number campaigns 2010-present**

**Discipline and Disputes**

34. Have you ever been held, arrested, charged or convicted by federal, state, or other law enforcement authorities for violation of any federal law, state law, county or municipal law, regulation or ordinance? **NO**
35. Has a client ever made a claim or suit against you for malpractice? **NO**

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

36. Please describe your direct experience, if any, with domestic violence and sexual harassment.

**From 1988-1992, I worked as a Probation Officer in the Child Abuse and Neglect Unit of the Douglas County Probation Office in Omaha, Nebraska. During this time, I was co-founder of a speaker's bureau that provided presentations to community groups regarding family violence.**

**While attending law school at Notre Dame from 1992-1995, I worked at the local prosecutors office as an intern. One of the assignments I completed was the development of a DV Prosecution manual for the office.**

**From 1995-1998, I worked at the King County Prosecutors Office and handled hundreds of Domestic Violence Cases. I was asked to do numerous trainings on the issue of Domestic Violence and co-wrote DV policies and procedures.**

**From 2000-2006, I served as the Domestic Violence Legal Advocate for a number of local cities including Kenmore, Sammamish, Issaquah, Snoqualmie, North Bend and Burien.**

**In 2002, I founded a group called Sammamish Womenade that gathered to raise awareness and money for victims of domestic violence on the eastside.**

**Since beginning my Pro Tem work, I have handles hundreds of DV cases from arraignment to pretrial to motions to trial.**

37. Have you been a party in interest, witness, or consultant in any legal proceeding?  
**I have been endorsed as an expert witness in a few DV cases. These cases have each resolved prior to trial.**
38. Have you ever been the subject of a complaint to any bar association, disciplinary committee, court, administrative agency or other professional group? **NO**
39. Have you ever been disciplined or cited for breach of ethics or unprofessional conduct? **NO**
40. If you have served as a judge, commissioner, or in any judicial capacity, has a complaint for misconduct in that capacity ever been made against you? **NO**

**Miscellaneous**

41. Are you aware of anything that may affect your ability to perform the duties of a judge? **NO**
42. Have you published any books or articles in the field of law? If so, please list them, giving the citations and dates. Also, please give the dates and forums of any Continuing Legal Education presentations that you have made.  
**I have not published any books or articles but I have played a primary role in the development of many policies and procedures.**

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

43. Please list any honors, prizes, awards or other forms of recognition that you have received and whether they were professional or civic in nature.

**1988- Saint Mary's Outstanding Graduate Award**

**2004- City of Sammamish Unsung Hero Award**

44. Are you aware of anything in your background or any event you anticipate in the future that might be considered to conflict with the Code of Judicial Conduct? **NO**
45. Please provide a writing sample of your work (between 5 and 10 pages long), written and edited solely by you, within the last 4 years. **I have not written anything of this length in the past four years. My rulings are done primarily on the record. The only other writings are the brief rulings I issue after a motion hearing or small claims case. To that end, I am attaching a brief reflection I wrote about my role as a Pro Tem.**

**Access to Justice**

46. Please describe activities that you have engaged in to eliminate bias or improve access to the judicial system for indigent populations and ethnic, racial and sexual minorities. As a member of the bench, what, if any, role do you believe a judge has to enhance equal access to justice?  
**I feel like I have taken a number of steps in this regard. The first was to take a good and honest inventory of any bias I might have towards member of certain groups without even realizing it. The next was to make myself aware of the diverse frames of reference that arise from diverse populations. The next was to educate myself on the programs and resources available in the area. Finally, and most importantly, is maintaining a commitment not to allow any bias to impact the way that I treat any person in the courtroom.**
47. Please describe the frequency, time commitment and substantive nature of your direct participation of free legal services to indigent populations, and ethnic, racial and sexual minorities.  
**Approximately one year ago, I was asked to join ELAP's (Eastside Legal Assistance Program) list of Pro Bono attorneys. Upon completion of the application process, I was asked to serve women seeking Protection Orders. I am now one of the volunteer attorneys called when a women without financial resources needs help with a Protection Order matter.**

**Diversity in the Legal Profession**

48. Please briefly describe your understanding of the issue of "diversity within the legal profession."  
**It is my firm belief that the diversity of the bench and the bar should be a reflection of the community served. Sensitivity to racial, gender and socioeconomic issues is imperative to the fair administration of justice.**

**References**

It is useful for evaluators to speak with attorneys and non-attorneys who are familiar with you. One or more participants in the evaluation process may contact each of your references. All telephone numbers should be current and legible. If a reference is unreachable, your rating/evaluation may be delayed. **Please use a separate piece of paper for each list.** You may contact references in advance if you so desire. Individuals not listed by you as a reference may be contacted to obtain information about you.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

49. If you have been in practice within the past fifteen years, list the names and phone numbers of ten opposing counsels who know you best, including at least three opposing counsels on cases that went to trial.

**Bill Bowman- (425) 301-8226**

**Darcy McPherson (253) 261-7677**

**Ted Barr (425) 451-8697**

**Brit Mercer (206) 919-0300**

**Bill Kirk (425) 466-8958**

**Virginia Amato (206) 551-3395**

**Diego Vargas (253) 283-0516**

**Andrew Nguyen (206) 818-2198**

**Lynn Moberly (425) 269-8660**

**Rene Cespedes (425) 462-1235**

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

50. If you have been a judge or otherwise have served as a neutral decision-maker within the past fifteen years, please list the names and phone numbers of the last ten attorneys who have appeared before you.

**Tim Jenkins/Mary Broberg (253) 315-1107**

**Diane Zumwalt/Karama Hawkins/Matt Crawford (206) 226-3236**

**Lisa Paglisotti (206) 322-8400**

**Nicole Sirkin (206) 674-4700**

**Patrick Lavin (206) 296-9000**

**Geoff Burg (206) 467-3190**

**Sherri Brown (206) 747-0292**

**Bill Kirk/Matt Knauss (425) 466-8958**

**Jon fox (425) 444-4014**

**\*\*There are 10-20 attorneys before me on a daily basis. See additional names below.**

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

51. List the names and phone numbers of up to six non-attorney references whose opinions or observations – particularly with respect to your commitment to improving access to the judicial system for indigent populations, people of color, and disenfranchised communities – would assist in the consideration of your application.

**Donna Belin KCSC Kids Court Director**

**Susanna Sarvina KDCD Interpreter**

**Julia Williams Maynard**

**Craig Richards**

**Lillian Hawkins KCDC Court Clerk**

**\*Please consider calling the Court Managers of each of the court listed above**

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

52. For the last five trials in which you participated (whether as trial lawyer or decision-maker), list as appropriate the following for each: case name, subject matter, court, judge (w/ phone number), and opposing counsel or counsel appearing before you (w/ phone number).

**City of Sumner-  
Defendant Andre Phair-  
Judge N. Stewart (253) 653-9899 for Judge Tim Jenkins.  
Kenneth Hershey (253) 939-7750 as opposing counsel.**

**King County District Court- East Division  
Date of Trial: October 4-5, 2012  
Defendant Lauren Hinckley DUI C00867326  
Served as Trial Judge  
Prosecuting Attorney Allison Bannerman (206) 296-900  
Defense Counsel Emily Deckman (SCRAP) (206) 322-8400**

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

53. List the names and phone numbers of ten additional attorneys familiar with your professional qualifications, skills, experience or attributes.

**The Honorable Karen Donohue (SMC) (206) 684-5600**  
**The Honorable Bill Bowman (KCSC) (425) 301-8226**  
**The Honorable Susan Mahoney (KCDC)- (253) 223-3391**  
**Tiffany Gustufson (253) 332-0161**  
**Geoff Burg (206) 467-3190**  
**Nate Webb (425) 398-4323**  
**Diego Vargas (253) 283-0516**  
**Jon fox (425) 444-4014**  
**Andrew Nguyen (206) 818-2198**  
**Mike Hogan (206) 296-9000**

**\*\* THESE LAST FEW LISTS OF REFERENCES IS EXTREMELY REDUNDANT GIVEN THE NATURE OF MY WORK. IN THE INTEREST OF COMPLETE TRANSPARENCY, I AM ATTACHING A LIST OF THE DEFENSE ATTORNEYS AND PROSECUTORS THAT HAVE APPEARED IN FRONT OF ME OVER THE PAST FEW MONTHS. YOU ARE WELCOME TO CALL ANY OF THEM.**

**King County District Court:**

**Prosecutors: Roberta Wolf, Emmanuel Augustin, Patrick Lavin, Michelle Tri (206) 296-9000**

**Public Defenders:**

**Northwest Defenders Association: Nicole Sirkin, Sam Wolf, Sunjae Lee (206) 674-4700**

**TDA-Lauren McLane and Kristim Shotwell (206) 447-3900**

**SCRAP- Lisa Paglisotti and Seth Conant (206) 322-8400**

**Federal Way Municipal Court:**

**Prosecutors: Stephanie Arthur, Jennifer Castleton (253) 835-2563**

**Public Defenders: Diane Zumwalt, Karama Hawkins, Matt Crawford (206) 226-3236**

**Puyallup Municipal Court:**

**Prosecutors: Tera Evans (253) 841-4321 and Krista White-Swain (206) 304-0455**

**Public Defenders: Tim Jenkins (235) 315-1107, Kenneth Hershey (253) 939-7750**

**Pierce County District Court**

**Prosecutors: Any prosecutors currently assigned to the District Court rotation**

**Public Defenders: Department of Assigned Counsel (DAC)**

**Bonney Lake Municipal Court:**

**Prosecutor: Maile Barber (206) 321-3123**

**Public Defender: Sherri Brown (206) 747-0292**

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

**NOTE:** The Governor's Office requires individuals seeking judicial appointment to utilize, to the fullest extent possible, the ratings processes from state, county, and minority bar organizations. Contact information for the minority bar associations can be found on the Washington State Bar Association's website at (<http://www.wsba.org/public/links/minoritybars.htm>). It is the applicant's responsibility, however, to obtain these evaluations in a timely manner, and to forward evaluations received to the Governor's Office. To that end, all applicants are strongly encouraged to commence the evaluation process with the various bar associations as soon as possible. To facilitate the process, the following organizations have agreed to accept this questionnaire as the principal application in their evaluation process and may also require candidates to complete an additional supplement questionnaire:

**State Bar Association**

☒ Washington State Bar Association (WSBA) (appellate court evaluations only)

**County Bar Associations**

X King County Bar Association (KCBA)

☒ Spokane County Bar Association (SCBA)

☒ Tacoma-Pierce County Bar Association (TPCBA)

**Minority Bar Associations**

☒ Latina/o Bar Association of Washington (LBAW)

X Loren Miller Bar Association (LMBA) NOT CURRENTLY CONDUCTING RATINGS

X The Joint Asian Judicial Evaluations Committee of Washington

☒ Pierce County Minority Bar Association (PCMBA)

X Q-Law / GLBT (Gay Lesbian Bisexual Transgender) Bar Association

X Washington Women Lawyers (WWL)

As of the date of your certification below and submission of this questionnaire to the Governor's Office, please check beside each of the above organizations you have contacted to evaluate you for the position for which you seek.

**Certification**

54. By signing below, I declare under penalty of perjury under the laws of the State of Washington that the information provided by me in responding to this questionnaire is true and correct to the best of my knowledge.



Date: 11/4/12

Signature: Kara Murphy Richards //s//

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**KING COUNTY BAR ASSOCIATION**  
**Supplemental Questionnaire for Candidates Seeking Appointment**  
**or Election to Judicial Office**

**COVER SHEET**

NAME Murphy, Kara

**Business Address: 1727 233<sup>rd</sup> Place NE**  
**Sammamish, Washington 98074**

(206) 947-3852

**karamurphy@live.com**

Position Sought:

By Election \_\_\_\_\_  
By Appointment   X  

\_\_\_\_\_ Municipal Court  
  X   King County District Court ( East Division)  
\_\_\_\_\_ King County Superior Court  
\_\_\_\_\_ Washington State Court of Appeals, Div.I  
\_\_\_\_\_ Washington State Supreme Court

**PLEASE NOTE:** In the process of determining judicial ratings, the Judicial Screening Committee of the King County Bar Association uses the Washington State Governor's Office Uniform Judicial Evaluation Questionnaire and this Supplemental Questionnaire, as well as reference checks, candidate interviews and other sources of information. (See Judicial Screening Rules and Procedures.)

The responses to the following questions on the Washington State Governor's Office Uniform Judicial Evaluation Questionnaire may be disclosed to persons other than the Judicial Screening Committee and, in the case of judicial elections, will be publicly available:

Position Sought, Name, Business Address, Business email  
Professional History: #8, 9, 10, 11, 12, 13, 14, 15,  
Educational Background: #16, 17  
Professional Experience: #18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32  
Community and Civic Activities: #33

At various times, groups not affiliated with KCBA have rated judicial applicants. The KCBA Judicial Screening Committee's bylaws preclude the Committee from disclosing the names of applicants seeking a rating for appointment to these other groups. However, if you are interested in obtaining the names and addresses of such other rating groups to request this information yourself, you may contact the Executive Director at the KCBA office, telephone: 206-267-7100.

**Include the following materials in your application packet:**

- Governor's Office Uniform Judicial Evaluation Questionnaire
- KCBA Supplemental Questionnaire
- A writing sample between 5-10 pages, as requested in question 45 of the Governor's questionnaire.

Please be advised that the Judicial Screening Committee may take into account the information provided in the questionnaire, the reference checks, the interview, and any other source of information available to it. Letters of recommendation will not be provided to the Committee and should not be solicited. Supplemental materials such as journal articles, legal research, motions, briefs or other documents that you have filed in court, other than the writing sample specifically called for in the Governor's Uniform Questionnaire, should not be included.

REFERENCES. The Committee finds it useful to speak with attorneys and non-attorneys

who are familiar with you. One or more Committee members will attempt to contact each reference listed. All telephone numbers should be current and legible. You may contact references in advance if you so desire. The Committee may also call upon individuals not listed to obtain information.

(1) List the names and phone numbers of up to ten attorneys who have supervised you or who have reviewed and are familiar with your legal work, including your current supervisor and at least one other supervisor from your current workplace and at least one supervisor from each of your prior workplaces during the past fifteen years.

- a. Lynn Moberly (425) 269-8660 (Contract Prosecutor Supervisor)
- b. Donna Belin (KCSC Kids Court Director/Supervisor) (425) 868-4740
- c. Judge Susan Mahoney (206) 296-3640 (SDC)
- d. Judge Dave Larson (253) 835-3026 (Federal Way Pro Tem Supervisor)
- e. Judge Bill Bowman (425) 301-8226 (Black Diamond Position)
- f. Judge Mike Finkle (206) 296-3640
- g. Diane Zumwalt (206) 226-3236
- h. Maile Barber (206) 321-3123
- i. Diego Vargas (425) 531-1676
- j. Virginia Amato (206) 551-3395

(2) For the last five appellate matters in which you participated (whether as lawyer or decision-maker), list as appropriate the following for each: case name, subject matter, court, judge (w/phone number), and opposing counsel or counsel appearing before you (w/ phone number).

**I have not participated in any appellate matters.**

**I certify under penalty of perjury of the laws of the state of Washington that the above information is true, accurate and complete. I agree to notify KCBA if there are material changes in this information between the time the Uniform Questionnaire and this cover sheet are completed and the expiration of any rating received.**

**Kara M. Murphy /s/**

Signature

Kara Marie Murphy

Print Name

November 4, 2012

Date

Washington State Bar Association  
Office of Disciplinary Counsel  
1325 Fourth Ave Suite 600  
Seattle, WA 98101

RE: WAIVER AND AUTHORIZATION TO RELEASE INFORMATION

I, Kara Marie Murphy, WSBA No. 25080 have requested rating for judicial office by the King County Judicial Screening Committee.

Pursuant to ELC 3.4(c) I authorize and request the Washington State Bar Association, to disclose the record of disciplinary grievances filed against me and the status of otherwise confidential disciplinary investigations and proceedings and to provide copies of nonpublic information to the Judicial Screening Committee of the King County Bar Association, 1200 Fifth Avenue, Suite 600, Seattle, Washington 98101.

Dated this 5th of November, 2012

A handwritten signature in dark ink, appearing to read "Kara M. Murphy", with a long, sweeping horizontal stroke extending to the right.

**Kara M. Murphy /s/**

Signature

Kara Marie Murphy

Print Name

25080

WSBA Number

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David A. Larson  
P.O. Box 24626  
Federal Way, WA 98093

February 24, 2013

Dear King County Councilmembers:

I am writing this letter in support of my endorsement of Kara Murphy as the replacement for Judge Frank LaSalata in Northeast District Court.

I am the presiding judge at Federal Way Municipal Court. Ms. Murphy has been a pro tem judge for our court for the past three-plus years. That exposure to her and her work has given me the confidence to put my reputation on the line to endorse her for this position. Courts of limited jurisdiction are the gateways to justice for most people and having a judge like Kara Murphy on the bench will engender confidence and pride in the system of justice that your constituents rely upon to be beacons of justice and fairness.

I do not envy the position you are in with a fine slate of people to choose from. I want to add a useful perspective that I hope will help you in this process.

Anybody with legal training can learn to perform the legal, administrative, and mechanical functions of a judge. A steward of justice is something much greater than that. A steward of justice is someone who transcends the power given to them by humbling themselves to the tasks they perform and the impact they have on the lives of others. A steward of justice never loses sight of the fact that they are not entitled to the title "your honor" and that they need to earn that special title in all they say and do on and off the bench. A steward of justice balances firmness with compassion. A steward of justice cares about the success of every person that comes before them. A steward of justice treats their staff with dignity and respect at all times. Not enough emphasis can be given to the notion that how a judge treats staff should be just as important a consideration in your selection process as how they treat people who appear in court. Ms. Murphy excels in how she treats staff. Finally, a steward of justice values doing what is right above all else, especially their own ego and pride.

Ms. Murphy has proven repeatedly that she is a exemplar steward of justice, not just a judge. I would hope that her background and her proven ability to be such a steward of justice is held in high regard by you in the selection process. I am confident that the King County District Court and our entire system of justice will benefit if a Judge Kara Murphy is at the helm of a courtroom. I hope you give the people of King County the opportunity to appear before her.

A lawyer that knew Judge LaSalata and appeared in his courtroom many times said at his funeral that, "He made every person in court feel important. He took a lot of personal interest in the defendants. He treated them all equally." I could not think of a better person than Kara Murphy to carry on that tradition.

Feel free to call me directly if you would like further information.

Thank you.

David A. Larson

February 26, 2013

Re: Kara Murphy

Dear Members of the King County Council:

I am writing this letter to express my support for Kara Murphy as a candidate for the open Northeast District Court position. I first met Kara when we were both employed at the King County Prosecutor's Office. Kara showed herself early as a hardworking and dedicated attorney.

The focus of Ms. Murphy's legal career has been in the Courts of Limited Jurisdiction and she has worked as a tireless advocate for the justice system in a variety of capacities, including prosecutor, defense attorney, victim advocate, and pro tem judge. This breadth of experience and knowledge would serve her well as a District Court Judge. As a Judge Pro Tem, Ms. Murphy has distinguished herself as a thoughtful and fair jurist. She has an exceptional courtroom demeanor and tempers the tough decisions that must be made on a daily basis with compassion. She is patient and deliberative, but efficient in the handling of very heavy dockets. Ms. Murphy is a much sought after Pro Tem by multiple jurisdictions due to her exceptional skills on the bench.

I am very pleased the King County Council will be considering her for this position despite the King County Bar's inexplicable refusal to grant her a rating interview. I believe she is a very strong candidate and would be an asset to the King County District Court.

Respectfully submitted,

  
Judge Susan Mahoney  
King County District Court

## Wagner, Nick

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**From:** Kim Hunter <kim@khunterlaw.com>  
**Sent:** Sunday, February 24, 2013 10:06 PM  
**To:** Wagner, Nick  
**Subject:** from Atty Hunter re Kara Murphy

Dear Mr. Wagner:

Please excuse the informal nature of this email, but I am in trial Monday and I understand the deadline for judicial candidate letters has been moved up to tomorrow. I wanted to get in my recommendation and endorsement for Kara Murphy as I think she is a phenomenal candidate for a judicial seat. I have known Kara as a co-chair on a committee, a fellow practicing defense attorney, a prosecutor and a pro tem Judge. She has displayed the pinnacle of professionalism in all that she does. Ms. Murphy is highly ethical and takes each and every case and issue and examines it carefully for the best outcome that takes into account the totality of the circumstances, with the utmost adherence to the law of which she has an impressive working knowledge. Although she has ruled against me on some occasions, I have always known that her decision is well thought out and always fair; I never have reason to doubt the methods by which she has reached that decision. As a person, Ms. Murphy is exemplary with a strong sense of purpose and a moral compass that is unsurpassed. She displays fairness and compassion in all that she does and I have rarely seen a person so dedicated and hard-working. As a Judge I would consider it an honor to be in her courtroom knowing that my client will get the benefit of a compassionate Judge while still having to adhere to the laws of this State. I do not think you could find a more qualified candidate. Ms. Murphy receives my highest and absolute recommendation.

Please do not hesitate to contact me at the phone number below if I may be of further assistance.

Best Regards,

Kim Hunter, Attorney

caring, competent, affordable criminal defense

Law Offices of Kim E. Hunter, PLLC

27121 174th Pl SE

Suite #201 A

Covington, WA 98042

ph 253-709-5050

fx 253-630-9994

[kim@khunterlaw.com](mailto:kim@khunterlaw.com)

"Character is higher than intellect...A great soul will be strong to live, as well as strong to think."

"We acquire the strength we have overcome."

Ralph Waldo Emerson



**STEPHEN G. SMITH, P.S.**

A PROFESSIONAL CORPORATION

22525 SE 64<sup>th</sup> Place, Suite 280  
Issaquah, WA 98027  
(425) 557-3610  
Fax (425) 557-3611

Stephen G. Smith  
Attorney at Law

stephens@sgsmithlaw.com

February 26, 2013

King County Council  
C/O Nick Wagner

*RE: Kara Murphy Candidacy for Appointment to Vacant District Court Position*

Dear Council Members:

I am writing this letter of support for Kara Murphy and her bid to seek your appointment to the vacant judicial position in the King County District Court.

I am a King County attorney with over thirty years experience in trial practice with an emphasis in criminal defense. There was a time in my practice from approximately 1985 through 1990 when I served as a pro-tem judge at the district court level. I believe I can offer insight from both sides of the bench into what I consider valuable qualities for a judge at the district court level.


For almost every citizen who comes in contact with the judicial system, that contact in Washington State will be at the district court level whether it be at a municipal court or one of our various district courts. As such, the face of our judicial system is the person in the robe seated in these various court rooms. I believe this to be a significant role which involves patience and a demeanor that is not only firm when the need arises but sincere and understanding.

All too often, I see and hear of judges who are arrogant and dismissive with a marked unwillingness to offer any explanation for their rulings. This type of demeanor from our judiciary poorly reflects upon "the system".

Kara Murphy has a demeanor that will reflect admirably upon King County and our Judicial System. Kara Also has significant background with multiple facets of the law and will bring years of knowledge and experience to the bench.

If I can be responsive to answer any particular questions in regard to Kara I will make myself available.

Sincerely,

  
Stephen G. Smith  
Attorney at Law

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# THE WASHINGTON STATE GOVERNOR'S OFFICE

## UNIFORM JUDICIAL EVALUATION QUESTIONNAIRE<sup>1</sup>

Position Sought (Court/Division/District): King County District Court, NE Division

By Appointment: ☒ By Election: ☐

### Personal Information

1.                      O'Brien                      John                      Lawrence                      #11918  
                         Last Name                      First Name                      Middle Name                      WSBA Bar Number
2.    Business Address:    O'Brien Law Firm PLLP d/b/a O'Brien, Barton, Joe and Hopkins  
   Business Name  
   175 NE Gilman Blvd  
   Street or P.O. Box  
   Issaquah                      Wash.                      98027  
   City                      State                      Zip
- Business Phone No. 425-391-7427
- Work e-mail address: jlob@obrienlawfirm.net

3.

4.

6.

### Prior Evaluation / Application History

7.    Please state the date of all other judicial evaluations you sought, bar polls you participated in, and appointment applications you submitted. Please specify whether you sought appointment or election for each, from whom the evaluation was sought, the position sought, and the outcome.

In 1992, I was evaluated by the Seattle-King County Bar Association for appointment to the Issaquah District Bench. My rating by the Judicial Screening Committee was "Exceptionally Well Qualified".

In 2010, I was again evaluated by the King County Bar Association for an elected district court position. My rating was "Exceptionally Well Qualified".

<sup>1</sup> The Governor's Office uses this questionnaire exclusively for candidates seeking judicial appointment. The Washington State Bar Association and other state bar associations noted on the last page also accept this questionnaire in their judicial evaluation process. The Governor's Office reserves the right to update this questionnaire and will post updated versions of the questionnaire on the Governor's webpage. Please direct all questions about the questionnaire to the Governor's Office of General Counsel.

<sup>2</sup> Only include your social security number on the copy of the questionnaire forwarded to the Governor's Office.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

**Professional History**

8. Year admitted to practice law in Washington: 1981 \_\_\_\_\_

9. Employment History (in reverse chronological order):

a. Start Date: January 1<sup>st</sup>, 2004\_\_\_\_ End Date: On-going

Organization: O'Brien Law Firm PLLP

Address: 175 NE Gilman Blvd., Issaquah, Wash. 98027

Phone No.: 425-391-7427

Position/Title: Managing Member

Supervisor: N/A

Nature of Practice (including frequency of court appearances):

We are an eleven attorney firm engaged in the general practice of law with emphasis on personal injury, criminal law, family law, real estate and estate planning. We currently have District Court Public Defender contracts with 5 Eastside cities. We also represent private individuals in the district court system on a regular basis. The personal injury practice is primarily in arbitration settings.

Reason for leaving: N/A \_\_\_\_\_

b. Start Date: May 2<sup>nd</sup>, 1996\_\_\_\_ End Date: December 31<sup>st</sup>, 2003

Organization: John O'Brien, Inc. PS.

Address: 175 NE Gilman Blvd., Issaquah, Wash. 980027

Phone No.: 425-391-7427

Position/Title: President

Supervisor: N/A

Nature of Practice (including frequency of court appearances):

The professional service corporation is the predecessor of the professional limited liability partnership, O'Brien Law Firm, PLLP. It was created to add equity partners to the practice. In addition to the areas of practice listed above, we had prosecuting attorney contracts for the cities of Medina, Hunts Point, Carnation and Duvall.

Reason for leaving: Created equity partnership

c. Start Date: January 1<sup>st</sup>, 1985 End Date: May 1<sup>st</sup>, 1996

Organization: O'Brien & Holt Law Firm

Address: 4 425 Rainier Blvd. N., Issaquah, Wash. 98027

Phone No.: 425-392-5335

Position/Title: Partner

Supervisor: Richard Holt

Nature of Practice (including frequency of court appearances):

O'Brien and Holt was a 5 attorney firm engaged in the general practice of law in Issaquah. Our focus was much the same as the areas summarized above.

Reason for leaving: After 11 years of partnership, Dick Holt and I amicably parted ways to pursue separate practices.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

d. Start Date: October 1982 End Date: December 31<sup>st</sup>, 1984  
Organization: O'Brien & Pflug Law Firm  
Address: 801 Olive Way, Seattle, Washington  
Phone No.: ?  
Position/Title: Partner  
Supervisor: N/A  
Nature of Practice (including frequency of court appearances):

O'Brien & Pflug was a 2 attorney firm in the general practice of law with emphasis on personal injury, criminal law, family law, estate planning and corporations. We had a small contract with the public defender agency to take overflow and conflict cases. We were also house council for the Washington State Protection and Advocacy, also known as "Trouble Shooters for the Handicapped" advising them on discrimination/contract/defense issues.

Reason for leaving: Merged partnership with Richard Holt in Issaquah

e. Start Date: August 1<sup>st</sup>, 1981 End Date: October 1982  
Organization: King County Superior Court  
Address: 516 3<sup>rd</sup> Ave., Seattle, Wash. 98104  
Phone No.: 206-296-9100  
Position/Title: Bailiff/ Law Clerk  
Supervisor: Judge Steven Reilly  
Nature of Practice (including frequency of court appearances):  
Judge Reilly offered one year internships to first year attorneys. Responsibilities included research on evidentiary rulings and legal issues presented to the court as well as organizing court calendars, control of evidence and jury care.

Reason for leaving: Completed one year internship

f. Start Date: October 1979 End Date: June 1981  
Organization: Tacoma Housing Clinic/Puget Sound Legal Assistance Foundation  
Address: 902 South Tenth Street, Tacoma, Wash. 98405  
Phone No.: ?  
Position/Title: Rule 9 Intern  
Supervisor: Max Messman  
Nature of Practice (including frequency of court appearances):  
I was one of 5 UPS law students that organized Tacoma Housing Clinic in conjunction with the Puget Sound Legal Assistance Foundation to provide housing related legal services to low income clients. We received Federal, State and local funding to address tenant evictions, public housing complaints, mortgage defaults and landlord tenant issues. With our limited licenses to practice law, we represented tenants in eviction show cause hearings on a regular basis.

Reason for leaving: Graduated

Please continue, if necessary, on a separate piece of paper in the above format as needed.

10. Please list all other courts and jurisdictions in which you have been admitted to practice law and the

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

dates of admission. Please provide the same information for administrative bodies having special admission requirements.

Washington State Courts 1981

U.S. District Court 1982

United States Court of Appeals 9<sup>th</sup> Circuit 1982

11. Please list all bar associations and professional societies of which you are a member and give the titles and dates of any offices that you have held in such groups.

Washington State Bar Association

12. Are you in good standing in every bar association of which you are a member? Yes / No. If you answered "no", please explain.

Yes

13. If you have ever been a judge, please identify any court committees on which you have served or administrative positions you have held. Please state the dates of service for each.

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The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

14. Please list up to five of your most significant professional accomplishments. (If applicable, please provide the case and court name and the citation if a case was reported (and copy of the opinion)).

Locke v. City of Seattle, 162 Wash. 2d 474 (2007). Professionally, I am very proud of my involvement in the case of Locke v. City of Seattle, recorded at 162 Wash.2d 474, 172 P.3d 705 (2007). My partner, Dave Wieck and I filed suit against the City of Seattle for Kevin Locke, a firefighter trainee, injured during a training exercise. Mr. Locke was in the 10<sup>th</sup> week of a 12 week course when he collapsed from dehydration and fell from a 50 foot ladder, suffering injuries including a broken back, pelvis, leg, ankle and foot. We filed suit in 2002 and went to trial in 2004. The two of us spent two months in trial against the City of Seattle's legal department proving 33 safety violations against the City.

Although we were suing for negligence, the City decided to use this case to challenge the constitutionality of the 30 year statute allowing Washington State firefighters and police officers to sue their employer if their injuries were a result of the negligence of their employers. Motions were served quite regularly against us while we were in trial. We would prepare responses at night while also preparing for the next day's testimony. We obtained a \$1.8 million dollar verdict against the city (later reduced to \$1.5 million). The verdict and statute were upheld unanimously in the Court of Appeals in 2006 and again in the Supreme Court in 2007.

Even though I am not anticipating any 2 month trials in the district court, the Locke trial experience honed many skills and attributes to carry with me to the bench.

1. The mental discipline and stamina of trial work;
2. The speed with which evidentiary objections and rulings are made;
3. The drafting of non- patterned, custom jury instructions; and
4. Appreciating the stress and sacrifice we put on our citizens serving on our juries.

Issaquah School District v. Overby, King County Superior Court cause number 99-2-14533-0. I represented an elderly Issaquah family when the Issaquah School District tried to take their farm property through eminent domain proceedings. Because of the growth on the Issaquah Plateau, the school district was in need of land to build another elementary school. The plateau was divided by the Urban Growth Boundary lines established by King County. The density on one side of the line caused the increase in the population necessitating the need for the new school. The Overby's farm was immediately across the street from the density boundary, limiting their land to rural use, and cheaper to purchase. The Overbys had been on the land for 35 or 40 years and did not want to move. Although 3 of the Overbys neighbors who were also going to lose their property decided not to challenge the District's eminent domain authority, the Overbys decided to fight. After defeating the District in a preliminary summary judgment hearing on necessity, the Issaquah community rallied behind the Overbys. The issue was also the topic on a KIRO talk show. The District then voted to dismiss the case and compensate the Overbys for their expenses.

Question 14 continued:

Venera v. City of North Bend Gerald Venera was the fire chief of North Bend in the mid 1980s. After the election of a new mayor, he was terminated for alleged misconduct. We challenged the termination as being politically motivated, in violation of his civil rights as a vested member in the Civil Service and as an extreme measure in light of the allegations of wrongdoing against him.

The case required the filing of two Writs of Mandamus, against the City and the Civil Service Commission, required a 5 day Civil Service Commission hearing and a Superior Court review of one portion of the Commission's findings. A separate suit was also filed against the City.

At the conclusion of it all, Venera was reinstated to his position with full retirement and the majority of his back pay was returned to him.

The case was significant to me because of the diverse and unique issues it presented and the personal satisfaction at its resolution.

