



# SCBA NEWS

The Official Publication of the Snohomish County Bar Association April 2004



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## SCBA NEWS

Published by the  
**Snohomish County  
Bar Association**

P.O. Box 5429  
Everett, WA 98206

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SCBA News is published monthly by the Snohomish County Bar Association, P.O. Box 5429, Everett, WA 98206.

**Send changes of address to:**  
Snohomish County Bar Association  
P.O. Box 5429, Everett, WA 98206

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**Announcements:** SCBA members only. Contact Joyce Wood at (425) 388-3056 or joycew@snoabar.org

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**Submissions:** Contact Joyce Wood at (425) 388-3056 or at joycew@snoabar.org.

**Deadline:** Copy must be received (not postmarked) by the 15th of each month for the subsequent issue. No cancellations will be accepted after the deadline. Please submit a hard copy to the SCBA office at P.O. Box 5429, Everett, WA 98026, as well as a copy in ASCII text of Microsoft Word Format (Mac or PC) by e-mail or on a 3.5 inch disk. WordPerfect users, save your files in either MS Word format or Rich Text format (RTF)..

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## Inside This Issue

- \*Letter from the President
- \*Young Lawyers Update
- \*SCBA Family Law
- \*Lawyers Road Review
- \*Bar Poll Results
- \*Get a Life
- \*Letter from the Vice President
- \*Law Day 2004
- \*New Law for Active Military
- \*Advertisements
- \*Announcements

# SCBA Calendar of Events

## April

6th Young Lawyers Section Meeting  
 15th Deadline SCBA Newsletter  
 15th SCBA Board of Trustees Meeting  
 19th Family Law Section Meeting  
 19th **CLE - Special considerations in handling the high income/wealth case**  
 27th Auction Committee Meeting

## May

11th Young Lawyers Section Meeting  
 14th Deadline SCBA Newsletter  
 17th Family Law Section Meeting  
 17th **CLE - Special consideration in handling the low income case**  
 20th SCBA Board of Trustees Meeting  
 25th Auction Committee Meeting

## June

8th Young Lawyers Section Meeting  
 15th Deadline SCBA Newsletter  
 17th SCBA Board of Trustees meeting  
 18th **SCBA CLE**  
 21st Family Law Section Meeting  
 25th Auction Committee Meeting

## July

13th Young Lawyers Section Meeting  
 15th Deadline SCBA Newsletter  
 15th SCBA Board of Trustees meeting  
 19th Family Law Section Meeting  
 23rd **SCBA CLE**  
 27th Auction Committee Meeting

## August

10th Young Lawyers Section Meeting  
 15th **NO SCBA Newsletter**  
 16th Family Law Section Meeting  
 19th **NO SCBA Trustees meeting**

## September

14th Young Lawyers Section Meeting  
 15th Deadline SCBA Newsletter  
 16th SCBA Board of Trustees meeting  
 17th SCBA Golf Tournament  
 20th Family Law Section Meeting

# Superior Court Assignments

**Presiding Judge:** ..... Judge Thomas J. Wynne

**Trial Calendar Call and Motions to Continue Trial:** ..... Judge Thomas J. Wynne, Dept. 7

**Juvenile Court:** ..... Judges Knight and Castleberry;  
 ..... Commissioner Bedle<sup>1</sup>

**Civil Motions:** ..... Judge French: April 1 - April 2  
 ..... Judge McKeeman: April 5 - April 16  
 ..... Judge Bowden: April 19 - April 30

**Criminal Hearings:** ..... Judge McKeeman: April 1 - April 2  
 ..... Judge Allendoerfer: April 5 - April 9  
 ..... Judge Hulbert: April 12 - April 16  
 ..... Judge Dwyer: April 19 - April 23  
 ..... Judge Hulbert: April 26 - April 30

**Criminal Dept. Judges:<sup>2</sup>** ..... Judges Thorpe, Allendoerfer, McKeeman, Wynne, Hulbert, Farris, French, and Fair

**Civil Dept. Judges:<sup>2</sup>** ..... Judges Krese, Bowden, Cowser and Dwyer

**Ex Parte/Commissioner Civil Motions:<sup>1</sup>** ..... Commissioner Waggoner

**Family Law Calendars:<sup>1</sup>** ..... Commissioners Stewart and Brudvik

\* All assignments are subject to change without notice and assignments may not change on the first day of the month.

