

Bryan Chushcoff

Questionnaire

Washington State Supreme Court

The Governor's Office's
Uniform Judicial Evaluation Questionnaire

Professional History

8. Year admitted to practice law in Washington: 1977

9. Employment History (in reverse chronological order):

a. Start Date: January 13, 1997 End Date: N/A

Organization: Pierce County Superior Court

Address: 930 Tacoma Avenue South, #334, Tacoma, WA 98402

Phone No.: (253) 798-7574

Position/Title: Superior Court Judge

Supervisor: I am the Presiding Judge.

Nature of Practice (including frequency of court appearances):

I am in court daily. The Superior Court is the general jurisdiction court for the State of Washington. Among other types of cases, I have presided over: felony criminal cases from theft to murder; civil cases including class action litigation, family law, bodily injury and commercial litigation. I am currently participating, along with 3 other judges, in a special project designed to reduce case age and the outstanding number of court cases. In this project, I am presiding over pre-assigned Class A, special assault cases (domestic violence and sexual offense).

I have been a member of the court's governing Executive Committee since 2002. I was elected Assistant Presiding Judge the next year and continued to serve as such until I was elected Presiding Judge in 2008 to serve in 2009-10. I was re-elected in January to remain as Presiding Judge through 2012.

This position involves important administrative duties as spokesperson for the court and chief executive officer. I supervise the court's Administrator and other staff. In consultation with the Executive Committee, I am responsible for the court's budget and for establishing and executing the policies of the court. In this capacity, I have appeared at various local governmental hearings and meetings representing Pierce County Superior Court. While doing so, I continue to maintain a full trial docket.

Reason for leaving: This is my current employment.

b. Start Date: January 1978. End Date: January 12, 1997.

Organization: Bryan Chushcoff, Attorney at Law

Address: 6311 Pacific Avenue, Tacoma, WA 98408

Phone No.: (253) 473-5400

Position/Title: Owner

Supervisor: Self-employed

Nature of Practice (including frequency of court appearances):

General practice of law. I appeared in court most regularly for family, bankruptcy and criminal law matters. I represented a municipal corporation that administered housing loans to low-income people for purchase (urban homesteading) or improvement (home safety and weatherization projects) of residences. My most significant litigation work was criminal law. See Supplemental.

Reason for leaving: Election as a superior court judge.

c. Start Date: February 1997. End Date: December 1977.

Organization: S.A. Davidson, attorney at law

The Governor's Office's
Uniform Judicial Evaluation Questionnaire

Address: 17701 Pacific Avenue, Spanaway, WA 98387

Phone No.: I do not recall

Position/Title: legal intern

Supervisor: S.A. Davidson

Nature of Practice (including frequency of court appearances):

General practice of law. Primarily family law and misdemeanor criminal cases.

Reason for leaving: Mr. Davidson left me! He re-entered service with the U.S. Army JAG and I bought his practice.

d. 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.

United States District Court for the Western District of Washington – 1978.

United States Court of Appeals for the 9th Circuit – 1980.

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 – 1977 to date.

Superior Court Judges Association – 1997 to date.

12. Are you in good standing in every bar association of which you are a member? Yes. If you answered “no”, please explain.

The Governor's Office's
Uniform Judicial Evaluation Questionnaire

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 have been a member of the court's Executive Committee since 2002. I was elected Assistant Presiding Judge the next year. I was elected Presiding Judge in 2008 to serve in 2009-10. I was re-elected in January 2010 to remain as Presiding Judge through 2012.

Earlier in my judicial career, I was Chair of the court's criminal law committees from 2002 - 2006. I have served on the court's civil case management/LINX committee, and its civil law committee. I have served on and been Chair, or been a member, of several *ad hoc* court committees, e.g. to hire a court commissioner and to deal with specialized problems such as the court's criminal case backlog.

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).

Winning election as a Superior Court Judge. I ran for an open position and my opponent in the general election was a long-time state legislator who had never lost an election. It is a humbling and educational experience to run for public office.

Another accomplishment was to be elected to the court's governing body, the Executive Committee, in 2002. Other related accomplishments were to be named Acting Presiding Judge in 2003 and Presiding Judge for 2009-10 (and being re-elected to serve as Presiding Judge for 2011-12)

As Presiding Judge, I have been presented with several challenges. I successfully managed: criminal charges against a new judge, Michael Hecht; difficult press treatment of two of our judges related to the Maurice Clemmons/Lakewood police officers shooting; political and legal problems arising from the County Council deciding to eliminate a judicial department to save money; logistical difficulties posed by an unprecedented 36 co-defendant conspiracy case (pending); and, substantial budget reductions to the court as all of county government has had to adapt to lowered revenues.