Kombol GAL for Vito Chiechi v. Douglas Chiechi d/b/a Don's Quality Meats, 98 Wash. App. 1007 (1999)

I represented a minor, Vito Chiechi, through his guardian ad litem, in a suit against his father, Douglas Chiechi, for injuries he sustained when he placed his fingers near the blades of a meat cubing machine at his father's butcher shop. Relying on the parental immunity doctrine, the trial court granted the father's motion for summary judgment. We appealed, arguing that the parental immunity doctrine did not apply when a child's injury results from a parent's negligent business operations, and that the question of whether the father's negligence occurred in a business or parental capacity presents a material issue of fact. Alternatively, we urged the court to abrogate or eliminate the parental immunity doctrine to the extent that it applied to this case.

Although we were unsuccessful, the case was significant to me as it was the first time I asked a court to review and overturn existing precedent of what I thought was an archaic and overbroad doctrine.

Court: Court of Appeals, Div I

Judge: Susan Agid

Plaintiff's Attorney: John O'Brien

Defense Attorney: Catherine Doudnikoff

Przybylski v. Corcoran, 93 Wash. App. 1056 (1999)

I represented a landlord in a commercial unlawful detainer proceeding. The tenant claimed it had a twelve month lease but the president of the corporate tenant never signed the personal guarantee. The court held that a lease, like any contract, is not formed unless the parties mutually assent. In this case, the proposed lease agreement between D.C. Holdings, Inc. (DC Holdings) and Przybylski, Inc. (Przybylski) required John

Corcoran to personally guarantee the obligations of DC Holdings. But DC Holdings returned the proposed lease agreement to Przybylski with John Corcoran's signature as President of DC Holdings, not his personal guaranty. Because the guaranty was a material inducement to and consideration for the lease, the parties never mutually assented to the lease agreement, leaving DC Holdings with only a month-to-month tenancy. The Court of Appeals held that the trial court properly adjudged DC Holdings guilty of unlawful detainer and the case was affirmed on appeal.

The case was significant to me as it allowed me to utilize concepts I had first learned as a Rule 9 student at the Tacoma Housing Clinic 19 years earlier.

Court: Court of Appeals, Division I  
Judge: Ellington  
Plaintiff's Attorney: John L. O'Brien  
Defense Attorney: John Corcoran, Pro Se

Huntington v. Fraternity Snoqualmie, Inc., 86 Wash. App. 1093 (1997)

I represented Fraternity Snoqualmie in a case brought against it by one of its members, Mr. Huntington. Mr. Huntington entered into an annual lot lease with Fraternity Snoqualmie (FS), a non-profit corporation, and renewed it several times. But when the corporation changed its bylaws to permit only month-to-month leases, they sued FS and individual board members alleging breach of contract, promissory estoppel, defamation, and interference with contract and initiated a shareholder derivative suit. The trial court granted defendants' motions for summary judgment. The dismissal was affirmed on appeal.

The case had significance for me as this very private club put its trust in us to represent them in this very public forum. (Although invited to the club on many occasions, I declined the invitations).

Court: Court of Appeals, Div. I  
Judge: Agid  
Plaintiff's Attorney: Sandra Gay  
Defense Attorney: John O'Brien Catherine Franklin

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15. Please summarize up to eight of the most significant matters that you participated in as an advocate. Please include the dates of your participation and the reason each was significant to you. Please provide the citation if a case was reported. If you have been a judge, please include some cases that have been tried before you.

1. The most significant matter that I participated as an advocate was the case of City of Auburn v. Hedlund, 137 Wash. App. 494 (2007). The case itself involved criminal charges filed against the sole survivor of a terrible single car accident in which 6 young people were killed. I was asked to represent the estate of one of the passengers in the car, Jamie Vomenici. The key piece of evidence in Hedlund's aiding and abetting a reckless driver case was a video tape she was recording just moments before the car crashed into a freeway over pass support pillar. The tape was focused on the rear passengers in the car, especially Jamie, who was the only one in the car who had not been drinking. Jamie's parents did not want the tape shown or released to the public.

Prior to the trial commencing, television stations KCPQ, KIRO, KING and KOMO brought a motion to have the tape released. At the Superior court hearing, Dan Heid represented the City of Auburn's position and I presented the views of the Vomenici family. The court denied the request.

At trial, the municipal court allowed the four television stations to share one camera feed to record the proceedings. When it came time for the jury to view the video tape, I was asked to again present the concerns and viewpoint of the Vomenici family to not have the video recorded by the news stations. The municipal court ordered the cameras off during the viewing of the tape. I believe the tape is still under seal today.

The case was significant to me because of the personal nature of the proceedings and the impact on the individual members of all six families that were involved with the issues at trial. None of the other families were represented and each vented and shared their emotions with me as we sat through the testimony. They all thanked me for my efforts.

2. In the mid 1980s I represented a non-profit corporation called Washington State Protection and Advocacy Agency, also known as Trouble Shooters for the Handicapped. It was strictly on a pro bono basis. We assisted them in lease negotiations, grant applications, employment contracts and discrimination issues.

In 1984, 27 students of Rainier School, a special needs institution, were given passes to the Tacoma Tigers baseball game. The passes were for seats behind home plate. The Tigers general manager, Stan Naccarato, was unhappy with the presence of the students and forced their teachers to move them to the bleachers in right field. I was asked to represent the students and filed a complaint with the Human Rights Commission for the humiliation experienced by the group and the Tigers failure to provide public accommodation for the disabled. With the assistance of the Attorney General's office, the case settled with Naccarato issuing an apology, offering new passes and a monetary fine. The matter was significant to me as it made local and national headlines that helped educate the public to the rights of the disabled.

3. Also, within the representation of the Troubleshooters, we sued Metro for a practice they had established for providing free tokens to disabled, wheel chair bound patrons of the bus system. Under the program, disabled patrons of city transit were issued vouchers to ride the bus for free. Although known to the driver, if a patron had forgotten their voucher, the driver was instructed to leave the patron stranded at the stop. Although defeated in court, the case was important to us as it led to changes in the policy as soon as the case was dismissed.

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**Educational Background**

16. Please list all undergraduate and graduate (non-law school) colleges and universities attended, years of attendance, degree awarded and reason for leaving if no degree was awarded.

College/University: Gonzaga University

Dates of Attendance: 1973-1978

Degree: Bachelor of Arts

17. Please list all law schools attended, years of attendance, degree awarded and reason for leaving if no degree was awarded.

Law School: University of Puget Sound (Seattle U.)

Dates of Attendance 1978 – 1981

Degree: Juris Doctor

**Professional Experience**

18. Please summarize, briefly, the general nature of your current law practice.

We are an eleven attorney firm engaged in the general practice of law with emphasis on personal injury, criminal law, family law, real estate and estate planning. We represent individuals in the district court system on a regular basis.

19. If you are in practice, please describe your typical clients and any areas of special emphasis within your practice.

Our client base, typically, are families in and around King County. Since it is a general practice firm, we are able to assist these families through a myriad of legal issues, be they home purchases, estate planning and probate, criminal law and family issues.

20. If your present law practice is different from any previous practice, please describe the earlier practice, including the nature of your typical clients and any area of special emphasis within your practice.

We prosecuted gross misdemeanor and misdemeanor cases for the cities of Medina, Hunts Point,, Duvall and Carnation for 9 years.

21. Within the last 5 years, did you appear in trial court:

☒ Regularly

☐ Occasionally

☐ Infrequently

22. Within the last 5 years, did you prepare appellate briefs and appear before appellate courts:

☐ Regularly

☒ Occasionally

☐ Infrequently

23. Within the last five years, how often did you appear in the court for which you are applying:

☒ Regularly

☐ Occasionally

☐ Infrequently

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24. Career Experience

(a) What percentage of your appearances in the last five years was in:

(1) Federal appellate courts	_____ %
(2) Federal trial courts	_____ %
(3) State appellate courts	_____ 1 _____ %
(4) State trial courts	_____ 10 _____ %
(5) Municipal courts	_____ 5 _____ %
(6) District courts	_____ 84 _____ %
(7) Administrative tribunals	_____ %
(8) Tribal courts	_____ %
(9) Other	_____ %
TOTAL	100%

(b) What percentage of your practice in the last five years was:

(1) Civil litigation (excl. family law)	_____ 25 _____ %
(2) Criminal litigation	_____ 75 _____ %
(3) Family law litigation	_____ %
(4) Non-litigation	_____ %
TOTAL	100%

(c) What percentage of your trials in the last five years were:

(1) Jury trials	_____ 5 _____ %
(2) Non-jury trials	_____ 95 _____ %
TOTAL	100%

(d) State the number of cases during your total career that you have tried to verdict or judgment (rather than settled) in the following courts, and indicate for each court the following percentages: trials in which you were sole counsel or chief counsel, jury trials, and trials where you were the arbiter/decision maker.

<u>Number</u>	<u>Court</u>	<u>% as Sole / Chief Counsel</u>	<u>% Jury</u>	<u>% as the Arbiter</u>
2	Municipal	100		
187	State Dist.	17	7	83
59	State Superior	33	1	67
1	Federal Dist.	Co-Chair	100	
	Administrative			
	Tribal Courts			
1	Other (JAMS)	100		

(e) State the number of appellate cases during your total career where you appeared as counsel of record in the following courts, and indicate for each court the following percentages: cases where you were sole counsel or chief counsel, and cases where you were the arbiter/decision maker (if applicable).

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<u>Number</u>	<u>Court</u>	<u>% as Sole / Chief Counsel</u>	<u>% as the Arbiter</u>
<u>2</u>	State Superior Court	<u>100</u>	<u>                    </u>
<u>6</u>	WA. Div. I COA	<u>20</u>	<u>                    </u>
<u>          </u>	WA. Div. II COA	<u>                    </u>	<u>                    </u>
<u>          </u>	WA. Div. III COA	<u>                    </u>	<u>                    </u>
<u>2</u>	WA. Supreme Court	<u>0</u>	<u>                    </u>
<u>          </u>	Fed. Cir. COA	<u>                    </u>	<u>                    </u>
<u>          </u>	U.S. Supreme Court	<u>                    </u>	<u>                    </u>

(f) Briefly describe no more than five significant litigation matters that you directly handled as the sole counsel. For each, please provide the name and telephone number of opposing counsel, the name of the judge or other judicial officer, and the citation (if applicable).

1. Overby case sited in Answer 14 above. Opposing counsel were from Montgomery, Blankenship. One of the attorneys was Camille Ralston 206-682-7090

(g) State in detail your experience in adversary proceedings before administrative boards or commissions during the last five years.

I represented a business client, Cain's Pressure Washer and Maintenance, in an unemployment compensation appeal. An employee was discharged for insubordination, denied unemployment benefits and appealed. The denial was upheld on appeal.

I represented a business client in an appeal of a Labor & Industries audit that concluding it had underpaid worker compensation premiums in excess of \$10,000.00. After an 8 hour hearing, the Industrial Insurance Board ruled there had been no underpayment by the business.

25. Please briefly describe any legal non-litigation experience that you feel enhances your qualifications to serve as a judge.

1. Service on the Issaquah Grange Board. The Issaquah Grange is a 76 year old, 4000 member, farmers' cooperative in Issaquah. I served on its volunteer board for ten years. I was President of the Grange for two of those years. During my tenure, revenues of the Grange went from approximately \$1.5 million dollars per year to \$4 million where it is today. Internally, the Board dealt with personnel issues, ground contamination remediation, insurance coverage issues and remodel financings all at a time when competitive stores were going out of business in Issaquah, i.e. Lowe's, Earnest, Henry Bacon and Eagle hardware.

I summarize this experience, in this section, as I believe I can assist the District Court, not only as a trial judge, but in the administration and budgeting of the \$26 million dollar King County District Court system.

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26. If you are now an officer or director of any business organization or otherwise engaged in the management of any business enterprises, please provide the following: the name of the enterprise, the nature of the business, the title of your position, the nature of your duties, and the term of your service. If you are appointed and do not intend to resign such position(s), please state this below along with your reasons for not resigning.

Eastside Montessori School Foundation: I am a board member of this non-profit foundation that distributes scholarships to needy families desiring a Montessori education for their children. This activity appears to be governed by the Code of Judicial Conduct, Canon 5 (B), Civic and Charitable Activities and I do not intend on resigning from the Board.

Thunder Valley Hydroplanes, LLC. I am a share holder and managing member of Thunder Valley Hydroplanes. It has an ownership interest in an unlimited hydroplane. I maintain the records of the LLC and draft sponsorship contracts. During race weekends, my duties are radio communications with the driver. This activity appears to be governed by the Code of Judicial Conduct, Canon 5(A) Avocational Activities: "Judges may....engage in the arts, sports, and other social and recreational activities...." I will maintain my position on the crew, however, I will resign my duties of contract writing and maintaining the records of the business.

H1 Unlimited Hydroplanes, Inc. I am on the board of directors of H1 Unlimited, the non-profit governing body for the sport of unlimited hydroplanes. The board creates the rules for the unlimited hydroplane races, approves an annual budget, negotiates and approves domestic and international race site contracts, television contracts and sponsorship agreements. I would resign this position if appointed to the bench.

O'Brien Investment Company. I am the vice president of O'Brien Investments. It is a family owned real estate and stock investment company started by my father and currently owned by my mother, sisters, brother and myself. My duties are leasing agreements and tenant relations. This activity appears to be governed by the Code of Judicial Conduct, Canon 5(C)(3), Financial Activities and Ethics Advisory Opinion 97-02. I will retain my investments in the company; however, I will resign as its Vice President and member of its Board.

OBryant Investments LLC. I am a shareholder in OBryant with two other partners. It purchases and leases rental properties. My duties are leasing agreements and tenant relations. This activity appears to be governed by the Code of Judicial Canons 5(C)(3) as well. I will maintain my investment in the LLC but resign as its managing member.

27. Please list all chairmanships of major committees in bar associations and professional societies and memberships on any committees that you have held and believe to be of particular significance.

Eastside Legal Clinic Pro Bono Panel Attorney 1988-1990  
Washington State Trial Lawyers Association 1984 – 1991

**Judicial Interest and Experience**

28. In 50 words or less, please describe why you should be appointed / elected and are seeking a judicial position.

I can bring a balanced, impartial sense of decision making to the bench. In my practice as a defense attorney, I know what it means to assist someone facing the criminal justice system. I have also served as prosecuting attorney for four cities on the East side.

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Having represented plaintiffs and defendants in private civil cases, in everything from personal injury claims to contract disputes, I again believe I have the experience to bring balance to the position.

29. In 50 words or less, please describe your judicial philosophy.

First, I endorse the philosophy that the District Court upholds the current law. It holds individuals accountable for their actions. Second, I believe an attempt at treatment is recommended over penal punishment for most first time offenders. Having said that, I have seen the glow of pride in a defendant who has successfully completed a probationary counseling program, but have also sentenced defendants to maximum confinement for failed efforts at personal reform.

30. Have you ever held a judicial office or have you ever been a candidate for such office?  
Yes / No. If you answered "yes", please provide details, including the courts involved, whether elected or appointed, and the periods of your service.

No

31. Have you ever held public office other than a judicial office, or have you ever been a candidate for such an office? Yes / No. If you answered "yes", please provide details, including the offices involved, whether elected or appointed, and the length of your service.

No

32. Please briefly identify all of your experience as a neutral decision-maker (e.g. judge (permanent or pro tem) in any jurisdiction, administrative law judge, arbitrator, hearing officer, etc.). Give courts, approximate dates, and attorneys who appeared before you.

I have been a King County Superior Court Arbitrator for 25 years dating back to 1986. There are 43 billing records in our current accounting system. Older records have either been archived or destroyed and I believe I have heard over 70 cases.

I was first sworn in as a District Court Judge Pro Tem in 1991 and served in that capacity on a regular basis in Issaquah, Bellevue, Mercer Island and Seattle for 15 years. I have presided over bench trials, jury trials, motions calendars, felony arraignments, Small Claims and traffic ticket calendars.

In the mid 1990s, I also served as a Hearing Examiner for the Eastside Narcotics Task Force, adjudicating the right of the government to seize personal assets used in the facilitation or commission of drug crimes. I presided over seizure cases involving houses, automobiles and cash up to \$400,000.

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**Community and Civic Activities**

33. Please list your community and civic activities, including dates and leadership roles held, over the last 10 years.

Rotary: I am a 23 year member of the Issaquah Rotary Club and have served as its president. From approximately 1999 to 2004 I served as the Rotary Run Race Chairman, coordinating our 10K race through the Salmon Days festival with city officials and the police department as well as the coordination of 80 volunteers. I also serve as the race day announcer in our Challenge Day Race, now in its 13<sup>th</sup> year, pairing disabled participants with able bodied drivers in Soap Box Derby races.

Issaquah Chamber: I am a 19 year member of the Issaquah Chamber of Commerce and have served on its Board of Directors and chaired its Legislative Affairs Committee. I continue to serve as the Chamber's Salmon Days Parade Announcer, as I have for approximately 15 years.

Issaquah Grange: The Issaquah Grange is a 78 year old farmers' co op in Issaquah. It has 4,000 members, boasts annual revenue of \$4 million dollars and is run by a volunteer board of directors. The Board is elected every three years by the members. I served on the Grange board for 10 years ending in 2004. I was President of the Board for two years during my term of office.

Eastside Montessori School Foundation: My term as a board member of the Eastside Montessori School Foundation commenced July 1<sup>st</sup> of this year. EMSF grants tuition scholarships to needy families seeking a Montessori education for their children.

Tastin' N Racin' Festival: I am the co-founder of the Tastin' N Racin' community festival at lake Sammamish State Park, now in its 17<sup>th</sup> year. TNR is a festival featuring hydroplane racing, food booths, arts and crafts, car shows and local bands that has grown to be the 2<sup>nd</sup> largest festival on the Eastside.

**Discipline and Disputes**

34. Have you ever been held, arrested, charged or convicted by federal, state, or other law enforcement authorities for violation of any federal law, state law, county or municipal law, regulation or ordinance? Yes / No. If you answered "yes", please provide details. (Do not include traffic violations for which a fine of \$150.00 or less was imposed.) Please feel free to provide your view of how it bears on your present fitness for judicial office.

N/A \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

35. Has a client ever made a claim or suit against you for malpractice? Yes / No. If you answered "yes", please provide details and the current status of the claim and/or suit.

N/A.

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36. Please describe your direct experience, if any, with domestic violence and sexual harassment.

As a pro tem judge, I have presided over civil petitions for restraining orders with issues of domestic violence as well as criminal proceedings of DV assault. As a prosecuting attorney, I have represented victims of domestic violence in pre-trial motions for restraining orders, bench and pre-trial hearings and at a jury trial for telephone harassment with DV overtones.

37. Have you been a party in interest, witness, or consultant in any legal proceeding? Yes / No.  
If you answered "yes", please provide details. Do not list proceedings in which you were merely a guardian ad litem or stakeholder.

In 1987, a group of investors filed suit against our partnership alleging that one of the partners missed a deadline for filing a limited partnership agreement in Alaska. My wife and I were named defendants. The case against my wife and I was dismissed at summary judgment as the act in question was performed prior to the creation of the new partnership.

In 1989, I filed suit against King County Medical Blue Shield for breach of contract due to their refusal to pay for my four year old son's speech therapy. I alleged that my insurance policy covered this expense as the therapy was necessitated by ear infections the boy had since birth. The case settled prior to trial.

In 2000, my wife's business suit against us to partition a piece of property jointly owned. The case was settled by us purchasing our partner's interest in the property.

38. Have you ever been the subject of a complaint to any bar association, disciplinary committee, court, administrative agency or other professional group? Yes / No. If you answered "yes", please provide details.

In 1991, an 80 year old personal injury client of mine, Viola Evans, made a complaint to the Bar because she felt that her treating physicians had been paid twice, once by Safeco and once through her settlement proceeds. It wasn't true but I could not convince her otherwise. I wrote a letter of explanation to the Bar, included my trust account ledger and settlement statement. The claim was dismissed.

39. Have you ever been disciplined or cited for breach of ethics or unprofessional conduct?  
Yes / No. If you answered "yes", please provide details.  
N/A.

40. If you have served as a judge, commissioner, or in any judicial capacity, has a complaint for misconduct in that capacity ever been made against you? Yes / No. If you answered "yes", please provide details.  
N/A

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**Miscellaneous**

41. Are you aware of anything that may affect your ability to perform the duties of a judge? Yes / No.  
If you answered "yes", please provide details.  
No

42. Have you published any books or articles in the field of law? If so, please list them, giving the citations and dates. Also, please give the dates and forums of any Continuing Legal Education presentations that you have made.

I wrote an article for a trade journal, Construction Data and News entitled "Know Your Lien Rights" in 1984.

I wrote an article for the Protection and Advocacy newsletter in 1984 entitled Washington State Protection & Advocacy System and the Representation of the Disabled.

I was a CLE presenter on two occasions in July of 2009. I was on a Civil Dispute Panel presented by ARAG Insurance Company. My topics were 1. Outlining the presentation of a personal injury plaintiff's case in chief. 2. Mediation and 3. Choice of Forum, Superior or District Court. We presented the CLE in Seattle on July 13th and again in Bellevue on July 15<sup>th</sup>.

43. Please list any honors, prizes, awards or other forms of recognition that you have received and whether they were professional or civic in nature.

I am a Rotary Paul Harris Fellow

44. Are you aware of anything in your background or any event you anticipate in the future that might be considered to conflict with the Code of Judicial Conduct? Yes / No. If you answered "yes", please explain.  
No

45. Please provide a writing sample of your work (between 5 and 10 pages long), written and edited solely by you, within the last 4 years. Attached

**Access to Justice**

46. Please describe activities that you have engaged in to eliminate bias or improve access to the judicial system for indigent populations and ethnic, racial and sexual minorities. As a member of the bench, what, if any, role do you believe a judge has to enhance equal access to justice?

Please see answers 2 and 3 to question number 14 regarding the Trouble Shooters for the Handicapped. In addition to my work with the Troubleshooters, I was a pro bono attorney for the Eastside Legal Clinic from 1988 to 1990. As a pro-bono attorney for the Clinic, I met low-income clients on a walk-in basis during nighttime clinic hours in Bellevue. The clinic offered free advice on issues relating to dissolution, unemployment, criminal law and housing.

Two summers ago, I represented a young Vietnamese client, pro bono, charged with harassment in the Auburn municipal court. Kevin Le was an employee of a friend of mine. After months of racial slurs, taunts and road blocks by a neighboring tenant in a shared office park, Kevin allegedly threatened to kill the intimidators. After nine witnesses in a two day trial, the jury found Kevin not guilty.

I support the Bar's proposed Legal Technician Rule which would permit non-lawyers to provide limited legal services after training and passing an exam. It is my understanding that the areas of family law, elder law, housing and immigration are being considered as limited practice areas. I also understand that the practice will be limited to assistance in completing Washington state approved forms and guiding clients through court processes as opposed to advocating for the clients in court.

I think supporting this unmet need in the State for many disadvantaged citizens to obtain legal services will enhance their ability to gain access to the courts. With the training and testing requirements being outlined by the Practice of Law Board, the Legal Technician can help fulfill the gap for those that qualify for legal service clinics and those that cannot afford a private attorney.

47. Please describe the frequency, time commitment and substantive nature of your direct participation of free legal services to indigent populations, and ethnic, racial and sexual minorities.

As referenced in paragraphs 14 and 46, I was in house counsel for The Washington State Protection and Advocacy System for over 3 years in the mid 1980s, a panel attorney of the Eastside Legal Clinic for 2 years and represented Kevin Le in his criminal case in Auburn.

**Diversity in the Legal Profession**

48. Please briefly describe your understanding of the issue of "diversity within the legal profession."

My understanding of the issue of diversity within the legal profession is the concern that all attorneys, regardless of their gender, ethnic backgrounds, sexual orientation or physical disabilities are not the victims of personal bias or prejudice either in the workplace or in court.

As the managing partner in our 11 member firm, I have always looked to the quality of the individuals considered for employment over any physical appearance or personal preference. My first partner in the practice of law was a quadriplegic attorney. In my current practice, the next senior partner in the firm is Lisa Barton. Lisa and I have worked together for over 17 years. Next in line of seniority is Russell Joe, of Chinese/Japanese decent. Mr. Joe is in the process of retiring. We recently hired Sengphachahn Livingston, a Taiwanese attorney, for a year and half long project that ended last October. Our newest attorney is active in the GLBT Bar Association.

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**References**

It is useful for evaluators to speak with attorneys and non-attorneys who are familiar with you. One or more participants in the evaluation process may contact each of your references. All telephone numbers should be current and legible. If a reference is unreachable, your rating/evaluation may be delayed. **Please use a separate piece of paper for each list.** You may contact references in advance if you so desire. Individuals not listed by you as a reference may be contacted to obtain information about you.

49. If you have been in practice within the past fifteen years, list the names and phone numbers of ten opposing counsels who know you best, including at least three opposing counsels on cases that went to trial.

Greg Fuller- 206-684-8240  
Eric Metzker – 360-586-6300  
Roman Dixon – 206-346-6000  
Ray Dearie – 206-239-9920  
Paul Jacobson – 425-883-9161  
Al Rinaldi – 206-621-9400  
David Speikers – 425-222-0555  
Doug Cowan – 425-822-1220  
Jill Theile – 425-452-6822

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

50. If you have been a judge or otherwise have served as a neutral decision-maker within the past fifteen years, please list the names and phone numbers of the last ten attorneys who have appeared before you.

Andrew Nguyen -425-452-6822  
John Mucklestone – 866-822-6139  
Susan Irwin – 425-452-6822  
Jill Thiele – 425-452-6822  
Donna Tucker (judge) – 206-205-9200  
Scott Robbins – 425-637-3022  
Howard Stein – 425-643-9424  
Doug Cowan – 425-822-1220  
Steve Lotzkar – 425-643-9424

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

51. List the names and phone numbers of up to six non-attorney references whose opinions or observations – particularly with respect to your commitment to improving access to the judicial system for indigent populations, people of color, and disenfranchised communities – would assist in the consideration of your application.

Harold Mills –  
Fred Nystrom -  
Dean Rebheun  
Dr. Larry Greenblatt –  
Kevin Locke –  
Jim Berry –  
Stan Conrad -

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

52. For the last five trials in which you participated (whether as trial lawyer or decision-maker), list as appropriate the following for each: case name, subject matter, court, judge (w/ phone number), and opposing counsel or counsel appearing before you (w/ phone number).
1. Locke v. Seattle personal injury case summarized in answer 14 above. I was co counsel for the plaintiff with my partner, David Wieck. Opposing counsel Greg Fuller 206-684-8240. Superior Court Judge Michael Spearman 206-464-6047
  2. Auburn v. Le criminal harassment case summarized in answer 46 above. I was counsel for defendant. Prosecuting Attorney was Roman Dixon – 206-346-6000 Judge: Patrick Burns 253-931-3076
  3. Tex v. Engel Personal injury arbitration held in 2007  
Plaintiff's Counsel: M. Scott Ericson 206-674-4582  
Defense Counsel: James McGowan 425-644-4440  
Arbitrator: John O'Brien
  4. O'Toole v. Zook Personal injury arbitration held May 2008  
Plaintiff's Counsel: Richard Geib-253-815-8307  
Defense Counsel: Amy Schoenecker- 425-201-5405  
Arbitrator: John O'Brien
  5. Danard v. Carroll Personal injury arbitration held November 2008  
Plaintiff's Counsel: Timothy Robbins – Deceased  
Defense Counsel: Darren Graffe – 206 – 521-5000  
Arbitrator: John O'Brien
  6. As a pro tem judge in the district court, I have presided over a myriad of cases. Please contact prosecutors Susan Irwin and Jill Thiele at 425-452-6822 and former prosecutor Andrew Nguyen at 425-452-6822 as well as defense counsel Jim Roe 206-623-5540, Jeannie Mucklestone 206-623-3343 and Steve Hayne 425-450-6800.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

53. List the names and phone numbers of ten additional attorneys familiar with your professional qualifications, skills, experience or attributes.

Noel Wright – 425-837-4717

Nancy Whitten – 425-837-4717

Tom Bierlein – 425-557-0301

Loren Studebaker- 425-392-7558

Stacey Goodman – 425-837-4717

Tim Reid – 425-313-9414

Jerry Tuttle – 425-391-7427

Bill Rudzick – 206-622-8000

Jay Rodne – 425-831-2372

Jim Dore, Jr. – 253-850-6411

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

**NOTE:** The Governor's Office requires individuals seeking judicial appointment to utilize, to the fullest extent possible, the ratings processes from state, county, and minority bar organizations. Contact information for the minority bar associations can be found on the Washington State Bar Association's website at (<http://www.wsba.org/public/links/minoritybars.htm>). It is the applicant's responsibility, however, to obtain these evaluations in a timely manner, and to forward evaluations received to the Governor's Office. To that end, all applicants are strongly encouraged to commence the evaluation process with the various bar associations as soon as possible. To facilitate the process, the following organizations have agreed to accept this questionnaire as the principal application in their evaluation process and may also require candidates to complete an additional supplement questionnaire:

**State Bar Association**

☐ Washington State Bar Association (WSBA) (appellate court evaluations only)

**County Bar Associations**

- ☐ King County Bar Association (KCBA)  
☐ Spokane County Bar Association (SCBA)  
☐ Tacoma-Pierce County Bar Association (TPCBA)

**Minority Bar Associations**

- ☐ Latina/o Bar Association of Washington (LBAW)  
☐ Loren Miller Bar Association (LMBA)  
☐ The Joint Asian Judicial Evaluations Committee of Washington<sup>3</sup>  
☐ Pierce County Minority Bar Association (PCMBBA)  
☐ Q-Law / GLBT (Gay Lesbian Bisexual Transgender) Bar Association  
☐ Washington Women Lawyers<sup>4</sup> (WWL)

As of the date of your certification below and submission of this questionnaire to the Governor's Office, please check beside each of the above organizations you have contacted to evaluate you for the position for which you seek.

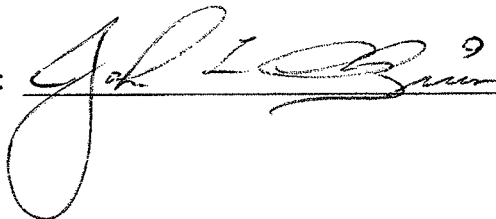
**Certification**

54.

By signing below, I declare under penalty of perjury under the laws of the State of Washington that the information provided by me in responding to this questionnaire is true and correct to the best of my knowledge.

Date: 10-10-12

Signature: \_\_\_\_\_



<sup>3</sup> A joint committee of the Asian, Korean, South Asian and Vietnamese American Bar Associations of Washington.

<sup>4</sup> Washington Women Lawyers has approved the use of the Governor's Uniform Judicial Evaluation Questionnaire for its statewide and all county chapters.

**JOHN O'BRIEN LEGAL WRITING  
SAMPLE AS REQUESTED IN  
QUESTION #45**

V. DISCUSSION

**1. Genuine issues of material fact exist regarding defendants negligence.**

In order for the jury to find liability, there must be a showing of the existence of a duty, breach of that duty, proximate cause between the breach and injury, and resulting damage. Davis v. Globe Machine Mfg. Co., 102 Wash.2d 68, 73, 684 P.2d 692 (1984).

The argument offered to support the City of Seattle, Molly Douce and Chief Sewell's Motion to dismiss Plaintiff's common law causes of action boil down to two points:

1. Kevin Locke was properly trained therefore we didn't cause him to fall from the ladder; and
2. Kevin Locke consented to and assumed the risk of falling from a ladder due to heat exhaustion.

With respect to the first argument, generally, proximate cause is an issue for the trier of fact and is not susceptible to summary judgment. Wojcik, at 854. However, proximate cause may be a question of law for the court and subject to summary judgment if the facts are undisputed, the inferences are plain and inescapable, and reasonable minds could not differ. Thompson v. Devlin, 51 Wash.App. 462, 466, 754 P.2d 1003 (1988) (citing Petersen v. State, 100 Wash.2d 421, 436, 671 P.2d 230 (1983)).

Proximate cause consists of two elements: cause in fact and legal causation. Thompson, at 466. Cause in fact refers to the actual ("but for") consequences of an act: "but for" the defendant's act, the plaintiff would not have been injured. Hartley, at 778; King v. Seattle, 84 Wn.2d 239, 249, 525 P.2d 228 (1974). The cause in fact

determination is not appropriate for summary judgment unless there is but one reasonable conclusion. Hartley, at 778.

In the case at bar we are concerned only with cause and fact type of proximate cause. There is overwhelming evidence that the cause of Kevin Locke's fall was the City of Seattle, and it's employees, failure to follow established Washington Administrative Code regulations and their own policies with respect to recruit training.

RCW 5.40.050. Breach of duty--Evidence of negligence--Negligence per se provides:

"A breach of a duty imposed by statute, ordinance, or administrative rule shall not be considered negligence per se, but may be considered by the trier of fact as evidence of negligence; ..."

One of the of Seattle Fire Departments own Safety Officer's, John Gablehouse, cited the Training Division with 32 violations of department policy, WAC's and National Fire Protection Agency (NFPA) regulations. Battalion Chief Gablehouse concluded that "Kevin Locke became dehydrated and slipped into a state of weakness and momentarily lost consciousness thirty-feet above the ground. Prior events and symptoms that would have lead a reasonable person to temporarily excuse Locke from further training and demand a medical opinion to ensure his physical condition, was disregarded." Please see Section One, Accident Opinion, WSPFA Report #1 Attached to the Affidavit of John Gablehouse.