- 1 Court Commissioner assignments are for six months duration and change in early January and July.
- 2 At the discretion of the Presiding Judge, criminal cases may be assigned to Civil Department Judges and civil cases may be assigned to Criminal Department Judges.



**FROM THE DESK OF  
THE PRESIDENT,  
RUTH WESTBROOK**

This article is directed to our current and future sitting jurists. Recently, I was involved in a discussion about whether a judge should be flexible in making their judicial decisions. Now, many people will automatically say, "Sure, they should." I frankly question whether that is how they *really* feel. Let me tell you about my first experience with our judicial branch.

A good number of years ago, I was living with my mom, and the six sisters and brothers who remained at home. My three children were also residing there, as were my two nephews and one niece. To say the least, we had a house full.

Well, my mom and I decided that we had to do something to decrease our food costs. So, at the county fair in September, we bought two darling little piglets, with the intention of raising them to adulthood, then to a visit to our local butcher.

It was during this time of rearing these swine that I found out pigs are not stupid. They really are quite intelligent. So intelligent in fact that they managed to consistently escape from their pen without us ever discovering how and where they managed to get out. Frankly, my vote was they were watching Hogan's Heroes.

These pigs had decided that the neighborhood, and the accompanying neighbors should receive regular visits from them. Being the social animals they are, they made frequent calls on our neighbors, including poor Mrs. Billingsley. Mrs. Billingsley was the type of person you would think a Mrs. Billingsley would be like. However, once ensconced in the various neighbor's yards, and once in one of their houses, the unfortunate Mrs. Billingsley, their manners were atrocious. This tested the patience of the entire area, who for quite a while were understanding of our ultimate goal. However, that understanding eventually came to an end.

The retched creatures once again escaped from their pen and visited the local lake area; Lake Serene. Now anyone familiar with this area knows that the lake is little more than a bog with a lake in the middle.

Well, someone called the Snohomish County Sheriff to respond to the situation. Then someone called our house.

When my sister and I arrived at the lake, we were met with the sight of four Sheriffs attempting to capture our future dinner. The pigs were simply not cooperating and as the Sheriffs chased them, our county's finest frequently slipped in the boggy shoreline, getting quite wet and muddy.

After watching this for several minutes, my sister stated she would just have to show them how to corral the pigs. We had had the foresight to bring with us a can with feed in it. Kathy approached the pigs, shaking the can and the pigs happily trotted off with her, secure in the knowledge they would get a snack once they got home.

The police officers were certainly not amused. After determining who the owner of the pigs was, they proceeded to the house to speak with my mom. Once at the house, they expressed their displeasure by arresting my mom for "Allowing Swine to Run Loose." I was unable to locate that specific RCW, but Judge Cowser kindly found it for me several weeks ago, albeit twenty years late.

My mom appeared in front of our currently most senior judge, Judge Gerald Knight. I could not figure out why she ended up in Superior Court, but it may have had to do with the fact that the county was trying to get a hefty amount of money from her for the pigs ruining the officer's uniforms. When asked to explain the situation, she explained how many children were at the house and our intent to decrease food costs and the on-going difficulty we had with keeping the pigs in their pen. She assured Judge Knight that the pigs had made the trip to the local butcher and would no longer be a problem. Judge Knight, exercising judicial flexibility, told my mom that he really should sentence her to a ham, but with as many children as she had at the house, he felt that was punishment enough, and promptly dismissed the case. I was impressed with his wisdom and was relieved, as I did not really want to give him one of our hard earned hams.

That was many years ago and I remember it as if it was yesterday. Judge Knight will deny that this incident occurred. However, I have rechecked and verified the above with my mother, who to this day sings Judge Knight's praises. I was impressed with the empathy that was shown my mom. The story is also frequently related at many family gatherings, so it remains vividly alive. Thank goodness for judicial flexibility.



**FROM THE DESK OF  
GEOFF GIBBS  
VICE PRESIDENT,  
SCBA**

**Auction**

As you know, your Board of Directors voted that the entirety of the proceeds from this year's auction would go to benefit Snohomish County Legal Services in our continuing effort to provide access to justice for all. Although we will not have a final profit figure for this years auction held on March 8<sup>th</sup> but all indications are that we did very well. And by all other measures, attendance, advance sponsorships, attendance by most of our judges and a number of appellate jurists, laughter and gaiety by all, the auction was a rousing success. As the auction chair for this event, my thanks go out to the many volunteers who donated so willingly of their time and to those who donated the auction items which are the key elements.