See #24(f) below. See also #25 below.

Significant reported cases as a judge:

State v. Kelley, 168 Wn.2d 72 (2010)

State v. Zhao, 157 Wn.2d 188 (2006)

State v. Shafer, 156 Wn.2d 381 (2006)

State v. Wingate, 155 Wn.2d 817 (2005)

State v. Beaver, 148 Wn.2d 338 (2002)

State v. Coria, 146 Wn.2d 631 (2002)

Western Telepage v. City of Tacoma Dept. of Financing, 140 Wn.2d 599 (2000)

State v. Ranslaben, 144 Wn. App. (2006)

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 #24(f) below. See also #25 below.

State v. Shafer, 156 Wn.2d 381 (2006).

At issue was the constitutionality of the child hearsay statute in perhaps the first cases post-*Crawford v. Washington*. The Washington Supreme Court (J. Sanders dissenting) affirmed my ruling that the statements of a 3 year-old to her mother were admissible in this Rape of a Child case.

State v. Beaver, 148 Wn.2d 338 (2002).

Acting as a Juvenile court judge, I set a manifest injustice imposition of sentence on defendant of confinement until age 21, without possibility of release. In so doing, I by set his minimum term equal to maximum term (following a conviction for conspiracy to commit second degree murder). The Supreme Court held that this did not usurp legislative authority of Department of Social and Health Services' (DSHS) to determine defendant's release date.

In re: Detention of Sease, 149 Wn. App. 66 (2009).

Court of Appeals affirmed my ruling in a case said to be the first in Washington to consider the detention of a person as a sexually violent predator purely under the "personality disorder" prong of RCW 71.09.020.

State v. Devron Anderson, 72, Wn. App. 253, 863 P.2d 1370 (1993).

I was appointed to represent Mr. Anderson on charges of murder in the first degree and simple assault. Anderson was acquitted after a trial. The jury also made a special finding that Anderson had acted in self-defense when confronted by several angry youths in front of his home. The case was also significant because of the important use of ballistic evidence by the defense. The issue on appeal was my client's unsuccessful claim that because he had acted in self-defense he was entitled to compensation for his "loss of time" while incarcerated awaiting trial and that his attorney was entitled to reasonable fees in his defense pursuant to RCW 9A.16.110.

Reed v. Eller, 33 Wn. App. 820, 664 P.2d 515 (1983).

In one of my first cases, I represented the plaintiff, Sidney Reed, in a dispute involving the forfeiture of Mr. Reed's purchaser's interest in a real estate contract by the seller to the contract, Eller. This appeal on behalf of Mr. Reed reversed the trial court and restored him to possession of his property. This case was significant because it revealed the chaotic and often unjust manner in which a purchaser's interest in realty could be terminated. This case influenced the Washington State Real Property, Probate and Trust section of the Washington State Bar Association to sponsor legislation to address these problems. The result was the enactment of RCW 61.30, the Real Estate Contract Forfeiture Act in 1985.

Metropolitan Savings v. Roberts, 72, Wn. App. 104, 863 P.2d 1370 (1993).

Attorney Stephen Demarest purchased real property at a sheriff's foreclosure sale subject to redemption rights of defendant Roberts. Demarest then intervened in the lawsuit and obtained a court order that the redemption rights were terminated. I represented Third Party Plaintiff Mutual Security Financing Inc. who had purchased the redemption rights from Roberts. The Court of Appeals agreed with my analysis, reversed the trial court and restored the redemption rights. My client redeemed the sale and obtained the realty. This case represents one of the few interpreting this area of foreclosure law.

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.

University of Washington College/University	September 1970 to March 1974 Dates of Attendance	Business Administration (Finance) Degree
--	---	---

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

University of Puget Sound Law School	September 1974 to May 1977 Dates of Attendance	Juris Doctor Degree
---	---	------------------------

Professional Experience

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

I am in court daily. The superior court is the general jurisdiction court for the State of Washington. I preside over all manner of cases including: felony criminal cases from theft to murder; civil cases including class action litigation, family law, bodily injury and commercial litigation. I am currently participating, along with 3 other judges, in a special project of pre-assigned Class A, special assault cases (domestic violence and sexual offense).

