

King County Democrats

2018 Candidate Questionnaire

Judicial Level

Candidate Name	Justice Sheryl Gordon McCloud	
Position Sought	Position 9, Washington State Supreme Court (incumbent)	
Home County and Legislative District	Kitsap – 23 rd LD	
Campaign Contact Information	Mailing address: PO Box 20776, Seattle, WA 98102	Phone: 425-466-0619 Fax:
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Campaign manager or point of contact	Mary Ann Ottinger – 425-466-0619	
Consultant(s)	Same	

Part I – Candidate Background

Please briefly describe your qualifications, education, employment, community and civic activity, past union affiliation, and other relevant experience. Attach a resume with more complete history.

I have been a Washington Supreme Court Justice since January, 2013, and I am seeking re-election in 2018. During my first term as a Justice, I have participated in over 500 decisions made by the court and have authored many opinions that are of particular significance in Washington, including *State v. Arlene's Flowers*. Prior to my service on the bench, I was an appellate lawyer in private practice for nearly 30 years, arguing matters of significance before state and federal courts, including the U.S. Supreme Court. I also worked as a Public Defender for several years at the beginning of my career.

Education: B.A., State University of New York at Buffalo – 1976 –*cum laude*
J.D., University of Southern California Law Center – 1984

Past Union Affiliation: IBEW, 1976-77, Buffalo, NY (Markel Electric); UAW, 1977-78, Lockport, NY (Harrison Radiator).

Over the course of my career as a lawyer, and now as a Supreme Court Justice, I have engaged in many legal and community activities to improve access to justice in every forum:

1. ***Chair, Amicus Committee, Washington Association of Criminal Defense Lawyers, 1999-2012.*** In my long-time tenure as co-chair of this committee, and in my slightly shorter tenure as Vice Chair of the *Amicus* Committee of the National Association of Criminal Defense Lawyers, I had a hand in raising the level of criminal defense appellate and motions practice, particularly for indigent defendants, throughout the state. As co-chair, I stayed abreast of issues being appealed; shared those with trial lawyers so they can use that information in their practice; offered assistance with brainstorming, briefing, and even doing mock arguments; and also drafted, edited, and recruited authors and edited their work, when we submitted *amicus* briefs. We even reached across to WAPA on occasion to see if there were issues of common interest. This is a body of work that I believe has contributed to raising the level of appellate practice in our state. It was all

pro bono.

2. **Clemency Work:** Over the years, many former clients have stayed in touch with me while they serve their prison terms. Some want to know if any new legal developments could help them; but a few stay in touch to get advice about how to move forward in their lives, and to let me know that they are programming in prison, learning trades, getting good job reviews, participating in volunteer work, and maintaining family and community ties. I sought clemency for one such prisoner during Gov. Locke's term, on a *pro bono* basis, because I felt that his prison achievements were so outstanding that they might warrant leniency. Both the Board and Gov. Locke agreed, and the Governor granted clemency. My former client, Mr. Gardner, has been out, employed, and staying in touch with me ever since. As a result of this victory, I began taking on other deserving clemency cases and I have found this to be an immensely rewarding complement to my post-conviction practice. But it has also made me realize that a prisoner's chances of obtaining clemency are dependent on his ability to hire a lawyer, because counsel are not appointed for clemency hearings and because Clemency Board members are volunteers without staff or the ability to investigate potentially meritorious cases themselves. I have therefore worked towards trying to devise a network of *pro bono* lawyers, or a clemency clinic. In the meantime, I have had the opportunity to work closely with faith communities, community groups, and NAACP members and officers, on these cases. Perhaps my most notable success occurred when Gov. Gregoire granted clemency to an exceptional prisoner named Gerald Hankerson, who had been convicted of helping an aggravated murder in the 1980's. He remains free; employed; successful; attends school; and serves on volunteer committees. He is now the president of the Seattle King County NAACP and President of the Alaska, Oregon and Washington State Area Conference of the NAACP. My clemency presentation before the Clemency and Pardons Board on behalf of Mr. Hankerson, from June 7, 2006, can be viewed at the following link:

http://www.tvw.org/index.php?option=com_tvwplayer&eventID=2006060067.

3. I am the Supreme Court's liaison to the Washington Supreme Court Pattern Instructions Committee

4. I am the Court's member on the WSBA Commission on Public Defense.

5. I was an Adjunct Professor of Law at Seattle University School of Law from 1999 – 2007, teaching Appellate Practice, Death Penalty, and Post-Conviction Remedies. I designed the syllabus and examination for each class I taught.