**Bar Poll Results – South Division of District Court**

One recent evening, members of your Board convened in my office to count the ballots for the recent "bar poll" regarding the candidates for the vacant position in the South Division of the District Court. While those results will be published elsewhere in this newsletter and available in the Bar Office, it was troubling to a number of Board members present that over 25 ballots had to be disqualified because the voting member failed to follow instructions and complete the entire ballot. Troubling on two fronts; that our attorney-members cannot follow instructions and that the poll represents less than 20% of our membership. I am confident that your Board will be considering this issue and discussing potential alternatives in future meetings.

**Articles**

Although many of us turn first in the Washington State Bar News to the "disciplinary notices" both to make sure we are not listed therein

and to learn from the errors of others, the articles are also of interest to many. Each of you may, in your practice, face new issues, prosecute an appeal or meet up with a new court policy or procedure. Consider writing a brief article for our Bar News which is published monthly.

**CLE's**


Part of my duties this year (now that the auction is completed) will be to plan and schedule CLE's for the next 12 months. I would appreciate ideas, concepts and volunteers to work with me chairing individual seminars. As you may know, our goal is to ensure that our members have the opportunity to complete all their annual educational requirements here in Snohomish County. But your input would be greatly appreciated. You can leave ideas for me in my folder in the SCBA Office in the Courthouse or e-mail them to me at geoff.gibbs@gte.net.

**Happy St. Patrick's Day !**

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**THE LAWYER'S ROAD  
REVIEW  
PETE PATTERSON**

## 3600 Bicycles and a Ferry

How did you use the extra day we have this year? On Feb. 29<sup>th</sup> I joined 3599 other cyclists and pedaled aboard an Issaquah class ferry and left the Coleman dock for Bainbridge Island for the annual Cascade bicycle club Chilly Hilly; 33 miles of fear inspiring ascents and white knuckle descents and an island full of inconvenienced residents.

How often have you been on a ferry and had trouble finding a seat? This was one of those rare days, which I am guessing most readers have not had. By prearrangement with the ferry system we filled the entire boat with bikes. It was a glorious sight.

One thing that is immediately apparent riding around Bainbridge Island is the people who move there are issued upon arrival a Volvo and a golden retriever, and only about ½ the dogs are issued a leash. Golden's are marvelous dogs; they just love everyone, and apparently love bikes too. In other words they get in the way. Kids lined the route with Kool-Aid stands and cookies for sale. By the end of the day they were just giving them away, standing along the road holding out cups and cookies for us to snag and consume like so many marathoners.

This is the first major ride for the club this year, and I believe it is meant to shock us all into the realization that the winter lay off has bled away all that strength and endurance we built up over the last summer. Hills are God's little joke for cyclists. Here you are thinking you are really something flying along at 20 MPH on the flats then come around the corner and see the mile long Baker hill with about a 300 foot elevation gain. My jaw

dropped. Gravity. It is the law. Many of us fought the law that day, and for many, the law won. Baker hill was littered with dismounted cyclists pushing bikes up.

On the other hand there is safety in numbers. Cars could not get out of their driveways on Bainbridge Island that day. Usually when there is a car – cyclist accident the cyclist does not do too well. With 3600 riders along the road no motorist can claim they did not see us. Keeping cars off the roads was a good thing. On the other hand as we boarded the ferry in Seattle there was a man with a sign standing at the ramp that read "Need Witnesses For 2003 Chilly Hilly Accident". So much for my sense of security.

Then there is the question of toxic fumes, not from the cars, but from the smokers in them. I swear, riding a bike enhances the senses and when a motorist goes by smoking and you get a lungful of second hand tobacco you are ready to see cigarettes banned.

Recently I was out for a ride here in Everett and it began to rain. I decided to cut through the projects to get home sooner. A woman flagged me down and asked if I had a spare smoke! Oh yeah, I replied, right here in my saddle bag. I never go cycling without a pack of unfiltered Camels.

I am sure you have all seen the domestiques dropping back from the peleton during to the Tour de France to take on cartons of Winston's from the chase cars to bring forward to the rest of the USPS team.

