

John L. O'Brien

Questionnaire

King County District Court

The Governor's Office's
Uniform Judicial Evaluation Questionnaire

Professional History

8. Year admitted to practice law in Washington: 1981 _____

9. Employment History (in reverse chronological order):

a. Start Date: January 1st, 2004____ End Date: On-going

Organization: O'Brien Law Firm PLLP

Address: 175 NE Gilman Blvd., Issaquah, Wash. 98027

Phone No.: 425-391-7427

Position/Title: Managing Member

Supervisor: N/A

Nature of Practice (including frequency of court appearances):

We are an eleven attorney firm engaged in the general practice of law with emphasis on personal injury, criminal law, family law, real estate and estate planning. We represent individuals in the district court system on a regular basis. The personal injury is primarily in arbitration settings.

Reason for leaving: _____

b. Start Date: May 2nd, 1996____ End Date: December 31st, 2003

Organization: John O'Brien, Inc. PS.

Address: 175 NE Gilman Blvd., Issaquah, Wash. 980027

Phone No.: 425-391-7427

Position/Title: President

Supervisor: N/A

Nature of Practice (including frequency of court appearances):

The professional service corporation is the predecessor of the professional limited liability partnership, O'Brien Law Firm, PLLP. It was created to add equity partners to the practice. In addition to the areas of practice listed above, we had prosecuting attorney contracts for the cities of Medina, Hunts Point, Carnation and Duvall.

Reason for leaving: Created equity partnership

c. Start Date: January 1st, 1985 End Date: May 1st, 1996

Organization: O'Brien & Holt Law Firm

Address: 4 425 Rainier Blvd. N., Issaquah, Wash. 98027

Phone No.: 425-392-5335

Position/Title: Partner

Supervisor: Richard Holt

Nature of Practice (including frequency of court appearances):

O'Brien and Holt was a 5 attorney firm engaged in the general practice of law in Issaquah. Our focus was much the same as the areas summarized above.

Reason for leaving: After 11 years of partnership, Dick Holt and I amicably parted ways to pursue separate practices.

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d. Start Date: October 1982 End Date: December 31st, 1984

Organization: O'Brien & Pflug Law Firm

Address: 801 Olive Way, Seattle, Washington

Phone No.: ?

Position/Title: Partner

Supervisor: N/A

Nature of Practice (including frequency of court appearances):

O'Brien & Pflug was a 2 attorney firm in the general practice of law with emphasis on personal injury, criminal law, family law, estate planning and corporations. We had a small contract with the public defender agency to take overflow and conflict cases. We were also house council for the Washington State Protection and Advocacy, also known as "Trouble Shooters for the Handicapped" advising them on discrimination/contract/defense issues.

Reason for leaving: Merged partnership with Richard Holt in Issaquah

e. Start Date: August 1st, 1981 End Date: October 1982

Organization: King County Superior Court

Address: 516 3rd Ave., Seattle, Wash. 98104

Phone No.: 206-296-9100

Position/Title: Bailiff/ Law Clerk

Supervisor: Judge Steven Reilly

Nature of Practice (including frequency of court appearances):

Judge Reilly offered one year internships to first year attorneys. Responsibilities included research on evidentiary rulings and legal issues presented to the court as well as organizing court calendars, control of evidence and jury care.

Reason for leaving: Completed one year internship

f. Start Date: October 1979 End Date: June 1981

Organization: Tacoma Housing Clinic/Puget Sound Legal Assistance Foundation

Address: 902 South Tenth Street, Tacoma, Wash. 98405

Phone No.: ?

Position/Title: Rule 9 Intern

Supervisor: Max Messman

Nature of Practice (including frequency of court appearances):

I was one of 5 UPS law students that organized Tacoma Housing Clinic in conjunction with the Puget Sound Legal Assistance Foundation to provide housing related legal services to low income clients. We received Federal, State and local funding to address tenant evictions, public housing complaints, mortgage defaults and landlord tenant issues. With our limited licenses to practice law, we represented tenants in eviction show cause hearings on a regular basis.

