

# SCBA NEWS

The Official Publication of the Snohomish County Bar Association

- July 2004

## HAPPY INDEPENDENCE DAY!

We hold these truths to be sacred and undeniable; that all men are created equal and independent, that from that equal creation they derive rights inherent and inalienable, among which are the preservation of life, and liberty, and the pursuit of happiness.

~ Thomas Jefferson



Freedom is never more than one generation away from extinction. We didn't pass it to our children in the bloodstream. It must be fought for, protected, and handed on for them to do the same, or one day we will spend our sunset years telling our children and our children's children what it was once like in the United States where men were free.

~ Ronald Reagan

Be courteous to all, but intimate with few, and let those few be well tried before you give them your confidence. True friendship is a plant of slow growth, and must undergo and withstand the shocks of adversity before it is entitled to the appellation.

~ George Washington



The boisterous sea of liberty is never without a wave.

~ Thomas Jefferson

## SCBA NEWS

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**Snohomish County  
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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).

## Contact Us

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## Inside This Issue

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Do you know someone who has made a positive contribution to the legal profession in Snohomish County? Please contact SCBA President Ruth Westbrook ([Lawruth2@cs.com](mailto:Lawruth2@cs.com)) or Joyce Wood, Executive Director ([joycew@snoabar.org](mailto:joycew@snoabar.org)) with the details.

# SCBA Calendar of Events

## July

13th Young Lawyers Section Meeting  
 15th **NO AUGUST SCBA NEWSLETTER**  
 15th SCBA Board of Trustees Meeting  
 19th Family Law Section Meeting  
 21st **SCBA CLE**  
 27th Auction Committee Meeting

## August

10th Young Lawyers Section Meeting  
 15th Deadline 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  
 28th Auction Committee Meeting

## October

12th Young Lawyers Section Meeting  
 15th Deadline SCBA Newsletter  
 18th Family Law Section Meeting  
 21st SCBA Board of Trustees Meeting  
 26th Auction Committee Meeting

## November

9th Young Lawyers Section Meeting  
 15th Deadline SCBA Newsletter  
 15th Family Law Section Meeting  
 18th SCBA Board of Trustees Meeting  
 30th Auction Committee Meeting

## December

14th Young Lawyers Section Meeting  
 15th Deadline SCBA Newsletter  
 16th SCBA Board of Trustees Meeting  
 20th Family Law Section Meeting  
 28th Auction Committee Meeting

# Superior Court Assignments

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

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

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

**Civil Motions:** ..... Judge Hulbert: July 1 - July 9  
 ..... Judge Thorpe: July 12 – July 23  
 ..... Judge Farris: July 26 – July 30

**Criminal Hearings:** ..... Judge Fair: July 1 – July 2  
 ..... Judge Kreese: July 5 – July 9  
 ..... Judge Farros: July 12 – July 23  
 ..... Judge McKeeman: July 26 – July 30

**Criminal Dept. Judges:**<sup>2</sup> ..... Judges Thorpe, Allendoerfer, McKeeman, Hulbert, Kreese, Bowden, Cowsert and Dwyer

**Civil Dept. Judges:**<sup>2</sup> ..... Judges Wynne, Farris, French and Fair

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

**Family Law Calendars:**<sup>1</sup> ..... Commissioners Bedle and Waggoner

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

<sup>1</sup> Court Commissioner assignments are for six months duration and change in early January and July.

<sup>2</sup> 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 is the last installment of the debate related to zero based budget and access to justice. I have received an incredible response to last month's article. For that I am grateful. However, I would like to clear up some misconceptions concerning my views on the subject.

Don't get me wrong. I have a deep and abiding affection for our current County Executive. And new ideas are always an asset. But don't throw the baby out with the bath water. While our budgeting process is in need of reform, any approach that places our judicial system in competition with fleet management or the parks department is wrong. Don't get me wrong, I like and enjoy parks as much as the next person. But if I have to choose between parks and providing an increased access to justice to those who cannot afford it, I will choose the latter every time.