One of the maxims of the Tour: "Never enter the Pyrenees without enough cigarettes". One wonders why Lance Armstrong has not endorsed his favorite brand, whatever that is. Must be Marlboro, as he is a Texan. It would be a key endorsement for him I think. How about this for a slogan:

"I beat cancer, and you can too".

All I know is at the end of the Chilly Hilly we flooded Winslow, consumed a massive amount of chili and got back on the boat and returned to the mainland where cars rule the roads, leash laws are enforced, there are far fewer Volvos, and many more smokers.

# *Superior Court of the State of Washington for Snohomish County*

JUDGES  
 GERALD L. KNIGHT  
 RICHARD J. THORPE  
 JAMES H. ALLENDOERFER  
 LARRY E. MC KEEMAN  
 RONALD L. CASTLEBERRY  
 THOMAS J. WYNNE  
 DAVID F. HULBERT  
 ANITA L. FARRIS  
 LINDA C. KRESE  
 CHARLES S. FRENCH  
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 KENNETH L. COWSERT  
 STEPHEN J. DWYER

SNOHOMISH COUNTY COURTHOUSE  
 M/S #502  
 3000 Rockefeller Avenue  
 Everett, WA 98201-4060

PRESIDING JUDGE  
 THOMAS J. WYNNE  
  
 COURT COMMISSIONERS  
 ARDEN J. BEDLE  
 LESTER H. STEWART  
 JACALYN D. BRUDVIK  
 TRACY G. WAGGONER  
  
 COURT ADMINISTRATOR  
 SUPERIOR AND JUVENILE COURT  
 RICHARD E. CARLSON

## **NOTICE** *Snohomish County Local Court Rules*

Snohomish County Superior Court is soliciting requests for additions or revisions to the Snohomish County Local Court Rules.

Please submit requests to:  
 Dick Carlson – Court Administrator  
 Snohomish County Superior Court  
 3000 Rockefeller, MS 502  
 Everett, WA 98201  
 425-388-3421

dick.carlson@co.snohomish.wa.us

**Requests must be submitted by April 30, 2004.**

### **South County District Court Bar Poll Results**

	Excellent	Good	Average	Poor	Unknown
<b>Cheryl Beyer</b>	<b>4</b>	<b>15</b>	<b>19</b>	<b>15</b>	<b>43</b>
<b>Peter Camp</b>	<b>7</b>	<b>18</b>	<b>10</b>	<b>2</b>	<b>59</b>
<b>Douglas Fair</b>	<b>53</b>	<b>28</b>	<b>7</b>	<b>5</b>	<b>3</b>
<b>Elizabeth Fraser</b>	<b>40</b>	<b>28</b>	<b>7</b>	<b>0</b>	<b>21</b>
<b>Jeffrey Goodwin</b>	<b>28</b>	<b>27</b>	<b>9</b>	<b>6</b>	<b>26</b>
<b>Michael Hall</b>	<b>1</b>	<b>5</b>	<b>7</b>	<b>28</b>	<b>55</b>
<b>Skip Moyers</b>	<b>5</b>	<b>15</b>	<b>30</b>	<b>24</b>	<b>22</b>

- |            |                 |                         |
|------------|-----------------|-------------------------|
| <b>(1)</b> | <b>184 pts:</b> | <b>Douglas Fair</b>     |
| <b>(2)</b> | <b>146 pts:</b> | <b>Elizabeth Fraser</b> |
| <b>(3)</b> | <b>113 pts:</b> | <b>Jeffrey Goodwin</b>  |
| <b>(4)</b> | <b>50 pts:</b>  | <b>Peter Camp</b>       |
| <b>(5)</b> | <b>44 pts:</b>  | <b>Skip Moyers</b>      |
| <b>(6)</b> | <b>26 pts:</b>  | <b>Cheryl Beyer</b>     |
| <b>(7)</b> | <b>13 pts:</b>  | <b>Michael Hall</b>     |

## GET A LIFE

BY REBECCA WALICK

*A series of profiles of lawyers and judges in Snohomish County who recognize the value of having a passion outside the law, of the outdoor variety. If you know someone who has a unique or daring outdoor passion that others might find interesting, amusing, or inspiring, let me know at ultrarnr@juno.com.*

### **LES STEWART, SUPERIOR COURT COMMISSIONER**

I first realized Les had an “outside of the law” life when years ago I caught him doing stair repeats in the courthouse with a heavy pack on his back. He said he was training for a climb up Rainier. He has climbed most of the major peaks in the Northwest, but has one major climbing goal still remaining - Denali, in Alaska. He once promised himself he’d climb it by age forty. Sometimes we have to modify our goals.