Should a jury find that any one of the statutes, ordinances or administrative rules found by the Safety Division of the Seattle Fire Department and the Washington State Department of Labor and Industries to have been violated, it will be a question of fact for the jury to determine whether the violation is evidence of negligence and a proximate cause of injury to Kevin Locke.

The defendants maintain they adequately trained the firefighter recruits. Plaintiffs maintain the training was abusive. The defendants maintain they adequately supervised the firefighter recruits. Plaintiffs maintain defendants deliberately refused to summon medical attention for recruits suffering from heat exhaustion. The defendants maintain they gave the recruits adequate time to rest and hydrate. Plaintiffs maintain the firefighter recruits were pushed so hard they had no time to rest or hydrate. The defendants maintain they kept a

close eye on weather conditions. Plaintiffs maintain the Seattle Fire Department violated their own adverse weather policy. The defendants maintain Kevin Locke was simply fatigued and did not have heat exhaustion. Plaintiff will establish beyond any doubt that Kevin was suffering from heat exhaustion. Defendants maintain Kevin Locke simply slipped and fell of the ladder. That contention does not even merit a response. These are just a few of the issues of fact that will need to be decided by a jury.

**b. Kevin Locke did not knowingly assume the risk of collapsing on a ladder**

“Traditionally, the doctrine of assumption of risk has four facets: (1) express assumption of risk; (2) implied primary assumption of risk; (3) implied reasonable assumption of risk; and (4) implied unreasonable assumption of risk. The third and fourth facets, implied reasonable and implied unreasonable assumption of risk, *are nothing but alternative names for contributory negligence, and neither is pertinent here*. The first and second facets, express assumption of risk and implied primary assumption of risk, raise the same question: Did the plaintiff consent, before the accident or injury, to the negation of a duty that the defendant would otherwise have owed to the plaintiff? If the answer is yes, “the defendant does not have the duty, there can be no breach and hence no negligence.” Thus, when either facet applies, it bars any recovery based on the duty that was negated.

Although the first and second facets involve the same idea--the plaintiff's consent to negate a duty the defendant would otherwise have owed to the plaintiff--they differ with respect to the way in which the plaintiff manifests consent. With express assumption of risk, the plaintiff states in so many words that he or she consents to relieve the defendant of a duty the defendant would otherwise have. With implied primary assumption of risk, the plaintiff engages in other kinds of conduct, from which consent is then implied. Here, we focus on implied consent, which we alternatively refer to as assumption of risk.

To invoke assumption of risk, a defendant must show that the plaintiff knowingly and voluntarily chose to encounter the risk. Thus, “[t]he evidence must show that the plaintiff (1) had full subjective understanding, (2) of the presence and nature of the specific risk, and (3) voluntarily chose to encounter that risk.” Put another way, the plaintiff “must have knowledge of the risk, appreciate and understand its nature, and voluntarily choose to incur it.” Knowledge and voluntariness are questions of fact for the jury, except when reasonable minds could not differ.

Erie v White, 92 Wash.App. 297,302-306, 966 P.2d 342 (1998) citations omitted. Here, Kevin Locke did not have a “full subjective understanding of the presence and nature of

the specific risk." Therefore, he could not possibly have consented to encounter the risk. When Kevin went up the ladder he did not consent to the possibility he would fall from the ladder due to heat exhaustion. Indeed the presence and nature of the specific risk, falling from the ladder due to heat exhaustion, was the farthest thing from his mind. He, like all other Fire Fighters in the drill, was ordered up the ladder to rescue mannequins.

"Whether a plaintiff decides knowingly to encounter a risk turns on whether he or she, at the time of decision, actually and subjectively knew all facts that a reasonable person in the defendant's shoes would know and disclose, or, concomitantly, all facts that a reasonable person in plaintiff's shoes would want to know and consider. Thus, "The test is a subjective one: Whether the plaintiff in fact understood the risk; not whether the reasonable person of ordinary prudence would comprehend the risk." The plaintiff must "be aware of more than just the generalized risk of [his or her] activities; there must be proof [he or she] knew of and appreciated the specific hazard which caused the injury." And a plaintiff "appreciates the specific hazard" only if he or she actually and subjectively knows all facts that a reasonable person in the defendant's shoes would know and disclose, or, concomitantly, all facts that a reasonable person in the plaintiff's shoes would want to know and consider when making the decision in issue.

Whether a plaintiff decides voluntarily to encounter a risk depends on whether he or she elects to encounter it despite knowing of a reasonable alternative course of action. Thus, Division One has said that in order for assumption of risk to bar recovery, the plaintiff "must have had a reasonable opportunity to act differently or proceed on an alternate course that would have avoided the danger." And the Restatement comments:

Since the basis of assumption of risk is the plaintiff's willingness to accept the risk, take his chances, and look out for himself, his choice in doing so must be a voluntary one. If the plaintiff's words or conduct make it clear that he refuses to accept the risk, he does not assume it. The plaintiff's mere protest against the risk and demand for its removal or for protection against it will not necessarily and conclusively prevent his subsequent acceptance of the risk, if he then proceeds voluntarily into a situation which exposes him to it. Such conduct normally indicates that he does not stand on his objection, and has in fact consented, although reluctantly, to accept the danger and look for himself

Two cases illustrate. In Dorr v. Big Creek Wood Products, Inc., Knecht was logging at a remote site. His friend Dorr, also a logger, came to visit. Before approaching Knecht's position, Dorr looked for "widow-makers"--limbs from felled trees caught high in the branches of standing trees. Failing to see any, he walked toward Knecht. As he walked, he was hit and injured by a falling widow-maker that he had not seen. If he had seen it, realized the danger it posed, and decided to hurry under it, he would have

actually and subjectively known all facts that a reasonable person would have known and disclosed (which is the same as to say he would have "appreciated the specific hazard which caused the injury" , and he would also have known of a reasonable alternative course of action (e.g., remaining where he was, or walking around the area into which the widow-maker might fall). Thus, he would have knowingly and voluntarily assumed the risk. As it was, however, he failed to see the particular widow-maker, and he did not have the kind of subjective knowledge that is a prerequisite to assuming a risk. At most, he was contributorily negligent.

In Alston v. Blythe, Alston wanted to walk from east to west across an arterial with two northbound and two southbound lanes. A truck driven by McVay stopped in the inside southbound lane, and McVay waved her across in front of him. A car in the outside southbound lane did not stop and struck her as she stepped out from in front of the truck. If Alston had seen the oncoming car, realized the danger, and decided to hurry across in front of it instead of waiting for it to pass, she would have known the facts that a reasonable person would have known and disclosed (which is to say she would have appreciated the specific risk), and she would have assumed the risk. As it was, however, she did not know the car was coming, and she did not have the knowledge required by the doctrine of assumption of risk. At most, she was contributorily negligent."

White, at,302-306. The specific hazard that caused Kevin Locke to fall was heat exhaustion. Just as the plaintiff in Dorr failed to appreciate the "widow maker", and the plaintiff in Alston failed to appreciate the car approaching, Kevin Locke did not appreciate and consent to the risk that he would succumb to the effects of heat exhaustion and fall from the ladder. Kevin Locke was in no position to appreciate or accept risks. He, had and all the other recruits, had been pushed to their limits. They simply wanted to finish the drill and go home. The individuals charged with the duty of supervising the training also failed to see or appreciate the risk. Perhaps if there had been a Safety Officer present during training at the WSPFA he or she would have appreciated the risk and stopped the drill before Kevin fell.

In any event, the questions regarding knowledge of the risk and voluntariness of the consent are for the jury. Summary Judgment is not appropriate.

**2. Kevin Locke may bring an action upon which relief may be granted under RCW 41.26.281**

**a. Firefighter is defined in RCW 41.26.030(4)**

Counsel for the City misconstrues the facts and law as they apply in the case at bar.

First, RCW 41.26.281 provides:

If injury or death results to a member from the intentional or negligent act or omission of a member's governmental employer, the member, the widow, widower, child, or dependent of the member shall have the privilege to benefit under this chapter and also have cause of action against the governmental employer as otherwise provided by law, for any excess of damages over the amount received or receivable under this chapter.

Accordingly, if Kevin Locke is a LEOFF "member" he is entitled to a cause of action.

Under RCW 41.26.030, LEOFF "Provisions Applicable to Plan 1 and Plan 2" Definitions, section (8) Member is defined as "any firefighter, law enforcement officer, or other person as would apply...."

The same statute, Section (4), states:

"Fire Fighter means: (a) Any person who is serving on a full time, fully compensated basis as a member of a fire department of an employer and who is serving in a position which requires passing a Civil Service examination for fire fighter, and who is actively employed as such."

On June 26, 1999 Kevin Locke sat for and passed the Public Safety Civil Service commission Firefighter examination. His score ranked him 31<sup>st</sup> out of 610 candidates. On or about March 27, 2000 the Seattle Fire Department offered Kevin the position of "Fire Fighter Recruit" which he accepted. Kevin's "employment" began on April 19, 2000. Therefore, Kevin Locke was actively employed "as such" on June 29, 2000. Please see the undated correspondence from the Public Safety Civil Service Commission and the March 27, 2000 letter from the City of Seattle to Kevin Locke attached to the affidavit of David J. Wieck.

**b. An Administrative Agency Cannot Circumvent an Unambiguous Definition In A State Statute**

Council for the City states that the Director of Retirement defined the term "firefighter" under the authority delegated him in RCW 41.26.115. The authority given the Director under that statute reads as follows:

"(1) The director of retirement systems shall adopt rules,...under which each disability board shall execute its disability retirement duties under this chapter. The rules shall include, but not be limited to, the following:(a) Standards governing the type and manner of presentation of medical, employability, and other evidence before disability boards; and (b) Standards governing the necessity and frequency of medical and employability reexaminations of persons receiving disability benefits."

There was no specific authority to define the term "fire fighter" given to the Director by the legislature. On it's own initiative, the Director decided to define a Firefighter. Unfortunately, this definition is in conflict with the definition of a fire fighter found in the state statute. As noted above, Firefighter is already defined in RCW 21.46.030(4).

It is clear that the legislature went to great lengths to define the term "fire fighter" in the statute before delegating any other rule making authority to the Director.

An administrative regulation that conflicts with the intent and purpose of the legislation or exceeds the agency's statutory authority is invalid. Superior Asphalt & Concrete Co. v. Department of Labor & Indust., 84 Wash.App. 401, 405, 929 P.2d 1120 (1996); RCW 34.05.570(2)(c).

"Ultra vires acts [of administration agencies] are those done 'wholly without legal authorization or in direct violation of existing statutes....' " Metropolitan Park Dist. v. Department of Natural Resources, 85 Wash.2d 821, 825, 539 P.2d 854 (1975) (quoting Finch v. Matthews, 74 Wash.2d 161, 172, 443 P.2d 833 (1968)). "The power and authority of an administrative agency is limited to that which is expressly granted by statute or necessarily implied therein." McGuire v. State, 58 Wash.App. 195, 198, 791 P.2d 929 (1990); see also McGovern v. Department of Social & Health Servs., 94 Wash.2d 448, 450, 617 P.2d 434 (1980).

To the extent the administrative definition limits or varies from the succinct definition found in the statute, it is void.

Finally, defendant City of Seattle admitted that this Court had personal and subject matter jurisdiction over this controversy. To now claim that Kevin Locke is not entitled to bring a cause of action is disingenuous.

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**O'BRIEN, BARTON, JOE & HOPKINS PLLP**

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**John L. O'Brien, Inc. P.S.**

**Lisa K. Barton**

**S. Russell Joe\*\***

**Fred Hopkins**

**Michael S. Essig**

**Steven R. Leppard**

**Sean E. Nyberg**

**Mary E. O'Brien\***

**John G. Price**

**Gerald G. Tuttle**

**Kirk R. Wines+**

**\*Also Admitted to Alaska Bar**

**\*\* Retired**

**+Of Counsel**

February 21<sup>st</sup>, 2013

Mr. Nick Wagner  
Metropolitan King County Council Staff  
King County Courthouse  
516 Third Ave. Rm 1200  
Seattle, Washington 98104-3272

RE: Northeast District Court Appointment

Dear Mr. Wagner,

Enclosed is a brochure we put together in 2010 with a list of my endorsements for appointment to the District Court bench. Also enclosed are two letters of support from the Redmond and Seattle Firefighters Associations that didn't quite make it into the brochure. I would appreciate you supplementing the ratings that have been submitted by the Bar associations with these materials.

Thank you for your assistance with this process,

  
John L. O'Brien

JLOB:ob



## Seattle Fire Fighters Union, Local 27 IAFF, AFL-CIO

517 Second Avenue West, Seattle, WA 98119 • (206) 285-1271 or 800-423-4224

October 15, 2010

John O'Brien  
John O'Brien for Judge Committee  
175 Northeast Gilman Blvd. #207  
Issaquah, WA 98027

Dear John O'Brien ;

I am pleased to inform you that Seattle Fire Fighters have endorsed you in your race for District Court Judge, District 6.

We have put our name on the line for you because we trust you will support Public Safety and issues important to Seattle Fire Fighters. The mission of Local 27 is to protect Seattle Fire Fighters and Seattle citizens and we are confident that we can work together to achieve these goals.

We are proud to have you on our team.

Seattle Fire Fighters look forward to your successful campaign and election.

If there is anything we can do to help you please do not hesitate to call.

Sincerely,

Kenny Stuart  
President / Political Action Chair  
Seattle Fire Fighters Union, Local 27

**John L OBrien**

---

**From:** JamieOBrien [JamieOBrien@obrienlawfirm.net]  
**Sent:** Thursday, September 30, 2010 4:30 PM  
**To:** John OBrien  
**Subject:** FW: Endorsement for John O'Brien

---

**From:** John Stockman [mailto:firedogc13@aol.com]  
**Sent:** Thursday, September 30, 2010 2:45 PM  
**To:** JamieOBrien  
**Subject:** Re: Endorsement for John O'Brien

Jamie,

To simplify...lets use the Facebook and this notice that the Redmond Firefighters Local 2829 have endorsed John O'Brien for District Judge.

Best wishes in the campaign.

**John Stockman**  
**Redmond Fire Fighters**  
**206-940-2377**

**<http://www.wscff.org>**



-----Original Message-----

**From:** JamieOBrien <JamieOBrien@obrienlawfirm.net>  
**To:** firedogc13@aol.com  
**Cc:** J LOB <JLOB@obrienlawfirm.net>  
**Sent:** Thu, Sep 30, 2010 9:10 am  
**Subject:** Endorsement for John O'Brien

Captain Stockman,

I wanted to thank you for helping us secure the endorsement from the Redmond Fire Fighters, IAFF Local 2829. I was wondering if we will be receiving anything in writing or if we can rely on the Facebook page comment to use this information on our webpage and mailers.

Thank you again for your support,

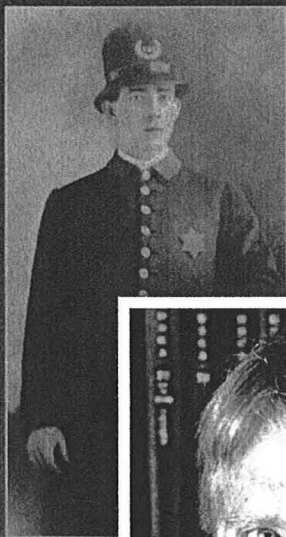
Jamie O'Brien  
Assistant to  
O'Brien, Barton, Joe & Hopkins, PLLP  
175 NE Gilman Blvd. Ste. #100 \* Issaquah, WA \* 98027  
Email: JamieOBrien@obrienlawfirm.net  
Vmail: (425) 391.7427 \* Fax: (425) 391.7489

2/21/2013

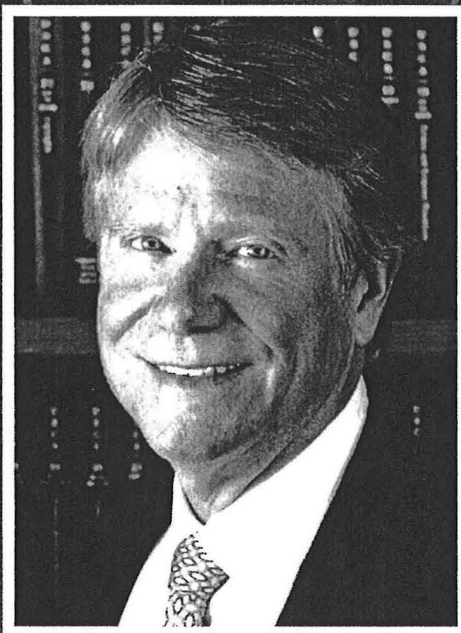
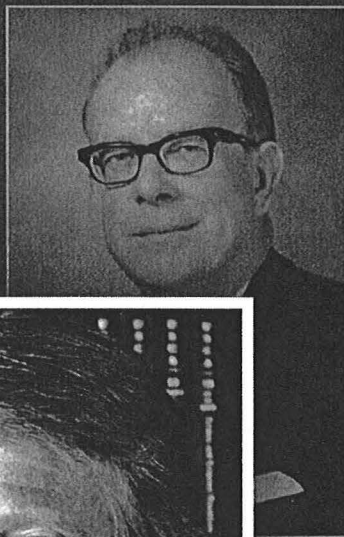
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# A legacy of leadership and service.

Seattle Police Officer James J. O'Brien



State Representative John L. O'Brien



ELECT

John L. O'Brien  
District Court Judge

NORTHEAST DIVISION POSITION #6

# The O'Brien Legacy

THREE GENERATIONS OF SERVICE TO COMMUNITY.

**Police Officer James J. O'Brien (John's grandfather)**

ONE OF MURDERED POLICE OFFICERS, HIS HOME AND FAMILY



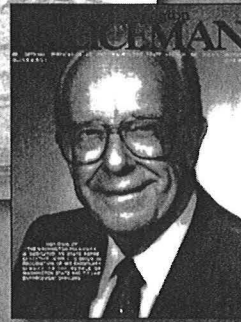
A clipping from The Seattle Times, Sunday, January 23, 1921. The article features the children and widow left behind.

Victims of Bandit's Bullets.

1—Three of Detective O'Brien's children grouped behind the baby's crib, in which is Mary Josephine, 1 month old. Left to right—James Thomas, Wilfred Martin and John Lawrence. (Photograph by Webster & Stevens, Times Staff Photographers.) 2—City Detective James O'Brien. 3—Mrs. James O'Brien. 4—The new bungalow which the O'Brien family has lived in for three months and which Mr. O'Brien helped build while off duty. (Photo by Webster & Stevens, Times Staff Photographers.)

"My grandfather was a Seattle Police detective. He was shot to death on the streets of Seattle when my father was nine years old. My grandmother raised her four children on a pension of \$58.50 a month. I abide by the judicial philosophy that the duty of a judge is to uphold the laws of the state. I also have a special concern for the victims of crime and their families." —John O'Brien

### State Representative John L. O'Brien (John's father)



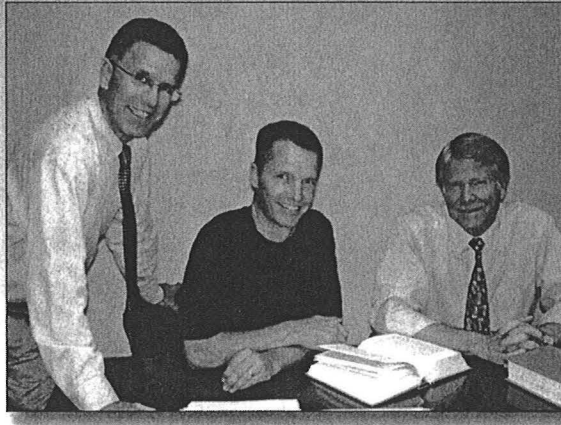
John L. O'Brien Sr. served the Rainier Valley community of Seattle in the State Legislature for 52 years. During his career, he served in nearly every leadership post, including caucus chair, majority and minority leader and an unprecedented eight years as Speaker of the House. He was honored countless times for his volunteer and community service to the citizens of the Seattle area throughout his life.

*"This issue of 'The Washington Policeman' is dedicated to John L. O'Brien in recognition of his exemplary service to the people of Washington State and to law enforcement..."*  
- The Washington Policeman,  
June, 1987

### Attorney John L. O'Brien, District Court Judge Candidate

**In one of the many successful cases in service to the people of his community,**

John O'Brien and his partner, Dave Wieck, represented a Seattle firefighter who was severely injured during a training exercise. Not only did the City of Seattle law department challenge the multitude of safety violations proven at trial, the



*Dave Wieck, firefighter Kevin Locke and John O'Brien*

City tried to abolish the right of all Washington State firefighters and police officers to sue their employer for negligence. Kevin Locke's 1.5 million dollar verdict against the City and the constitutionality of the statute protecting the rights of the police and firefighters was upheld in the Court of Appeals and the Washington State Supreme Court.

*Locke v. Seattle, 162 Wash. 2d 474 (2007).*

# Experienced and ready to serve.

As a 25-year resident of the Eastside community, John O'Brien has raised his family, been active in the community and operated a law practice representing Eastside families. John will bring to the bench his experience, commitment to community, and dedication to service to ensure fairness in the legal process.

## **JOHN O'BRIEN'S EXPERIENCE AND BACKGROUND INCLUDE:**

King County Superior Court Arbitrator for 23 years • King County Judge Pro-Tem for 15 years • Eastside Narcotics Task Force Hearing Examiner for 5 years • Prosecuting Attorney for Duvall, Carnation, Medina and Hunts Point for 9 years • Managing Partner of the Issaquah law firm of O'Brien, Barton, Joe and Hopkins, serving Eastside families and businesses since 1985 • Past President and 23-year member of the Issaquah Rotary Club • Past President and 8-year board member of the Issaquah Grange • Issaquah Chamber of Commerce Board member; Chair of its Government Affairs Committee • Issaquah School Board Bond Feasibility Committee • Eastlake Sammamish Parkway Revitalization Committee • Issaquah Salmon Days volunteer • Lake Sammamish Tastin' N Racin' Festival co-founder and chair • Little League Baseball Coach

***“I am very proud of my record of community service. I have acquired many skills working as a volunteer, such as leadership, loyalty, dependability, motivation and prioritization. A judge serving a community must be involved in the community. I truly believe that serving as a judge is a natural extension of community service.”***

***- John O'Brien***

RATED **VERY GOOD**  
BY THE MUNICIPAL LEAGUE OF KING COUNTY

## ENDORSEMENTS

### CURRENT AND FORMER COMMUNITY LEADERS

**Gary Locke**, *Former Governor*  
**Jay Rodne**, *State Representative*  
**Glenn Anderson**, *State Representative*  
**Kathy Lambert**, *King County Council Member*  
**Reagan Dunn**, *King County Council Member*  
**Pete von Reichbauer**, *King County Council Member*  
**Ava Frisinger**, *Issaquah Mayor*  
**Eileen Barber**, *Issaquah City Council Member*  
**Fred Butler**, *Issaquah City Council Member*  
**Nancy S. Whitten**, *Sammamish City Council Member and Attorney*  
**Jeff MacNichols**, *Snoqualmie City Council Member*  
**Charles Peterson**, *Snoqualmie City Council Member*  
**Bob Jeans**, *Snoqualmie City Council Member*  
**Kingston Wall**, *Snoqualmie City Council Member*  
**Joe Forkner**, *Issaquah Civil Serve Commission Member and  
Former Issaquah City Council Member*  
**Jack Barry**, *Former Sammamish City Council Member*  
**S. Russell Joe**, *Former Issaquah City Council Member and Attorney*  
**Brian Thomas**, *Former State Representative*  
**Connie Fletcher**, *Former President Issaquah School Board*  
**Conrad Lee**, *Bellevue Deputy Mayor*  
**Phil Dyer**, *Former State Representative*  
**David Irons, Jr.**, *Former King County Council Member*  
**Janet Barry**, *Former Superintendent of the Issaquah School District*

### MEMBERS OF THE LEGAL COMMUNITY

**Tom Chambers**, *Supreme Court Justice*  
**Faith Ireland**, *Retired Supreme Court  
Justice*  
**Frank LaSalata**, *District Court Judge,  
Northeast Division*  
**Peter Nault**, *District Court Judge,  
Northeast Division*

### ATTORNEYS

**Wright Noel**  
**Col. Bruce Meyers**, *Ret.*  
**Geoffrey Burg**  
**Stu Carson**  
**Danielle Anderson**  
**Tim Reid**  
**Mark Garka**  
**Howard Stein**  
**Jim Austin**  
**Patricia Fulton**  
**Steve Hayne**  
**Janet Irons**  
**Dick Wotipka**  
**Jason S. Newcombe**  
**Ken Selander, Jr.**  
**Jeannie O'Brien**  
**Doug Cowan**  
*and many more*

### ORGANIZATIONS AND INDIVIDUALS

**5th District Republicans**  
**Joint Council of Teamsters #28**  
**Teamsters Local Union #763**  
**Redmond Firefighters,**  
**IAFF Local 2829**  
**Skip Rowley**  
**Dean Rebhuen**  
**Bob Ittes**  
**Commander Chris Felstad**, *Ret.*  
**Nate Brown**  
**Mary Pigott**  
**Jim Berry**  
**Bo and Patti Darling**  
**Fred and Mardi Nystrom**  
*and many more*

***"John O'Brien has distinguished himself as an accomplished trial attorney over the past 29 years, and his dedication to his community has been extraordinary. John will make an outstanding district court judge."***

***-Supreme Court Justice Tom Chambers***

# ELECT JOHN L. O'BRIEN DISTRICT COURT JUDGE

NORTHEAST DIVISION POSITION #6  
[johnobrienforjudge.com](http://johnobrienforjudge.com)

Paid for by John O'Brien for Judge Committee  
175 NE Gilman Blvd., #207  
Issaquah, WA 98027

THE NEXT GENERATION  
OF O'BRIENS CONTINUES  
THE LEGACY OF SERVICE.

John and Mary O'Brien met in law school and have been married 28 years. Mary is the administrator of Arbor Schools and Issaquah Montessori. Son Sean teaches at a local Montessori school. Daughter Jamie recently graduated with an undergraduate degree in international law and business. Son Mike served four years as a firefighter in the Navy and is currently studying for a Fire Science degree. Daughter-in-law Alicia continues her family's legacy of work in law enforcement in the dispatch division of the police department. Duke, the golden retriever serves joyfully as speaker of the house.



**John and Mary O'Brien and Family**  
(l-r) Sean, Jamie, Mary, John, Mike, Alicia

RATED **EXCEPTIONALLY  
WELL QUALIFIED**  
BY THE KING COUNTY BAR ASSOCIATION

# THE WASHINGTON STATE GOVERNOR'S OFFICE

## UNIFORM JUDICIAL EVALUATION QUESTIONNAIRE<sup>1</sup>

Position Sought (Court/Division/District): King County District Court Judge, East Division

By Appointment: ☒ By Election: ☐

### Personal Information

1. 

<b>O'Toole</b>	<b>Lisa</b>	<b>Napoli</b>	<b>17258</b>
<small>Last Name</small>	<small>First Name</small>	<small>Middle Name</small>	<small>WSBA Bar Number</small>
2. Business Address: **Lisa Napoli O'Toole** \_\_\_\_\_  
Business Name  
**6947 Coal Creek Parkway SE # 310** \_\_\_\_\_  
Street or P.O. Box  
**Newcastle, Washington 98059** \_\_\_\_\_  
City State Zip
- Business Phone No. **(206)799-8236** After-hours/direct dial: **(same)** \_\_\_\_\_
- Work e-mail address: **the4otooles@comcast.net**
- 3.
- 4.
- 6.

### Prior Evaluation / Application History

7. Please state the date of all other judicial evaluations you sought, bar polls you participated in, and appointment applications you submitted. Please specify whether you sought appointment or election for each, from whom the evaluation was sought, the position sought, and the outcome.
- I have not sought any previous evaluations or appointments**

<sup>1</sup> The Governor's Office uses this questionnaire exclusively for candidates seeking judicial appointment. The Washington State Bar Association and other state bar associations noted on the last page also accept this questionnaire in their judicial evaluation process. The Governor's Office reserves the right to update this questionnaire and will post updated versions of the questionnaire on the Governor's webpage. Please direct all questions about the questionnaire to the Governor's Office of General Counsel.

<sup>2</sup> Only include your social security number on the copy of the questionnaire forwarded to the Governor's Office.

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**Professional History**

8. Year admitted to practice law in Washington: **1987**
9. Employment History (in reverse chronological order):
- a. Start Date: **March 2008**(initial training and appointment)/**June 2011** (active service)\_\_\_\_  
End Date: **Present**  
Organization: **King County District Court**\_\_\_\_  
Address: **King County Courthouse, #W-1034, 516 Third Avenue, Seattle, WA 98104** \_\_\_\_  
Phone No.: **206-205-9200**\_\_\_\_  
Position/Title: **Pro Tem Judge**\_\_\_\_  
Supervisor: **The Honorable Corinna Harn, Chief Presiding Judge (206-296-0150), Honorable Donna Tucker, Assistant Presiding Judge (206-296-7060), Judges Susan Mahoney (206-296-0904), Arthur Chapman, Elizabeth Stephenson (206-276-9861), Anne Harper; Court Administrators/Managers Jane Fisher, LeeAnna Young, Damita Beleford,**\_\_\_\_  
Nature of Practice (including frequency of court appearances):  
**Serve as Pro Tem Judge in District Courts throughout King County. Hear Criminal and Civil matters. Preside over criminal misdemeanor matters, including arraignments, pre-trial hearings, motions, jury trials, sentencing and post-sentencing probation review/revocation matters. Preside over preliminary hearing calendars on felony investigations. Preside over small claims trials. Preside over civil Domestic Violence Protection Order and Anti-Harassment hearings and name-change matters. In court an average of one or two weeks per month.**  
Reason for leaving: **N/A ( this is my current job)**\_\_\_\_\_
- b. Start Date: **February 2008** (returned) End Date: **May 2011**\_\_\_\_\_  
Organization: **King County Prosecuting Attorney's Office**\_\_\_\_\_  
Address: **516 Third Avenue, #W-554, Seattle, WA 98104**\_\_\_\_\_  
Phone No.: **206-296-9000**\_\_\_\_\_  
Position/Title: **Deputy Prosecuting Attorney, Criminal Division**\_\_\_\_\_  
Supervisor: **Dan Satterberg, King County Prosecuting Attorney (206-296-9064); Mark Larson, Chief Criminal Deputy (206-296-9450)**\_\_\_\_\_  
Nature of Practice (including frequency of court appearances):  
**Initially invited to return to the Prosecutor's Office to assist in the Filing (charging) Unit to fill a staffing gap. For the final 18 months, served in a grant-funded position as King County's Deputy Prosecutor for the Greater Puget Sound Financial Fraud Task Force, which prosecuted Identity Theft and other complex financial fraud cases. Worked with various Federal and State law enforcement agencies to develop cases, including search warrant drafting and review. Filed charges, and negotiated resolution of complex identity theft and financial fraud cases.**  
Reason for leaving: **Grant-funded position was re-structured and I wanted the opportunity to serve as a Pro Tem Judge, a position for which I had trained in 2008, but had not had the opportunity to perform because of my return to the Prosecutor's Office.**\_\_\_\_\_
- c. Start Date: **May 2006**\_\_\_\_ End Date: **November 2006**\_\_\_\_\_  
Organization: **Corr Cronin**\_\_\_\_\_  
Address: **1001 4<sup>th</sup> Avenue , #3900, Seattle, WA 98154**\_\_\_\_\_  
Phone No.: **206-625-8600**\_\_\_\_\_  
Position/Title: **Of Counsel**\_\_\_\_\_

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Supervisor: **Guy Michelson, (206-625-8600)** \_\_\_\_\_

Nature of Practice (including frequency of court appearances):

**Served Of Counsel on contract basis for a project with former colleagues from Bogle & Gates who founded Corr Cronin. Worked on a discovery-related project regarding the JOA Litigation between the Seattle Times and the Seattle PI.** \_\_\_\_\_

Reason for leaving: **Project completed; litigation settled** \_\_\_\_\_

d. Start Date: **June 1993** \_\_\_\_\_ End Date: **February 2002** \_\_\_\_\_

Organization: **King County Prosecuting Attorney's Office** \_\_\_\_\_

Address: **516 3<sup>rd</sup> Avenue, Seattle, WA 98104** \_\_\_\_\_

Phone No.: **206-296-9000** \_\_\_\_\_

Position/Title: **Deputy Prosecuting Attorney, Criminal Division** \_\_\_\_\_

Supervisor: **Norm Maleng, King County Prosecuting Attorney, Mark Larson, Chief Criminal Deputy (206-296-9450)** \_\_\_\_\_

Nature of Practice (including frequency of court appearances):

**Responsible for felony criminal cases, including case development, preparation, negotiation, trials, and appeals in King County Superior Court and Washington State Court of Appeals, Division I. In court nearly every day for motions and other hearings. Tried approximately 25-30 felony jury trials in King County Superior Court. Briefed more than 70 appellate matters in WA State Court of Appeals, Div I. Also argued numerous cases before Court of Appeals, Division I.**

Reason for leaving: **To have the opportunity to stay at home with our young children.** \_\_\_\_\_

e. Start Date: **Oct 1987** \_\_\_\_\_ End Date: **June 1993** \_\_\_\_\_

Organization: **Bogle & Gates (firm disbanded in 1999)** \_\_\_\_\_

Address: **Two Union Square, 47<sup>th</sup> Floor, Seattle, WA (former address)** \_\_\_\_\_

Phone No.: **(206) 682-5151 (former phone number)** \_\_\_\_\_

Position/Title: **Associate Attorney** \_\_\_\_\_

Supervisor: **Hon. Richard C. Tallman (now Judge, Ninth Circuit Court of Appeals (206) 224-2250)); Kevin Baumgardner, (now with Corr Cronin (206) 625-8600))** \_\_\_\_\_

Nature of Practice (including frequency of court appearances):

**Civil litigation practice with emphasis in copyright infringement, tort, contract, and professional malpractice actions. Conducted all aspects of litigation, particularly research, drafting, and arguing motions in King County Superior Court and discovery. Conducted hundreds of depositions for cases in both Superior Court and Federal Court. Court appearances included motions practice.** \_\_\_\_\_

Reason for leaving: **I was granted a two-year leave of absence from Bogle & Gates to pursue trial experience in the King County Prosecuting Attorney's Office in June 1993. At the end of my leave, I decided to remain at the Prosecutor's Office.** \_\_\_\_\_

f. Start Date: **Jan 1987** \_\_\_\_\_ End Date: **June 1987** \_\_\_\_\_

Organization: **Office of the Federal Public Defender, Western District of Washington** \_\_\_\_\_

Address: **601 5<sup>th</sup> Avenue #700, Seattle, WA 98101** \_\_\_\_\_

Phone No.: **(206) 553-1100** \_\_\_\_\_

Position/Title: **Student Extern (second semester of third year of law school)** \_\_\_\_\_

Supervisor: **Allen R. Bentley, (206) 343-9391** \_\_\_\_\_

Nature of Practice (including frequency of court appearances):

The Governor's Office's  
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**Assisted in preparation of defense of client against criminal indictment in substantial white-collar fraud case in U.S. District Court for the Western District of Washington (U.S. v. Ascani, et al). Participated in all aspects of case, including researching and drafting briefs, conducting discovery, and trial assistance.** \_\_\_\_\_

Reason for leaving: **Student Externship ended when I graduated from law school; to study for the bar exam and begin my Associate position at Bogle & Gates.**

Please continue, if necessary, on a separate piece of paper in the above format as needed.