6. Access to Justice – Gender Bias:

California Federal Savings & Loan Assn. v. Guerra, 479 U.S. 272, 107 S.Ct. 683, 93 L.Ed.2d 613 (1987). At the beginning of my career, I was invited to participate in *amicus* briefing before the U.S. Supreme Court on this case raising issues of employee rights and gender equality. The issue presented to the U.S. Supreme Court was whether a California statute requiring employers to correct employment policies that have a discriminatory effect on the procreative rights of working women was preempted by federal equal employment opportunity law. The California law, Cal. Gov. Code § 12945(b)(2), made it an unfair employment practice for an employer to refuse to grant reasonable leave to female employees temporarily disabled by pregnancy, childbirth, or related medical conditions. California Federal Savings & Loan Association and others challenged the law, claiming that it was preempted by federal law which prohibited differential treatment of men and women. Over a score of diverse women's, labor, lawyers', and other organizations, along with clergy, professors, and elected officials, appeared as *amici curiae* in support of the position advanced by respondents, that is, to uphold California's pregnancy disability leave law. Along with co-counsel, I represented *amici curiae* in the U.S. Supreme Court by submitting a brief supporting California's pregnancy disability leave law. We won. It was an inspiring way to start out.

At the request of the Ninth Circuit Gender Bias Task Force member Professor Judith Resnik, I researched and co-authored the Task Force's report concerning the effect of gender in the appointment of counsel under the Criminal Justice Act in the federal system, Advisory Research Group of the Gender Bias Task Force of the Ninth Circuit on Appointment of Private Counsel Under the Criminal Justice Act. Our extensive research on the effect of gender in Criminal Justice Act appointments in every district within the Ninth Circuit was a milestone. No one had ever collected this data in one place before. Our report has been shared with lawyers and judges throughout the country who are interested in conducting similar studies on the effect of gender in the distribution of indigent defense funds and services.

7. **Chair, Gender & Justice Commission:** As Chair, I oversee our committees and projects on various topics, such as incarcerated women and girls (including our very recent summit consisting of judges, DOC representatives, former prisoners, lawyers, and other advocates, on obstacles to parenting in prison); domestic violence (such as the recently completed update to the domestic violence benchbook); communications and outreach; education, primarily for judges and court personnel; and our Tribal-State Court Consortium (developing ties and fostering trust between the state and tribal court systems by addressing common needs and areas of concern).

8. **Gender & Justice Task Force Revisiting 1989 Gender Bias Study:** This is a significant project undertaken by the G&J Task Force, which I am chairing. In 1989, a Gender Bias Task Force published our first lengthy review of gender bias in the courts. It focused not just on the treatment of women in the courts, from litigants and the lower bench to lawyers, experts and judges, but on three clearly gendered areas of the law: violence against women (rape and domestic violence), divorce consequences, and civil damages awards. It drew the conclusion that bias existed in those areas, and made numerous recommendations for change to the courts, the bar, the legislature, law enforcement, and others. Almost 30 years have passed since that time. We have made a decision to be the first state to do a full review of not just how we've progressed in those previously identified areas, but also to focus on areas of concern to us now that are not necessarily considered gendered and that were not addressed before: access to justice for women in poverty, consequences of judicial decisions for women of color as well as women in poverty, and the differential impact of the areas studied on women of color and the LGBTQ population.

9. **Access to Justice – Indigent Clients:** I have served on the Board of the Washington Appellate Defender Association. I have served on the Criminal Justice Act Committee for the U.S. District Court for the Western District of Washington, overseeing appointed counsel performance and compensation to provide advice to the local federal bench. In private practice, I consistently accepted indigent appellate post-conviction appointments from the state and federal appellate courts.

I believe that the judiciary, like the rest of the Bar, has a role to play in enhancing equal access to justice. That involves all aspects of the job: treating litigants and advocates with dignity; being mindful of barriers to access, including lack of income, language difficulties, and lack of familiarity with the role of lawyers and the courts; and on the administrative side, being aware of the impact of practices that might discourage underrepresented populations from asserting or protecting their own legal rights, such as filing fees, attorney fees, and complex rules. While each individual case must be decided based on the facts and the law, the ultimate goal is to ensure equal access to justice for all.