I had an interesting call from Judge Ryan, who wanted to provide me with figures for the District Courts. These are as bleak, if not bleaker, than the Superior Court statistics. In 2000, the District Courts handled 81,850 cases. In 2001, they handled 83,962. In 2002, the figures jumped to 101,853 and in 2003, the court handled 112,367 cases. It is a given that the funds allocated to both the Superior Court and to District Courts did not increase proportionately to the increase in their caseloads. To even remotely suggest a *cut* in either budget is profane and disrespectful. The family law commissioners read nearly 3,000 pages of documents each week. And this does not include those who forget to file paperwork, continued cases or pro se dissolutions.

The Bar Association sent a fax to attorneys in Snohomish County indicating a support for the court when they submit their budget for the addition of a fifth commissioner. I would encourage attorneys who have not filled out the simple form and faxed it back or brought it back to the Bar Office, to do so. I have asked Judge Wynne to include those forms with his budget when he submits the budget to the County for consideration. Hopefully, this will send a message to the Counsel that we are watching their decisions during the budget process. I have also included the form at the end of this article for those who may not have received the form.

Finally, and off the subject of this article, the Board has asked that if anyone knows of someone that has made a positive contribution to the legal profession in Snohomish County, please let either myself or Joyce know.

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I, We, the undersigned, acknowledging the overload of cases that result in a clogging of our judicial system, request that the Snohomish County Council approve the funds to hire a fifth Commissioner for Snohomish County Superior Court.

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Name and Bar Number





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

July 28<sup>th</sup>, 1975. I turn 17. My father walks in the door, hands me the keys to a yellow 1970 mustang with 57,000 miles on it. My sister and I get in it and go for a drive, nearly running into a telephone pole fiddling with the Philco AM radio. Three weeks later Dad asks for the keys back after a drag race with my cousins in the car that ended in a rumble with some dudes in a Camero and my windshield smashed. I became a trial attorney that night. I learned how to hit and take hits. I walked to school my senior year in high school.

August 9<sup>th</sup> 2004. My oldest child, a daughter turns 17, the advent of her senior year in high school. The plan is to turn the keys over to her and for the first time I worry about the safety of the car. There is no air bag. The engine is huge and the rear end too light. The seat belts feature the beginning of the concept of a shoulder belt but it is more or less unfunctional, leaving her in a lap belt to hit her head against a hard plastic steering wheel in an accident. The car has had extensive repairs and decades of painstaking maintenance. It is still unsafe. It is a young person's car. It is a car for people who do not sense mortality. And I am getting old.

Why did she grow up so fast?

As far as Rachel is concerned this is bigger than the purchase of the cello, the trip to Colonial Williamsburg, or getting her cross country letter. She will be the coolest kid on campus.

It is time for her Dad to give that up. ☞

**ARBITRATIONS - MEDIATIONS  
SETTLEMENT CONFERENCES**

**HON. JOSEPH A. THIBODEAU  
(RET.)**

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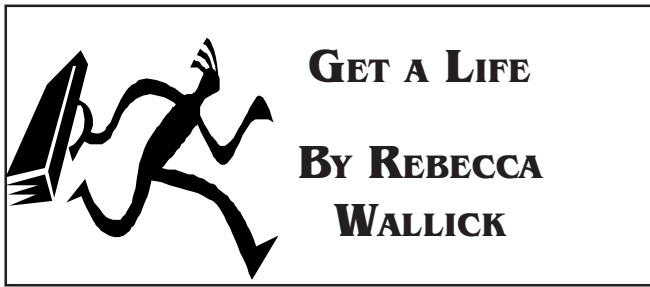
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*A series of profiles of lawyers and judges in Snohomish County who recognize the value of having a passion outside the law, of the outdoor variety. If you know someone who has a unique or daring outdoor passion that others might find interesting,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