10. Please list all other courts and jurisdictions in which you have been admitted to practice law and the dates of admission. Please provide the same information for administrative bodies having special admission requirements.

**Washington, 1987; U.S. District Court, Western District of Washington, 1987.** \_\_\_\_\_

11. Please list all bar associations and professional societies of which you are a member and give the titles and dates of any offices that you have held in such groups. \_\_\_\_\_

**Washington State Bar Association, member, 1987-present;** \_\_\_\_\_

12. Are you in good standing in every bar association of which you are a member? Yes. If you answered "no", please explain.

**N/A** \_\_\_\_\_

13. If you have ever been a judge, please identify any court committees on which you have served or administrative positions you have held. Please state the dates of service for each.

**Pro Tem Judge, King County District Court, March 2008 (initial training and appointment), June 2011 (active service)-present.** \_\_\_\_\_

14. Please list up to five of your most significant professional accomplishments. (If applicable, please provide the case and court name and the citation if a case was reported (and copy of the opinion).

**Becoming an Associate Attorney at Bogle & Gates. My years spent at Bogle & Gates gave me invaluable experience in civil litigation and instilled in me the firm's long tradition of "quality work, promptly done".** \_\_\_\_\_

**Serving as a King County Deputy Prosecuting Attorney. I am proud to have served our community in my role as a prosecutor. I feel very fortunate to have had the opportunity to work for Norm Maleng and Dan Satterberg in a prosecuting attorney's office that values ethics and justice above all else.** \_\_\_\_\_

**Serving as a Pro-Tem Judge in King County District Court. It has been my great honor to serve as Pro-Tem Judge and to have earned a reputation of being fair, capable and efficient.** \_\_\_\_\_

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15. Please summarize up to eight of the most significant matters that you participated in as an advocate. Please include the dates of your participation and the reason each was significant to you. Please provide the citation if a case was reported. If you have been a judge, please include some cases that have been tried before you. (SEE ATTACHED)

**Identity Theft Task Force Cases**

In my second employment as a King County Deputy Prosecuting Attorney, (2008-2011), I undertook a grant-funded position as King County's Deputy Prosecutor for the Greater Puget Sound Financial Fraud Task Force, which prosecuted Identity Theft and other complex Financial Fraud cases. Some of my more significant cases are listed below.

**State v. Ann Louise Gaskill, AKA Doris Butts**, King County Cause number 10-1-063796. Defendant was involved in multi-county Identity Theft. Defendant had prior convictions for Identity Theft and Forgery in multiple states. There were multiple individuals and financial institutions as victims in this case. The Gaskill case is an excellent example of the public-private partnership I was able to establish as the Financial Fraud and Identity Theft Task Force prosecutor. As bank investigators conducted their investigation of the suspect, they contacted me for assistance to coordinate the filing of incidents in multiple jurisdictions. As a result of the co-ordination I was able to provide, a police detective in one city agreed to investigate all of the Gaskill incidents, regardless of jurisdiction. The resulting investigation led not only to charging defendant Gaskill in King County, but also to the "global resolution" of felony cases in King, Thurston, and Whatcom Counties (Thurston County Cause number 10-1-00594-7 and Whatcom County Cause number 10-1-00530-0). This case was significant not only because of the interesting issues involved in a new area of the law (Identity Theft), but because its successful resolution required forging strong working relationships with defense counsel as well as prosecutors and law enforcement from multiple jurisdictions.

**State v. Richard Wakeley, Jr.**, King County Cause Numbers 09-1-04865-3 SEA, 09-1-07131-1 SEA, 10-1-00177-4 SEA, 10-1-00230-4 SEA, 10-1-02240-2 SEA, 10-1-06714-7 SEA, 10-1-08920-5 SEA, and 10-1-04155-5 SEA. Defendant masqueraded as a wealthy businessman using multiple closed and/or under-funded "business" checking accounts to make lavish, and in some cases outlandish, purchases with fraudulent "business" checks. Transactions included two checks (\$250,000 and \$100,000) on his under-funded/closed "business accounts" as escrow deposits on two parcels of real property on Bainbridge Island (Kitsap County), the purchase a Mercedes, a Hummer and a Ford pick-up truck, among others. In some instances, the defendant committed new offenses while out on bail on the pending felonies. On 11/4/10, Defendant Wakeley pleaded guilty, as charged, to all eight (8) King County Cause numbers. In all, he pleaded guilty to a total of 50 felony counts: five counts of Theft 1<sup>st</sup>, one count of Theft 2<sup>nd</sup>, and 44 counts of UIBC. His plea resolved felony matters in King, Snohomish, Skagit and Kitsap Counties. On 12/3/10, defendant was sentenced to an exceptional sentence above the Standard Range. This case was significant not only because of the intricate detail work that was involved in sifting through the defendant's complex web of transactions, but because of the hundreds of thousands of dollars of loss suffered by multiple victims, many of whom had had their trust violated by the defendant. The resolution of this case provided that the defendant could resolve his pending felony matters in multiple counties and that the victims in all counties would be awarded restitution. This case also involved developing strong working relationships with defense counsel as well as prosecutors and law enforcement from other jurisdictions. **(Continued on Attachment)**

**Stare v. William Graham Hnedak**, King County Cause number 10-1-04303-5 SEA.

Version 10-2008  
Defendant was charged with eight counts of forgery and with Theft 1, ID Theft 2, UIBC, all with vulnerable victim aggravators, and Theft 2.

Defendant preyed on vulnerable victims, winning their confidence and convincing them to provide him housing, access to contact as well as personal finances, and purchase him

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**Educational Background**

16. Please list all undergraduate and graduate (non-law school) colleges and universities attended, years of attendance, degree awarded and reason for leaving if no degree was awarded.

<b>Whitman College</b> _____	<b>1980-1984</b> _____	<b>BA, Economics</b> _____
College/University	Dates of Attendance	Degree
_____	_____	_____
College/University	Dates of Attendance	Degree

17. Please list all law schools attended, years of attendance, degree awarded and reason for leaving if no degree was awarded.

<b>Univ. of Puget Sound (now Seattle U.)</b> _____	<b>1984-1987</b> _____	<b>J.D., cum laude</b> _____
Law School	Dates of Attendance	Degree
_____	_____	_____
Law School	Dates of Attendance	Degree

**Professional Experience**

18. Please summarize, briefly, the general nature of your current law practice.

**My current practice of law consists solely of serving as a Judge Pro Tem in King County District Court.**

19. If you are in practice, please describe your typical clients and any areas of special emphasis within your practice.

**N/A** \_\_\_\_\_

20. If your present law practice is different from any previous practice, please describe the earlier practice, including the nature of your typical clients and any area of special emphasis within your practice.

**King County Prosecutor, Criminal Division, Deputy Prosecutor 1993-2002 and 2008-2011, felony criminal matters, including trials and appeals; \_\_\_\_\_**  
**Corr Cronin, Of Counsel, contract basis on civil litigation matter, 2006; \_\_\_\_\_**  
**Bogle & Gates, Associate, 1987-1993, general commercial civil litigation, corporate clients, insurance defense. \_\_\_\_\_**

21. Within the last 5 years, did you appear in trial court:

☒ Regularly (Superior Court)      ☐ Occasionally      ☐ Infrequently

22. Within the last 5 years, did you prepare appellate briefs and appear before appellate courts:

☐ Regularly      ☐ Occasionally      ☒ Infrequently

23. Within the last five years, how often did you appear in the court for which you are applying:

☒ Regularly(as Pro Tem)      ☐ Occasionally      ☒ Infrequently

24. Career Experience

(a) What percentage of your appearances in the last five years was in:

(1) Federal appellate courts \_\_\_\_\_%

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(2)	Federal trial courts	_____ %
(3)	State appellate courts	_____ %
(4)	State trial courts	<u>100</u> % (as advocate)
(5)	Municipal courts	_____ %
(6)	District courts	<u>100</u> % (as pro tem)
(7)	Administrative tribunals	_____ %
(8)	Tribal courts	_____ %
(9)	Other	_____ %
	<b>TOTAL</b>	<b>100%</b>

(b) What percentage of your practice in the last five years was:

(1)	Civil litigation (excl. family law)	<u>5</u> %
(2)	Criminal litigation	<u>95</u> %
(3)	Family law litigation	_____ %
(4)	Non-litigation	_____ %
	<b>TOTAL</b>	<b>100%</b>

(c) What percentage of your trials in the last five years were:

(1)	Jury trials	<u>5</u> % (as pro tem)
(2)	Non-jury trials	<u>95</u> % (as pro tem)
	<b>TOTAL</b>	<b>100%</b>

**\*No trials in the last 5 years as an advocate. Daily appearances in other matters as advocate in Superior Court, however, 2008-2011.**

(d) State the number of cases during your total career that you have tried to verdict or judgment (rather than settled) in the following courts, and indicate for each court the following percentages: trials in which you were sole counsel or chief counsel, jury trials, and trials where you were the arbiter/decision maker.

<u>Number</u>	<u>Court</u>	<u>% as Sole / Chief Counsel</u>	<u>% Jury</u>	<u>% as the Arbiter</u>
	Municipal	_____	_____	_____
<b>approx 10</b>	State Dist.	_____	<u>5</u>	<u>100</u>
<b>approx 30</b>	State Superior	<u>100</u>	<u>95</u>	_____
_____	Federal Dist.	_____	_____	_____
_____	Administrative	_____	_____	_____
_____	Tribal Courts	_____	_____	_____
_____	Other	_____	_____	_____

(e) State the number of appellate cases during your total career where you appeared as counsel of record in the following courts, and indicate for each court the following percentages: cases where you were sole counsel or chief counsel, and cases where you were the arbiter/decision maker (if applicable).

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Uniform Judicial Evaluation Questionnaire

<u>Number</u>	<u>Court</u>	<u>% as Sole / Chief Counsel</u>	<u>% as the Arbiter</u>
	State Superior Court		
<u>20-30</u>	WA. Div. I COA	<u>100</u>	
	WA. Div. II COA		
	WA. Div. III COA		
	WA. Supreme Court		
	Fed. Cir. COA		
	U.S. Supreme Court		

- (f) Briefly describe no more than five significant litigation matters that you directly handled as the sole counsel. For each, please provide the name and telephone number of opposing counsel, the name of the judge or other judicial officer, and the citation (if applicable).

SEE No. 15, above and attached for descriptions and citations.

State v. Wakeley: Judges: Hon. Palmer Robinson (206-296-9103) & Hon. Michael Hayden (206-296-9230). opposing counsel: Hal Palmer (206-322 -8400) SEE No. 15 for description

State v. Gaskill: opposing counsel: Todd Greunhagen (206-624-8105) SEE No. 15 for description

State v. (don't recall name), (VUCSA felony drug case, King County Superior Court), Judge: Hon. Carmen Otero, retired, (206)296-9275). Opposing counsel Ann Harper, now King County District Court (prior to her becoming a judge) (206-296-3630).

State v. (don't recall name), (VUCSA felony drug case, King County Superior Court), Judge: Hon. Ann Schindler, now Washington State Court of Appeals, Div. I, (206-464-7659), opposing counsel, Dave Wieck (425-454-4455)

- (g) State in detail your experience in adversary proceedings before administrative boards or commissions during the last five years.

N/A \_\_\_\_\_

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25. Please briefly describe any legal non-litigation experience that you feel enhances your qualifications to serve as a judge.

As the Prosecutor for the Greater Puget Sound Financial Fraud and Identity Theft Task Force, I gave many presentations to law enforcement personnel, financial institution fraud investigator associations, and merchant fraud investigator associations regarding Identity Theft and the relevant Washington law. Speaking to non-lawyers about these topics made me adept at clearly and concisely explaining statutes, sentencing, and legal standards in a way that was understandable to all, lawyers and non-lawyers alike.

26. If you are now an officer or director of any business organization or otherwise engaged in the management of any business enterprises, please provide the following: the name of the enterprise, the nature of the business, the title of your position, the nature of your duties, and the term of your service. If you are appointed and do not intend to resign such position(s), please state this below along with your reasons for not resigning.

N/A

27. Please list all chairmanships of major committees in bar associations and professional societies and memberships on any committees that you have held and believe to be of particular significance.

N/A

**Judicial Interest and Experience**

28. In 50 words or less, please describe why you should be appointed / elected and are seeking a judicial position.

District Court often creates the first impression citizens have of our legal system. A competent, respectful, fair and compassionate judge who follows the law serves not only to inspire confidence in our legal system, but improves it. As a Pro Tem I have earned this reputation and I would be honored to serve as Judge.

29. In 50 words or less, please describe your judicial philosophy.

It is essential that all individuals in the Courtroom have the strong sense that justice is administered fairly, justly, and equally to all. The Judge must ensure that all matters are impartially heard, all parties are treated with respect, and all matters are adjudicated fairly and according to the law.

30. Have you ever held a judicial office or have you ever been a candidate for such office?

Yes / No. If you answered "yes", please provide details, including the courts involved, whether elected or appointed, and the periods of your service.

Pro Tem Judge, King County District Court, 2008 (initial training and appointment)/2011 (began active service) to the present

31. Have you ever held public office other than a judicial office, or have you ever been a candidate for such an office? Yes / No. If you answered "yes", please provide details, including the offices involved, whether elected or appointed, and the length of your service.

No

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32. Please briefly identify all of your experience as a neutral decision-maker (e.g. judge (permanent or pro tem) in any jurisdiction, administrative law judge, arbitrator, hearing officer, etc.). Give courts, approximate dates, and attorneys who appeared before you.

Pro Tem Judge, King County District Court, 2008 (initial training and appointment)/2011 (began active service) to the present \_\_\_\_\_

As Pro Tem Judge in King County District Court, I have had dozens of attorneys appear before me. Below is a list of those attorneys who have appeared frequently before me in Seattle, Burien, Renton, MRCJ, Bellevue, Redmond District Courts. \_\_\_\_\_

Michael Hogan 206-296-9527  
Bradley Bowen 206-296-9704  
James Daniels 206-296-9432  
Patrick Lavin 206-296-9525  
Jason Rittreiser 206-296-9541  
Loren Rigsby 206-205-7716  
Roberta Wolf 206-296-9568  
Lakesha Washington 206-296-9678  
Lisa Paglisotti 206-322-8400  
Seungjae Lee 206-674-4700  
Sam Wolf 206-674-4700  
Scott Saeda 253-520-6509 x279  
Matt Covello 253-520-6509 x369  
Vernon Smith 425-457-7474  
Edmund Allen, Jr 206-262-0903

**Community and Civic Activities**

33. Please list your community and civic activities, including dates and leadership roles held, over the last 10 years.

Sacred Heart School, School Commission member, (2002-2012)

Sacred Heart School, School Commission Chairperson, (2010-2011) \_\_\_\_\_

Holy Names Academy, Parent Board member, (2010-present)

Holy Names Academy, Parent Board Vice Chair, (2011-2012)

Sacred Heart Parish, Pastoral Council member, (1997-2009)

Sacred Heart Parish, Pastoral Council Chairperson ( 2009)

Sacred Heart Parish, Pastor Transition Team Chairperson (2011-present) \_\_\_\_\_

Whitman College Annual Fund volunteer (in 1990s and again 2010-present) \_\_\_\_\_

8<sup>th</sup> Grade Congressional Hearings Judge, We the People program, (2007-present) \_\_\_\_\_

Endowment Keynote Speaker, Sacred Heart School Auction, (2007 & 2010) \_\_\_\_\_

\_\_\_\_\_

**Discipline and Disputes**

34. Have you ever been held, arrested, charged or convicted by federal, state, or other law enforcement authorities for violation of any federal law, state law, county or municipal law, regulation or ordinance? Yes / No. If you answered "yes", please provide details. (Do not include traffic violations for which a fine of \$150.00 or less was imposed.) Please feel free to provide your view of how it bears on your present fitness for judicial office.

No \_\_\_\_\_

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35. Has a client ever made a claim or suit against you for malpractice? Yes / No. If you answered "yes", please provide details and the current status of the claim and/or suit.  
No \_\_\_\_\_
36. Please describe your direct experience, if any, with domestic violence and sexual harassment.  
None \_\_\_\_\_
37. Have you been a party in interest, witness, or consultant in any legal proceeding? Yes / No. If you answered "yes", please provide details. Do not list proceedings in which you were merely a guardian ad litem or stakeholder.  
**Yes. I was sued in my capacity as a Pro Tem Judge in King County District Court, Small Claims Court, by a litigant against whom I had ruled in an earlier Small Claims Court matter. Judge Eileen Kato heard the motion to dismiss brought on my behalf and dismissed the case with prejudice for failure to state a claim and based upon judicial immunity on 1/27/12. See Alex Zimmerman v. Lisa O'Toole, King County District Court, West Division, case number 115-1599.** \_\_\_\_\_
38. Have you ever been the subject of a complaint to any bar association, disciplinary committee, court, administrative agency or other professional group? Yes / No. If you answered "yes", please provide details.  
**SEE No. 37 above** \_\_\_\_\_
39. Have you ever been disciplined or cited for breach of ethics or unprofessional conduct?  
Yes / No. If you answered "yes", please provide details.  
No \_\_\_\_\_
40. If you have served as a judge, commissioner, or in any judicial capacity, has a complaint for misconduct in that capacity ever been made against you? Yes / No. If you answered "yes", please provide details.  
No \_\_\_\_\_

**Miscellaneous**

41. Are you aware of anything that may affect your ability to perform the duties of a judge? Yes / No. If you answered "yes", please provide details.  
No \_\_\_\_\_
42. Have you published any books or articles in the field of law? If so, please list them, giving the citations and dates. Also, please give the dates and forums of any Continuing Legal Education presentations that you have made.  
**In my capacity as Prosecuting Attorney for the Greater Puget Sound Financial Fraud and Identity Theft Task Force, I gave numerous presentations to law enforcement agencies, financial institution fraud investigator groups, and merchant fraud investigator groups regarding identity theft crimes and the Task Force's work.** \_\_\_\_\_

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

43. Please list any honors, prizes, awards or other forms of recognition that you have received and whether they were professional or civic in nature.  
**SEE No. 33. I was honored to be selected as Chair/Vice-Chair in each of those community service positions.** \_\_\_\_\_
44. Are you aware of anything in your background or any event you anticipate in the future that might be considered to conflict with the Code of Judicial Conduct? Yes / No. If you answered "yes", please explain.  
**No** \_\_\_\_\_
45. Please provide a writing sample of your work (between 5 and 10 pages long), written and edited solely by you, within the last 4 years.

**Access to Justice**

46. Please describe activities that you have engaged in to eliminate bias or improve access to the judicial system for indigent populations and ethnic, racial and sexual minorities. As a member of the bench, what, if any, role do you believe a judge has to enhance equal access to justice?

It is essential that all individuals in the courtroom have the strong sense that justice is administered fairly, justly, and equally to all. To ensure that all have equal access to justice, a judge must be sensitive to cultural differences and the needs of all in the courtroom, whether they be ethnic, racial, or sexual minorities or whether they be indigent or differently-abled. A critical component of that sensitivity is ensuring by one's demeanor that all who appear in court know that their case is important and that their voice will be heard. This is particularly important for those in the community who may view the courts with suspicion or mistrust. It is critical for the judge to take whatever time is necessary to clearly, patiently and completely explain to all who come before the court the procedures that govern the process and the basis of the decisions that have a real and meaningful impact on their lives. In my experience, judges who take the time and make the extra effort find that citizens who come before them respect the process, even if they disagree with the decision.

As Pro Tem Judge, I have ensured that parties needing interpreters or assigned attorneys were afforded the assistance they needed. Particularly in District Court matters, defendants often come to criminal hearings with no attorney, often because they cannot afford one. As a Pro Tem Judge I have had many occasions to discuss with defendants their right to counsel, even if they cannot afford to hire an attorney. I have further explained to unrepresented defendants how to participate in the screening process to obtain a public defender. I have continued cases so that defendants may have the opportunity to screen for a public defender and return to court on another date, represented by counsel. Similarly, I have continued cases so that an interpreter may be ordered to assist defendants for whom English is not their primary language. \_\_\_\_\_

47. Please describe the frequency, time commitment and substantive nature of your direct participation of free legal services to indigent populations, and ethnic, racial and sexual minorities.  
**While in private practice, I served as pro-bono counsel for the Guardian-Ad-Litem Program in dependency and termination of parental rights matters. Most of my career has been as a public servant in the Criminal Justice System, first as a Prosecutor and now as a Pro Tem Judge. I have been honored to serve our community in this way.** \_\_\_\_\_

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

**Diversity in the Legal Profession**

48. Please briefly describe your understanding of the issue of "diversity within the legal profession."  
**In King County, we have a very diverse community with people of many different races, ethnicities, genders, sexual orientations, ages and socio-economic backgrounds. The legal profession in our community should reflect the diversity of the community itself. The legal community has certainly become more diverse since I first began practice in 1987 and should continue to do so. New attorneys of diverse backgrounds should be welcomed and encouraged in their development as attorneys by all in the legal community. It is in this way that our legal community will reflect our larger community. It is also in this way that diverse community members will have a stronger sense that our legal system is equally accessible to all.**

**References**

It is useful for evaluators to speak with attorneys and non-attorneys who are familiar with you. One or more participants in the evaluation process may contact each of your references. All telephone numbers should be current and legible. If a reference is unreachable, your rating/evaluation may be delayed. **Please use a separate piece of paper for each list.** You may contact references in advance if you so desire. Individuals not listed by you as a reference may be contacted to obtain information about you.

49. If you have been in practice within the past fifteen years, list the names and phone numbers of ten opposing counsels who know you best, including at least three opposing counsels on cases that went to trial.
50. If you have been a judge or otherwise have served as a neutral decision-maker within the past fifteen years, please list the names and phone numbers of the last ten attorneys who have appeared before you.
51. List the names and phone numbers of up to six non-attorney references whose opinions or observations – particularly with respect to your commitment to improving access to the judicial system for indigent populations, people of color, and disenfranchised communities – would assist in the consideration of your application.
52. For the last five trials in which you participated (whether as trial lawyer or decision-maker), list as appropriate the following for each: case name, subject matter, court, judge (w/ phone number), and opposing counsel or counsel appearing before you (w/ phone number).
53. List the names and phone numbers of ten additional attorneys familiar with your professional qualifications, skills, experience or attributes.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

**NOTE:** The Governor's Office requires individuals seeking judicial appointment to utilize, to the fullest extent possible, the ratings processes from state, county, and minority bar organizations. Contact information for the minority bar associations can be found on the Washington State Bar Association's website at (<http://www.wsba.org/public/links/minoritybars.htm>). It is the applicant's responsibility, however, to obtain these evaluations in a timely manner, and to forward evaluations received to the Governor's Office. To that end, all applicants are strongly encouraged to commence the evaluation process with the various bar associations as soon as possible. To facilitate the process, the following organizations have agreed to accept this questionnaire as the principal application in their evaluation process and may also require candidates to complete an additional supplement questionnaire:

**State Bar Association**

☐ Washington State Bar Association (WSBA) (appellate court evaluations only)

**County Bar Associations**

- ☒ King County Bar Association (KCBA)  
☐ Spokane County Bar Association (SCBA)  
☐ Tacoma-Pierce County Bar Association (TPCBA)

**Minority Bar Associations**

- ☒ Latina/o Bar Association of Washington (LBAW)  
☒ Loren Miller Bar Association (LMBA)  
☒ The Joint Asian Judicial Evaluations Committee of Washington<sup>3</sup>  
☐ Pierce County Minority Bar Association (PCMBA)  
☒ Q-Law / GLBT (Gay Lesbian Bisexual Transgender) Bar Association  
☒ Washington Women Lawyers<sup>4</sup> (WWL)

As of the date of your certification below and submission of this questionnaire to the Governor's Office, please check beside each of the above organizations you have contacted to evaluate you for the position for which you seek.

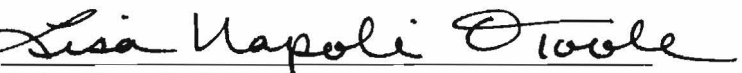
**Certification**

54.

By signing below, I declare under penalty of perjury under the laws of the State of Washington that the information provided by me in responding to this questionnaire is true and correct to the best of my knowledge.

Date: **October 15, 2012**

Signature:

  
**Lisa Napoli O'Toole**

<sup>3</sup> A joint committee of the Asian, Korean, South Asian and Vietnamese American Bar Associations of Washington.

<sup>4</sup> Washington Women Lawyers has approved the use of the Governor's Uniform Judicial Evaluation Questionnaire for its statewide and all county chapters.

**KING COUNTY BAR ASSOCIATION**  
**Supplemental Questionnaire for Candidates Seeking Appointment**  
**or Election to Judicial Office**

**COVER SHEET**

NAME **O'Toole**  
(Last)

**Lisa**  
(First)

**Napoli**  
(Middle)

Business Address:

**6947 Coal Creek Parkway SE # 310**  
**Newcastle, Washington 98059**

Telephone: (206) 799-8236

Business Email: the4otooles@comcast.net

Position Sought:

By Election \_\_\_\_\_

By Appointment **X**

\_\_\_\_\_ Municipal Court  
**X** King County District Court (**EAST** Division)  
\_\_\_\_\_ King County Superior Court  
\_\_\_\_\_ Washington State Court of Appeals, Div.I  
\_\_\_\_\_ Washington State Supreme Court

**PLEASE NOTE:** In the process of determining judicial ratings, the Judicial Screening Committee of the King County Bar Association uses the Washington State Governor's Office Uniform Judicial Evaluation Questionnaire and this Supplemental Questionnaire, as well as reference checks, candidate interviews and other sources of information. (See Judicial Screening Rules and Procedures.)

The responses to the following questions on the Washington State Governor's Office Uniform Judicial Evaluation Questionnaire may be disclosed to persons other than the Judicial Screening Committee and, in the case of judicial elections, will be publicly available:

Position Sought, Name, Business Address, Business email  
Professional History: #8, 9, 10, 11, 12, 13, 14, 15,  
Educational Background: #16, 17  
Professional Experience: #18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32  
Community and Civic Activities: #33

At various times, groups not affiliated with KCBA have rated judicial applicants. The KCBA Judicial Screening Committee's bylaws preclude the Committee from disclosing the names of applicants seeking a rating for appointment to these other groups. However, if you are interested in obtaining the names and addresses of such other rating groups to request this information yourself, you may contact the Executive Director at the KCBA office, telephone: 206-267-7100.

**Include the following materials in your application packet:**

- Governor's Office Uniform Judicial Evaluation Questionnaire
- KCBA Supplemental Questionnaire
- A writing sample between 5-10 pages, as requested in question 45 of the Governor's questionnaire.

Please be advised that the Judicial Screening Committee may take into account the information provided in the questionnaire, the reference checks, the interview, and any other source of information available to it. Letters of recommendation will not be provided to the Committee and should not be solicited. Supplemental materials such as journal articles, legal research, motions, briefs or other documents that you have filed in court, other than the writing sample specifically called for in the Governor's Uniform Questionnaire, should not be included.

**REFERENCES.** The Committee finds it useful to speak with attorneys and non-attorneys who are familiar with you. One or more Committee members will attempt to contact each reference listed. All telephone numbers should be current and legible. You may contact references in advance if you so desire. The Committee may also call upon individuals not listed to obtain information.

(1) List the names and phone numbers of up to ten attorneys who have supervised you or who have reviewed and are familiar with your legal work, including your current supervisor and at least one other supervisor from your current workplace and at least one supervisor from each of your prior workplaces during the past fifteen years.

- a. Hon. Richard C. Tallman, Judge, Ninth Circuit Court of Appeals (206) 224-2250)
- b. Hon. Susan Mahoney, Judge, King County District Court (206-296-0904)
- c. Hon. Elizabeth Stephenson, Judge, King County District Court (206-276-9861)
- d. Mark Larson, Chief Criminal Deputy, King County Prosecutor's Office (206-296-9450)
- e. Dana Cashman, Senior King County Prosecutor (206-205-7436)
- f. Cindi Port, Senior King County Prosecutor (206-296-9019)
- g. Denis O'Leary, Senior King County Prosecutor (206-661-7106)
- h. Melinda Young, Senior King County Prosecutor (206-205-3337)
- i. Craig Peterson, Robinson Tait (206-676-9640 or 206-876-3277)
- j. Kevin Baumgardner, Corr Cronin (formerly of Bogle & Gates) (206-625-8600)
- k. Guy Michelson, Corr Cronin (formerly of Bogle & Gates) (206-625-8600)

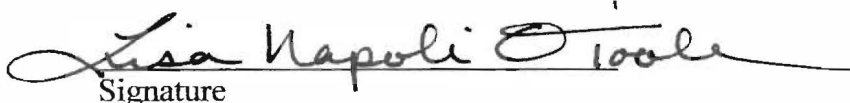
(2) For the last five appellate matters in which you participated (whether as lawyer or decision-maker), list as appropriate the following for each: case name, subject matter, court, judge (w/phone number), and opposing counsel or counsel appearing before you (w/ phone number).

During my years at the King County Prosecuting Attorney's Office, I served as a Deputy Prosecutor in the Appellate Unit from 1995-1999. During that time I wrote more than 70 appellate briefs, which were filed in the Washington State Court of Appeals, Division I (206-464-7750). As a result, I worked with numerous opposing counsel from the Washington Appellate Project (206-587-2711) and Nielsen Broman/Nielsen & Acosta (206- 623-2373). Below are the last five matters.

- a. Case Name: State v. Wren and Delgado, No. 43667-8-I  
Subject Matter: Criminal law, "to convict" instruction and accomplices  
Court: WA State Court of Appeals, Div I  
Judge: Hon. Susan Agid authored opinion (425-451-2812)  
Plaintiff's Attorney: I represented the State in this appeal  
Defense Attorney: David Donnan, (206-587-2711)
- b. Case Name: State v. Jermaine Garland, No. 44647-9-I  
Subject Matter: Criminal Law, sufficiency of evidence  
Court: WA State Court of Appeals, Div I  
Judge: Per Curium opinion (206-464-7750)  
Plaintiff's Attorney: I represented the State in this appeal  
Defense Attorney: Sharon Blackford, (206-459-0441)

- c. Case Name: **State v. Wade Simmons**, No. 43947-2-I  
Subject Matter: **Criminal law, sufficiency of evidence/pros. misconduct**  
Court: **WA State Court of Appeals, Div. I**  
Judge: **Per Curium opinion (206-464-7750)**  
Plaintiff's Attorney: **I represented the State in this appeal**  
Defense Attorney **Jason Saunders (206-332-1280)**
- d. Case Name: **State v. Savoya Harris**, No. 44081-1-I  
Subject Matter: **Criminal law, sufficiency of evidence**  
Court: **WA State Court of Appeals, Div. I**  
Judge: **Per Curium opinion (206-464-7750)**  
Plaintiff's Attorney: **I represented the State in this appeal**  
Defense Attorney **Elaine Winters, (206-587-2711)**
- e. Case Name: **State v. Ian Scarlett**, No. 43868-9-I  
Subject Matter: **Criminal law, speedy trial rights/jury instructions**  
Court: **WA State Court of Appeals, Div I**  
Judge: **Per Curium opinion (206-464-7750)**  
Plaintiff's Attorney: **I represented the State in this appeal**  
Defense Attorney **Eric Nielsen (206-623-2373)**

**I certify under penalty of perjury of the laws of the state of Washington that the above information is true, accurate and complete. I agree to notify KCBA if there are material changes in this information between the time the Uniform Questionnaire and this cover sheet are completed and the expiration of any rating received.**



Signature

**Lisa Napoli O'Toole**

Print Name

**October 15, 2012**

Date

Washington State Bar Association  
Office of Disciplinary Counsel  
1325 Fourth Ave Suite 600  
Seattle, WA 98101

RE: WAIVER AND AUTHORIZATION TO RELEASE INFORMATION

I, **Lisa Napoli O'Toole**, WSBA No. **17258**, have requested rating for judicial office by the King County Judicial Screening Committee.