Alaska holds a special spell on Les. He admits to always being fascinated by its history, culture and geology, referring to it as “a magical place.” Alaska symbolizes something Les finds necessary and compelling - wilderness. “Wilderness is the essence of the world” he said. “The sound, the smell - so different than anything you get around here.” He allowed that he might someday retire to Alaska.

Outdoor pursuits are what keep Les balanced. He loves his work as a commissioner, and is cognizant of the importance of the job, but says it doesn’t define who he is and isn’t the center of his universe. His real life exists outside the walls of the courthouse, and he purposefully keeps work separate from that life by never taking work home and not bringing mementoes of the outdoors to his office. For Les, law is a way to maintain his equilibrium until he finds where in the bigger world he needs to be, although he suspects that place is Alaska. Watching his face and eyes light up as he talked about Alaska and the wilderness, I think he’s guessed correctly.

Canada would be a close second on Les’s list of places to enjoy the outdoors. There he pursues

saltwater fishing, something his father taught him to love, and an activity he now shares with his own sons. They release most of what they catch, as the joy is in being outdoors in a relatively wild, untrammled environment. Les was initially reluctant to disclose his favorite spot, sharing the same fear I have that disclosure will open the flood gates of ugly tourists who will ruin the experience, but upon reflection wanted to validate the owners of the location: Larry & Shirley Andrews, members of the Muchalat native group and owners of Tuta Marina on Vancouver Island. Les describes them as gracious, outgoing, wonderful people who are preserving a beautiful area full of nature’s wonders, including eagles and bears. And of course fish. His trips are never shorter than a week, and leave him with renewed energy for all parts of his life.

The influences of Alaska and Canada can be seen in Les’s primary indoor hobby: woodcarving. He works on authentic Northwest Indian totems, using only hand tools. Les described how a Northwest native carver named Bill Reid scientifically investigated “primitive” Alaskan carving styles to disclose a mathematical structure - a series of ovoids combined to form the totem. This appeals to Les, who majored in economics and natural sciences in college. Les has developed an affinity for the native legends, such as those involving the raven, also known as the trickster. He admires the First Nation people of Canada and Alaska, especially the ancients - people whose respect of nature, of life, he finds affirming.

Les is still looking forward to making a meaningful contribution in the law. He is keenly aware that the results of his work as a commissioner are intangible, yet so important to those who come before him for resolution. If he could do it all over again, perhaps he’d go into pediatric surgery (immediate and tangible results), or something along the lines of astronomy or theoretical physics. Einstein, Hawking, Newton, Galileo, da Vinci - those are the geniuses he admires. And given the chance to go back in history to meet and talk with someone, Les would choose Abraham Lincoln, his historical hero because he was so eloquent in his speaking, writing and philosophy, throughout the hardships of his time and his personal life.

I hope Les bags Denali and retires as a fishing lodge operator in the wilds of Alaska or British Columbia.



## SCBA Young Lawyer Division

The general meeting for the Snohomish County Young Lawyers Division was held on Tuesday, March 9th. Meetings are held the second Tuesday of every month.

At the meeting, members of the Washington State Bar Association Young Lawyer Division were present to show their support for Snohomish County Young Lawyers and to offer WYLD's assistance in getting the section up and running. Noah Davis and Toni Davis of WYLD presented suggestions for raising funds and linking events with WYLD. They expressed their excitement for the activities in Snohomish County.

Julie Rattray presented the Division with two Pro Bono opportunities for young lawyers. The first option was to offer representation to students in expulsion hearings at local schools. The second option was to operate a clinic for individuals who do not meet the eligibility requirements of Snohomish County Legal Services. The Division plans to review Julie's programs and decide at the next meeting which program the YLD will be implementing.

Brice Howard presented a plan to have young lawyers go out to local high schools and work with students to demystify the legal profession. He is drafting a letter to go out to the local schools. Brice is also working on content for the YLD website.

The Student Membership Committee is drafting a letter to be sent to students from local law schools who will be interning in Snohomish County to invite them to join the YLD.