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 _____%

The Governor's Office's
Uniform Judicial Evaluation Questionnaire

(2) Federal trial courts	_____	%
(3) State appellate courts	_____	%
(4) State trial courts	_____	%
(5) Municipal courts	_____	%
(6) District courts	_____	%
(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)	_____	%
(2) Criminal litigation	_____	%
(3) Family law litigation	_____	%
(4) Non-litigation	_____	%
TOTAL	_____	100%

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

(1) Jury trials	75% est.
(2) Non-jury trials	25% est.
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>
	Municipal			
10 est.	State Dist.	100	20	
400 ? est.	State Superior	10	70	90
5 est.	Federal Dist.	100	20	
	Administrative			
	Tribal Courts			
5 est.	Other	100	0	

- (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>
50 est	State Superior Court		100
	WA. Div. I COA		
15 est.	WA. Div. II COA	100	
	WA. Div. III COA		
	WA. Supreme Court		
1 est.	Fed. Cir. COA	100	
	U.S. Supreme Court		

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

State v. Devron Anderson, 72, Wn. App. 253, 863 P.2d 1370 (1993).

I was appointed to represent Mr. Anderson on charges of murder in the first degree and simple assault. Anderson was acquitted after a trial. The jury also made a special finding that Anderson had acted in self-defense when confronted by several angry youths in front of his home. The case was also significant because of the important use of ballistic evidence by the defense. The issue on appeal was my client's unsuccessful claim that because he had acted in self-defense he was entitled to compensation for his "loss of time" while incarcerated awaiting trial and that his attorney was entitled to reasonable fees in his defense pursuant to RCW 9A.16.110. Trial Judge: Hon. Bruce Cohoe (ret.); Opposing counsel: Michael Johnson.

State v. David Sampson, 72, Wn. App. 253, 863 P.2d 1370 (1993).

I was appointed to represent Mr. Sampson in 1991 on charges of murder in the first degree and assault in the first degree. Sampson was acquitted after a trial. The jury also made a special finding that Anderson had acted in self-defense when an attempted drug purchase became a robbery attempt against Sampson.

Although the cases were tried a year apart, because the issues on appeal were similar to the issues in the *Anderson* case, the cases were consolidated on appeal. For this reason, the case has the same citation as *State v. Anderson*. Trial Judge: Hon. Waldo Stone (ret.); Opposing counsel: Dennis Ashman

State v. Vinh Nguyen et. al.

In 1992, I was appointed to represent defendant Vinh Nguyen on charges of murder in the first degree and assault in the second degree. Mr. Nguyen was one of several Vietnamese defendants charged with firing shots at some drunken men who had previously taunted them and made racial insults. One of the men was killed, another wounded. This case was more challenging because Mr. Nguyen and his three co-defendants were Vietnamese immigrants to the United States and they did not trust its judicial system. I was able to overcome these cultural and language barriers to effective representation of the defendant. Mr. Nguyen and another defendant were acquitted of murder and convicted of a lesser charger of manslaughter and assault in the second degree. Trial Judge: Hon. D. Gary Steiner; Opposing counsel: Gerald Horne.

State v. Darrell Massey.

In 1989, I was appointed to represent Mr. Massey on charges of murder in the first degree and two counts of attempted murder in the first degree. Mr. Massey and a co-defendant were accused of being members of the Hilltop Crips street gang. The case received publicity as a "drive-by" shooting involving victims not in a gang. The decedent was a 17 year-old girl. In addition to these charged issues, the case involved ballistics evidence and microscopic fiber and hair analysis. The defendants were convicted and the issue of whether association with a gang was a basis for an exceptional sentence was raised for the first time.

Glidden v. Municipal Authority of the City of Tacoma, 111 Wn.2d 341, 758 P.2d 487 (1988).

I represented the Municipal Authority, a junior lienholder, at a trustee's sale of real property. After the purchase, the trustee advised me that another junior lienholder (Old Stone Bank) had not received proper notice of the sale. I had inquired of the trustee about the issue prior to the sale and been assured that other lienholders had been notified. Because of this, I was a witness to the matter and so I arranged to have another counsel carry on the representation. Before doing so, I provided my analysis of the merits of the matter to my client. The Supreme Court accepted direct review of the case because of its novelty and significant public policy impact upon non-judicial foreclosure sales. The result was a reversal of a trial court's summary judgment against the client. The Court's decision, in large measure, mirrored my legal analysis.

4. *Metropolitan Savings v. Roberts, et. al.*, 72 Wn. App. 104j, 863 P.2d 615 (1993).

Version Attorney Stephen Demarest purchased the property at a sheriff's foreclosure sale subject to the redemption rights of the defendant Roberts. Demarest then intervened in the lawsuit and obtained a court order that the redemption rights were terminated. My client, Mutual Security Financing, Inc.,

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.