Pursuant to ELC 3.4(c) I authorize and request the Washington State Bar Association, to disclose the record of disciplinary grievances filed against me and the status of otherwise confidential disciplinary investigations and proceedings and to provide copies of nonpublic information to the Judicial Screening Committee of the King County Bar Association, 1200 Fifth Avenue, Suite 600, Seattle, Washington 98101.

Dated this 15th of October, 2012.



Signature

Lisa Napoli O'Toole

Print Name

17258

WSBA Number

I \_\_\_\_\_, WSBA No. \_\_\_\_\_, decline to authorize the release of confidential discipline information under RD 11.1(n) to the King County Bar Association Committee.

Dated this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_.

Signature

Print Name

WSBA Number

49. If you have been in practice within the past fifteen years, list the names and phone numbers of ten opposing counsels who know you best, including at least three opposing counsels on cases that went to trial.

Hal Palmer (206) 322-8400

Dave Wieck (425) 454-4455

Todd Greunhagen (206) 624-8105

Hon. Anne Harper (prior to her becoming a judge) (206) 296-3630

Marcus Naylor (206) 674-4700

Carey Huffman (206) 447-3900

Jesse Dubow (206) 674-4700

Kari Boyam (206) 674-4700

Teresa Griffin (206) 271-1929

Phil Griffin (206) 552-5318

Scott Saeda (253) 520-6506 X279

50. If you have been a judge or otherwise have served as a neutral decision-maker within the past fifteen years, please list the names and phone numbers of the last ten attorneys who have appeared before you.

**Below is a list of attorneys who appear frequently before me when I serve as Pro Tem Judge in Seattle, Burien, Renton, MRCJ, Bellevue, Redmond District Courts.**

**Michael Hogan 206-296-9527  
Bradley Bowen 206-296-9704  
James Daniels 206-296-9432  
Patrick Lavin 206-296-9525  
Jason Rittereiser 206-296-9541  
Loren Rigsby 206-205-7716  
Roberta Wolf 206-296-9568  
Lakesha Washington 206-296-9678  
Lisa Paglisotti 206-322-8400  
Seungjae Lee 206-674-4700  
Sam Wolf 206-674-4700  
Scott Saeda 253-520-6509 x279  
Matt Covello 253-520-6509 x369  
Vernon Smith 425-457-7474  
Edmund Allen, Jr. 206-262-0903**

51. List the names and phone numbers of up to six non-attorney references whose opinions or observations – particularly with respect to your commitment to improving access to the judicial system for indigent populations, people of color, and disenfranchised communities – would assist in the consideration of your application.

Non-Attorney References re: Judicial System:

Salina Hill, King County Superior Court Clerk 206-296-9113 or 425-891-6699

Amy Turley, King County District Court Clerk 253-569-0259

Susana Saravia-Anibarro, King County District Court Interpreter 206-229-8611

Lillian Hawkins, King County District Court Clerk 206-371-1464

Non-Attorney References re: Community leadership activities:

Denise Merle, Director of Internal Audit, Weyerhaeuser Corporation,

David Burroughs, Principal, Sacred Heart School

Dr. Carola Wittmann, Principal, Forest Ridge High School

Fr. Pat Ritter, Pastor, Sacred Heart Parish (Retired)

52. For the last five trials in which you participated (whether as trial lawyer or decision-maker), list as appropriate the following for each: case name, subject matter, court, judge (w/ phone number), and opposing counsel or counsel appearing before you (w/ phone number).

During my employment with the King County Prosecuting Attorney's Office, I was assigned to a trial unit between 1993-1995. During that time, I tried 25-30 felony criminal jury trials. Most of the King County Superior Court Judges before whom I have tried cases have retired or are deceased, including Judges Frank Sullivan, Carmen Otero (8 felony jury trials before retired Judge Otero), Richard Ishikawa, James Noe, Arthur Piehler, George Mattson and Marilyn Sellers. I have listed more than five trials in an effort to identify more judges in the event it is not possible for panel members to reach the retired Judges. Additionally, I have listed judges before whom I have practiced regularly, and who are more recently acquainted with my work, to provide the panel with judges who will be easier to reach. I have appeared before these additional judges frequently, and in some cases, daily, for motions, sentencings, pleas, and arraignments.

Judges more recently or regularly familiar with my work:

Hon. Palmer Robinson, King County Superior Court, (206-296-9103)

Hon. Michael Hayden, King County Superior Court, (206-296-9230)

Hon. Brian Gain, King County Superior Court, (206-296-9170)

Trials (1993-1995):

State v. Alejandro Diaz, (VUCSA felony drug case), King County Superior Court, Judge: Hon. Ann Schindler, now Washington State Court of Appeals, Div. I, (206-464-7659), opposing counsel, Dave Wieck (425-454-4455)

State v. Patrick Tables, (VUCSA felony drug case), King County Superior Court No. 93-C-07547-9, Judge: Hon. George Mattson, retired, (425- 941-0187), opposing counsel: Marcus Naylor (206-674-4700)

State v. Jarmelia Jones, (VUCSA felony drug case), King County Superior Court No. 93-1-04895-1, Judge: Hon. Frank Sullivan, (deceased), opposing counsel: Victoria Foedisch (206-447-3900)

State v. Donniel D. Brown, (VUCSA felony drug case), King County Superior Court No. 93-C-07123-6, Judge: Hon. Carmen Otero, retired (206-296-9275), opposing counsel: Ann Albright (240-777-9261)

State v. Anthony Aase, (VUCSA felony drug case), King County Superior Court, Judge: Marilyn Sellers, retired, (206- 296-9330), opposing counsel: David Speikers (425) 222-0555)

State v. Carol Dreyer, (VUCSA felony drug case), King County Superior Court No. 93-1-05598-2, Judge: Laura Inveen (206-296-9268), opposing counsel: Ron Piper (206-499- 9375)

State v. Ronald Joyner, (VUCSA felony drug case), King County Superior Court No. 93-1-0585-9, Judge Deborah Fleck, (206-296-9273), opposing counsel: Tom Olmstead (360-779-8980)

State v. (don't recall defendant name), (VUCSA felony drug case), King County Superior Court, Judge: Hon. Carmen Otero, retired, (206-296-9275). Opposing counsel, now Hon. Ann Harper, now King County District Court Judge, (prior to her becoming a judge) (206-296-3630).

53. List the names and phone numbers of ten additional attorneys familiar with your professional qualifications, skills, experience or attributes.

**Hon. Richard C. Tallman, Judge, Ninth Circuit Court of Appeals (206-224-2250)**  
**Hon. Susan Mahoney, Judge, King County District Court (206-296-0904)**  
**Hon. Elizabeth Stephenson, Judge, King County District Court (206-276-9861)**  
**Mark Larson, Chief Criminal Deputy, King County Prosecutor's Office (206-296-9450)**  
**Dana Cashman, Senior King County Prosecutor (206-205-7436)**  
**Cindi Port, Senior King County Prosecutor (206-296-9019)**  
**Denis O'Leary, Senior King County Prosecutor (206-661-7106)**  
**Melinda Young, Senior King County Prosecutor (206-205-3337)**  
**Craig Peterson, Robinson Tait (206-676-9640 or 206-876-3277)**  
**Kevin Baumgardner, Corr Cronin (206-625-8600)**  
**Guy Michelson, Corr Cronin (206-625-8600)**

**FILED**

KING COUNTY, WASHINGTON

AUG 09 1994

SUPERIOR COURT CLERK  
BY EILEEN L. MCLEOD  
DEPUTY

## SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	NO. 94-1-02237-3
	)	
vs.	)	STATE'S MEMORANDUM IN
	)	OPPOSITION TO DEFENDANT'S
JOEL TRISTAN DUNCAN,	)	MOTION TO SUPPRESS
	)	
Defendant.	)	
	)	
	)	
	)	

I. INTRODUCTION

This case involves the service of a VUCSA search warrant at defendant Joel Tristan Duncan's residence on March 31, 1994. During the service of the search warrant one of defendant Duncan's roommates, Shawn Cottrell, pulled a gun on the officers serving the warrant. Mr. Cottrell was shot and killed.

The defendant moves this court for an order suppressing evidence claiming that no "knock and announce" notice was given by the officers serving the warrant. However, The evidence that the "knock and announce" notice was properly given is overwhelming and the defendant's motion to suppress should be denied.

STATE'S MEMORANDUM IN OPPOSITION TO  
DEFENDANT'S MOTION TO SUPPRESS - 1

Norm Maleng  
Prosecuting Attorney  
W 534 King County Courthouse  
Seattle, Washington 98104-2312  
(206) 276-9000

51 D

1  
2  
3 II. FACTS

4 On March 31, 1994, at approximately 10:30 p.m., the King  
5 County Police Precinct Five Proactive Unit and the Tac 30 Unit  
6 served a search warrant<sup>1</sup> at the residence of defendant Joel  
7 Tristan Duncan and Shawn Cottrell, at 30829-B 22nd Avenue South,  
8 Federal Way, King County, Washington. The Tac 30 Unit assisted in  
9 the serving of the warrant because the Officers had information  
10 that the residents were armed. The service of the warrant was  
11 planned in advance and each officer was assigned a specific task  
12 at the briefing meeting that had occurred earlier in the evening.

13 As the police approached the front door of the residence,  
14 they observed people moving around inside the residence. The  
15 first officer at the door of the residence, Officer Dornay,  
16 knocked on the door and loudly announced, "King County Police with  
17 a search warrant." There was no response. Officer Dornay then  
18 knocked on the door again and again loudly announced, "King County  
19 Police with a search warrant." There was no response. After  
20 receiving no response to the second announcement, the officers  
21 forced open the door while again announcing "King County Police  
22 with a search warrant." While the announcements were made,  
23

24 <sup>1</sup>A copy of the Search Warrant and Affidavit in Support of the  
25 Search Warrant are attached hereto. The sufficiency of the  
Warrant and Affidavit are not being challenged by the defendant.

1 officers observing the exterior of the house saw defendant Joel  
2 Duncan attempting to flee by climbing out of a second floor  
3 window. When defendant Duncan saw the police officers outside, he  
4 quickly retreated into the residence. While the door was being  
5 forced open the officers saw Cottrell move from the right of the  
6 front door to the left of the door. Once the door was opened, the  
7 officers saw Cottrell to the left of the front door near the  
8 entrance of a first floor bedroom. Cottrell then pointed a  
9 loaded 9-millimeter semi-automatic handgun at Officer Dornay.  
10 Officer Dornay then shot Cottrell. Cottrell was killed.  
11 Defendant Duncan was arrested upstairs in his bedroom.

12 The Officers found cocaine, currency, weapons and other  
13 paraphernalia in the house. Defendant Duncan subsequently  
14 admitted that he lived in the house, that the drugs were his, that  
15 he sold drugs, and that the guns were his.

### 17 III. ARGUMENT

18 When police officers make a non-consensual entry to a  
19 person's home, the officers must comply with the "knock and  
20 announce" notice rule. State v. Coyle, 95 Wn. 2d 1, 5-6, 621 P.2d  
21 1256 (1980); State v. Garcia-Hernandez, 67 Wn. App. 492, 495, \_\_\_\_  
22 P.2d \_\_\_\_ (1992). The purposes of the rule are:

23 (1) reduction of potential violence to both occupants and  
24 police arising from an unannounced entry, (2) prevention of  
25 unnecessary property damage, and (3) protection of an  
occupant's right to privacy.

1 Coyle, 95 Wn. 2d at 5.

2 In order to comply with the "knock and announce" rule, the  
3 officers must, prior to entry, announce their identity, demand  
4 admittance, announce the purpose of their demand, and be  
5 explicitly or implicitly denied admittance. Coyle, 95 Wn. 2d at  
6 6. A statement by police officers identifying themselves and  
7 advising that they possess a search warrant is implicitly a demand  
8 for admission into the house and no express demand to enter the  
9 house is necessary. State v. Schmidt, 48 Wn. App. 639, 642-3, 740  
10 P.2d 351 (1987) and State v. Lehman, 40 Wn. App. 400, 404-405, 698  
11 P. 2d 606 (1985). A lack of response to the "knock and  
12 announcement" is an implicit denial of admittance and no  
13 requirement of an affirmative refusal of admittance is required.  
14 State v. Amezola, 49 Wn. App. 78, 84, 741 P. 2d 1024 (1987),  
15 State v. Jones, 15 Wn. App. 165, 167, 547 P. 2d 906 (1976) and  
16 Schmidt, 48 Wn. App. at 642.

17 Police officers must give the occupants a reasonable  
18 opportunity to respond. Id. Whether officers waited a reasonable  
19 time before entering depends on the circumstances in each case.  
20 Id. A ten second delay has been found sufficient. State v.  
21 Jones, 15 Wn. App. 165 (1976). A five second delay has been found  
22 sufficient. State v. Garcia-Hernandez, 67 Wn. App. 492 (1992).  
23 Even a three second delay between the "knock and announce" and  
24  
25

1 entry has been found sufficient. State v. Schmidt, 48 Wn.App.  
2 639,646 (1987).

3 In the present case, the officers involved knocked on the  
4 door of defendant Duncan's residence and announced "King County  
5 Police with a search warrant" thereby identifying themselves,  
6 stating their purpose, and demanding entry in compliance with the  
7 case law discussed above: Coyle, Schmidt, and Lehman. The  
8 officers then waited and received no response. This lack of  
9 response is sufficient to imply a denial of entry. Amezola and  
10 Jones. Rather than force open the door at this point, the  
11 officers gave a second "knock and announce" notice. The officers  
12 again knocked on the door and loudly announced "King County Police  
13 with a search warrant". Again the officers received no response.  
14 This lack of response, too, is sufficient to imply denial of  
15 admittance. The officers then forced open the door by hitting it  
16 not once, not twice, but three times with an opening device and  
17 again announcing "King County Police with a search warrant."  
18 After the third hit with the opening device, the door gave way.  
19 The evidence in this case is clear that the officers complied with  
20 the "knock and announce" rule and the defendant's motion to  
21 suppress should be denied.


IV. CONCLUSION

As discussed above the officers in this case clearly complied with the "knock and announce" rule and the defendant's motion to suppress should be denied.

DATED this 9th day of August, 1994.

Respectfully submitted,

NORM MALENG  
King County Prosecuting Attorney

By:   
LISA NAPOLI O'TOOLE, WSBA #91002  
Deputy Prosecuting Attorney  
Attorneys for Plaintiff



## **Lisa Napoli O'Toole**

Candidate for Appointment to  
King County District Court Judge, East Division

## **Lisa Napoli O'Toole**

### **King County District Court Judge, East Division**

**Occupation:** Judge Pro Tem, King County District Court; former King County Deputy Prosecutor

**Education:** Whitman College, B.A.; Seattle University School of Law, J.D., *cum laude*.

**Statement:** Lisa Napoli O'Toole brings to the courtroom twenty-five years of experience practicing law and trying cases, both as a King County Deputy Prosecuting Attorney and as civil attorney in private practice. She also has extensive experience as a Judge Pro Tem in King County District Court, presiding over both criminal and civil cases. She has earned a reputation as a judge of great integrity who is fair, respectful and knowledgeable, and who follows the law. Lisa Napoli O'Toole is a judge who ensures that justice is administered fairly, justly, and equally to all. She will make an excellent King County District Court Judge.

Lisa Napoli O'Toole has received the highest rating, "Exceptionally Well Qualified," for the District Court bench from area Bar Associations, including Washington Women Lawyers and QLaw/GLBT Bar Association.

Lisa Napoli O'Toole has lived in Newcastle for 23 years. She and her husband have two children. She is an active community volunteer.

## **Bar Association Ratings for Lisa Napoli O'Toole**

Washington Women Lawyers	Exceptionally Well Qualified
Q-Law/GLBT Bar Association	Exceptionally Well Qualified
Joint Asian Bar Association	Well Qualified
Latina/o Bar Association	Well Qualified
King County Bar Association	Well Qualified

## **Endorsements of Lisa Napoli O'Toole**

Jane Brahm, Mercer Island City Council Member

John Chelminiak, Bellevue City Council Member

Bill Erxleben, Newcastle City Council Member

Christopher Hurst, State Representative

Dan Satterberg, King County Prosecuting Attorney

Washington State Council of County and City Employees, AFSCME,  
AFL-CIO

King County District Court Clerk's Union, Local 21-DC, AFSCME

King County Police Guild

Kirkland Police Guild

Hon. Timothy Bradshaw, King County Superior Court Judge

Hon. Regina Cahan, King County Superior Court Judge

Hon. Susan Craighead, King County Superior Court Judge

Hon. Palmer Robinson, King County Superior Court Judge

Hon. James Rogers, King County Superior Court Judge

Hon. Susan Mahoney, King County District Court Judge

## **LISA NAPOLI O'TOOLE**

### **EDUCATION**

**Seattle University School of Law (formerly University of Puget Sound School of Law),** Seattle, Washington.

J.D., *cum laude*, May 1987. Moot Court Board member, Dean's Award Recipient.

**Whitman College**, Walla Walla, Washington.

B.A., Economics; minor, History, 1984. Dean and Esther Vail Scholarship Recipient.

### **EXPERIENCE**

**Judge Pro Tem, King County District Court**, King County, WA. June 2011-present.

Serve as Pro Tem Judge. Hear Criminal and Civil matters in District Courts throughout King County.

**Deputy Prosecuting Attorney, King County Prosecutor**, Seattle, WA. June 1993 – February 2002; February 2008-May 2011.

Criminal Division. Responsible for felony case preparation, trials, and appeals, including jury trials in King County Superior Court and arguments before the Washington State Court of Appeals Division I.

**Of Counsel, Corr Cronin**, Seattle, WA. May, 2006 –November, 2006

Served as Of Counsel on a contract basis on a discovery project for a civil litigation matter. Extensive use of electronic discovery using Applied Discovery system.

**Associate Attorney, Bogle & Gates**, Seattle, WA. October 1987 – June 1993.

Civil litigation practice, with emphasis in copyright infringement, tort, contract, and professional malpractice actions.

**Extern, Office of the Federal Public Defender**, Seattle, WA. January 1987 – June 1987.

Assisted in preparation of defense against criminal indictment in large white-collar fraud case tried in the United States District Court for the Western District of Washington.

### **PROFESSIONAL QUALIFICATIONS**

**Admitted to Bar:** Washington, 1987; U. S. District Court, Western District of Washington.

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February 25, 2013

Re: Lisa O'Toole

Dear Members of the King County Council:

I am writing this letter to express my support for Lisa O'Toole as a candidate for the open Northeast District Court position. I first met Lisa in the early 90's when we both worked as deputies for the King County Prosecutor's Office. Lisa joined the office as an experienced attorney and quickly established herself as a smart, hardworking, and dedicated prosecutor. Lisa embodied the philosophy that Norm Maleng tried to instill in all of his deputies that justice is about more than just winning convictions. Her legal acumen is second to none, but maybe even more important is her ability to consider the human side of the equation and her understanding that accountability needs to be tempered with compassion for victims and defendants. She understands that each case is unique and each person must be considered as an individual.

I was elected to the King County bench in 2010 and Lisa began sitting as a pro tem for me a few months later. As with all endeavors, Lisa wanted to make sure she was prepared and up to the task. She took a great deal of her own time to come in and watch calendars and to work with me and other judges to make sure she was ready to assume the bench. Lisa quickly became one of the King County District Court's most requested pro tems and is frequently called on to serve in all of our District Courts. Lisa brings with her not only her exceptional and broad based legal experience and knowledge, but an excellent demeanor and passion for justice that makes her particularly well suited to court work at this level.

I hope that you will give Lisa O'Toole strong consideration for this position. I believe she would make an excellent addition to the current King County District Court bench both inside and outside of the courtroom.

Respectfully submitted,

  
Judge Susan Mahoney  
King County District Court

State of  
Washington  
House of  
Representatives



January 28, 2013

Larry Gossett, King County Council member  
King County Council  
516 3<sup>rd</sup> Avenue, Room 1200  
Seattle, WA 98104

RE: Lisa Napoli O'Toole appointment as King County District Court Judge, East District

Dear Councilmember Gossett,

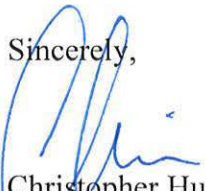
I am writing to give my enthusiastic recommendation for the appointment of Lisa Napoli O'Toole to the position of King County District Court Judge for the East District.

I have known King County Prosecutors Lisa and Scott O'Toole for over 20 years, both personally and professionally. In that time I have worked with Lisa in her role as a King County Deputy Prosecuting Attorney and found her to be highly competent and knowledgeable. Lisa has also worked in civil practice in a large Seattle law firm and now serves as a Pro Tem Judge in King County District Court. With over 25 years of experience as an attorney, and with a wide breadth of experience, Lisa is extremely well-qualified to serve on the bench.

While Lisa's experience makes her extremely well-qualified, it is her personal qualities that make her the best candidate for this position. Her demeanor inspires confidence in our judicial system. She is balanced and even-tempered, treating everyone with courtesy and respect. She is knowledgeable, fair, and follows the law.

Lisa is an excellent candidate for the District Court bench. I have given her my full support and ask that you do the same and appoint Lisa Napoli O'Toole to the position of King County District Court Judge for the East District. Please feel free to contact me with any questions you may have concerning this appointment. I look forward to working with you in the legislature on issues we share representing our constituents in King County.

Sincerely,

  
Christopher Hurst, State Representative  
31<sup>st</sup> Legislative District





**King County  
Police Officers Guild**

5701 6<sup>th</sup> Ave S. Suite 491-B  
Seattle, WA 98108

(Located in the Seattle Design Center)

Phone: (206) 957-0934  
(800) 244-1860  
Fax: (206) 957-0937

**President**  
Steve Eggert

**Vice President**  
Bob Lurry

**Secretary/Treasurer**  
Alan Kelley

**Board Members**  
Thad Frampton  
Rob Dorman  
Mike Mansanarez  
Stan Seo  
Kirk Rains  
Bob Conner

**Website**

[www.kcpog.com](http://www.kcpog.com)

AFFILIATED WITH THE COUNCIL  
OF METROPOLITAN POLICE AND  
SHERIFFS

February 11, 2013

King County Council Member Larry Gossett  
King County Courthouse  
516 Third Ave, Room 1200  
Seattle, WA 98104

RE: Lisa Napoli O'Toole- Appointment to King County District Court

Dear Council Member Gossett,

The King County Police Officers Guild would like to recommend Lisa Napoli O'Toole, for your consideration for appointment to King County District Court Judge, East Division.

Lisa Napoli O'Toole has practiced law in King County for the past 25 years as a King County Prosecuting Attorney and Pro Tem Judge in King County District Court. With her experience and effectiveness on the bench and as Prosecutor she has earned a great deal of respect with our membership.

The King County Police Officers Guild feels that Lisa Napoli O'Toole would be an outstanding addition to the King County District Court.

Thank you for your consideration of this recommendation.

Sincerely,

Steve Eggert  
President

King County Police Officers Guild

cc: Lisa Napoli O'Toole



WASHINGTON STATE  
COUNCIL OF COUNTY AND CITY EMPLOYEES  
AFSCME AFL-CIO

CHRIS DUGOVICH President/Executive Director

EF  
Affiliated with:  
American Federation of State, County & Municipal Employees  
Washington State Labor Council

January 7, 2013

Larry Gossett, Chairman  
King County Council District 2  
516 3<sup>rd</sup> Ave., Room 1200  
Seattle, WA 98104

RE: Lisa O'Toole/District Court Appointment

Dear Chairman Gossett:

This letter is written to recommend Lisa O'Toole for the appointment to the King County District Court.


Our Union represents District Court employees and we have had the pleasure to work with Lisa in her role as a Pro Tem Judge. In short, Lisa understands the vital role a fair judiciary system provides our citizens and the need for people to have confidence in our legal system. We believe her demeanor and experience make her an excellent candidate for the court and worthy of your consideration.

Sincerely,



**Chris Dugovich**  
President/Executive Director  
WASHINGTON STATE COUNCIL  
OF COUNTY & CITY EMPLOYEES  
AFSCME, AFL-CIO

Sincerely,



**J. Pat Thompson**  
Deputy Director  
WASHINGTON STATE COUNCIL  
OF COUNTY & CITY EMPLOYEES  
AFSCME, AFL-CIO

cc: King County Council

CD/JPT:cv

Lillian Hawkins, President  
Jean Moore, Secretary  
Thu Mack, Member-at-Large

## Local 21-DC

Steve Wede, Vice President  
Kathleen Baier, Treasurer  
Ethan Fineout, Staff Rep

December 4, 2012

Mrs. Lisa Napoli O'Toole  
6947 Coal Creek Parkway SE, #310  
Newcastle, WA 98059

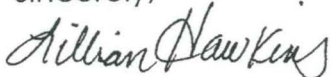
Dear Mrs. O'Toole:

As President, I am writing on behalf of the membership of AFSCME – Local 21-DC King County District Court Clerks. It is my pleasure to advise you that we have endorsed you in your bid for the East Division King County District Court Judge position.

Local 21-DC has over 175 Clerks in District Court and we are pleased you have sought our endorsement. We believe that your education, judicial experience, integrity and work ethic make you well qualified to serve as a King County District Court Judge.

We congratulate you and wish you the best of luck. Please feel free to contact me if you have any questions.

Sincerely,



Lillian B. Hawkins, President  
Local 21-DC

LBH:jem

cc: Local 21-DC Executive Board

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# THE WASHINGTON STATE GOVERNOR'S OFFICE UNIFORM JUDICIAL EVALUATION QUESTIONNAIRE<sup>1</sup>

Position Sought (Court/Division/District): King County District Court/Northeast Division

By Appointment: ☒ By Election: ☐

## Personal Information

1. 

<u>Schwartz</u>	<u>Mychal</u>	<u>Howard</u>	<u>24368</u>
Last Name	First Name	Middle Name	WSBA Bar Number
2. Business Address: 

<u>Board of Industrial Insurance Appeals</u>			
Business Name			
<u>2815 Second Avenue, Suite 550</u>			
Street or P.O. Box			
<u>Seattle</u>	<u>WA</u>	<u>98121</u>	
City	State	Zip	
Business Phone No. <u>(206) 464- 6550</u>		After-hours/direct dial: _____	
Work e-mail address: <u>mychal.schwartz@biia.wa.gov</u>			

3.

4.

6.

<sup>1</sup> The Governor's Office uses this questionnaire exclusively for candidates seeking judicial appointment. The Washington State Bar Association and other state bar associations noted on the last page also accept this questionnaire in their judicial evaluation process. The Governor's Office reserves the right to update this questionnaire and will post updated versions of the questionnaire on the Governor's webpage. Please direct all questions about the questionnaire to the Governor's Office of General Counsel.

<sup>2</sup> Only include your social security number on the copy of the questionnaire forwarded to the Governor's Office.

**Prior Evaluation / Application History**

7. Please state the date of all other judicial evaluations you sought, bar polls you participated in, and appointment applications you submitted. Please specify whether you sought appointment or election for each, from whom the evaluation was sought, the position sought, and the outcome.

**In 2011, I submitted an application for appointment for appointment to the King County Superior Court (and concurrently sought ratings for district and municipal courts as well). I received the following ratings:**

**King County Bar Association**

**Superior Court--Qualified**

**District Court—Well Qualified**

**Municipal Court--Exceptionally Well Qualified**

**Joint Asian Bar Association**

**Superior Court--Qualified**

**District Court—Exceptionally Well Qualified**

**Municipal Court--Exceptionally Well Qualified**

**Latina/o Bar Association**

**Superior Court—Well Qualified**

**District Court—Well Qualified**

**Municipal Court—Well Qualified**

**QLaw**

**Superior Court--Qualified**

**District Court—Well Qualified**

**Municipal Court—Well Qualified**

**Washington Women Lawyers**

**Superior Court—Declined to Provide Rating to Me**

**District Court—Highly Qualified**

**Municipal Court—Highly Qualified**

**Loren Miller Bar Association**

**Superior Court—Screened, but never received rating**

**District Court—Screened, but never received rating**

**Municipal Court—Screened, but never received rating**

**In 2005, I ran for election for the judicial position in the Renton Municipal Court. I received the following ratings for that election:**

**King County Bar Association—Exceptionally Well Qualified**

**Asian Bar Association—Exceptionally Well Qualified**

**Washington Women Lawyers—Highly Qualified**

**Latina/o Bar Association—Highly Qualified**

**Domestic Violence Task Force of Renton—Well Qualified**

**King County Corrections Officers Guild—Well Qualified**

**I have sought appointment to the following judicial positions: Black Diamond Municipal Court (2010) (finalist); Bothell Municipal Court (2009) (finalist); Auburn Municipal Court Commissioner (2008) (runner up); Federal Way Municipal Court (2007)**

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

**Professional History**

8. Year admitted to practice law in Washington: 1994
9. Employment History (in reverse chronological order):
- a. Start Date: January, 2013 End Date: N/A  
Organization: Board of Industrial Insurance Appeals  
Address: 2815 Second Avenue, Suite 550 Seattle, WA 98121  
Phone No.: (206) 464-6550  
Position/Title: Industrial Insurance Appeals Judge  
Supervisor: Mark Jaffe  
Nature of Practice (including frequency of court appearances):  
Manage large caseload of appeals from orders of the Department of Labor and Industries. Cases arise from the Industrial Insurance Act, RCW 51; the Washington Industrial Safety and Health Act, RCW 49.17 and other industrial safety acts; and the Crime Victims Compensation Act; RCW 7.68. Responsibilities include scheduling and presiding over various hearings, making evidentiary rulings, and writing proposed decisions for the Board of Industrial Insurance Appeals' approval.
- b. Start Date: July, 2001 End Date: December, 2012  
Organization: Various municipal and district courts throughout King and Pierce County  
Position/Title: Judge Pro Tempore  
Nature of Practice (including frequency of court appearances):  
Preside over criminal calendars, including arraignments, pre-trial hearings, motions, jury trials, and review hearings as well as infraction mitigation and contested hearings in the Renton, Kent, Issaquah, Kirkland, and Federal Way Municipal Courts, as well as both criminal and civil calendars in the King County District Court. Trained and experienced in adjudicating automated traffic safety camera cases.
- Since November 2008, when I began working exclusively as a Judge Pro Tempore, I have presided over thousands of criminal and civil hearings and served in a judicial capacity for approximately 5500 hours.
- Reason for leaving: Accepted a full-time position as an industrial insurance appeals judge with the Board of Industrial Insurance Appeals.
- c. Start Date: January, 2009 End Date: December, 2009  
Organization: City of Kent Police Department  
Address: 220 4<sup>th</sup> Avenue S. Kent, WA 98032  
Phone No.: (253) 856-5772  
Position/Title: Hearing Examiner  
Supervisor: \_\_\_\_\_  
Nature of Practice (including frequency of court appearances):  
Appointed to preside over administrative hearings related to the seizure of property associated with violations of the uniform controlled substances act. Ruled on procedural and substantive motions and issued oral and written opinions including findings of fact and conclusions of law.
- Reason for leaving: Working as a judge pro tempore made it increasingly difficult to schedule hearings at a time that was convenient for all of the parties involved.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

d. Start Date: August, 1994 End Date: November, 2008  
Organization: Office of the King County Prosecuting Attorney  
Address: W554 King County Courthouse 516 Third Avenue Seattle, WA 98104  
Phone No.: (206) 296-9000  
Position/Title: Deputy Prosecuting Attorney  
Supervisor: Various  
Nature of Practice (including frequency of court appearances):  
All aspects of criminal prosecution from the filing of misdemeanor and felony charges to verdict and appeals. In court on a daily basis.

Reason for leaving: I was laid off as a result of budget cuts in 2008.

e. Start Date: April, 1998 End Date: August, 1998  
Organization: Office of the Pierce County Prosecuting Attorney  
Address: County-City Building 930 Tacoma Ave. S., Room 946 Tacoma, WA 98402-2171  
Phone No.: (253) 798-7400  
Position/Title: Special Deputy Prosecuting Attorney  
Supervisor: \_\_\_\_\_  
Nature of Practice (including frequency of court appearances):  
Appointed by Pierce County Prosecuting Attorney John W. Ladenburg to prosecute three co-defendant residential burglary case in which the Pierce County Prosecuting Attorney's Office had a conflict of interest. Three appearances in Pierce County Superior Court were required.