Samuel Marx is working on content for the Snohomish County Young Lawyers packet that the YLD will pass out to young lawyers at the upcoming swearing in ceremony.

If you are interested in getting involved in the YLD, please contact Christopher Bell at [cbell@bellingham.com](mailto:cbell@bellingham.com).

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### Snohomish County Bar Association Young Lawyer's Division Tip of the Month.

You know that staying organized is important throughout your practice. When you go to trial, it is important to help keep the judge organized as well. Regardless of how large or small your case is, it's a good idea to have a trial notebook prepared for the judge containing working copies of briefs and exhibits. You'll be able to direct the judge to exactly which document you are referring to in your argument or during testimony.

Have a tip for a young lawyer? E-mail it to [danjohanson333@msn.com](mailto:danjohanson333@msn.com)



## SCBA Family Law Section

### JOIN THE NEW FAMILY LAW SECTION

To become a member of the Snohomish County Family Law Section, Just send in your \$30 annual dues to:

Snohomish County Bar Association  
P.O. Box 5429  
Everett, WA 98206-5429

At writing, we already have 38 members, 2/3rds the way to our target goal of 60 members for our first year of operation. Feel good about being a founding member! Join!

Membership provides you with the opportunity to attend all of the monthly CLEs, offered at noon on the 3rd Wednesday of each month at the Kinard Room at the Snohomish County Courthouse. Other benefits of membership are being planned and considered, now is a good time to share your ideas.

Upcoming CLEs are:

Monday, April 19, 2004, "Special considerations in handling the high income/wealth case," Speaker: Kenneth E. Brew of Brew Layman. 1.0 CLE credit expected.

Monday, May 17, 2004, "Special consideration in handling the low income case," Speaker: Theresa Milligan, Snohomish County Legal Services. 1.0 CLE credit expected.

Any questions, contact Joyce Wood at SCBA, or Lee Tinney at 425-339-3319 or [le@leetinneylaw.com](mailto:le@leetinneylaw.com)



**LAW DAY 2004**

**A MESSAGE FROM**

**THE CHAIR**

SCBA will be hosting the traditional Law Day judicial “job shadow” again this year on May 4, 2004. This year’s ABA theme celebrates the 50<sup>th</sup> anniversary of the landmark civil rights and education case, Brown vs. Board of Education. In addition to Law Day activities at Snohomish County Superior Court on May 4, 2004, SCBA’s new Young Lawyer’s Division is planning a program where individual young lawyers go into a school of their choice and speak to the students during the last week of April. Brice Howard is leading this effort and is hopeful that a number of young lawyers will participate in this new program.

Law Day is an excellent opportunity for high school Juniors or Seniors from our county to meet members of the legal profession, watch court proceedings, and learn about the many paths that led different attorneys from high school to the practice of law. As a former public defender at Denney Juvenile Justice Center, I see this Law Day as a golden opportunity to make a difference in the life of a young adult. Many of the children I have worked with in the past have difficulty finding a successful path through their truancy, Child in Need of Services, or At Risk Youth action (let alone probation), fortunately Law Day provides an opportunity for outreach that I am thankful to have. I am hopeful for high participation from the bench for job shadowing as well as an enthusiastic response from the students of Snohomish County high schools. The May 4<sup>th</sup> Law Day will be divided into two shifts, one morning and one afternoon, with lunch for everyone over the noon hour. During the noon hour students, members of the bench, and volunteers will have an opportunity for picture taking, pizza, and discussion. As always, the success of Law Day depends upon participation of our membership, if you are able to spend part of your morning or afternoon “shepherding” students to and from assigned courtrooms, leading tours, or speaking with students about your experience as an attorney or law student, I welcome your assistance. Also, if anyone has a particular interest in or desire to lead a discussion regarding Brown, please speak up, and give some time to Law Day! Please call Joyce Wood at the SCBA office for more information (425) 388-3056 or contact myself (Jennifer Bridges) at (425) 259-2275.

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Please contact former Snohomish County Prosecutors Aaron L. Shields or Karen D. Moore for more information.