None.

The Governor's Office's
Uniform Judicial Evaluation Questionnaire

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

1. During my time in private practice, a new associate lawyer had a couple in to discuss a Will. When they arrived, both were upset. The wife related that she had received an x-ray as part of the testing to assess her injury sustained in a minor traffic accident. She reported to her physician that she thought she was pregnant but a pregnancy test was negative. Later, it was learned that she had been pregnant after all. The doctor recommended an abortion due to a risk of birth defects. The new lawyer asked me what to do.

I suspected the physician of acting precipitously in fear of a malpractice claim. I learned that it was early enough in the pregnancy that there was no danger postponing an abortion procedure. My colleague and I sought out specialized medical advice. The radiation exposure was determined to be slight and the risk of birth defect minimal. The clients proceeded with the pregnancy and were elated at the birth of their healthy boy.

Making the right judgment had to do with keeping foremost the best interest of the client. Whether a valid claim of malpractice could have been made out would have been of little value in the circumstances. The answer was not, strictly speaking, a legal one. But a human solution and not a legal one was what the client needed.

2. I regularly worked for Pierce County Department of Assigned Counsel as a "panel" attorney when it had an ethical conflict or for some reason a need to assign a case to private counsel. Around Christmas in 1993, a Crip gang member was on trial for murder. A material witness in the case was LaShonda Miller. Ms. Miller was a cocaine addict being held in jail on a probation violation. She was three-months pregnant. Because she and several other witnesses refused to testify, she was going to be held in contempt of court. I was appointed to represent her.

Ms. Miller had been threatened and assaulted by "friends" of the defendant. Not only had her life been threatened, but so had the life of her mother and daughter. Because she was already in jail on the probation violation, the Court had little leverage to pressure her to testify.

When I met with LaShonda, she did not want to have anything to do with me, even refusing to shake my hand. The judge wanted to remove the probation violation sanction so that her continued stay in jail at Christmas would be for not testifying. While this might have appeared to be what she wanted and was tempting to her, it did not address the serious problem of what her life would be if she immediately returned to the street.

With persistence, I convinced LaShonda that I genuinely wanted what was best for her and I gained her trust. She DID want to testify. She knew it was the right thing to do but she was understandably afraid for her life. Regrettably, neither then nor now does Washington State have anything comparable to the federal witness protection program

With the cooperation of the prosecutor's office, we worked out an arrangement: Ms. Miller would remain on probation but have her sentence again suspended on condition that she successfully complete an inpatient drug treatment program located far from Tacoma. She remained in jail after testifying until a placement could be found for her. Ms. Miller's testimony provided the only direct evidence of the defendant's involvement in the murder. A conviction was obtained.

As for LaShonda: she had her baby while still in treatment. For a time, I helped with communication between her and family members as she remained in a confidential location. I lost contact with her after about two years but at that time she remained drug free.

Gaining the client's trust was the key to communication and representation. It requires patience and good listening. Empathy, interest and friendliness served me well representing Ms. Miller.

The Governor's Office's
Uniform Judicial Evaluation Questionnaire

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.
- None.

Judicial Interest and Experience

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

For thirty-three years, in front of the bench and serving on it, I have been a guardian of the Constitution and of people's rights. I know their problems and share their concerns. I want to continue this work and contribute my experiences and judicial philosophy to our Supreme Court.

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

No judge should be an advocate for any party or class of litigants. Every judge must be highly ethical. The Court must not overreach its role prescribed in the Constitution. The judiciary must not only be just in carrying out its tasks but must be seen to be just.

30. Have you ever held a judicial office or have you ever been a candidate for such office?
Yes. If you answered "yes", please provide details, including the courts involved, whether elected or appointed, and the periods of your service.

In 1996, I was successfully elected to Pierce County Superior Court, position 4. I took office in January 1997. I was re-elected in 2000, 2004 and 2008. I am now in my 14th year as a superior court judge.

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.

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.

Prior to my election as Superior Court Judge in 1996, I served regularly as an arbitrator on the Pierce County's Mandatory Arbitration Panel.

Community and Civic Activities

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

I have not had a leadership role but I have contributed money, time and effort to several charitable and civic activities, from "Paint Tacoma Beautiful" and several "walks" to raise funds for charitable causes as well as to the court's regular holiday food drive and toys for children campaign.

I also regarded my work of many years (1978-96) at reduced compensation for the Department of Assigned Counsel as a way that I could contribute to access to justice for the indigent.