### **HOW THE GRAND CANYON KICKED MY BUTT**

I belong to a relatively small group of compulsive athletes known as ultra runners. An ultra is any distance longer than a marathon. Ultra races are typically anywhere from 50K (31 miles) to 100 miles in length, usually on mountainous trails, and take hours or even days to complete. I've competed in many ultra races since 1990, but the events that form my fondest ultra memories are the unofficial adventures such as running the Inca Trail in Peru, or around Mt. Rainier on the Wonderland Trail. The most spectacular run of all, for me, is the double crossing of the Grand Canyon, a trek of 42 to 46 miles, depending on route, from the South Rim to the North Rim and back again with a total elevation change of 22,000 feet. Not a simple undertaking, given the distance, elevation change, extreme temperature variance (from snow and freezing temps on the rims to 80+ at Phantom Ranch on the river) and lack of ready water sources. Each year, several ultra runners from around the country congregate at the South Rim on the first weekend in November to attempt a double crossing when the official tourist season is over then there are fewer mules (and thus less mule piss and shit) on the trails. I've done it twice. In 1996 I had an amazing run, finishing with friends in about twelve hours. But in 1997, all did not go well. The following is my story of that extraordinary trip.

My small group of four runners dropped off the South Rim and started running down the South Kaibab trailhead at 6:00 a.m. that November morning. It was still dark, so we used our flashlights to avoid hurtling

off the icy edge of the steep early portion of the trail. Soon we were rewarded with a spectacular sunrise and fiery light bouncing off the far canyon walls. The run starts with 6.5 miles of relentless, steep downhill, dropping 5000' to the Colorado River and Phantom Ranch. We avoided the temptation to race down the hills in order to save our leg muscles for the rest of the day. Part way down I stopped for a photograph with a bighorn sheep standing just paces away. It was truly an exhilarating start to the run.

After leaving Phantom Ranch and starting up the North Kaibab trail toward the North Rim, we encountered another runner who informed us that the two usual sources of piped water along the trail were broken, bad news which meant we would have to carry enough water in our running packs to get us the 14 miles and 6000' up to the North Rim and the return back down to Phantom Ranch, because there would be no water at the North Rim unless we could beg some off of a passing motorist. Luckily we had some iodine tablets and so were able to refill our pack bladders in a small stream near Cottonwood campground, about halfway between the river and the North Rim.

The run continued to go well and we all spread out to run our own pace. It's impossible to not be awed by the scenery and the varying colors of the rock as you travel through 1.7 billion years of sedimentary layers from river to rim. I took lots of pictures. I reached the North Rim feeling good, and turned to head back down with one of my friends. After refilling our water bladders at Cottonwood, he went on ahead and I enjoyed running alone. Shortly after that I began to notice my right quadriceps muscle talking to me. The chatter got louder and louder as I continued downhill, until I eventually had to listen to the pain and stop running. I also had to acknowledge that the cramping was likely because of dehydration from conserving water during the previous climb coupled with running too hard on the pounding downhills during the hottest part of the day. The temperature gauge at Cottonwood read 90 degrees. But I wasn't worried. I was about 2/3 of the way through the run at this point, and figured I could walk the remaining five miles to Phantom Ranch, then up to the South Rim, which is what everyone does strongest runner to run at the end of a double crossing.

Just before I reached Phantom Ranch, I came upon a father and his two kids sitting by the trail watching some deer. I stopped to chat, and must have looked a mess as he asked me if I was OK. When I hesitated in answering, he offered me a bunk in the cabin he shared with a bunch of kids at Phantom if I needed it. I told him I'd give it serious consideration, then limped on down the trail. Later, he and the kids passed me, which showed just how slowly I was moving. He repeated his offer of a bunk and I again declined. When I made it to Phantom, there he was, sitting in front of his cabin so I'd know which one it was. But I knew my running friends would go nuts if I didn't arrive at the South Rim starting point as planned, no matter how late, so I determined I should continue on, but did tell him to not be shocked if I changed my mind and turned up later in the night.

I rested at Phantom for a few minutes and ate a peanut butter bagel for energy. I left there at 4:45 p.m., or ten hours and 45 minutes after I started this journey. I was way behind schedule, and all of the other runners I knew had already passed me and left me in their dust. (To their credit, they all asked if I needed anything, and I always assured them I was fine. I was pissed at myself for getting dehydrated. Besides, the only alternative to using your own power to hike out is to get a very expensive helicopter ride.) I couldn't remember what time to expect sundown, but I did remember that the previous year it took me three hours to climb out on the 6.5 mile South Kaibab trail. This year the agreed route was to take the nine mile Bright Angel Trail up, gaining 5000', so even under the best of circumstances it was going to take me a *long* time. My brain wasn't up to calculating just how long it would take, but I felt confident I would be fine because I had my flashlight with me. Also, I knew that the Bright Angel Trail had the advantage of a campground half way up, with water available.