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**ANNOUNCEMENT**

***RFQ Planned for Juvenile Court Primary Indigent Defense Attorney Contracts***

Later this year, the Snohomish County Superior Court will be releasing a “Request for Qualifications” (RFQ) for Primary Indigent Defense Attorney contracts for Juvenile Court for 2005 and 2006. The RFQ when it is released will ask for attorneys and firms to submit proposals for covering indigent defense representation for all types of juvenile proceedings:

- Juvenile offender;
- Dependency and Termination;
- Becca Bill (At Risk Youth, Child in Need of Services, Truancy)

The RFQ will require all submissions to document how the applicant firm or attorney will cover each of the case types. There are three courtrooms at the Denney Juvenile Justice Center (DJJC), one courtroom essentially fulltime for each of the case types. Currently, coverage is provided by three firms with another firm contracted as the primary conflict firm. It is possible that four (4) primary indigent defense firms will be selected from this RFQ.

It is anticipated that at least two-year contracts will be negotiated with the selected attorneys/firms. Cases will be evenly assigned between contracted primary defense firms. Compensation is expected to be a pre-determined monthly fee based upon anticipated case numbers with an adjustment if cases increase or decrease significantly

Questions regarding this announcement can be directed to Bruce Eklund, Snohomish County Superior Court Assistant Administrator at (425) 388-7850 or Bruce.Eklund@co.snohomish.wa.us.

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The Child Advocacy Center (CAC) Task Force and newly formed CAC Steering Committee seeks a corporate attorney to provide *pro bono* legal services. The needs of the Task Force are simple, but pressing: advice and assistance for this project regarding incorporation, formation as a 501(c)(3) non-profit corporation, preparation of by-laws, and related legal support.

This is a wonderful opportunity to fulfill RPC 6.1's aspirational goal of 30 *pro bono* hours per year, and to apply your time to a program designed to enhance the health and safety network for children in our County.

### **For more information or to volunteer, please contact:**

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*Snohomish County Prosecuting Attorney*  
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*Phone: (425) 388-3772*  
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## NEW LAW IMPROVES LEGAL PROTECTION FOR ACTIVE DUTY MILITARY SERVICEMEMBERS

Submitted by:

Marc W. Nuzzo, LT, JAGC, USNR

Jaimica M. Jarvill, LTJG, JAGC, USNR

On December 16, 2003, President Bush signed HR 100, the Servicemembers Civil Relief Act (SCRA) which entirely replaced the Soldier's and Sailor's Civil Relief Act (SSCRA). The SCRA not only provides new protections for Servicemembers, but also strengthens and clarifies protections previously granted by the SSCRA. To name a few:

- Each military branch is now required to give written notice of the protections provided by the SCRA to every Servicemember.
- Service members may not waive their rights under the Act with respect to modification, termination or cancellation of contracts, leases, bailments, mortgage debts or most transactions involving real estate or personal property, unless they have done so in writing during or after their entry into a period of qualified active duty.
- The SCRA now provides that a legal representative, defined as either "[a]n attorney acting on behalf of a servicemember" or "[a]n individual possessing a power of attorney," may take up a civil action on behalf of a Servicemember unable to do so for him- or herself.
- For state income tax purposes, the SCRA forbids states from considering the pay of a Servicemember who is in a state due only to military orders when calculating the tax bracket of a Servicemember's spouse, who may be required to pay that state's income tax. Formerly, although no state could tax a Servicemember's income in this circumstance, some states would use that income in determining the tax liability of the Servicemember's civilian spouse who held a job in that state.
- Life insurance policies up to \$250,000 (or the maximum limit of the Servicemembers Group Life Insurance, whichever is greater) are protected from cancellation for non-payment of premiums due to military hardship. Although this protection is not new, the \$250,000 qualifying value is a significant increase from the \$10,000 ceiling provided in the SSCRA.
- The SCRA defines "dependents" under the Act to include anyone for whom the service member has provided more than 50% of their support in the 180 days before seeking relief under the SCRA. The intended effect of this provision is to extend certain SCRA protections to

dependent parents and disabled adult children.

### **The New Right to Terminate an Auto Lease**

Under the SSCRA, Servicemembers could request that a court defer enforcement of an automobile lease payment obligation during the Member's period of active duty. Consequently, a court could deny a creditor's request for legal authority to compel payment from a Servicemember through methods such as allotments or garnishments. This was true even if the contract between the creditor and the non-paying Member was valid. After leaving the military, the Servicemember was then obligated to make up the deferred payments within a period of time equal to the Servicemember's time on active duty.