Reason for leaving: Graduated

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

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

Washington State Courts 1981

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U.S. District Court 1982
United States Court of Appeals 9th Circuit 1982

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

Washington State Bar Association

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

Yes

13. If you have ever been a judge, please identify any court committees on which you have served or administrative positions you have held. Please state the dates of service for each.

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

Locke v. City of Seattle, 162 Wash. 2d 474 (2007). Professionally, I am very proud of my involvement in the case of Locke v. City of Seattle, recorded at 162 Wash.2d 474, 172 P.3d 705 (2007). My partner, Dave Wieck and I filed suit against the City of Seattle for Kevin Locke, a firefighter trainee, injured during a training exercise. Mr. Locke was in the 10th week of a 12 week course when he collapsed from dehydration and fell from a 50 foot ladder, suffering injuries including a broken back, pelvis, leg, ankle and foot. We filed suit in 2002 and went to trial in 2004. The two of us spent two months in trial against the City of Seattle's legal department proving 33 safety violations against the City.

Although we were suing for negligence, the City decided to use this case to challenge the constitutionality of the 30 year statute allowing Washington State firefighters and police officers to sue their employer if their injuries were a result of the negligence of their employers. Motions were served quite regularly against us while we were in trial. We would prepare responses at night while also preparing for the next day's testimony. We obtained a \$1.8 million dollar verdict against the city (later reduced to \$1.5 million). The verdict and statute were upheld unanimously in the Court of Appeals in 2006 and again in the Supreme Court in 2007.

Even though I am not anticipating any 2 month trials in the district court, the Locke trial experience honed many skills and attributes to carry with me to the bench.

1. The mental discipline and stamina of trial work;
2. The speed with which evidentiary objections and rulings are made;
3. The drafting of non- patterned, custom jury instructions; and
4. Appreciating the stress and sacrifice we put on our citizens serving on our juries.

Issaquah School District v. Overby, King County Superior Court cause number 99-2-14533-0. I represented an elderly Issaquah family when the Issaquah School District tried to take their farm property through eminent domain proceedings. Because of the growth on the Issaquah Plateau, the school district was in need of land to build another elementary school. The plateau was divided by the Urban Growth Boundary lines established by King County. The density on one side of the line caused the increase in the population necessitating the need for the new school. The Overby's farm was immediately across the street from the density boundary, limiting their land to rural use, and cheaper to purchase. The Overbys had been on the land for 35 or 40 years and did not want to move. Although 3 of the Overbys neighbors who were also going to lose their property decided not to challenge the District's eminent domain authority, the Overbys decided to fight. After defeating the District in a preliminary summary judgment hearing on necessity, the Issaquah community rallied behind the Overbys. The issue was also the topic on a KIRO talk show. The District then voted to dismiss the case and compensate the Overbys for their expenses.

Question 14 continued:

Venera v. City of North Bend Gerald Venera was the fire chief of North Bend in the mid 1980s. After the election of a new mayor, he was terminated for alleged misconduct. We challenged the termination as being politically motivated, in violation of his civil rights as a vested member in the Civil Service and as an extreme measure in light of the allegations of wrongdoing against him.

The case required the filing of two Writs of Mandamus, against the City and the Civil Service Commission, required a 5 day Civil Service Commission hearing and a Superior Court review of one portion of the Commission's findings. A separate suit was also filed against the City.

At the conclusion of it all, Venera was reinstated to his position with full retirement and the majority of his back pay was returned to him.

The case was significant to me because of the diverse and unique issues it presented and the personal satisfaction at its resolution.