As the day finally cooled, I crossed the river on the hiker's bridge, then followed the trail along the river. I started burping, and then that peanut butter bagel came back up. So much for renewed energy. I was more dehydrated than I realized. At least I was able to steadily sip water.

After about 1.5 miles along the river, the trail turned upward and became more difficult. My right leg by now was very painful to use, especially going uphill

because I had to put more weight on the sore quad muscle. I wanted a walking stick, but couldn't find anything in that arid, desolate landscape. I finally broke a branch off of some low growing shrub; it was crude and bent, with thorns, but allowed me to keep moving without too much stress on my leg. I tried to calculate my miles per hour pace, but there are no mile markers on these trails. I figured I was making about a mile per hour – painfully slow. I admitted to myself it was going to be a long night. And that thought caused me a bit of panic as I remembered that my flashlight batteries at best only lasted four hours and I'd already used them for about 30 minutes in the early morning. I still had over seven miles to go! I knew the campground was 4.5 miles up from the river, and that became my immediate goal. I went as long as I could without using the flashlight, but there was only a new moon for light and it eventually became truly dark. After tripping several times, I had to use my light, but I actually picked up the pace significantly; it's amazing what a healthy dose of fear can do to take your mind off your pain and get you moving.

When I finally arrived at the campground, I accosted the first person I saw and begged for four AA batteries. She took me to her campsite and her boyfriend gave me some of his batteries, but warned he didn't know how much power they had left. I gratefully accepted his gift, and as the woman escorted me back to the trail, she happened to mention that there were two emergency shelters between there and the rim – one three miles, and the other 1.5 miles below the rim – and they both had emergency phones. This was excellent news. My new goal was to continue upward as long as I had flashlight power, and stop at one of the shelters if I had to. It was getting late enough that I knew my running friends would start to wonder what had happened to me, and before long they'd send their own search party down the trail. The higher I got, the less distance they'd have to come down to find me, as they'd already done their own 44 mile run that day.

I floundered on up the trail. About a half mile after leaving the campground, my flashlight batteries went dead. Within about two seconds, I went from light to no light. I sat in the middle of the trail and changed batteries in total darkness. I got it right on the second try. Amazingly, I felt totally calm. It was an incredibly beautiful night, with clear skies and more stars than I'd

## Get a Life - *Continued*

ever seen, so I enjoyed the view and the solitude. It was cool, but not cold. And despite feeling nauseous and unable to eat, I had plenty of energy for this slow hiking, which I attributed to being in such an awesome, almost spiritual place. Eventually I continued on, using the “new” batteries that could die on me at any time, adding another element of fun to this adventure. I was worried about my friends being worried about me, and that’s what kept me going upward at a steady but slow pace.

I finally reached the emergency shelter three miles from the rim, located a short distance off the trail. After some muddled thought, I acknowledged that my new batteries could also die at any time. I was, at that point, high enough in the canyon that the drops off the side of the trail were steep and long, something I was glad I couldn’t see in the dark. But I was also acutely aware just how dangerous a misstep could be. I didn’t want to even think about negotiating this portion of trail without a flashlight. Nor did I want to have to sit in the middle of the trail awaiting daylight, as I knew there were scorpions and spiders who shared the trail. So I elected to stay at the shelter.

It took me a couple of minutes to find the shelter’s emergency phone, which for some reason is attached at the very top of a wall. I painfully scrambled up to the phone, which rings directly to the ranger station. I told the answering ranger that I was fine, but asked her to let my friends know where I was and see if they could bring me some fresh batteries. I hung up so she could try to call them at their motel. She called back in a few minutes and said no one answered. She then told me about a cache box hidden behind the shelter and gave me the combination (3333, for future reference) so that I could take the flashlight stored there. I found it, but ironically, its batteries were dead, too! I found one spare battery (D cell) and swapped it for one of two in the flashlight, but still no luck. I called the ranger back, and told her that as I’d found a comfy sleeping bag as well as some crackers and fruit juice in the box, I was quite happy and would wait out the night in the shelter, then hike out in daylight. She didn’t like that idea and said she’d keep trying to call my friends.