Reason for leaving: The case resolved.

f. Start Date: January, 1997 End Date: August, 1997  
Organization: Senate Committee Services  
Address: 304 15<sup>th</sup> Ave. SW P.O. Box 40466 Olympia, WA 98504-0466  
Phone No.: (360) 786-7400  
Position/Title: Staff Attorney, Law and Justice Committee  
Supervisor: Dick Armstrong  
Nature of Practice (including frequency of court appearances):  
Drafted and edited legislation dealing with criminal, family, and corporate law. Researched constitutional issues and presented findings to senators in written form and orally during public legislative hearings.

Reason for leaving: The legislative session ended and I returned to the King County Prosecutor's Office.

g. Start Date: August, 1993 End Date: May, 1994  
Organization: Montgomery County (MD) State's Attorney's Office  
Address: 50 Maryland Ave. Rockville, MD 20840  
Phone No.: (240) 777-7300  
Position/Title: Assistant State's Attorney (Intern)  
Supervisor: \_\_\_\_\_  
Nature of Practice (including frequency of court appearances):  
Prosecuted misdemeanor and traffic cases. In court on a weekly basis.

Reason for leaving: I graduated from law school, returned to Washington State, and after taking the Bar Exam, began work for the King County Prosecuting Attorney.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

10. Please list all other courts and jurisdictions in which you have been admitted to practice law and the dates of admission. Please provide the same information for administrative bodies having special admission requirements. N/A
11. Please list all bar associations and professional societies of which you are a member and give the titles and dates of any offices that you have held in such groups.

**Washington State Bar Association, admitted November, 1994**

**Criminal Justice Institute Steering Committee, 1999 – 2010**

**Legislative Committee, 2000 – 2002**

**Criminal Law Section, Executive Committee, 2008**

**King County Bar Association, 2000 – 2010**

**East King County Bar Association, 2006 – 2010**

**South King County Bar Association, 2000 – 2005**

**American Bar Association, 1997 – 2010**

**Office of the Administrator of the Courts Uniform Citation/Notice of Infraction Committee**

**(Washington Association of Prosecuting Attorneys' Representative), 2000 – 2001**

**Washington Association of Prosecuting Attorneys' District Court Committee, 1999 – 2006**

**The Order of the Barristers, Moot Court Honor Society, inducted May, 1994**

---

12. Are you in good standing in every bar association of which you are a member? ☒ **Yes** / ☐ **No**. If you answered "no", please explain.
13. If you have ever been a judge, please identify any court committees on which you have served or administrative positions you have held. Please state the dates of service for each. N/A
14. Please list up to five of your most significant professional accomplishments. (If applicable, please provide the case and court name and the citation if a case was reported (and copy of the opinion))

1. **Judge Pro Tempore—As a prosecutor, I earned the respect of the judges before whom I practiced to the extent that many have now turned their courts over to me as a judge pro tempore. As a judge pro tempore, I have similarly earned a reputation for being dedicated, knowledgeable, and thorough. I am also known to be respectful, fair, and just. This reputation has provided me the opportunity to serve as a judge pro tempore in courts where I had neither served as a prosecutor nor known any of the people responsible for hiring judges pro tempore.**
2. **Training New Attorneys—From March, 1999 through February, 2006, I assisted in the training and supervision of more than one hundred new attorneys and interns at the King County Prosecuting Attorney's Office. These attorneys have gone on to successful careers as prosecutors, defense attorneys, and judges.**
3. **Lecturer on DUI issues—During my tenure with the King County Prosecutor's Office, I was regularly selected by my supervisors and my peers to give presentations at both local and statewide gatherings of attorneys, judges, and law enforcement officers.**

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

15. Please summarize up to eight of the most significant matters that you participated in as an advocate. Please include the dates of your participation and the reason each was significant to you. Please provide the citation if a case was reported. If you have been a judge, please include some cases that have been tried before you.
1. *State v. Ted Jagla* (reported as *City of Seattle v. Clark-Munoz*, 152 Wash. 2d 39, 93 P.3d 14 (2004))—I prepared the trial court and appellate briefing and argued this issue (dealing with the Washington State Patrol's methods for certifying thermometers used in the maintenance of the breath testing program) in King County District Court, various municipal courts (on behalf of the local prosecutors), King County Superior Court (on a petition for a writ of review), and the Washington State Supreme Court. My appearance at the Supreme Court was unusual in that, most often, deputy prosecutors who were assigned to the appellate unit of the King County Prosecutor's Office made those arguments. I was given the opportunity to argue my case based upon my experience and "expertise" in the subject of DUI prosecution and breath testing.
  2. *Drug Court Liaison*—In 1995, I had the opportunity to work with Judge Ricardo Martinez, his court staff, and other professionals in the infancy of King County's innovative drug diversion court. The non-adversarial atmosphere provided me with the chance to learn the importance of looking at every defendant as an individual. Judge Martinez was my role model whose example I have tried to follow both as a prosecutor and judge pro tempore. Most significantly, he taught me the importance of showing respect to everyone who came into the court.
  3. *State v. Bun Song Pen*—In 1996, while assigned to the felony filing unit, I filed vehicular assault charges against Pen. He was involved in a drunk driving collision and seriously injured two of his children. At the time of this crime, Pen already had multiple warrants for his arrest for DUIs in various King County District Court divisions. By 1998, I had moved on to a felony trial rotation in the King County Prosecutor's Office. By chance, Pen was arrested (for another DUI) and I was assigned the vehicular assault case for trial. Over the course of several months, I not only negotiated a guilty plea to the vehicular assault charge, but also took over the prosecution of the DUIs in District Court. Pen was brought to justice in each of the pending DUI cases. Upon my motion, Pen received an exceptional sentence. (His appeal was not published by the Court of Appeals, but may be found at 97 Wash. App. 1068. I did not prosecute the appeal.)
  4. In 2001, while serving as a judge pro tempore at the Kent Municipal Court, I had the opportunity to preside over a criminal jury trial for the first time. It was an exhilarating learning experience. After years of being an advocate for the people, I was now a neutral arbiter of the law. I had tried more than one hundred jury trials, but clearly this was a very different situation. Watching the prosecutor and defense attorney present their cases to the jury showed me that I was more than capable of detaching myself from my prosecutorial training, ensuring a fair trial to both sides. As a side note, while the trial concluded with the jury returning a guilty verdict, internally, I concluded that had the case been tried as a bench trial, I would have found the defendant not guilty.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

### Educational Background

16. Please list all undergraduate and graduate (non-law school) colleges and universities attended, years of attendance, degree awarded and reason for leaving if no degree was awarded.  
Stanford University                      1986 - 1990                      Bachelor of Arts (International Relations)  
 College/University                      Dates of Attendance                      Degree
17. Please list all law schools attended, years of attendance, degree awarded and reason for leaving if no degree was awarded.  
The Washington College of Law (The American University)   1991 - 1994   Juris Doctor  
 Law School                      Dates of Attendance   Degree

### Professional Experience

18. Please summarize, briefly, the general nature of your current law practice.  
Since November, 2008, I have worked exclusively as a judge pro tempore in courts of limited jurisdiction throughout King and Pierce Counties.
19. If you are in practice, please describe your typical clients and any areas of special emphasis within your practice. **N/A**
20. If your present law practice is different from any previous practice, please describe the earlier practice, including the nature of your typical clients and any area of special emphasis within your practice. **N/A**
21. Within the last 5 years, did you appear in trial court:  
☒ Regularly                      ☐ Occasionally                      ☐ Infrequently
22. Within the last 5 years, did you prepare appellate briefs and appear before appellate courts:  
☐ Regularly                      ☐ Occasionally                      ☒ Infrequently
23. Within the last five years, how often did you appear in the court for which you are applying:  
☒ Regularly                      ☐ Occasionally                      ☐ Infrequently
24. Career Experience
- (a) What percentage of your appearances in the last five years was in:
- |                              |   |
|------------------------------|---|
| (1) Federal appellate courts | <u>0</u> %  |
| (2) Federal trial courts     | <u>0</u> %  |
| (3) State appellate courts   | <u>0</u> %  |
| (4) State trial courts       | <u>40</u> % (as a prosecutor and judge pro tempore) |
| (5) Municipal courts         | <u>60</u> % (exclusively as a judge pro tempore)    |
| (6) District courts          | <u>0</u> %  |
| (7) Administrative tribunals | <u>0</u> %  |
| (8) Tribal courts            | <u>0</u> %  |
| (9) Other                    | <u>0</u> %  |
| TOTAL                        | 100%  |

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

(b) What percentage of your practice in the last five years was:

(1) Civil litigation (excl. family law)	<u>&lt; 1</u>	%
(2) Criminal litigation	<u>99+</u>	%
(3) Family law litigation	<u>          </u>	%
(4) Non-litigation	<u>          </u>	%
TOTAL	100%	

(As both a prosecutor and judge pro tempore)

(c) What percentage of your trials in the last five years were:

(1) Jury trials	<u>15</u>	%
(2) Non-jury trials	<u>85</u>	%
TOTAL	100%	

(As both a prosecutor and judge pro tempore)

(d) State the number of cases during your total career that you have tried to verdict or judgment (rather than settled) in the following courts, and indicate for each court the following percentages: trials in which you were sole counsel or chief counsel, jury trials, and trials where you were the arbiter/decision maker.

<u>Number</u>	<u>Court</u>	<u>% as Sole / Chief Counsel</u>	<u>% Jury</u>	<u>% as the Arbiter</u>
<u>50</u>	Municipal	<u>          </u>	<u>30</u>	<u>100</u>
<u>300</u>	State Dist.	<u>100</u>	<u>30</u>	<u>5</u>
<u>45</u>	State Superior	<u>100</u>	<u>95</u>	<u>0</u>
<u>          </u>	Federal Dist.	<u>          </u>	<u>          </u>	<u>          </u>
<u>          </u>	Administrative	<u>          </u>	<u>          </u>	<u>          </u>
<u>          </u>	Tribal Courts	<u>          </u>	<u>          </u>	<u>          </u>
<u>          </u>	Other	<u>          </u>	<u>          </u>	<u>          </u>

(e) State the number of appellate cases during your total career where you appeared as counsel of record in the following courts, and indicate for each court the following percentages: cases where you were sole counsel or chief counsel, and cases where you were the arbiter/decision maker (if applicable).

<u>Number</u>	<u>Court</u>	<u>% as Sole / Chief Counsel</u>	<u>% as the Arbiter</u>
<u>          </u>	State Superior Court	<u>          </u>	<u>          </u>
<u>2</u>	WA. Div. I COA	<u>100</u>	<u>          </u>
<u>          </u>	WA. Div. II COA	<u>          </u>	<u>          </u>
<u>          </u>	WA. Div. III COA	<u>          </u>	<u>          </u>
<u>1</u>	WA. Supreme Court	<u>1 of 3 attorneys on case</u>	<u>          </u>
<u>          </u>	Fed. Cir. COA	<u>          </u>	<u>          </u>
<u>          </u>	U.S. Supreme Court	<u>          </u>	<u>          </u>

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- (f) Briefly describe no more than five significant litigation matters that you directly handled as the sole counsel. For each, please provide the name and telephone number of opposing counsel, the name of the judge or other judicial officer, and the citation (if applicable).  
**As a prosecutor for nearly 15 years, I litigated thousands of cases on behalf of the citizens of King County and the State of Washington. I take great pride in the work that I did. My last trial rotation ended in 2007. I no longer have record of the cases I prosecuted. Many of the individuals I have listed in my references are the judges and attorneys before whom I practiced and against whom I tried cases.**
- (g) State in detail your experience in adversary proceedings before administrative boards or commissions during the last five years. **N/A**
25. Please briefly describe any legal non-litigation experience that you feel enhances your qualifications to serve as a judge.  
**As a staff attorney with Senate Committee Services in 1997, I developed strong communication skills. This ability was demonstrated both in meetings with individual senators and in public hearings where I was required to extemporaneously answer senators' questions in a clear and concise manner. As a supervisor in the District Court Unit of the King County Prosecutor's Office from 1999 until 2006, I helped train, supervise, and critically evaluate the performances of more than one hundred full and part time prosecutors. I also had the opportunity to work with support staff from the prosecutor's office and the courts. This administrative experience translates well to the "off the bench" requirements of a judicial position.**
26. If you are now an officer or director of any business organization or otherwise engaged in the management of any business enterprises, please provide the following: the name of the enterprise, the nature of the business, the title of your position, the nature of your duties, and the term of your service. If you are appointed and do not intend to resign such position(s), please state this below along with your reasons for not resigning. **N/A**
27. Please list all chairmanships of major committees in bar associations and professional societies and memberships on any committees that you have held and believe to be of particular significance.  
**N/A**

**Judicial Interest and Experience**

28. In 50 words or less, please describe why you should be appointed / elected and are seeking a judicial position.  
**My combination of experience and temperament will be an asset to the judiciary and the people of Washington. Throughout my career, I have demonstrated qualities that I believe are essential for a judge—integrity, respect for all parties, objectivity, and an ability to make difficult decisions.**
29. In 50 words or less, please describe your judicial philosophy.  
**It is a judge's responsibility to ensure that all parties are shown respect, treated fairly, and are given an opportunity to have their voices heard. A judge must apply the law evenly and appropriately. Judges should also be leaders in their communities advocating for access to justice for all.**

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30. Have you ever held a judicial office or have you ever been a candidate for such office? Yes / No. If you answered "yes", please provide details, including the courts involved, whether elected or appointed, and the periods of your service.  
**I ran unsuccessfully for election as Renton Municipal Court judge in 2005. I have also applied for numerous appointed positions including municipal courts in Federal Way, Kirkland, Auburn, Bothell, and Black Diamond.**
31. Have you ever held public office other than a judicial office, or have you ever been a candidate for such an office? Yes / No. If you answered "yes", please provide details, including the offices involved, whether elected or appointed, and the length of your service.
32. Please briefly identify all of your experience as a neutral decision-maker (e.g. judge (permanent or pro tem) in any jurisdiction, administrative law judge, arbitrator, hearing officer, etc.). Give courts, approximate dates, and attorneys who appeared before you.  
**In 2001, while working as a deputy prosecuting attorney, I began serving as a judge pro tempore. Since November 2008, I have worked exclusively as a judge pro tempore. Since that time, I have served on the bench for approximately 5500 hours presiding over criminal and civil cases in all the divisions and courthouses of the King County District Court and municipal courts in Renton, Kent, Issaquah, Auburn, Puyallup, Kirkland, Federal Way and Lake Forest Park. In 2009, I served as a hearing examiner for the City of Kent Police Department. Since beginning work as a judge pro tempore nearly 10 years ago, several hundred different attorneys have appeared before me.**

**Community and Civic Activities**

33. Please list your community and civic activities, including dates and leadership roles held, over the last 10 years.  
**Board of Directors, Camp Solomon Schechter, 2006 – 2009**  
**City of Renton Rotary, 2001 – 2003, 2005 - 2006**

**Discipline and Disputes**

34. Have you ever been held, arrested, charged or convicted by federal, state, or other law enforcement authorities for violation of any federal law, state law, county or municipal law, regulation or ordinance? Yes / No. If you answered "yes", please provide details. (Do not include traffic violations for which a fine of \$150.00 or less was imposed.) Please feel free to provide your view of how it bears on your present fitness for judicial office.
35. Has a client ever made a claim or suit against you for malpractice? Yes / No. If you answered "yes", please provide details and the current status of the claim and/or suit.
36. Please describe your direct experience, if any, with domestic violence and sexual harassment.  
**N/A**
37. Have you been a party in interest, witness, or consultant in any legal proceeding? Yes / No. If you answered "yes", please provide details. Do not list proceedings in which you were merely a guardian ad litem or stakeholder.

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38. Have you ever been the subject of a complaint to any bar association, disciplinary committee, court, administrative agency or other professional group? ☒ Yes / ☐ No. If you answered "yes", please provide details.  
**Immediately after I publicly announced my candidacy for election to the Renton Municipal Court, one of my opponents filed complaints against me with the Washington State Bar Association and the King County Bar Association Fair Campaign Practices Committee. After brief investigations, both organizations dismissed the complaints.**
39. Have you ever been disciplined or cited for breach of ethics or unprofessional conduct? Yes / ☒ No. If you answered "yes", please provide details.
40. If you have served as a judge, commissioner, or in any judicial capacity, has a complaint for misconduct in that capacity ever been made against you? Yes / ☒ No. If you answered "yes", please provide details.

**Miscellaneous**

41. Are you aware of anything that may affect your ability to perform the duties of a judge? Yes / ☒ No. If you answered "yes", please provide details.
42. Have you published any books or articles in the field of law? If so, please list them, giving the citations and dates. Also, please give the dates and forums of any Continuing Legal Education presentations that you have made.  
**Lectures/Presentations:**  
  
**"Anatomy of a Breath DUP" (with WSP Troopers Kenneth Denton and Carlos Rodriguez)**  
**Washington Association of Prosecuting Attorneys' District Court Seminar, June, 2005**  
  
**"Developments in our DUI Laws" (with Diego Vargas of Fox Bowman & Duarte)**  
**Washington State Bar Association's Criminal Justice Institute, September, 2003**  
  
**"Where We've Been and Where We're Headed – DUI Motions and Appellate Issues"**  
**Washington Association of Prosecuting Attorneys' District Court Seminar, May, 2002**  
  
**"The 'Thermometer Issue': Where We've Been and Where We're Going"**  
**Washington Association of Prosecuting Attorneys' District Court Seminar, June, 2001**  
  
**"New Motions Practice in DUI Prosecution"**  
**Washington Association of Prosecuting Attorneys' District Court Seminar, June, 2000**
43. Please list any honors, prizes, awards or other forms of recognition that you have received and whether they were professional or civic in nature.  
**"Rising Star," Washington Law and Politics, 2000 and 2001**
44. Are you aware of anything in your background or any event you anticipate in the future that might be considered to conflict with the Code of Judicial Conduct? Yes / ☒ No. If you answered "yes", please explain.
45. Please provide a writing sample of your work (between 5 and 10 pages long), written and edited solely by you, within the last 4 years.

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**Access to Justice**

46. Please describe activities that you have engaged in to eliminate bias or improve access to the judicial system for indigent populations and ethnic, racial and sexual minorities. As a member of the bench, what, if any, role do you believe a judge has to enhance equal access to justice?  
**Judges must work to demystify the justice system. One example of how this can be done is by reaching out to the community—speaking to organizations and schools. Additionally, ways to simplify court filings and procedures should be examined. Lastly, funding for low income and indigent litigants and interpreter services must be a priority. Judges must work with administrators and the other branches of government to ensure that these barriers to accessing the justice system are addressed in an efficient and beneficial manner.**
47. Please describe the frequency, time commitment and substantive nature of your direct participation of free legal services to indigent populations, and ethnic, racial and sexual minorities.  
**Because of the nature of my practice has been as a criminal prosecutor and judge pro tempore, I have had to avoid providing such legal services so that I would avoid any possible conflicts or the violation of any judicial canons. As a judge, I would position myself to take a leadership role in efforts to make accessing the justice system by underrepresented populations easier and more equitable.**

**Diversity in the Legal Profession**

48. Please briefly describe your understanding of the issue of “diversity within the legal profession.”  
**Ensuring the access of all qualified people to law schools and the practice of law is crucial to breaking down historical barriers that prevented people from following their dreams based upon their gender, religion, skin color, or personal orientation. By working to educate the public to the role of the judiciary and the justice system, in general, the court can help to foster the dreams of people to take part in the system and to push past any artificial barriers that have previously prevented, either literally or figuratively, underrepresented people from becoming attorneys.**

**References**

It is useful for evaluators to speak with attorneys and non-attorneys who are familiar with you. One or more participants in the evaluation process may contact each of your references. All telephone numbers should be current and legible. If a reference is unreachable, your rating/evaluation may be delayed. **Please use a separate piece of paper for each list.** You may contact references in advance if you so desire. Individuals not listed by you as a reference may be contacted to obtain information about you.

49. If you have been in practice within the past fifteen years, list the names and phone numbers of ten opposing counsels who know you best, including at least three opposing counsels on cases that went to trial.
50. If you have been a judge or otherwise have served as a neutral decision-maker within the past fifteen years, please list the names and phone numbers of the last ten attorneys who have appeared before you.
51. List the names and phone numbers of up to six non-attorney references whose opinions or observations – particularly with respect to your commitment to improving access to the judicial system for indigent populations, people of color, and disenfranchised communities – would assist in the consideration of your application.

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52. For the last five trials in which you participated (whether as trial lawyer or decision-maker), list as appropriate the following for each: case name, subject matter, court, judge (w/ phone number), and opposing counsel or counsel appearing before you (w/ phone number).
53. List the names and phone numbers of ten additional attorneys familiar with your professional qualifications, skills, experience or attributes.

**NOTE:** The Governor's Office requires individuals seeking judicial appointment to utilize, to the fullest extent possible, the ratings processes from state, county, and minority bar organizations. Contact information for the minority bar associations can be found on the Washington State Bar Association's website at (<http://www.wsba.org/public/links/minoritybars.htm>). It is the applicant's responsibility, however, to obtain these evaluations in a timely manner, and to forward evaluations received to the Governor's Office. To that end, all applicants are strongly encouraged to commence the evaluation process with the various bar associations as soon as possible. To facilitate the process, the following organizations have agreed to accept this questionnaire as the principal application in their evaluation process and may also require candidates to complete an additional supplement questionnaire:

**State Bar Association**

- ☐ Washington State Bar Association (WSBA) (appellate court evaluations only)

**County Bar Associations**

- ☒ King County Bar Association (KCBA)  
☐ Spokane County Bar Association (SCBA)  
☐ Tacoma-Pierce County Bar Association (TPCBA)

**Minority Bar Associations**

- ☐ Latina/o Bar Association of Washington (LBAW)  
☐ Loren Miller Bar Association (LMBA)  
☐ The Joint Asian Judicial Evaluations Committee of Washington<sup>3</sup>  
☐ Pierce County Minority Bar Association (PCMBA)  
☐ Q-Law / GLBT (Gay Lesbian Bisexual Transgender) Bar Association  
☐ Washington Women Lawyers<sup>4</sup> (WWL)

As of the date of your certification below and submission of this questionnaire to the Governor's Office, please check beside each of the above organizations you have contacted to evaluate you for the position for which you seek.

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<sup>3</sup> A joint committee of the Asian, Korean, South Asian and Vietnamese American Bar Associations of Washington.

<sup>4</sup> Washington Women Lawyers has approved the use of the Governor's Uniform Judicial Evaluation Questionnaire for its statewide and all county chapters.

49. If you have been in practice within the past fifteen years, list the names and phone numbers of ten opposing counsels who know you best, including at least three opposing counsels on cases that went to trial.

Diego Vargas (425) 283-0516

Aaron Wolff (425) 822-1220

Mark Prothero (253) 520-5000

William Kirk (425) 822-1220

Virginia Amato (253) 880-3289

Douglas Cowan, Jr. (425) 822-1220

James Burnell (206) 264-9444

Jon Fox (425) 274-9190

Elizabeth Anne Padula (425) 883-2883

The Honorable Judge Bill Bowman (206) 296-9205

50. If you have been a judge or otherwise have served as a neutral decision-maker within the past fifteen years, please list the names and phone numbers of the last ten attorneys who have appeared before you.

Shawn Arthur (425) 430-6480

Tiffany Gustafson (206) 826-5160

Gregg Hirakawa (253) 838-3454

Jeffrey MacNichols (253) 859-8840

Kameron Cayce (425) 255-0603

Norman Partington, Jr. (206) 264-1590

Lynn Moberly (425) 313-5767

Paul Jacobson (425) 883-9161

Michael Hogan (206) 296-9000

Edmund Allen (206) 262-0903

51. List the names and phone numbers of up to six non-attorney references whose opinions or observations – particularly with respect to your commitment to improving access to the judicial system for indigent populations, people of color, and disenfranchised communities – would assist in the consideration of your application.

Bonnie Woodrow

Lynne Jacobs Campeau

Joseph McGuire

Margaret Yetter

Alma Valenzuela

52. For the last five trials in which you participated (whether as trial lawyer or decision-maker), list as appropriate the following for each: case name, subject matter, court, judge (w/ phone number), and opposing counsel or counsel appearing before you (w/ phone number).

City of Renton v. Todd Nazarino  
Driving Under the Influence and Negligent Driving 1<sup>st</sup> Degree  
Renton Municipal Court  
Prosecutor: Alex Tuttle (425) 430-6480  
Defense Attorney: Jill Malat (425) 259-4989

City of Renton v. Robert McQuatters-Davis  
Driving Under the Influence and Driving with a Suspended/Revoked License 1<sup>st</sup> Degree  
Renton Municipal Court  
Prosecutor: Eddie Aubrey (425) 430-6480  
Defense Attorney: Paul Landry (253) 272-2206

City of Renton v. Randall Scott Tripp  
Criminal Trespass 1<sup>st</sup> Degree and Theft 3<sup>rd</sup> Degree  
Renton Municipal Court  
Prosecutor: Alex Tuttle (425) 430-6480  
Defense Attorney: Merry Broberg (206) 910-9271

City of Renton v. Miles Hillis  
Violation of Domestic Violence No Contact Order  
Renton Municipal Court  
Prosecutor: Alex Tuttle (425) 430-6480  
Defense Attorney: Tricia Grove Johnson (425) 255-0603

City of Renton v. John Hopkins  
Criminal Trespass 1<sup>st</sup> Degree  
Renton Municipal Court  
Plaintiff: Alex Tuttle (425) 430-6480  
Defense: Kyle Pisula (253) 221-6360

53. List the names and phone numbers of ten additional attorneys familiar with your professional qualifications, skills, experience or attributes.

The Honorable Judge Ricardo Martinez (206) 370-8999  
US District Court, Western Washington

The Honorable Judge Brian Gain (206) 296-9170  
King County Superior Court

The Honorable Judge Elizabeth Stephenson (206) 205-2727  
King County District Court

The Honorable Judge Charles J. Delaurenti, II (206) 296-3445  
King County District Court

The Honorable Judge Robert McBeth (ret.) (425) 255-4498  
King County District Court

The Honorable Judge Richard Bathum (206) 296-7758  
King County District Court

The Honorable Judge Arthur Chapman (206) 296-3610  
King County District Court

The Honorable Judge Anne Harper (206) 296-3631  
King County District Court

The Honorable Judge Terry Jurado (425) 430-6565  
Renton Municipal Court

The Honorable Judge Karli Jorgenson (253) 595-3116  
Kent Municipal Court

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**Certification**

54.

By signing below, I declare under penalty of perjury under the laws of the State of Washington that the information provided by me in responding to this questionnaire is true and correct to the best of my knowledge.

Date: 11/15/12 Signature: Myrle H. Schell

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7 **IN THE MUNICIPAL COURT OF RENTON**  
8 **IN AND FOR THE STATE OF WASHINGTON**

9 CITY OF RENTON,

10 Plaintiff,

11 v.

12 TROFIM V. KOVALCHUK,

13 Defendant.  
14

) **Case No.:** 1Z0240020 & 1Z0328918  
)  
)

) **COURT'S DECISION ON DEFENDANT'S**  
) **MOTION TO WITHDRAW GUILTY**  
) **PLEAS**  
)  
)  
)

15 The defendant has moved this court for an order permitting the withdrawal of the two  
16 pleas of guilty he entered into on December 6, 2011. The defendant bases his motion on a claim  
17 of ineffective assistance of counsel in the context of his being able to make a knowing and  
18 intelligent decision about entering into the pleas of guilty without being told of the immigration  
19 consequences of his pleas.

20 **BACKGROUND**

21 The defendant, Trofim Kovalchuck, was born in Ukraine on December 22, 1991. The  
22 defendant was and is a citizen of Ukraine. In 1993, the defendant's parents immigrated to the  
23 United States, bringing the defendant with them. The defendant has held the status of Lawful  
24 Permanent Resident since entering the United States. The defendant's parents became

1 naturalized citizens of the United States on February 18, 2010. The defendant has not become a  
2 naturalized citizen and still retains the status of Lawful Permanent Resident and retains his  
3 Ukrainian citizenship.

4 On April 4, 2011, the City of Renton charged the defendant with the crime of Theft in the  
5 Third Degree under case number 1Z0240020. The defendant did not appear for his scheduled  
6 arraignment in that case and a warrant was issued for his arrest. The defendant was arrested on  
7 that warrant and for a new theft charge on May 16, 2011. The City of Renton filed the new Theft  
8 in the Third Degree charge under case number 1Z0328918. The defendant was arraigned on  
9 both charges on May 16, 2011. The defendant failed to appear for a number of subsequent  
10 hearings and, eventually, on November 8, 2011, was arrested for warrants that had been issued  
11 and was held in custody in lieu of posting \$7500 bond on each case. The defendant was  
12 appointed counsel at public expense to represent him in both cases.

14 At the defendant's next court appearance, on December 6, 2011, he pleaded guilty to both  
15 charges of Theft in the Third Degree. The defendant was sentenced at that hearing as well. A  
16 single plea form was used for both cases. In paragraph 5(L) of the plea form, the defendant  
17 acknowledged the following language by placing his initials to the left of the paragraph:

19 The judge and/or my attorney if represented, has advised me and I understand that  
20 a conviction for any crime irrespective of my status could result in my immediate  
21 removal from the United States without the benefit of a hearing; and if I do have  
22 status, revoke my status and keep me from applying for status in the future.

22 Based upon the Declaration of Signe Dortch, the court accepts as fact that the defendant's  
23 assigned counsel did not advise the defendant of any immigration consequences resulting from  
24 his pleas of guilty beyond the information provided in paragraph 5(L) of the plea form.

1 The same day that the defendant pleaded guilty to the theft charges, the U.S. Department  
2 of Homeland Security initiated removal proceedings against the defendant based solely upon the  
3 two theft convictions for which the defendant had just been sentenced.

#### 4 **ANALYSIS**

5 It has been long established that a defendant's right to counsel provided by the Sixth  
6 Amendment to the U.S. Constitution refers to the right to have effective and competent counsel.<sup>1</sup>  
7 *Strickland v. Washington* established a two-prong test to determine whether a defendant's  
8 conviction should be reversed due to ineffective assistance of counsel. First, the defendant must  
9 show that counsel's performance fell below a standard of reasonableness under the prevailing  
10 professional norms. Second, the defendant must show that, as a result of counsel's ineffective  
11 representation, the defense suffered prejudice.<sup>2</sup>

13 Very recently, the Supreme Court of the United States reaffirmed that the right to  
14 effective and competent counsel extends not just to a criminal trial, but also to the plea-  
15 bargaining process.<sup>3</sup> The Court also reaffirmed the position that the two-prong *Strickland* test  
16 sets out the standard that a defendant must overcome to establish ineffective assistance of  
17 counsel, even in the plea-bargaining stage of a criminal proceeding.<sup>4</sup>

19 In the context of plea-bargaining, the first *Strickland* prong remains essentially  
20 unchanged. The defendant must show that counsel's performance fell below an objective  
21 standard of reasonableness. To satisfy the second *Strickland* prong, the Court held that a  
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23 <sup>1</sup> See, *Strickland v. Washington*, 466 U.S. 668,686 (1984).

24 <sup>2</sup> *Id.* at 687-88

<sup>3</sup> *Lafler v. Cooper*, \_\_\_ U.S. \_\_\_, 132 S. Ct. 1376 (2012).

<sup>4</sup> *Id.* at 1384.

1 defendant must show that there is a reasonable probability that, but for counsel's unprofessional  
2 errors, the defendant would not have pleaded guilty and would have insisted on going to trial.<sup>5</sup>

3 The Supreme Court of the United States addressed the intersection of an accused's Sixth  
4 Amendment right to effective and competent counsel and immigration law in *Padilla v.*  
5 *Kentucky*.<sup>6</sup> There, the Court held that "constitutionally competent counsel would have advised  
6 [the defendant] that his conviction . . . made him subject to automatic deportation."<sup>7</sup> In  
7 determining the competency of counsel, the Court again found that the *Strickland* two-prong test  
8 applies.<sup>8</sup>

9  
10 In determining how to judge the reasonableness of counsel's performance (prong one),  
11 the Court noted that the weight of prevailing opinions in the legal community viewed advising a  
12 client regarding the risk of deportation to be within the scope of a criminal defense attorney's  
13 responsibilities. The Court also noted that preserving a client's right to remain in the United  
14 States may be more important to the client than any potential jail sentence.<sup>9</sup> The Court went on  
15 to divide cases into two columns: one for cases where the removal consequences upon  
16 conviction are clear and one for cases where the removal consequences upon conviction are not  
17 clear.

18  
19 In a case where the impact of a conviction to a client's immigration status is not clear, the  
20 Court found that a criminal defense attorney need do no more than advise a noncitizen client that  
21 conviction *may* carry a risk of adverse immigration consequences.<sup>10</sup> However, in a case where

22  
23 <sup>5</sup> *Lafler v. Cooper*, 132 S. Ct. at 1384-85 (citing, *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)).

<sup>6</sup> \_\_\_ U.S. \_\_\_, 130 S. Ct. 1473 (2010).

<sup>7</sup> *Padilla*, 130 S. Ct. at 1478.

<sup>8</sup> *Id.* at 1482.

<sup>9</sup> *Id.* at 1482-83.