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

1. The most significant matter that I participated as an advocate was the case of City of Auburn v. Hedlund, 137 Wash. App. 494 (2007). The case itself involved criminal charges filed against the sole survivor of a terrible single car accident in which 6 young people were killed. I was asked to represent the estate of one of the passengers in the car, Jamie Vomenici. The key piece of evidence in Hedlund's aiding and abetting a reckless driver case was a video tape she was recording just moments before the car crashed into a freeway over pass support pillar. The tape was focused on the rear passengers in the car, especially Jamie, who was the only one in the car who had not been drinking. Jamie's parents did not want the tape shown or released to the public.

Prior to the trial commencing, television stations KCPQ, KIRO, KING and KOMO brought a motion to have the tape released. At the Superior court hearing, Dan Heid represented the City of Auburn's position and I presented the views of the Vomenici family. The court denied the request.

At trial, the municipal court allowed the four television stations to share one camera feed to record the proceedings. When it came time for the jury to view the video tape, I was asked to again present the concerns and viewpoint of the Vomenici family to not have the video recorded by the news stations. The municipal court ordered the cameras off during the viewing of the tape. I believe the tape is still under seal today.

The case was significant to me because of the personal nature of the proceedings and the impact on the individual members of all six families that were involved with the issues at trial. None of the other families were represented and each vented and shared their emotions with me as we sat through the testimony. They all thanked me for my efforts.

2. In the mid 1980s I represented a non-profit corporation called Washington State Protection and Advocacy Agency, also known as Trouble Shooters for the Handicapped. It was strictly on a pro bono basis. We assisted them in lease negotiations, grant applications, employment contracts and discrimination issues.

In 1984, 27 students of Rainier School, a special needs institution, were given passes to the Tacoma Tigers baseball game. The passes were for seats behind home plate. The Tigers general manager, Stan Naccarato, was unhappy with the presence of the students and forced their teachers to move them to the bleachers in right field. I was asked to represent the students and filed a complaint with the Human Rights Commission for the humiliation experienced by the group and the Tigers failure to provide public accommodation for the disabled. With the assistance of the Attorney General's office, the case settled with Naccarato issuing an apology, offering new passes and a monetary fine. The matter was significant to me as it made local and national headlines that helped educate the public to the rights of the disabled.

3. Also, within the representation of the Troubleshooters, we sued Metro for a practice they had established for providing free tokens to disabled, wheel chair bound patrons of the bus system. Under the program, disabled patrons of city transit were issued vouchers to ride the bus for free. Although known to the driver, if a patron had forgotten their voucher, the driver was instructed to leave the patron stranded at the stop. Although defeated in court, the case was important to us as it led to changes in the policy as soon as the case was dismissed.

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Educational Background

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

College/University: Gonzaga University
Dates of Attendance: 1973-1978
Degree: Bachelor of Arts

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

Law School: University of Puget Sound (Seattle U.)
Dates of Attendance 1978 – 1981
Degree: Juris Doctor

Professional Experience

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

We are an eleven attorney firm engaged in the general practice of law with emphasis on personal injury, criminal law, family law, real estate and estate planning. We represent individuals in the district court system on a regular basis.

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

Our client base, typically, are families in and around King County. Since it is a general practice firm, we are able to assist these families through a myriad of legal issues, be they home purchases, estate planning and probate, criminal law and family issues.

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

We prosecuted gross misdemeanor and misdemeanor cases for the cities of Medina, Hunts Point,, Duvall and Carnation for 9 years.