I sat on the shelter’s bench, wrapped in the sleeping bag, and waited for daylight. It was nearly 11 p.m. by now. I listened to the night – mostly crickets – feeling safe and peaceful until I heard some sort of critter scuffling around just outside the shelter. I grabbed my flashlight and aimed it toward the sound: the beam hit the face of what appeared to be a cross between a fox and a raccoon. It stared back at me, unalarmed, moved around the shelter some more, looked at me one last time and moseyed off. I began to think about the other creatures that inhabit the canyon, including cougars, but still somehow briefly fell asleep. I awoke and chastised myself for dozing as I’d be unable to hear anyone hiking down looking for me. I worked hard at staying awake.

Within 15 minutes or so I did hear voices from up the trail. After wondering if I was hallucinating, I recognized them – my running friends coming to find me. They followed my flashlight beam to the shelter. After the bit of rest, food and fluids, I actually felt pretty good and was able to hike the remaining three miles easily. We topped out at ten minutes after midnight. I had been out a total of 18 hours, finishing six hours behind schedule. I knew I could rely on my ultra friends to come to my aid – it’s one of the things I love about the sport and the people who participate in it. We take care of each other.


While this was not the run I had in mind when I started out that morning, and I hope to never repeat it, I must say that if one has to get into trouble on a trail, the Grand Canyon is the place to do it. I never felt worried about wild animals or dangerous people. I always had water and food with me, and spare clothing. At the emergency shelter, I was completely safe and comfortable and could easily have spent the night there. (I did eventually send the rangers a thank you note with some cash to replace the dead batteries in the cache box.) I later learned that the creature I had in my flashlight beam at the shelter was a ringtailed cat – apparently quite a rare thing to see. I was assured they hunt only for mice and other small rodents. I finished the adventure with a story to tell and a new appreciation for the grandeur of the canyon at night.

I returned to run the canyon again in 1998, but opted for an abbreviated route, one that I was certain I would finish before dark. Even so, I carried two flashlights as well as spare batteries. I do, however, plan to do another double crossing in the near future. ☞



**SCBA  
Young  
Lawyer  
Division**

The Snohomish County Young Lawyer Division met on the second Tuesday of the month to discuss the free CLE event they are co-sponsoring with the Washington State Bar Association Young Lawyer Division. The 'CLE By the Sea' weekend event will be held September 25<sup>th</sup> at Friday Harbor in the San Juan Islands. CLE topics will include estate planning, criminal law and environmental law. This will be a great opportunity to network and get to know other young lawyers from across the state. For more information on the CLE By the Sea or other upcoming young lawyer events and activities please contact Christopher Bell at [cbell@bellinram.com](mailto:cbell@bellinram.com) or Karin Young at [youngkarin@hotmail.com](mailto:youngkarin@hotmail.com). Next month the Young Lawyer Division will be meeting July 13<sup>th</sup> at the Flying Pig at 6pm. Hope to see you there. ☞



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**GOLF FOR A GOOD CAUSE**

**Charity Golf Tournament  
To Benefit  
Families & Friends of Violent Crime Victims  
Hosted by Sheriff Rick Bart**

Who: Golfers and non-golfers  
Where: Cedarcrest Golf Course, Marysville  
When: Friday, August 27, 2004,  
Tee Time 8:00 a.m.  
Barbeque: 2:00 p.m.

Format: Scramble  
Entry Fee: \$75.00  
Sponsors: Sponsorship levels from \$100-\$1,500

Cost includes Greens fee, BBQ and prizes . Sign up individually or in groups of 2-4.

**Call Carla at 425 355-6822 to register, sponsor or for more information.**

All proceeds will be used to provide support services for violent crime victims and the surviving family members of homicide victims. Have fun and make every stroke count, no matter what your score. You can sponsor a hole for your business, or in memory of someone you know who has been a victim.