<sup>10</sup> *Id.* at 1483.

1 the immigration consequences could be easily determined from reading the removal statutes, the  
2 Court held that it is the responsibility of a criminal defense attorney to advise the client of the  
3 likely result of a conviction and that, in failing to do so, an attorney's performance would fall  
4 below the reasonableness standard found in the first *Strickland* prong.<sup>11</sup>

5 A year after *Padilla* was decided; in *State v. Sandoval*,<sup>12</sup> the Supreme Court of the State  
6 of Washington examined a similar case. In the wake of *Padilla*, the Washington Court held that  
7 where the immigration consequences of a criminal conviction were clear, it was the  
8 responsibility of a criminal defense attorney to correctly advise, or seek consultation to correctly  
9 advise, a defendant of the deportation consequence.<sup>13</sup> Furthermore, the Court rejected the  
10 argument that merely reciting language based upon the requirements of RCW 10.40.200(2) was  
11 sufficient to meet the requirements of *Strickland* and *Padilla*.<sup>14</sup>

13 *Sandoval* also addressed a defendant's burden for satisfying the second *Strickland* prong.  
14 Citing to *Hill v. Lockhart*,<sup>15</sup> the Court noted that a defendant was required to show that there was  
15 a reasonable probability that, but for counsel's errors, the defendant would not have pleaded  
16 guilty.<sup>16</sup> The Court continued:

17 A "reasonable probability" exists if the defendant "convince[s] the court that a  
18 decision to reject the plea bargain would have been rational under the  
19 circumstances." This standard of proof is "somewhat lower" than the common  
20 "preponderance of the evidence" standard.<sup>17</sup>

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22 <sup>11</sup> *Lafler*, 130 S. Ct. at 1483.

23 <sup>12</sup> 171 Wash. 2d 163, 249 P.3d 1015 (2011).

<sup>13</sup> *Sandoval*, 171 Wash. 2d at 172.

<sup>14</sup> *Id.* at 173-74.

24 <sup>15</sup> 474 U.S. 52 (1985).

<sup>16</sup> *Id.* at 174-75.

<sup>17</sup> *Id.* at 175.

1 In the present cases, there is no real dispute as to what counsel advised the defendant  
2 regarding the immigration consequences of pleading guilty to two charges of Theft in the Third  
3 Degree. Counsel advised the defendant in language drawn from RCW 10.40.200(2) and nothing  
4 more. Pursuant to *Padilla*, to determine if counsel's advisement fell below the reasonableness  
5 standard to satisfy the first *Strickland* prong, this court must examine the relevant removal statute  
6 to determine whether the immigration consequences from the defendant's pleading guilty to two  
7 charges of Theft in the Third Degree were clear from a simple reading of those federal laws.  
8 Looking at INA §237(2)(A)(ii), the court finds that the language and consequences are very  
9 clear. It states that  
10

11 Any alien who at any time after admission is convicted of two or more crimes  
12 involving moral turpitude, not arising out of the a single scheme of criminal  
13 misconduct, regardless of whether confined therefor and regardless of whether the  
14 convictions were in a single trial, is deportable.

15 The City argues that the words "is deportable" are merely permissive and that, therefore,  
16 counsel's general advice under 10.40.200(2) that there *may* be immigration consequences  
17 resulting from the defendant's pleas, was sufficient. This argument has been specifically  
18 rejected by the Washington State Supreme Court.<sup>18</sup>

19 Based upon the clarity of the immigration consequences that would flow from the  
20 defendant's pleading guilty to both of the theft charges involved in this instance, there is little  
21 room to doubt that counsel's limited advice was insufficient. The first prong of the *Strickland*  
22 test is clearly satisfied.

23 The next question for the court to determine is whether the defendant was prejudiced by  
24 the constitutionally deficient representation. It could be argued that, by pleading guilty, the

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<sup>18</sup> See, *Sandoval* at 172-73.

1 defendant received a significant benefit; that is, the City's sentence recommendation of  
2 concurrent, time-served sentences. However, had defense counsel been aware of the  
3 consequences that would flow from the two convictions, it would have been apparent that the  
4 defendant would not have been released from custody after pleading guilty. Rather, it would  
5 have been clear that he would have simply been transferred to federal custody.<sup>19</sup> Even if the  
6 defendant had gone to trial and been found guilty as charged for both theft offenses, he would  
7 have been no worse off than he is now. And, had he gone to trial, there is always the possibility  
8 of a different outcome. With the guilty pleas, the convictions (and the immigration  
9 consequences) were a virtual certainty. Moreover, had counsel been aware of the immigration  
10 consequences, there may have been alternate arguments made in an effort to negotiate a different  
11 resolution than simply pleading guilty as charged to both offenses.  
12

13 This court has no difficulty resolving the second *Strickland* prong in favor of the  
14 defendant. The defendant's declaration specifically states that he would not have pleaded guilty  
15 to both of these offenses had he known that he was going to be deported as a result. This  
16 assertion is completely reasonable and logical.  
17

## 18 CONCLUSION

19 The court finds that the defendant has established that he was denied the assistance of  
20 effective and competent counsel in making the decision to plead guilty as charged to the two  
21 theft charges in this matter.

22 **THUS, THE COURT**, having read and heard the arguments of counsel does hereby  
23 grant the defendant's motion to withdraw the guilty pleas in each of the cases captioned above  
24

---

<sup>19</sup> In fact, that is exactly what occurred. The same day the defendant plead guilty and was sentenced in the Renton Municipal Court, he was transferred to a federal detention facility to await removal.

1 and orders that the matters be reset to a pre-trial status. Furthermore, the court reinstates the  
2 previous bail amount of \$7500 (bondable) for each case. If the defendant is able to post those  
3 amounts and obtain his release pending trial, the conditions of release originally imposed on each  
4 case are re-imposed. If the defendant is going to seek representation by a public defender, he  
5 must rescreen for eligibility. If the defendant is deemed eligible, conflict counsel should be  
6 appointed.

7  
8  
9 

---

Mychal H. Schwartz, Judge Pro Tem



**PLEASE NOTE:** In the process of determining judicial ratings, the Judicial Screening Committee of the King County Bar Association uses the Washington State Governor's Office Uniform Judicial Evaluation Questionnaire and this Supplemental Questionnaire, as well as reference checks, candidate interviews and other sources of information. (See Judicial Screening Rules and Procedures.)

The responses to the following questions on the Washington State Governor's Office Uniform Judicial Evaluation Questionnaire may be disclosed to persons other than the Judicial Screening Committee and, in the case of judicial elections, will be publicly available:

Position Sought, Name, Business Address, Business email  
Professional History: #8, 9, 10, 11; 12, 13, 14, 15,  
Educational Background: #16, 17  
Professional Experience: #18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32  
Community and Civic Activities: #33

At various times, groups not affiliated with KCBA have rated judicial applicants. The KCBA Judicial Screening Committee's bylaws preclude the Committee from disclosing the names of applicants seeking a rating for appointment to these other groups. However, if you are interested in obtaining the names and addresses of such other rating groups to request this information yourself, you may contact the Executive Director at the KCBA office, telephone: 206-267-7100.

**Include the following materials in your application packet:**

- Governor's Office Uniform Judicial Evaluation Questionnaire
- KCBA Supplemental Questionnaire
- A writing sample between 5-10 pages, as requested in question 45 of the Governor's questionnaire.

Please be advised that the Judicial Screening Committee may take into account the information provided in the questionnaire, the reference checks, the interview, and any other source of information available to it. Letters of recommendation will not be provided to the Committee and should not be solicited. Supplemental materials such as journal articles, legal research, motions, briefs or other documents that you have filed in court, other than the writing sample specifically called for in the Governor's Uniform Questionnaire, should not be included.

**REFERENCES.** The Committee finds it useful to speak with attorneys and non-attorneys who are familiar with you. One or more Committee members will attempt to contact each reference listed. All telephone numbers should be current and legible. You may contact references in advance if you so desire. The Committee may also call upon individuals not listed to obtain information.

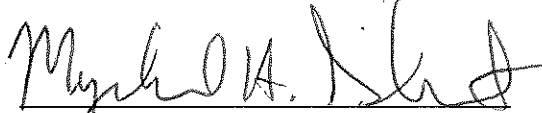
(1) List the names and phone numbers of up to ten attorneys who have supervised you or who have reviewed and are familiar with your legal work, including your current supervisor and at least one other supervisor from your current workplace and at least one supervisor from each of your prior workplaces during the past fifteen years.

- a. **The Honorable Judge David Christie (206) 205-6785  
King County District Court**
- b. **The Honorable Judge Catherine Shaffer (206) 296-9185  
King County Superior Court**
- c. **The Honorable Judge Rebecca Robertson (253) 835-3025  
Federal Way Municipal Court**
- d. **The Honorable Judge Michael Lambo (425) 587-3179  
Kirkland Municipal Court**
- e. **The Honorable Judge Glenn Phillips (253) 856-5734  
Kent Municipal Court**
- f. **The Honorable Judge N. Scott Stewart (253) 859-8840  
Issaquah Municipal Court**
- g. **The Honorable Judge Tim Jenkins (253) 315-1107  
Sumner Municipal Court**
- h. **Michael Hogan (206) 296-9000  
Office of the King County Prosecuting Attorney**
- i. **Amy Freedheim (206) 296-9000  
Office of the King County Prosecuting Attorney**
- j. **Margaret Nave (206) 296-9000  
Office of the King County Prosecuting Attorney**

(2) For the last five appellate matters in which you participated (whether as lawyer or decision-maker), list as appropriate the following for each: case name, subject matter, court, judge (w/phone number), and opposing counsel or counsel appearing before you (w/ phone number).

I have not participated in an appellate matter in approximately 7 years. The bulk of my appellate work was done approximately 12 years ago. I have no record of those matters.

I certify under penalty of perjury of the laws of the state of Washington that the above information is true, accurate and complete. I agree to notify KCBA if there are material changes in this information between the time the Uniform Questionnaire and this cover sheet are completed and the expiration of any rating received.



Signature

Mychel H. Schwartz

Print Name

11/15/12

Date

Washington State Bar Association  
Office of Disciplinary Counsel  
1325 Fourth Ave Suite 600  
Seattle, WA 98101

RE: WAIVER AND AUTHORIZATION TO RELEASE INFORMATION

I, Mychal H. Schwartz, WSBA No. 24368 have requested rating for  
judicial office by the King County Judicial Screening Committee.

Pursuant to ELC 3.4(c) I authorize and request the Washington State Bar  
Association, to disclose the record of disciplinary grievances filed against me and the  
status of otherwise confidential disciplinary investigations and proceedings and to  
provide copies of nonpublic information to the Judicial Screening Committee of the King  
County Bar Association, 1200 Fifth Avenue, Suite 600, Seattle, Washington 98101.

Dated this 15<sup>th</sup> of November, 2012

Mychal H. Schwartz

Signature

Mychal H. Schwartz

Print Name

24368

WSBA Number

I \_\_\_\_\_, WSBA No. \_\_\_\_\_, decline to authorize the  
release of confidential discipline information under RD 11.1(n) to the King County Bar  
Association Committee.

Dated this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
WSBA Number

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The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

2009 Latino/a Bar Association – Well Qualified  
2009 Washington Women Lawyers – Highly Qualified  
2009 Municipal League - Outstanding

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

**Professional History**

8. Year admitted to practice law in Washington: 1995

9. Employment History (in reverse chronological order):

a. Start Date: October 2007 End Date: Present

Organization: King County District Court

Address: 516 Third Avenue, Room 1034, Seattle, Washington 98104 (Office of Presiding Judge)

Phone No.: 206.205.2820

Position/Title: Judge Pro Tempore

Supervisor: Presiding Judge Corinna Harn

Nature of Practice (including frequency of court appearances):

Preside over criminal and civil cases including arraignments, pre-trial hearings, motions, jury trials, bench trials, sentencing, review matters, infractions, small claims matters, protection orders and anti-harassment orders. Preside over State of Washington, City of Bellevue, City of Redmond, Woodinville, Duvall/Carnation, and Issaquah calendars. I have been a pro tem judge in Bellevue District Court, Seattle District Court, Northeast District Court, Issaquah District Court, Renton District Court, Shoreline District Court, and the Regional Justice Center in Kent. I have appeared as a pro tem judge on an average of 4 days a month.

Reason for leaving: Current Employment

b. Start Date: January 2000 End Date: Present

Organization: Ketu Shah Law Offices

Address: 2135 112<sup>th</sup> Avenue NE, Suite 250, Bellevue, Washington 98004

Phone No.: 425.455.7611

Position/Title: Attorney at Law

Supervisor: Self-Employed

Nature of Practice (including frequency of court appearances):

Law practice emphasizing business and immigration law. Assist businesses and families in obtaining visas, permanent residency, and naturalization. Assist businesses and individuals in civil litigation matters ranging from contract dispute to employment law. Appear in District and Superior Court and Immigration Court.

Reason for leaving: Current Employment.

c. Start Date: January 2000 to April 2007

Organization: City of Bellevue

Address: 450 110th Ave. NE, Bellevue, Washington 98009

Phone No: 425.452.6829

Position/Title: Domestic Violence Prosecutor

Supervisor: Susan Irwin

Nature of Practice (including frequency of court appearances):

Charged, investigated, and took over 80 cases to jury trial. Created systems to vertically prosecute cases to ensure accountability and consistency. Worked with EDVP, community members and police to create better system responses to domestic violence. Trained detectives, advocates, and prosecutors statewide on prosecuting domestic violence crimes. Appeared in District Court weekly.

Reasons for leaving: Expanded my civil practice.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

c. Start Date: January 1999 End Date: January 2000

Organization: Seattle City Attorney's Office

Address: 700 5<sup>th</sup> Avenue, Suite 5300, P.O. Box 94667, Seattle, Washington 98124

Phone No.: 206.684.7757

Position/Title: Assistant City Attorney

Supervisor: Bob Chung; Judith Shoshana

Nature of Practice (including frequency of court appearances):

Prosecuted misdemeanor cases and domestic violence cases. Assigned to Domestic Violence Unit and worked with team members to investigate and prosecute domestic violence cases. Represented the City Attorney's Office at community and local law enforcement meetings.

Appeared daily in municipal court.

Reason for leaving: City of Bellevue opportunity

d. Start Date: March 1997 End Date: January 1999

Organization: Vancouver City Attorney's Office

Address: 210 East 13<sup>th</sup> Street, P.O. Box 1995, Vancouver, Washington 98668

Phone No.: 360.487-8500

Position/Title: Assistant City Attorney

Supervisor: Ted Gathe; Scott Sonju

Nature of Practice (including frequency of court appearances):

Prosecuted misdemeanor cases with emphasis on domestic violence crimes. Helped create and implement first domestic violence court. Trained officers on domestic violence issues and investigations. Drafted ordinances and advised city departments. Advised and resolved code enforcement cases including building and zoning violations. Appeared in District Court two to three times a week.

Reason for leaving: Spouse transferred to Seattle.

e. Start Date: September 1994 End Date: March 1997

Organization: King County Superior Court

Address: 516 Third Avenue South

Phone No.: 206.296.9150

Position/Title: Law Clerk Bailiff for Judge Carol Schapira

Supervisor: Judge Carol Schapira

Nature of Practice (including frequency of court appearances):

Researched and prepared memoranda on issues including constitutionality of ordinances, discrimination claims, complex commercial litigation, personal injury, medical malpractice, and wrongful termination. Discussed the legal merits of trial issues and motion arguments. Acted as liaison between judge, litigants, and public. Appeared in Superior Court daily.

Reason for leaving: Clerkship ended.

f. Start Date: January 1994 End Date: May 1994

Organization: Humphrey Institute of Public Affairs

Address: 130 Humphrey Center, 301 19<sup>th</sup> Avenue South, Minneapolis, Minnesota 55455

Phone No.: 612.626.8910

Position/Title: Law Clerk

Supervisor: N/A

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

Nature of Practice (including frequency of court appearances):  
Researched legal issues concerning education policy.  
Reason for leaving: Graduated law school.

Please continue, if necessary, on a separate piece of paper in the above format as needed.

10. Please list all other courts and jurisdictions in which you have been admitted to practice law and the dates of admission. Please provide the same information for administrative bodies having special admission requirements.

None.

11. Please list all bar associations and professional societies of which you are a member and give the titles and dates of any offices that you have held in such groups.

Member of Washington State Bar Association - 1995 to Present

Member of South Asian Bar Association - 2002 to Present

Member of American Immigration Lawyers Association – 2004 to Present

Board Member of South Asian Bar Association – 2008 to Present

The Indus Entrepreneur (Seattle) – 2008 to 2010

King County VAWA Committee – 2001-2007

Member of Asian Bar Association – 2000 to 2004

Washington Association of Municipal Attorneys – 1997-2000

Vice-president of Community Development for Network of Indian Professionals – 1995-1996

Co-President of Asian Law Students Association – 1993-1994

12. Are you in good standing in every bar association of which you are a member? Yes / No. If you answered “no”, please explain.

Yes.

13. If you have ever been a judge, please identify any court committees on which you have served or administrative positions you have held. Please state the dates of service for each.

As a pro tem judge, I have not sat on any committees.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

14. Please list up to five of your most significant professional accomplishments. (If applicable, please provide the case and court name and the citation if a case was reported (and copy of the opinion).
- a. Pro Tempore Judge. After participating in the judicial training, I was appointed to be a pro tempore judge by King County and it is personally significant because I am the first South Asian judge in King County and the State of Washington. After a few years of adjudicating cases, I am still amazed by the tremendous positive influence a judge can have on people's lives. Serving King County in this way gives me a great sense of purpose and meaning.
  - b. Vertical Prosecution for DV cases in Bellevue. I helped create a domestic violence team to prosecute domestic violence cases for the City of Bellevue by adopting a vertical prosecution model. When hired, I was asked to streamline the process of investigating, filing, and prosecuting domestic violence cases. I created a system where the prosecutor would review cases early, decide whether to charge the case or not, and then manage the case to trial. I collaborated with the domestic violence detective, the victim advocate, the specially trained paralegal, and the District Court to create a quasi-domestic violence court to hold batterers accountable. The implementation of this process led to a dramatic improvement in favorably resolving cases. We also collaborated with the Eastside Domestic Violence Program (EDVP) to offer broader services to victims that the court could not offer and make sure the victim's perspective was considered throughout the process.
  - c. Appointment to GAAPCOM. Governor Locke appointed me to the Governor's Affirmative Action Policy Committee (GAAPCOM) in 1998. It was a great honor to be involved with policy in advising the Governor on a complex issue. We were tasked with evaluating state agencies and colleges on how they met the Governor's policy requirements and state law regarding affirmative action. We met monthly with agencies at their offices and discussed challenges and successes they had in implementing these policies. As a Board, we met quarterly and discussed overall what agencies could do to bridge their lack of representation with disparate groups. In this forum, it was especially rewarding because we were constructively working toward ending discrimination in all forms.
  - d. DV Trainings. Conducting statewide trainings of officers, prosecutors, and advocates with the Washington Coalition Against Domestic Violence (WSCADV). I was a faculty member for Team 3 statewide trainings that encouraged community-based advocates, prosecutors, and officers to work together in handling domestic violence cases. We taught teams from different parts of the State with different issues and concerns. These trainings led to thought-provoking reflection for small and large jurisdictions on how they deal with domestic violence cases. I led substantive discussions on jury selection, pre-trial issues, working with advocates, and a mock trial.
  - e. Community Award by SABAW. I was awarded the South Asian Bar Association Community Award for my service to the South Asian Community. This was extremely gratifying to be acknowledged for the pro bono work I did for Chaya, the Hindu Temple Cultural Center, and other South Asian communities.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

15. Please summarize up to eight of the most significant matters that you participated in as an advocate. Please include the dates of your participation and the reason each was significant to you. Please provide the citation if a case was reported. If you have been a judge, please include some cases that have been tried before you.

a. Pro Bono Case with Chaya. As the first volunteer attorney for Chaya, in 2003, I assisted a client in obtaining a U visa which was created by *statute* for victims of crimes but did not exist in *regulations*. The Congress passed a law authorizing this new type of visa but the Immigration Service did not create any regulations on how to obtain the visa. My client was abused by her spouse. When she and her two-year old child fled the relationship to make a new life for themselves, she had no status to work. Her visa status was dependent on her husband so she had no independent ability to stay in the country. If she returned to her home country, she would have been ostracized and pressured to return to the abusive relationship. I consulted with the National Immigration Project and the NOW Legal Defense Fund on how to obtain a U visa for my client. With their guidance, I was able to successfully obtain the visa for my client and her life was forever changed. With her new status, she went back to school, obtained a degree, started a career, relocated to another state, and now is in a safe place for herself and her child.

b. Pro Bono with Northwest Immigrant's Rights Project (NWIRP) and the University of Washington. I was the supervising attorney for obtaining VAWA immigration benefits for my client. I worked with the Immigration Family Advocacy Project and two University of Washington students in applying for VAWA benefits for my client and her children. This project took almost two years because of the difficulty in obtaining all the necessary documents. We had to coordinate with the Forks City Prosecutor, her pro bono attorneys in Clallum County, and the ever-changing regulations. It reminded me of how difficult these cases are but also how incredibly rewarding it is helping my client and her children create a new life.

c. Obtaining work visas for my client's workers. A client who has an international business wished to bring workers to the United States for a project. It was a new venture and time was critical. I prepared the application over a few days for seven workers and ultimately obtained six approvals almost immediately. We had to submit over 200 pages of supporting documents to substantiate the case. The seventh case became extremely complicated because the consulate in the home country did not believe my client had a legitimate business. We had to have the employee re-visit the embassy armed with another 100 pages of supporting documents. This case tested our patience because we met the legal requirements but after many long hours, we were able to secure the visa for my client. It demonstrated to me persistence and strong advocacy can lead to positive results.

d. Bellevue v. Blake –2007. I prosecuted the defendant for assaulting his elderly father. The defendant had a long history of alcohol related offenses and had .43 blood alcohol content in this incident. In pre-trial motions, I argued the prior alcohol related incidents were relevant to show the defendant's pattern of conduct. The judge agreed and after a jury trial, the defendant was convicted. After the trial, the parents thanked me but were concerned about what would happen to their son. They were anxious to obtain treatment for him. The case made me appreciate the difficulty elderly parents face in helping adult children whether it is for an addiction, criminal conduct, or mental illness.

e. Bellevue v. \_\_\_\_\_ – 2003. This was a case I prosecuted that involved a defendant stalking his victim for over 20 years and over three states. The defendant had kidnapped their daughter when she was 4 months old. He was found and served time for that offense. While in prison, the victim moved to Bellevue and changed her name. For many years she lived a normal life but then the defendant found her and began stalking her and her daughter.

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I tried the case before a jury but it was an especially difficult case to prove because much of the stalking was contact that was nearly impossible to establish without having the teenage daughter testify. I worked closely with the victim and she did not want to put her daughter through a trial. After many discussions, we went to trial without the daughter testifying and obtained a conviction of a lesser offense. Ultimately, the victim was able to move and find safety again. It made me reflect on the purpose of our prosecution and how important the safety of victims is in domestic violence cases.

f. Seattle v. \_\_\_\_\_ – 1999. I prosecuted a case where the defendant was charged with harassment of a bus driver. A jury who found he had threatened to shoot the driver and convicted the defendant. During sentencing, I discovered the defendant had prior convictions for animal cruelty. I presented this information that no one had discovered previously and the judge agreed with my recommendation for an enhanced sentence because of his history of violence. The bus driver was appreciative because this happened shortly after another bus driver had been shot.

g. Vancouver v. \_\_\_\_\_ -1998. I prosecuted a case where the victim refused to appear. We went forward with the trial even though everyone expected the City to dismiss the case. The jury convicted the defendant based on the evidence we had accumulated including the 911 tape, the defendant's admissions, and photographs. This was my first case to go to jury without the victim and gain a conviction. There were several unsuccessful pre-trial motions to dismiss the case. It was an extremely stressful case but very rewarding because of all the legal work we did to get the case before the jury.

The Governor's Office's  
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**Educational Background**

16. Please list all undergraduate and graduate (non-law school) colleges and universities attended, years of attendance, degree awarded and reason for leaving if no degree was awarded.

Whitman College	1986-1990	Bachelor of Arts
College/University	Dates of Attendance	Degree
College Year in Athens	Spring 1989	Study Abroad
College/University	Dates of Attendance	Degree

17. Please list all law schools attended, years of attendance, degree awarded and reason for leaving if no degree was awarded.

University of Minnesota	1991-1994	Juris Doctorate
Law School	Dates of Attendance	Degree

**Professional Experience**

18. Please summarize, briefly, the general nature of your current law practice.

My practice focuses on representing businesses and individuals related to immigration, business and estate planning. I also assist individuals in obtaining work visas, permanent residency, and citizenship. I regularly serve the District Court as a pro tempore judge for criminal and civil calendars. I review contracts and advise businesses on formation issues as they relate to immigration. I also litigate civil cases regarding employment law and contract disputes.

19. If you are in practice, please describe your typical clients and any areas of special emphasis within your practice.

Individuals and employers sponsoring immigrants.

20. If your present law practice is different from any previous practice, please describe the earlier practice, including the nature of your typical clients and any area of special emphasis within your practice.

Tried over 180 cases to jury trial as a prosecutor with the City of Bellevue, City of Seattle, and City of Vancouver. Investigated cases, developed and created systems to properly and effectively prosecute domestic violence cases. Met monthly with local domestic violence advocacy group and police to identify and resolve system wide issues.

21. Within the last 5 years, did you appear in trial court:

☒ Regularly                      ☐ Occasionally                      ☐ Infrequently

22. Within the last 5 years, did you prepare appellate briefs and appear before appellate courts:

☐ Regularly                      ☐ Occasionally                      ☒ Infrequently

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23. Within the last five years, how often did you appear in the court for which you are applying:

☒ Regularly

☐ Occasionally

☐ Infrequently

24. Career Experience

(a) What percentage of your appearances in the last five years was in:

(1) Federal appellate courts	_____ %
(2) Federal trial courts	_____ %
(3) State appellate courts	_____ %
(4) State trial courts	15 %
(5) Municipal courts	5 %
(6) District courts	75 %
(7) Administrative tribunals	5 %
(8) Tribal courts	_____ %
(9) Other	_____ %
TOTAL	100%

(b) What percentage of your practice in the last five years was:

(1) Civil litigation (excl. family law)	10 %
(2) Criminal litigation	30 %
(3) Family law litigation	_____ %
(4) Non-litigation	60 %
TOTAL	100%

(c) What percentage of your trials in the last five years were:

(1) Jury trials	90 %
(2) Non-jury trials	10 %
TOTAL	100%

The Governor's Office's  
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- (d) State the number of cases during your total career that you have tried to verdict or judgment (rather than settled) in the following courts, and indicate for each court the following percentages: trials in which you were sole counsel or chief counsel, jury trials, and trials where you were the arbiter/decision maker.

<u>Number</u>	<u>Court</u>	<u>% as Sole / Chief Counsel</u>	<u>% Jury</u>	<u>% as the Arbiter</u>
80	Municipal	100	75	N/A
100	State Dist.	100	80	5
	State Superior			
	Federal Dist.			
	Administrative			
	Tribal Courts			
	Other			

- (e) State the number of appellate cases during your total career where you appeared as counsel of record in the following courts, and indicate for each court the following percentages: cases where you were sole counsel or chief counsel, and cases where you were the arbiter/decision maker (if applicable).

<u>Number</u>	<u>Court</u>	<u>% as Sole / Chief Counsel</u>	<u>% as the Arbiter</u>
	State Superior Court		
	WA. Div. I COA		
	WA. Div. II COA		
	WA. Div. III COA		
	WA. Supreme Court		
	Fed. Cir. COA		
	U.S. Supreme Court		

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- (f) Briefly describe no more than five significant litigation matters that you directly handled as the sole counsel. For each, please provide the name and telephone number of opposing counsel, the name of the judge or other judicial officer, and the citation (if applicable).

Bellevue v. Blake. A trial involving a defendant charged with assaulting his father. Josh Schaer (425.457.7810) represented the defendant and it was tried before Judge Janet Garrow in Bellevue District Court (206.205.5701)

Bellevue v. Howard – 2004: This was a case I prosecuted that involved a defendant who had abused his girlfriend. He had a pattern of behavior of assaulting his significant others. Prior bad acts were admitted and the Defendant was found guilty. Jann Zabel (425.334.4400) represented the defendant and it was tried before Judge Linda Jacke (206.296.3660).

State v. Logan – 2011: Presided as a pro tem judge for prosecution of DUI. Cailin Daly (206-674-4700) represented the defense and Allison Bannerman (206.296.9000) represented the State. I presided over this case as a judge and it made me quite aware of the importance a judge plays in these proceedings. Through pre-trial motions, voir dire, and instructions, the judge played a critical role in maintaining a fair trial.

Bellevue v. Eichorn – 2003: Prosecuted and convicted a defendant who assaulted his wife. Neil Fox (206.728.5440) represented the Defendant and Ret. Judge Fred Yeatts (425.454.8509) presided. This was a heavily litigated case with pre-trial motions for prior bad acts, and complicated arguments about instructions. The lesser included crime of Simple Assault was challenged for its constitutionality.

Bellevue v. \_\_\_\_\_ - 2007: Prosecuted and convicted a defendant charged with violating a protection order. Saad Qadri (206.441.0900) represented the defendant and Judge Janet Garrow (206.205.5701) presided. This case was a challenge because there was very little evidence besides the victim's testimony and thus the case boiled down to convincing the jury that the victim's testimony was credible beyond a reasonable doubt.

- (g) State in detail your experience in adversary proceedings before administrative boards or commissions during the last five years.

I have appeared in immigration proceedings with the Executive Office of Immigration Review in several cases where my client's are contesting removal proceedings.

The Governor's Office's  
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25. Please briefly describe any legal non-litigation experience that you feel enhances your qualifications to serve as a judge.

I was on the Board of Directors for Chaya. With Chaya, I developed confidentiality policies, employment policies, and advised staff on immigration issues. This experience helped me communicate with non-attorneys in simple and understandable language which would be very useful in the courtroom in dealing with pro se litigants.

I am on the Board of Directors with SABAW and serve on different committees, the most recent being organizing our membership in providing pro bono services to indigenous and underserved communities. This work has been incredibly helpful in understanding the barriers litigants face in access to justice and access to the courts.

I am a Board Member with the Mercer Island Youth Soccer Club as the Vice President of Select. I supervise our Coaches, help form teams, and deal with parent expectations. By navigating these different constituencies, I have mediated different points of views to be consistent with club philosophy.

26. If you are now an officer or director of any business organization or otherwise engaged in the management of any business enterprises, please provide the following: the name of the enterprise, the nature of the business, the title of your position, the nature of your duties, and the term of your service. If you are appointed and do not intend to resign such position(s), please state this below along with your reasons for not resigning.

N/A

27. Please list all chairmanships of major committees in bar associations and professional societies and memberships on any committees that you have held and believe to be of particular significance.

Executive Committee for Chaya – 2005-2012  
Co-Chair for Board of Directors of Chaya – 2006-2012  
Committee member of JAJEC Rules Committee – 2008 to 2009  
Committee member of ABAW Judicial Evaluations – 2000 to 2004  
Board Member for Governor's Affirmative Action Policy Committee – 1998-2004  
Former Vice-president of Community Development for Network of Indian Professionals  
Former Co-President of Asian Law Students Association

**Judicial Interest and Experience**

28. In 50 words or less, please describe why you should be appointed / elected and are seeking a judicial position.

The judiciary is strong when it is diverse and reflects our community. My varied perspective through my professional experiences combating domestic violence and helping individuals in private practice would enrich the bench. I will bring the temperament and work ethic necessary to make the courts more accessible and more just.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

29. In 50 words or less, please describe your judicial philosophy.

The orderly resolution of disagreements is the core purpose of the judiciary. The bench must be fair to everyone by being impartial, intelligent, and respectful. When litigants receive a fair hearing and a decision is made, the judiciary is strengthened and our society moves forward.

30. Have you ever held a judicial office or have you ever been a candidate for such office?  
Yes / No. If you answered "yes", please provide details, including the courts involved, whether elected or appointed, and the periods of your service.

Yes. I was a candidate in 2010 for an open judicial seat for the Northeast Division of King County District Court. I was unsuccessful in the election.

31. Have you ever held public office other than a judicial office, or have you ever been a candidate for such an office? Yes / No. If you answered "yes", please provide details, including the offices involved, whether elected or appointed, and the length of your service.

No.

32. Please briefly identify all of your experience as a neutral decision-maker (e.g. judge (permanent or pro tem) in any jurisdiction, administrative law judge, arbitrator, hearing officer, etc.). Give courts, approximate dates, and attorneys who appeared before you.