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

Regularly Occasionally Infrequently

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

Regularly Occasionally Infrequently

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

Regularly Occasionally Infrequently

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24. Career Experience

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

| | | |
|------------------------------|--------------|-------------|
| (1) Federal appellate courts | _____ | % |
| (2) Federal trial courts | _____ | % |
| (3) State appellate courts | _____ 1 | % |
| (4) State trial courts | _____ 10 | % |
| (5) Municipal courts | _____ 5 | % |
| (6) District courts | _____ 84 | % |
| (7) Administrative tribunals | _____ | % |
| (8) Tribal courts | _____ | % |
| (9) Other | _____ | % |
| TOTAL | _____ | 100% |

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

| | | |
|--|--------------|-------------|
| (1) Civil litigation (excl. family law) | _____ 25 | % |
| (2) Criminal litigation | _____ 75 | % |
| (3) Family law litigation | _____ | % |
| (4) Non-litigation | _____ | % |
| TOTAL | _____ | 100% |

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

| | | |
|---------------------|--------------|-------------|
| (1) Jury trials | _____ 5 | % |
| (2) Non-jury trials | _____ 95 | % |
| TOTAL | _____ | 100% |

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

| <u>Number</u> | <u>Court</u> | <u>% as Sole / Chief Counsel</u> | <u>% Jury</u> | <u>% as the Arbiter</u> |
|---------------|----------------|----------------------------------|---------------|-------------------------|
| 2 | Municipal | 100 | | |
| 187 | State Dist. | 17 | 7 | 83 |
| 59 | State Superior | 33 | 1 | 67 |
| 1 | Federal Dist. | Co-Chair | 100 | |
| | Administrative | | | |
| | Tribal Courts | | | |
| 1 | Other (JAMS) | 100 | | |

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

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| <u>Number</u> | <u>Court</u> | <u>% as Sole / Chief Counsel</u> | <u>% as the Arbitrator</u> |
|-------------------|----------------------|----------------------------------|-----------------------------|
| <u>2</u> | State Superior Court | <u>100</u> | <u> </u> |
| <u>6</u> | WA. Div. I COA | <u>20</u> | <u> </u> |
| <u> </u> | WA. Div. II COA | <u> </u> | <u> </u> |
| <u> </u> | WA. Div. III COA | <u> </u> | <u> </u> |
| <u>2</u> | WA. Supreme Court | <u>0</u> | <u> </u> |
| <u> </u> | Fed. Cir. COA | <u> </u> | <u> </u> |
| <u> </u> | U.S. Supreme Court | <u> </u> | <u> </u> |

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

1. Overby case cited in Answer 14 above. Opposing counsel were from Montgomery, Blankenship. One of the attorneys was Camille Ralston 206-682-7090

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

I represented a business client, Cain's Pressure Washer and Maintenance, in an unemployment compensation appeal. An employee was discharged for insubordination, denied unemployment benefits and appealed. The denial was upheld on appeal.

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

1. Service on the Issaquah Grange Board. The Issaquah Grange is a 76 year old, 4000 member, farmers' cooperative in Issaquah. I served on its volunteer board for ten years. I was President of the Grange for two of those years. During my tenure, revenues of the Grange went from approximately \$1.5 million dollars per year to \$4 million where it is today. Internally, the Board dealt with personnel issues, ground contamination remediation, insurance coverage issues and remodel financings all at a time when competitive stores were going out of business in Issaquah, i.e. Lowe's, Earnest, Henry Bacon and Eagle hardware.

I summarize this experience, in this section, as I believe I can assist the District Court, not only as a trial judge, but in the administration and budgeting of the \$26 million dollar King County District Court system.

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

Eastside Montessori School Foundation: I am a board member of this non-profit foundation that distributes scholarships to needy families desiring a Montessori education for their children. This activity appears to be governed by the Code of Judicial Conduct, Canon 5 (B), Civic and Charitable Activities and I do not intend on resigning from the Board.

Thunder Valley Hydroplanes, LLC. I am a share holder in Thunder Valley Hydroplanes. It has an ownership interest in an unlimited hydroplane. I maintain the records of the LLC and draft sponsorship contracts. During race weekends, my duties are radio communications with the driver. This activity appears to be governed by the Code of Judicial Conduct, Canon 5(A) Avocational Activities: "Judges may...engage in the arts, sports, and other social and recreational activities...". I will maintain my position on the crew however, I will resign my duties of contract writing and maintaining the records of the business.