**A FILING FROM THE  
SNOHOMISH COUNTY  
CLERK,  
PAM DANIELS**

**Snohomish County Clerk’s Office Imaging  
(EDRMS) Update:**

The Clerk’s Office is in the final development stage of their Electronic Document and Records Management System (EDRMS). The system is projected to be implemented in late 2004, with public access to digitized documents to begin in the first quarter of 2005. Over the past two years, the Clerk’s Office has worked in partnership with the County’s Department of Information Services, County Law and Justice Departments, the Bar, and a vendor to develop an EDRMS that will provide electronic court records access and enhanced service to all customers of the Clerk’s Office.

What does this EDMRS mean to you? Rather than completing a records check-out slip and waiting in line to view a record or records, you will be able to view the electronic record/documents, print copies, and pay for copies without ever checking out the paper record! The paper record will continue to be maintained and circulated for court use, but if you are simply looking to make copies of particular documents within a record, you will be able to do that electronically, saving time and resources for everyone involved. Initially, electronic documents will not be available to the general public via web (internet) technology.

While it will take time to populate the new EDRMS with Clerk’s records, the system will eventually provide a single point of access to view most all SCOMIS information as well as the electronic documents for a given case.

How can you assist in this transition to ensure that the new system is successful and of benefit to you? The Clerk receives between 2,300-3,300 Superior Court documents daily. Over the past two years, the Clerk’s Office has completed an exhaustive review and analysis of the documents filed in the Clerk’s Office

on a daily basis, primarily looking at format and compliance issues. As a result of this review and the changes to GR 14 (Format for Pleadings and Other Papers) in April 2001, we have been able to resolve many of the issues related to microfilming and now scanning of these documents. While there has been good progress in this area, there is still more to be done to ensure documents meet standards for scanning.

You are encouraged to review GR 14 as well as Snohomish County Local Court Rule 79(d)(2) (Books and Records Kept by the Clerk) to ensure that documents filed with the Clerk’s Office are suitable for scanning. Additional information on document filing requirements will be provided in the August Bar News.

If you have any questions, don’t hesitate to contact the Clerk’s Office. ☺

**Snohomish County Clerk’s Office Update:**

Effective June 10, 2004, Senate Bill 6121 went into effect. This bill adds the following language to RCW 11.12:

*“Any person who has custody or control of any original will and who has not received knowledge of the death of the testator may deliver the will for filing to any court having jurisdiction. The testator may withdraw the original will so filed upon proper identification. Any other person, including an attorney in fact or guardian of the testator, may withdraw the original will so filed only upon court order after showing good cause. Upon request and presentation of a certified copy of the testator’s death certificate, the clerk shall unseal the file. This section does not preclude filing a will not under seal and does not alter any duty of a person having knowledge of the testator’s death to file the will.”*

In this regard the Snohomish County Clerk’s Office has established a Will Repository to allow individuals and attorneys to “file” wills for safekeeping when the testator is still living. These files are sealed and fall under the same criteria as all other sealed files. The following fees have been established:

*continued on next page*

Initial Filing Fee:	\$ 20.00
Subsequent Codicil Filing:	\$ 20.00
Transfer to Will Only Filing:	\$ 20.00
Transfer to Probate Filing:	\$110.00

A Will Repository Cover Sheet will be required for every will filed. We have enclosed a copy for your use. Please feel free to photocopy this form. If you wish to have an electronic version of this cover sheet please E-mail either of the following individuals and it will be sent to you: Robbin.Ballard@co.snohomish.wa.us or Anne.Trice@co.snohomish.wa.us. The form will soon be available on our website. To save everyone's valuable time, if you wish to file more than 10 wills at one time, please contact our office at (425) 388-3068 to make an appointment.

If you have any questions regarding implementation of this new legislation please feel free to call either Anne M. Trice at (425) 388-3396 or Mark W. Allen at (425) 388-3620. ☞

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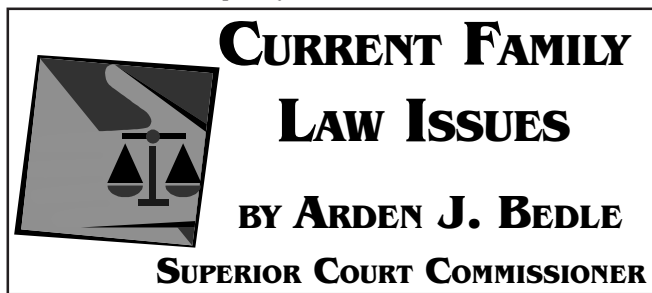
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Brian Buckley Retiring from Superior Court

Everyone in the courthouse and all of the bar are cordially invited to come to dept #5 Superior Court on July 21<sup>st</sup> from 12-2 p.m. to help celebrate Brian Buckley's 3 1/2 years as Judge Hulbert's law clerk.