Although the SCRA essentially preserves this entitlement, it also strengthens it by adding the specific right to terminate an automobile lease. If, after executing an automobile lease, the lessee enters active duty under a call or order for 180 days or more, the member may terminate the lease if he or she: 1) provides a written copy of the orders to lessor by hand, by certified mail or by private business carrier, and; 2) returns the vehicle to the lessor within 15 days. Although this excuses the Servicemember from any early termination charges, he or she may still lawfully be on the hook for taxes, title and registration fees, excess wear and usage as well as summonses.

Notably, a court is not required to grant this relief if it determines that the Servicemember's military service does not materially affect the Member's ability to pay. Furthermore, if a Servicemember receives orders permanently assigning him or her to a location outside the continental U.S., or orders to deploy with a unit outside the continental U.S. for 180 or more days, the Servicemember may terminate a lease just as if he or she been had entered into the lease before coming onto active duty.

### **More Lease News**

Formerly, Servicemembers and their families were protected from eviction from residential rental properties if their military service materially affected their ability to make rental payments, providing the monthly rental payment was \$1,200 or less. This amount has been increased to \$2,465 per month or less for 2004, and will increase annually to account for inflation.

A Servicemember who enters into a lease for residential, business, professional or agricultural purposes, and who subsequently receives PCS orders or deployment orders of 90 days or more has the right to cancel the lease by delivering written notice of the event along with a copy of his or her orders to the landlord either by hand, certified mail or private business carrier.

Note that a similar right was codified by the State of Washington in March of 2003. The state provision may be preferred to the SCRA provision in some circumstances.

### **Civil Default Judgments and Hearings**

Under the recently enacted SCRA, courts are required to grant a 90-day stay upon written request by a Servicemember when the nature of that Member's military service prevents him or her from appearing in a civil matter. The written request for a stay must: 1) explain why the Member's military duty "materially affects" his or her ability to appear; 2) provide an alternate date on which the Member can appear, and; 3) include a letter from the Member's commanding officer stating that the Member's duties prevent him or her from appearing and that the Member is not otherwise authorized leave to attend. This 90-day stay may be extended upon later request by the Servicemember. If a court denies a Member's request for a subsequent stay and the conditions that qualified the Member for the initial stay still exist, the court must appoint an attorney to represent the Servicemember at the hearing in the Servicemember's absence.

Previously, language in the SSCRA left open for debate whether a Servicemember's stay request could constitute a general appearance. The stay provision in the SCRA resolves this issue by providing, "[a]n application for stay...does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense (including a defense relating to lack of personal jurisdiction)."

The SCRA also improved upon the SSCRA by extending provisions relating to civil court cases to federal, state and local administrative hearings. This change is a powerful tool for Servicemembers, making the Act applicable to driver's license revocation hearings, business or professional license revocation hearings, zoning hearings, unemployment compensation hearings, Social Security claims hearings and possibly even administrative child support proceedings.

### **Reduction of Interest Rates to Six Percent**

One of the trademark provisions of the SSCRA required creditors to lower the interest rate on any pre-existing debt to six percent upon commencement of a Servicemember's active duty service. The SCRA fortifies this provision by also requiring creditors to forgive any interest in excess of six percent accruing after active duty service begins but before a servicemember reports his or her active duty status to the creditor.

To illustrate, imagine yourself a U.S. Navy sailor who entered into a contract to finance a refrigerator before receiving orders to come onto active duty. Accord-

ing to the agreement with the dealer, you agreed to pay eighteen percent on the amount you still owed. Six months after packing the refrigerator away and heading off to begin active duty service, you learn about the SCRA. Under the old law, you could request that the creditor lower the interest rate on this pre-active duty service debt from the high eighteen percent to a lower six percent. What was not as clear was whether you were owed the difference between the two interest rates which had accumulated during the six months before you invoked your right. The SCRA makes clear that once you provide written notice to a creditor along with a copy of your orders, the creditor is required to lower your interest rate to six percent and to recalculate your debt from the day you entered active duty service. You must be reimbursed the difference between the six percent interest rate and any higher interest rate you were charged since entering active duty service, and the creditor must adjust your periodic monthly payment to reflect the new six percent interest rate.

These are just a few examples of the important entitlements Congress has provided for active duty military personnel. For additional entitlements, or for greater detail with regard to provisions of the SCRA discussed here, consult the Servicemembers' Civil Relief Act, 227 Stat. 2835 (2003).

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