O'Brien Investment Company. I am the vice president of O'Brien Investments. It is a family owned real estate and stock investment company started by my father and currently owned by my mother, sisters, brother and myself. My duties are leasing agreements and tenant relations. This activity appears to be governed by the Code of Judicial Conduct, Canon 5(C)(3), Financial Activities and Ethics Advisory Opinion 97-02. I will retain my investments in the company; however, I will resign as its Vice President and member of its Board.

OBryant Investments LLC. I am a shareholder in OBryant with two other partners. It purchases and leases rental properties. My duties are leasing agreements and tenant relations. This activity appears to be governed by the Code of Judicial Canons 5(C)(3) as well. I will maintain my investment in the LLC but resign as its managing member.

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

Eastside Legal Clinic Pro Bono Panel Attorney 1988-1990
Washington State Trial Lawyers Association 1984 – 1991

Judicial Interest and Experience

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

I can bring a balanced, impartial sense of decision making to the bench. In my practice as a defense attorney, I know what it means to assist someone facing the criminal justice system. I have also served as prosecuting attorney for four cities on the East side.

Having represented plaintiffs and defendants in private civil cases, in everything from personal injury claims to contract disputes, I again believe I have the experience to bring balance to the position.

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

First, I endorse the philosophy that the District Court upholds the current law. It holds individuals accountable for their actions. Second, I believe an attempt at treatment is recommended over penal punishment for most first time offenders. Having said that, I have seen the glow of pride in a defendant who has successfully completed a probationary counseling program, but have also sentenced defendants to maximum confinement for failed efforts at personal reform.

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

No

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

No

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

I have been a King County Superior Court Arbitrator for 23 years dating back to 1986. There are 43 billing records in our current accounting system. Older records have either been archived or destroyed and I believe I have heard over 70 cases.

I was first sworn in as a District Court Judge Pro Tem in 1991 and served in that capacity on a regular basis in Issaquah, Bellevue, Mercer Island and Seattle for 15 years. I have presided over bench trials, jury trials, motions calendars, felony arraignments, Small Claims and traffic ticket calendars.

In the mid 1990s, I also served as a Hearing Examiner for the Eastside Narcotics Task Force, adjudicating the right of the government to seize personal assets used in the facilitation or commission of drug crimes. I presided over seizure cases involving houses, automobiles and cash up to \$400,000.

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Community and Civic Activities

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

Rotary: I am a 23 year member of the Issaquah Rotary Club and have served as its president. From approximately 1999 to 2004 I served as the Rotary Run Race Chairman, coordinating our 10K race through the Salmon Days festival with city officials and the police department as well as the coordination of 80 volunteers. I also serve as the race day announcer in our Challenge Day Race, now in its 13th year, pairing disabled participants with able bodied drivers in Soap Box Derby races.

Issaquah Chamber: I am a 19 year member of the Issaquah Chamber of Commerce and have served on its Board of Directors and chaired its Legislative Affairs Committee. I continue to serve as the Chamber's Salmon Days Parade Announcer, as I have for approximately 15 years.

Issaquah Grange: The Issaquah Grange is a 76 year old farmers' co op in Issaquah. It has 4,000 members, boasts annual revenue of \$4 million dollars and is run by a volunteer board of directors. The Board is elected every three years by the members. I served on the Grange board for 10 years ending in 2004. I was President of the Board for two years during my term of office.

Eastside Montessori School Foundation: My term as a board member of the Eastside Montessori School Foundation commenced July 1st of this year. EMSF grants tuition scholarships to needy families seeking a Montessori education for their children.

Tastin' N Racin' Festival: I am the co-founder of the Tastin' N Racin' community festival at lake Sammamish State Park, now in its 15th year. TNR is a festival featuring hydroplane racing, food booths, arts and crafts, car shows and local bands that has grown to be the 2nd largest festival on the Eastside.