Brian is moving to Chicago where he will pursue his PhD at Loyola University. There will be cake and coffee provided and everyone is genuinely welcome to come by and say farewell to Brian who has been such a joy to work with over the past 3 1/2 years.

*At the invitation of SCBA Vice President, Geoff Gibbs, Superior Court Commissioner Arden Bedle has provided the following update on certain family law issues. Other jurists or SCBA members should contact Geoff Gibbs or SCBA Secretary Jennifer Bridges if they wish to submit articles on topics of interest to the Bar.*



June 1, 2004

I believe that there are three present “hot spots” in family law that the Bar should be aware of. Recent changes in third-party custody and paternity cases have, or should have, changed the way that these cases are being handled.

**Paternity cases.** The paternity laws were changed in 2000, as a result of federal pressure. It created a process of establishing paternity by irrefutable presumption by the two adults signing a declaration. As controversial as this was, it was further changed in 2002, even more than the prior 2000 changes. The primary change is that the child has been eliminated as a statutory and required party. This means that a G.A.L. is no longer mandatory, but only optional, like in any family law matter. This change has created significant furor, as many jurists and attorneys believe that the child enjoys a Constitutional right to be a party. However, this right has not been recognized since the legislation. So the purpose and payment for a G.A.L. needs to be addressed by motion.

I believe that there has been a decrease in the number of paternity cases being brought by the State. In the past, most were brought by the State in order to establish child support. As the presumptive declaration provision doesn't anticipate judicial establishment of paternity, most support is set administratively. We see new paternity cases usually where there may be conflicting presumptions, where there is no presumptive declaration, or by a presumptive father to establish a residential plan.

A problem now exists in paternity cases as to whether there are adequate facts presented relating to the actual paternity. Where the Court relied upon GALs to insure actual paternity exists, that is no longer a safety net. As pointed out in Santos, 18% of admissions are incorrect. What we call the “Santos declaration” will always be needed, even more so now. A copy of the birth certificate and presumptive declaration, if any, should always be provided and attached

to the Petition. Nonetheless, jurists will scrutinize the facts and may well require DNA tests if the facts are deemed to be insufficient, or where there may be contradictory presumptions. The problem with such testing is the arranging for and payment of the tests.

**Third party custody.** The changes to the third-party custody law were occasioned by a horror story. A court granted an agreed third-party decree, with not much information, and the child was killed by the custodian. The custodian was apparently a suspected child abuser before the order entered. The primary change in third party custody actions is to require that certain records be produced prior to court orders. The following are some of the new requirements to keep in mind:

1. JIS records check is required of all parties and adult household members. Do it before any orders are entered, better yet, at filing. The hard working folks in the Facilitators' office are providing quick and ready service to us all by providing these records.
2. Adequate cause, i.e., unfitness of the parents is required before any orders enter. Do it up front.
3. Petition needs to allege status or non-status under the ICWA, even for agreed orders. Full application of ICWA, including tribal notice, attorneys, and services will come into play.
4. CPS and WSP records check of all the parties is needed prior to the entry of final orders. There are form orders to present ex-parte, and a protocol has been negotiated with CPS for the provision of these records.
5. Be prepared to prove who the parents actually are by birth certificate and/or paternity declaration.
6. Be prepared to provide the Court information as to other litigation and/or court orders regarding the child.

There are many unanswered questions as to the details of implementation of these changes. The Bench and Bar will be struggling with these issues in the foreseeable future.