Since 2007, I have been a pro tem judge in King County District Court and Issaquah Municipal Court. I have appeared as a pro tem judge on average 4 days a month presiding over criminal and civil cases including arraignments, pre-trial hearings, motions, jury trials, bench trials, sentencing, review matters, infractions, small claims matters, protection orders and anti-harassment orders. I have presided over State of Washington, City of Bellevue, City of Redmond, Woodinville, Duvall/Carnation, and Issaquah calendars. Dozens of attorneys have appeared before me but some of the most frequent are as follows:

Jill Thiele – City of Bellevue  
Pat Kozu – Stein, Lotzkar, and Starr  
Elisa Brine – Stein, Lotzkar, and Starr  
Shawn McCully – Jacobsen Law Group  
Allison Bannerman – State of Washington  
Lynn Moberly – City of Issaquah  
Hal Palmer – SCRAP

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

**Community and Civic Activities**

33. Please list your community and civic activities, including dates and leadership roles held, over the last 10 years.

Mercer Island Youth Soccer Club – Vice President of Select – 2011 to Present  
Board Member of Chaya – 2005 to 2012  
Co-chair of Board for Chaya – 2006 to 2012  
Treasurer and Finance Committee, Chaya – 2005-2006  
Volunteer for Board Members of Hindu Temple Cultural Center  
Member of Seattle Gujarati Cultural Society  
Member of Indian Association of Western Washington  
Camp Counselor, Camp Bharat  
Former Vice-president of Community Development for Network of Indian Professionals  
Coach girls soccer team for 9 years  
Coached Boys Club team in Rainer Valley  
Math Tutor at West Mercer Elementary School  
PALS volunteer at Island Park Elementary School  
Volunteer, Gurukul Language School  
Y-Princess participant

**Discipline and Disputes**

34. Have you ever been held, arrested, charged or convicted by federal, state, or other law enforcement authorities for violation of any federal law, state law, county or municipal law, regulation or ordinance? If you answered "yes", please provide details. (Do not include traffic violations for which a fine of \$150.00 or less was imposed.) Please feel free to provide your view of how it bears on your present fitness for judicial office.

No. N/A

35. Has a client ever made a claim or suit against you for malpractice? Yes / No. If you answered "yes", please provide details and the current status of the claim and/or suit.

No.

36. Please describe your direct experience, if any, with domestic violence and sexual harassment.

I prosecuted domestic violence cases for over 10 years. I have volunteered as a pro bono attorney for survivors of domestic violence and served on the board of Chaya that supports and advocates for survivors of domestic violence. I have also represented clients in obtaining protection orders and provided pro bono services to survivors of domestic violence in obtaining immigration benefits.

37. Have you been a party in interest, witness, or consultant in any legal proceeding? Yes / No. If you answered "yes", please provide details. Do not list proceedings in which you were merely a guardian ad litem or stakeholder.

Yes. In 2005, a defendant I prosecuted named me in a lawsuit. The case was dismissed on summary judgment in Federal District Court.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

38. Have you ever been the subject of a complaint to any bar association, disciplinary committee, court, administrative agency or other professional group? Yes / No. If you answered "yes", please provide details.

Yes. While prosecuting for the City of Vancouver, a defendant I prosecuted made a complaint to the Bar Association. I did not know a complaint was made until I received a letter indicating the complaint had been summarily dismissed. This happened in either 1997 or 1998.

39. Have you ever been disciplined or cited for breach of ethics or unprofessional conduct? Yes / No. If you answered "yes", please provide details.

No.

40. If you have served as a judge, commissioner, or in any judicial capacity, has a complaint for misconduct in that capacity ever been made against you? Yes / No. If you answered "yes", please provide details.

No.

**Miscellaneous**

41. Are you aware of anything that may affect your ability to perform the duties of a judge? Yes / No. If you answered "yes", please provide details.

No.

42. Have you published any books or articles in the field of law? If so, please list them, giving the citations and dates. Also, please give the dates and forums of any Continuing Legal Education presentations that you have made.

Faculty Member for state training on d.v. for prosecutors, law enforcement, and advocates – 2001-2005

Presented at Washington Association of Prosecuting Attorney's Annual District Court training - 2006

Presented paper to State Association of Municipal Attorney's on domestic violence issues - 1998

Presented at CLE for SABAW and LBAW on Current Trends in Immigration - 2008

Moderated Panel on Current Trends in Immigration at Minority Bar Symposium - 2010

Panel Member at the NWAILA conference on Department of Labor audits - 2011

43. Please list any honors, prizes, awards or other forms of recognition that you have received and whether they were professional or civic in nature.

Board Member of South Asian Bar Association – 2008 to Present

2008 Community Award by South Asian Bar Association

1999 Outstanding Service Award – City of Vancouver

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

44. Are you aware of anything in your background or any event you anticipate in the future that might be considered to conflict with the Code of Judicial Conduct? Yes / No. If you answered "yes", please explain.

No.

45. Please provide a writing sample of your work (between 5 and 10 pages long), written and edited solely by you, within the last 4 years.

**Access to Justice**

46. Please describe activities that you have engaged in to eliminate bias or improve access to the judicial system for indigent populations and ethnic, racial and sexual minorities. As a member of the bench, what, if any, role do you believe a judge has to enhance equal access to justice?

I have taken on dozens of pro bono cases to help various racial minorities obtain legal relief including immigration, protection order, and landlord/tenant cases. I have led a pro bono campaign for SABAW to help South Asians in need of legal assistance. Also, I have worked with Chaya for 12 years helping vulnerable clients gain access to the justice system. I am a volunteer attorney with ELAP (Eastside Legal Assistance Program) for their immigration clinic. As a member of the bench, it is critical that the judiciary take an active role in making the courts accessible. Having interpreters available, making fees affordable or waived if appropriate, and educating the legal profession the issues minorities face are all active steps the judiciary can take.

47. Please describe the frequency, time commitment and substantive nature of your direct participation of free legal services to indigent populations, and ethnic, racial and sexual minorities.

In addition to the above, I have provided legal advice to minority religious institutions in Washington and Texas. I have worked with Immigrant Family Advocacy Project, NWIRP, and Chaya to provide pro bono services to clients for immigration proceedings. I have also volunteered with ELAP to provide pro bono legal immigration services to indigent communities.

**Diversity in the Legal Profession**

48. Please briefly describe your understanding of the issue of "diversity within the legal profession."

We need to increase diversity within the legal profession so we reflect the clients we represent and the litigants who appear in court. We need to make a concerted effort to include people from all backgrounds including racial, ethnic, gender, sexual orientation, and disabled groups so that the legal profession is enriched by their perspective. We have taken great steps to be inclusive but we need to go further in actively seeking out diverse perspectives and incorporating them into our practice and courtroom.

**References**

It is useful for evaluators to speak with attorneys and non-attorneys who are familiar with you. One or more participants in the evaluation process may contact each of your references. All telephone numbers should be current and legible. If a reference is unreachable, your rating/evaluation may be delayed. **Please use a separate piece of paper for each list.** You may contact references in advance if you so desire. Individuals not listed by you as a reference may be contacted to obtain information about you.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

49. If you have been in practice within the past fifteen years, list the names and phone numbers of ten opposing counsels who know you best, including at least three opposing counsels on cases that went to trial.
50. If you have been a judge or otherwise have served as a neutral decision-maker within the past fifteen years, please list the names and phone numbers of the last ten attorneys who have appeared before you.
51. List the names and phone numbers of up to six non-attorney references whose opinions or observations – particularly with respect to your commitment to improving access to the judicial system for indigent populations, people of color, and disenfranchised communities – would assist in the consideration of your application.
52. For the last five trials in which you participated (whether as trial lawyer or decision-maker), list as appropriate the following for each: case name, subject matter, court, judge (w/ phone number), and opposing counsel or counsel appearing before you (w/ phone number).
53. List the names and phone numbers of ten additional attorneys familiar with your professional qualifications, skills, experience or attributes.

The Governor's Office's  
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**NOTE:** The Governor's Office requires individuals seeking judicial appointment to utilize, to the fullest extent possible, the ratings processes from state, county, and minority bar organizations. Contact information for the minority bar associations can be found on the Washington State Bar Association's website at (<http://www.wsba.org/public/links/minoritybars.htm>). It is the applicant's responsibility, however, to obtain these evaluations in a timely manner, and to forward evaluations received to the Governor's Office. To that end, all applicants are strongly encouraged to commence the evaluation process with the various bar associations as soon as possible. To facilitate the process, the following organizations have agreed to accept this questionnaire as the principal application in their evaluation process and may also require candidates to complete an additional supplement questionnaire:

**State Bar Association**

☐ Washington State Bar Association (WSBA) (appellate court evaluations only)

**County Bar Associations**

- ☒ King County Bar Association (KCBA)  
☐ Spokane County Bar Association (SCBA)  
☐ Tacoma-Pierce County Bar Association (TPCBA)

**Minority Bar Associations**

- ☒ Latina/o Bar Association of Washington (LBAW)  
☒ Loren Miller Bar Association (LMBA)  
☒ The Joint Asian Judicial Evaluations Committee of Washington<sup>3</sup>  
☐ Pierce County Minority Bar Association (PCMBA)  
☒ Q-Law / GLBT (Gay Lesbian Bisexual Transgender) Bar Association  
☒ Washington Women Lawyers<sup>4</sup> (WWL)

As of the date of your certification below and submission of this questionnaire to the Governor's Office, please check beside each of the above organizations you have contacted to evaluate you for the position for which you seek.

**Certification**

54.

By signing below, I declare under penalty of perjury under the laws of the State of Washington that the information provided by me in responding to this questionnaire is true and correct to the best of my knowledge.

Date: 11/14/12 Signature: Ketu Shah

<sup>3</sup> A joint committee of the Asian, Korean, South Asian and Vietnamese American Bar Associations of Washington.

<sup>4</sup> Washington Women Lawyers has approved the use of the Governor's Uniform Judicial Evaluation Questionnaire for its statewide and all county chapters.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

**JOB ADDENDUM**

g. Start Date: August 1992 End Date: May 1994

Organization: Journal of Law & Inequality

Address: University of Minnesota Law School

Phone No.: N/A

Position/Title: Managing Editor

Supervisor: N/A

Nature of Practice (including frequency of court appearances):

Selected to edit and research articles for publication. Supervised staff members to ensure proper citation form and overall structure of article.

Reason for leaving: Graduate law school.

h. Start Date: October 1992 End Date: December 1993

Organization: Hennepin County Public Defender's Office

Address: 701 Building, Public Defender's Office, 701 Fourth Avenue South, Suite 1400

Minneapolis, Minnesota 55415

Phone No.: 612.348.9156

Position/Title: Law Clerk

Supervisor: Gretchen Hoffman

Nature of Practice (including frequency of court appearances):

Researched and drafted legal memoranda, interviewed clients, and worked closely with attorneys in trial preparation. Also assisted in preparation of appellate briefs and motion briefs.

Reasons for leaving: Policy opportunity with Humphrey Institute

Start Date: June 1990 End Date: March 1992

Organization: Amol Dicalite, Ltd.

Address: Ahmedabad, India

Phone No: N/A

Position/Title: Business Intern

Supervisor: Shreyas Sheth

Nature of Practice:

Worked in various stages of manufacturing and instituted computer sales analysis.

Reasons for leaving: Law School

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

**TEN OPPOSING ATTORNEYS**

1. Susan Amini: 425.454.3700
2. Miguel Bocanegra: 206.622.1604
3. Rene Cespedes: 425.462.1235
4. Byron Ward: 206.624.8105
5. Patricia Fulton: 206.467.3190
6. Lisa Daugaard: 206.447.3900
7. Blakeley Warbinton: 425.284.2362
8. Saad Qadri: 206.441.0900
9. Brit Mercer: 206.622.8000
10. John Price: 425.483.4441

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

**TEN ATTORNEYS WHO APPEARED BEFORE ME AS A NEUTRAL DECISION  
MAKER**

1. Allison Bannerman: 206.296.9000
2. Susan Irwin: 425.452.6822
3. Jill Thiele: 425.452.6822
4. Paul Jacobson: 425.883.9161
5. Shawn McCully: 425.449.8213
6. Hal Palmer: 206.322.8400
7. Jon Fox: 425.274.9190
8. Sam Wolf: 206.674.4700
9. Jag Matto: 253.332.4879
10. Fred Hopkins: 425.391.7427

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

**NONATTORNEY REFERENCES**

Aaliyah Gupta, Founder of Chaya:  
Kristen Webster, Bellevue DV Advocate: -----  
Bincy Jacob, Executive Director of Chaya:  
Doris Christian, Court Clerk:  
Josh Sattler, District Court Manager:  
Christina Melby, District Court Supervisor:

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

**LAST FIVE TRIALS**

State v. Logan

DUI

Prosecutors: Alison Bannerman (206.296.9000 )

Defense Attorneys: Cailin Daly (206-674-4700)

State v. Graves; 780166572

Displaying Weapon

Prosecutor: Jessica Manca (206.296.9000)

Defense Attorney: Lorne Grier (425.775.6809)

State v. Meadows; 1Z0125500

DUI

Prosecutor: David Baker (206.296.9000)

Defense Attorney: Vern Smith (425.457.7474)

State v. Long; CR45184KC

DUI

Prosecutor: David Baker (206.296.9000)

Defense Attorney: Nicholas Juhl; 206.706.2831

State v. Underwood; Case #: C735713

DUI

Prosecutor: Kevin Zeck: 206.359.3002

Defense Attorney: Joshua Schaer: 425.457.7810

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

**TEN ADDITIONAL ATTORNEYS**

1. Tim Graham: 425.454.3374
2. KM Das: 206.359.6899
3. Geoff Burg: 206.467.3190
4. Peter Finch: 425.646.6100 x 16123
5. Andrea Robertson: 206.395.5257
6. Tahmina Watson: 206.292.5237
7. Damon Shadid: 206.422.4222
8. Chris Barringer: 425.452.6822
9. David Richardson: 425.646.9801
10. Enoka Heart: 206.370.3013

**KING COUNTY DISTRICT COURT  
STATE OF WASHINGTON  
EAST DIVISION**

**CITY OF BELLEVUE,**

Plaintiff,

vs.

**XXXXXXX,**

Defendant.

No. BC XXXXX

**MOTION TO ADMIT 911 TAPE**

COMES NOW the plaintiff, City of Bellevue, by and through its attorney of record, Ketu Shah, makes the following motion: Admissibility of the 911 call.

**STATEMENT OF FACTS**

On May 17, 2004, Officer Park and Officer McDade were dispatched to 6101 122<sup>nd</sup> Ave. S.E., in the City of Bellevue, in regards to a physical fight in progress. Dispatch broadcast that the fight was between the defendant, XXXX, and his son, XXXX.

Officer Park made contact with XXXX while Officer McDade made contact with the defendant. After interviewing all the parties, it was determined by the police to arrest the defendant for assaulting XXXX. During the investigation, the officers spoke with XXXX, the defendant's daughter. She stated that when she went downstairs she saw the defendant on top of XXXX on the couch. She stated that the defendant was punching XXXX in the face with a closed fist, repeatedly. She stated that XXXX was fighting back but that his actions were defensive. She then stated that she told them to stop or she would

call 911. She said the defendant kept hitting XXXX and when her mother came downstairs she went to the phone and called 911.

The defense at a prior motion hearing had stipulated to the admissibility of the 911 tape. At trial, the defense again agreed in judicial chambers and on the court record that the 911 tape was stipulated to and that it could be played to the jury. The court inquired of the defense if they wished to listen to the 911 tape and the defense declined. After the tape was played to the jury, the defense made a motion for a mistrial because the 911 tape had information that they believed violated the court's order regarding prior bad acts. The court granted the mistrial and set over the case for motions to be filed regarding the 911 tape.

The City again moves to admit the 911 call based on previous stipulation by counsel and it does not violate the *Crawford* decision.

### **QUESTIONS PRESENTED**

1. Should a stipulation by the parties be upheld by the Court?
2. Is the 911 recording admissible given the *Crawford* decision?

### **ARGUMENT**

#### ***1. The 911 Tape Should be Admissible Because of the Stipulation of the Parties.***

Case law and comity require the Court to uphold a stipulation by the parties. In *Reilly v. State of Washington*, 18 Wash.App. 245, 566 P.2d 1283 (1977), the Court of Appeals held that a written stipulation bound the trial court and the parties. In fact, if there was an action taken contrary to the stipulation, the action should be reversed. *Id.* In the

instant case, although there was no written stipulation, it is clear from the record that the parties had stipulated to the admissibility of the 911 tape. At a motion hearing in September, the defense, on the record, indicated it had stipulated to the City's motion to admit prior bad acts and to the admissibility of the 911 tape. This stipulation was made after the City had subpoenaed three witnesses who had taken time off of work and school to testify. Then, on the day of trial, defense counsel again indicated in chambers that they stipulated to the 911 tape despite the Court pointing out new case law on the issue of the admissibility of 911 tapes. Then again, on the record, during the trial itself, the defense stipulated to admissibility of the 911 tape. After the tape was played to the jury, the defense raised a motion for mistrial because the 911 tape was prejudicial to the defendant.

This belated attempt to undermine the stipulation of the parties should not be countenanced by the Court. It is clear there were several times that the defense had the opportunity to either object or try and withdraw from its stipulation. Only after the tape was played to the jury, did the defense raise an objection the 911 tape. It is clear there is no basis to withdraw from the stipulation and the Court should not allow the defense to set such a precedent. The only possible withdrawal of the stipulation would be because the defense believed it committed malpractice by ineffectively assisting their client and were asking to withdraw from the case and have new counsel appointed.

If the Court and the parties cannot rely on stipulations, it undermines the efficiency of the Court and the general proposition to have the parties work together to streamline the presentation of a case to the jury. In the future, if such a precedent is allowed to stand, the

parties can never trust the other's stipulation because it can always be withdrawn when it is strategically convenient. Stipulations would be meaningless and no agreements by the parties could be relied upon. Practicing law under these circumstances would do a disservice to the profession and the ethical standards of attorneys.

The defense will undoubtedly argue that the 911 tape had prior bad act information that harmed their client's ability to receive a fair trial. However, this argument fails to acknowledge that some prior bad act information was deemed admissible because of the very same stipulation stated above, and the defense itself raised all sorts of questions about the defendant's prior history based on his relationship with his son and family. It was the defense's contention that the family was plotting to remove the defendant from the home and that the defendant had *never* used corporal punishment towards his family. Both of which, based on the testimony heard in court, turned out to not be true. By the defense's own questions, they put into issue any and all prior bad acts as a motive for each side to act the way that they did on the evening of May 17, 2004.

The 911 tape should be admissible because the parties stipulated to its admissibility and based on case law and professional standards, the parties have a duty and right to rely on such stipulations.

***2. The 911 Tape Should Be Admitted Because the Crawford Decision Does Not Apply.***

The City relies on its previous briefing regarding the admissibility of the 911 tape.

Additionally, the Court correctly pointed out that there is a new case, State v. Powers, \_\_\_\_

Wn.App. \_\_ Wn.App. \_\_\_\_, (2004) which held that a case-by-case test should be applied as to whether or not a 911 tape is testimonial. However, this test is only necessary when the Confrontation Clause is at issue as it was in the *Crawford*. See *Crawford v. Washington*, 124 S.Ct. 1354 (2004).

In the instant case, the Confrontation Clause is not at issue because the person making the statements, namely, XXXX, will be testifying in court. Any statements she made can be cross-examined during her testimony at trial. The *Crawford* decision was for the proposition that out-of-court statements are not admissible when the declarant is *unavailable* because this would violate a defendant's Sixth Amendment right to confrontation of the witness. Here, the declarant is available and willing to testify. Ms. XXXX will testify as she did at the previous trial and the defense may ask her any questions to preserve the right to confront a witness. Again, the standard adopted by the Court of Appeals is to review whether a 911 tape is testimonial and therefore whether *Crawford* applies at all. Here, even if we assume the 911 tape is testimonial, *Crawford* need not apply because the witness is available and willing to testify.

In this case, the caller's statements on the 911 tape should be admitted as present sense impressions under ER 803(a)(1) as previously briefed and they do not violate the *Crawford* decision.

### CONCLUSION

In this case, the 911 tape should be admissible because of the parties' stipulation. It would set an unworkable precedent if parties stipulations are not upheld. Further, the 911

tape does not violate the Confrontation Clause because the declarant, namely, XXXX  
XXXX, will testify.

RESPECTFULLY SUBMITTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Ketu Shah, WSBA #24859  
Assistant City Attorney  
Attorney for Plaintiff

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**KING COUNTY BAR ASSOCIATION**  
**Supplemental Questionnaire for Candidates Seeking Appointment**  
**or Election to Judicial Office**

**COVER SHEET**

Name: SHAH, KETU URMIL  
(Last) (First) (Middle)

Business Address: 2135 112<sup>TH</sup> AVENUE NE, SUITE 250

BELLEVUE, WASHINGTON 98004

Telephone: 425.455.7611

Business Email: ketushahlaw@aol.com

Position Sought:

By Election \_\_\_\_\_

By Appointment   X  

\_\_\_\_\_ Municipal Court  
  X   King County District Court (East Division)  
\_\_\_\_\_ King County Superior Court  
\_\_\_\_\_ Washington State Court of Appeals, Div.I  
\_\_\_\_\_ Washington State Supreme Court

**PLEASE NOTE:** In the process of determining judicial ratings, the Judicial Screening Committee of the King County Bar Association uses the Washington State Governor's Office Uniform Judicial Evaluation Questionnaire and this Supplemental Questionnaire, as well as reference checks, candidate interviews and other sources of information. (See Judicial Screening Rules and Procedures.)

The responses to the following questions on the Washington State Governor's Office Uniform Judicial Evaluation Questionnaire may be disclosed to persons other than the Judicial Screening Committee and, in the case of judicial elections, will be publicly available:

Position Sought, Name, Business Address, Business email  
Professional History: #8, 9, 10, 11, 12, 13, 14, 15,  
Educational Background: #16, 17  
Professional Experience: #18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32  
Community and Civic Activities: #33

At various times, groups not affiliated with KCBA have rated judicial applicants. The KCBA Judicial Screening Committee's bylaws preclude the Committee from disclosing the names of applicants seeking a rating for appointment to these other groups. However, if you are interested in obtaining the names and addresses of such other rating groups to request this information yourself, you may contact the Executive Director at the KCBA office, telephone: 206-267-7100.

**Include the following materials in your application packet:**

- Governor's Office Uniform Judicial Evaluation Questionnaire
- KCBA Supplemental Questionnaire
- A writing sample between 5-10 pages, as requested in question 45 of the Governor's questionnaire.

Please be advised that the Judicial Screening Committee may take into account the information provided in the questionnaire, the reference checks, the interview, and any other source of information available to it. Letters of recommendation will not be provided to the Committee and should not be solicited. Supplemental materials such as journal articles, legal research, motions, briefs or other documents that you have filed in court, other than the writing sample specifically called for in the Governor's Uniform Questionnaire, should not be included.

REFERENCES. The Committee finds it useful to speak with attorneys and non-attorneys who are familiar with you. One or more Committee members will attempt to contact each reference listed. All telephone numbers should be current and legible. You may contact references in advance if you so desire. The Committee may also call upon individuals not listed to obtain information.

(1) List the names and phone numbers of up to ten attorneys who have supervised you or who have reviewed and are familiar with your legal work, including your current supervisor and at least one other supervisor from your current workplace and at least one supervisor from each of your prior workplaces during the past fifteen years.

- a. Susan Irwin – 425.452.6822
- b. Lori Riordan – 425.452.7220
- c. Bob Chung – 206.684.7757
- d. Judith Shoshana – 206.727.6215
- e. Scott Sonju – 360.834.7957
- f. Ted Gathe – 360.487.8500
- g. Judge Carol Schapira – 206.296.9150
- h.
- i.
- j.

(2) For the last five appellate matters in which you participated (whether as lawyer or decision-maker), list as appropriate the following for each: case name, subject matter, court, judge (w/phone number), and opposing counsel or counsel appearing before you (w/ phone number).

- a. Case Name: N/A  
Subject Matter:  
Court:  
Judge:  
Plaintiff's Attorney:  
Defense Attorney:
- b. Case Name:  
Subject Matter:  
Court:  
Judge:  
Plaintiff's Attorney:  
Defense Attorney:
- c. Case Name:  
Subject Matter:  
Court:  
Judge:  
Plaintiff's Attorney:  
Defense Attorney:

- d. Case Name:  
Subject Matter:  
Court:  
Judge:  
Plaintiff's Attorney:  
Defense Attorney
- e. Case Name:  
Subject Matter:  
Court:  
Judge:  
Plaintiff's Attorney:  
Defense Attorney

I certify under penalty of perjury of the laws of the state of Washington that the above information is true, accurate and complete. I agree to notify KCBA if there are material changes in this information between the time the Uniform Questionnaire and this cover sheet are completed and the expiration of any rating received.

Ketu Shah  
Signature

KETU SHAH

11/14/12  
Date

Washington State Bar Association  
Office of Disciplinary Counsel  
1325 Fourth Ave Suite 600  
Seattle, WA 98101

RE: WAIVER AND AUTHORIZATION TO RELEASE INFORMATION

I, KETU SHAH, WSBA No. 24859 have requested rating for judicial office by the King County Judicial Screening Committee.

Pursuant to ELC 3.4(c) I authorize and request the Washington State Bar Association, to disclose the record of disciplinary grievances filed against me and the status of otherwise confidential disciplinary investigations and proceedings and to provide copies of nonpublic information to the Judicial Screening Committee of the King County Bar Association, 1200 Fifth Avenue, Suite 600, Seattle, Washington 98101.

Dated this 14<sup>th</sup> of November, 2012.

Ketu Shah  
Signature

KETU SHAH  
WSBA Number 24859

I \_\_\_\_\_, WSBA No. \_\_\_\_\_, decline to authorize the release of confidential discipline information under RD 11.1(n) to the King County Bar Association Committee.

Dated this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
WSBA Number

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**KETU SHAH LAW OFFICES**  
2135 112<sup>TH</sup> AVENUE NE, SUITE 250  
BELLEVUE, WASHINGTON 98004

**PHONE: (425) 455-7611**  
**FAX: (425) 455-4354**  
**EMAIL: KETUSHAHLAW@AOL.COM**

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February 27, 2013

King County Council  
King County Courthouse  
516 Third Avenue, Room 1200  
Seattle, Washington 98104

Dear Councilmembers,

Hope you are well. Thank you for the opportunity to interview with you for the judicial position in East Division of King County District Court.

I have been a pro tem judge for over 5 years, a domestic violence prosecutor for over 10 years, and now, I am in private practice focusing on civil issues. It is my blend of criminal and civil practice that gives me an outstanding foundation to sit on the bench. I pride myself on being fair, thoughtful, and deliberate in my practice and when I sit on the bench. I have the support of many judges and community members some of which are listed in the attachment.

I have also been very active in my community by volunteering with groups that help survivors of domestic violence, and being a Board member of our local Eastside Youth Soccer Club. I also volunteer with Eastside Legal Assistance Program Legal Clinic and take on many pro bono cases helping survivors.

I am including my resume for your reference and a sample of the wide support I have. Again, thank you for the opportunity to meet with you and I look forward to speaking with you.

Sincerely,

Ketu Shah  
Attorney at Law

Encl.

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## KETU SHAH

King County Bar Association – “Exceptionally Well Qualified”  
Joint Asian Judicial Evaluation Committee – “Exceptionally Well Qualified”  
Q Law Evaluation Committee – “Exceptionally Well Qualified”  
Washington Women Lawyers – “Exceptionally Well Qualified”  
Loren Miller Bar Association\* – “Exceptionally Well Qualified”  
Latino Bar Judicial Committee\* – “Well Qualified”  
Municipal League\* – “Outstanding”

\*= 2009 Rating

### EXPERIENCE

#### **Pro Tempore Judge – King County District Court**

*King County, Washington – October 2007 to Present*

Pro tempore judge with Northeast, Seattle, Southwest, Bellevue, and Issaquah District Courts including arraignments, pre-trials, motions, jury trials, bench trials, reviews, infractions, and contested infractions. Handled State of Washington, Bellevue, Carnation, Duvall, Issaquah, Redmond, Sammamish, and Woodinville calendars.

#### **Ketu Shah Law Offices – Attorney at Law**

*Bellevue, Washington – January 2000 to Present*

Currently, represent private clients on immigration, estate planning, and business matters. Assist individual and business clients in obtaining work visas, green cards, and citizenship in the United States. Assist survivors of domestic violence in obtaining immigration benefits as pro bono attorney. Develop and draft estate plans for clients to maximize planning objectives. Assist in review of contracts and advise on local and international business formation issues. Tried over 70 cases to jury trial as domestic violence prosecutor with the City of Bellevue for over seven years. Investigated cases, developed and created systems to properly and effectively prosecute domestic violence cases. Met monthly with local domestic violence advocacy groups and police to identify and resolve system wide issues.

#### **Seattle City Attorney’s Office – Assistant City Attorney**

*Seattle, Washington – January 1999 to January 2000*

Prosecuted over 80 cases to trial including domestic violence cases as part of the City Attorney’s Domestic Violence Unit. Worked within team environment to efficiently and effectively negotiate and prosecute cases. Represented the City Attorney’s Office at community meetings.

#### **Vancouver City Attorney’s Office - Assistant City Attorney**

*Vancouver, Washington - March 1997 to January 1999*

Prosecuted over 30 cases to trial in with emphasis on domestic violence crimes. Drafted ordinances and provided legal counsel to a variety of city departments. Helped create and implement domestic violence court. Trained officers on domestic violence issues and evidence gathering. Advised and resolved code enforcement cases regarding nuisances, building code violations, and neighbor disputes.

#### **Superior Court Judge Carol A. Schapira - Law Clerk Bailiff**

*King County Courthouse, Seattle, Washington - September 1994 to February 1997*

Researched and prepared memoranda on issues including family law, complex contract disputes, personal injury, medical malpractice, and wrongful termination cases. Discussed with judge the legal merits of trial issues and motion arguments. Acted as liaison between judge, litigants, and public.

**Humphrey Institute of Public Affairs - Law Clerk**

*University of Minnesota, Minneapolis, Minnesota - January 1994 to May 1994*

Researched legal issues concerning education policy. Led workshops educating children grades 4 through 12 on policy issues and consensus building. Employed during law school.

**Journal of Law and Inequality - Managing Editor**

*University of Minnesota, Minneapolis, Minnesota - August 1992 to May 1994*

Selected to edit and research articles for publication. Supervised staff members to insure proper citation form and overall structure of article.

**Hennepin County Public Defender's Office - Law Clerk**

*Minneapolis, Minnesota - October 1992 to December 1993*

Researched and drafted legal memoranda, interviewed clients, and worked closely with attorneys in trial preparation. Also assisted in preparation of appellate briefs and motion briefs. Employed during law school.

**Park Apartments - Property Manager**

*Minneapolis, Minnesota - April 1991 to March 1992*

Arranged showing of apartments, resolved tenant's queries, and assisted in computer work. Employed during law school.

**Amol Dicalite Ltd. - Intern and Assistant Manager**

*Ahmedabad, India - June 1990 to March 1991*

Learned various stages of manufacturing instituted computerized sales analysis, and supervised sales staff.

**EDUCATION**

<b>University of Minnesota:</b>	Minneapolis Minnesota - 1994 Juris Doctorate
<b>Whitman College:</b>	Walla Walla, Washington - 1990 Bachelor of Arts; Major: Philosophy
<b>College Year In Athens:</b>	Athens, Greece – 1989

**LEADERSHIP**

Member of Washington State Bar Association - 1995 to Present

Vice President of Select Soccer for Mercer Island Youth Soccer Association – 2011 to Present

Board Member of South Asian Bar Association - 2008 to 2012

Board Member of Chaya – 2005 to 2012

Co-chair of Board for Chaya – 2006 to 2012

2008 Community Award by South Asian Bar Association

Committee member of JAJEC Rules Committee – 2008 to 2009

Member of Asian Bar Association – 2000 to 2004

Committee member of ABAW Judicial Evaluations – 2000 to 2004

Faculty Member for state training on d.v. for prosecutors, law enforcement, and advocates – 2001-2005

Presented at Washington Association of Prosecuting Attorney's Annual District Court training - 2006

Presented paper to State Association of Municipal Attorney's on domestic violence issues.

Former Vice-president of Community Development for Network of Indian Professionals

Former Co-President of Asian Law Student Association

Captained varsity and intramural soccer teams in high school and college

Coached multiple girls and boys soccer teams

Volunteer Math Tutor

## **LIST OF SUPPORTERS FOR KETU SHAH FOR KING COUNTY DISTRICT COURT**

### **Judges**

**Justice Steven Gonzalez – Washington Supreme Court**

**Judge Jeanne Rietschel – King County Superior Court**

**Judge Carol Schapira – King County Superior Court**

**Judge Mary Yu – King County Superior Court**

**Judge Janet Garrow – King County District Court, East Division**

**Judge Linda Jacke – King County District Court, East Division**

**Judge Peter Nault – King County District Court, East Division**

**Judge David Steiner – King County District Court, East Division**

### **Community Members**

**Professor Bob Chang – Seattle University School of Law**

**Professor Michelle Storm – University of Washington School of Law**

**Chris Barringer**

**Aaliyah Gupta, Founder of Chaya**

**Pramila Jayapal, Former One America Executive Director**

**Didi & Dr. Sunil Saluja**

**Anu Goel – President, Jet Parts Engineering Inc.**

**Pallavi Mehta – KL & Gates**

**K.M. Das – Perkins Coie**

**Sandip Soli – Cairncross & Hempelmann**

**David Richardson – Law Offices of David Richardson**

**Tim Graham – Hanson Baker**

**Many current police officers, probation officers, judicial clerks, prosecutors, defense attorneys, and public defenders.**