**Child Support Modifications.** On the motions calendar, I've always handled these using a summary judgment standard, perhaps entering a temporary modification, and referring the matter to arbitration. With the advent of the new arbitration fee, many parties, particularly pro-se, may find that this process has become even more burdensome and be discouraged from seeking a modification. Counsel and parties need to be more willing to negotiate and compromise these cases for a cheaper and quicker solution. If the fee becomes a problem, and if there is an additional Court Commissioner, the Judges may themselves seek cheaper and quicker remedies. ☺

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## Announcement

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

Later this year, probably in September or October, the Snohomish County Superior Court will be releasing a "Request for Qualifications" (RFQ) for Primary Indigent Defense Attorney contracts for Juvenile Court for July, 2005 through June, 2007. 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 and all of the case types eligible for Indigent Defense representation at Juvenile Court. There are three courtrooms at the Denney Juvenile Justice Center (DJJC), one courtroom essentially fulltime for each of the case types. We may be contracting with up to four (4) primary indigent defense firms selected from this RFQ. Detailed funding information will be included in the RFQ when it is released.

It is anticipated that at least a two-year contract will be negotiated with each of 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](mailto:Bruce.Eklund@co.snohomish.wa.us).

# SCBA CLE

## **The Chemistry of Methamphetamine Manufacture: Background, Adaptability and Trends**

Wednesday, July 21, 2004

1:30 pm to 5:00 pm

Snohomish County Superior Court Department 6

CLE Credits applied for 3.5 general credits

For CLE Credit Cost: \$45.00

Presenters: Eric Person, Ph.D. Washington State Patrol Marysville Crime Laboratory  
Lori Knops, B.S. Washington State Patrol Marysville Crime Laboratory  
Matt Hunter Snohomish County Prosecutors  
Mark Thomas Snohomish Regional Drug Task Force

This CLE is for any attorney or GAL that may come in contact with a client that has Methamphetamine in their lives. This CLE will help you understand how the law applies to clandestine methamphetamine laboratories and what are some of the items for you to be aware of when having community contact or home visits.

***RSVP with the SCBA office at (425) 388-3056***

# 2004

## Snohomish County Bar Association Golf Tournament

### Entry Form

- Who:** SCBA members and their guests.  
**Where:** Legion Memorial Golf Course  
114 W. Marine View Dr. Everett, WA  
**When:** Friday, September 17, 2004. Tee times begin at 11:00 am.  
**Format:** Scramble  
**Cost:** \$55.00 per person. Make checks payable to SCBA.  
**Deadline:** September 10, 2004. First paid, first served. Limited entry.

**Cost includes Greens fee, post-golf hamburger barbeque, and prizes. Carts are available for \$11 per player, payable at the course on September 17<sup>th</sup>.**

Sign up as an individual or a group of two, three, or four.  
We'll match up those who sign up with less than four.

Please submit your name and any others that will be playing with you.  
Deliver/send this form and \$55.00 per player to the SCBA office, Rm. C206,  
Or  
PO Box 5429, Everett, 98206.

1. \_\_\_\_\_ 3. \_\_\_\_\_  
2. \_\_\_\_\_ 4. \_\_\_\_\_

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*Questions or input? Call Joyce Wood at (425)-388-3056*

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is pleased to announce that

**DANIEL R. JOHNSON**

*has joined the firm as an Associate Attorney. Mr. Johnson is a 2000 graduate of the University of Washington having earned a double major in Philosophy and Political Science. He was awarded his juris doctor degree from Seattle University School of Law in 2003, graduating magna cum laude. Mr. Johnson has most recently served as the law clerk for the Honorable Ronald L. Castleberry of the Snohomish County Superior Court. Mr. Johnson is a member of the Washington State Bar Association. He will be practicing in the areas of land use, real estate, and business litigation.*

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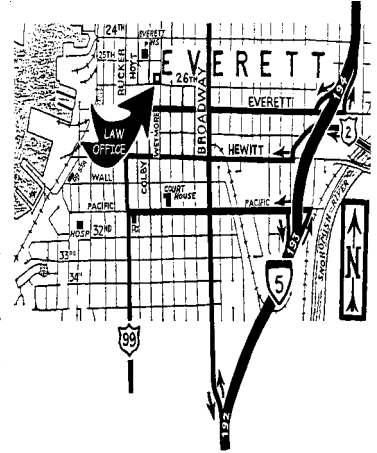
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Sign up as an individual group of two, three, or four.  
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## **SCBA CLE**

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