10. **Lobbying for funding for legal services:** In 2016, I joined a delegation of lawyers from our state (including then Bar President Anthony Gipe and Past President Bill Hyslop and members of Northwest Justice Project) on a trip to Washington, D.C., to lobby our congressional delegation for funding for legal services for the needy in Washington.

11. **Mentoring New Lawyers:** I have taught at the Washington Leadership Institute to mentor new lawyers from diverse backgrounds on topics of relevance to becoming a judge. I also have a steady

stream of clerks and externs that I do my best to mentor.

Describe your history of involvement in Washington state politics. What offices have you previously sought election or appointment to? What campaigns have you worked on?

I have never been involved in politics and had never been involved in campaigns. Prior to my first election to the Supreme Court in 2012, I had never run for office.

What prompted you to run for this office?

I ran for office in 2012 because constitutional rights matter – and I had lengthy experience advocating for constitutional and individual rights to bring to the job. I also brought my appreciation for hard work, fair treatment, and an independent judiciary. My decisions, especially those on free speech, open courtrooms, privacy rights, civil rights, education, and access to justice, show that I have made an important contribution to the judiciary.

Many judges are under attack. I aspire to continue to be a judge who thinks independently and applies the constitution and laws fairly, no matter how unpopular that might be. I want to continue as a hard-working judge, a judge who values fairness to all regardless of resources, a judge who values our democracy and understands the separation of powers, and who mentors clerks, externs and others.

Describe the progress of your campaign so far. What kind of reception is your campaign getting? Are you running unopposed, or do you have an opponent? How will your campaign appeal to the voters?

I started actively preparing for my 2018 re-election campaign in May, 2017. I have a strong campaign committee that has been actively raising money to support my re-election since mid-January, 2018. I have had a successful campaign kick-off event and have a number of other fundraising events scheduled. To date, I have been endorsed by 158 sitting judges and 256 attorneys and many community leaders and elected officials. I am currently unopposed, but I take nothing for granted and have been actively campaigning. My campaign appeals to the voters because I have a strong track record of advocating for and protecting both constitutional and individual rights. One of the main messages of my campaign is the importance of an independent judiciary, and I believe that is a message that resonates with all voters, regardless of political affiliation.

Please answer the following questions.

		Yes*	No
1	Have you ever failed to pay any taxes or court ordered judgments?		X
2	Have you ever been found in violation of a Public Disclosure Commission, Federal Election Commission or Seattle Ethics and Elections Commission regulation?		X

* If you answered "Yes" to either of the above, please explain your answer:

Part II – Ratings and endorsements

What endorsements and ratings from bar associations have you received to date?

Bar Association ratings:	King County Bar Association – Exceptionally Well Qualified Loren Miller Bar Association of Washington – Exceptionally Well Qualified Latina/o Bar Association of Washington – Exceptionally Well Qualified Joint Asian Judicial Evaluation Committee – Exceptionally Well Qualified QLaw – Exceptionally Well Qualified Washington Women Lawyers – Exceptionally Well Qualified Tacoma-Pierce County Bar Association – Exceptionally Well Qualified Pierce County Minority Bar Association – Exceptionally Well Qualified Washington State Veterans Bar Association – Exceptionally Well Qualified Cardozo Society of Washington – Exceptionally Well Qualified Washington Association of Prosecuting Attorneys – Well Qualified
Endorsements:	See attached list which is current as of the date of this submission; however, most endorsing organizations are just now beginning their process. The most current list of endorsements can be found at: www.justicesherylmcloud.com .

If you have previously sought elected office, what notable endorsements did you receive?

See attached endorsement list from my successful 2012 campaign.

What other organizations are you planning to ask for an endorsement?

I intend to seek endorsement from all organizations that previously endorsed me and similarly situated groups.

Part III – Legal experience, technology, and court costs

Please describe your pro bono activities over the last five years.

As a member of the judiciary, I am not able to offer pro bono services to individuals or organizations as a practicing lawyer would. However, I am able to support other individuals and groups who are able to do this important work. As discussed above, I joined a delegation of legal aid lawyers and supporters to lobby our federal delegation for funding for legal services in Washington DC in 2016. I am a member of the Court Rules Committee, which addresses rule changes to further access to justice. I am the Court's member on the WSBA Public Defense Commission, which addresses access to justice for individuals charged with crimes in Washington. And as Chair of the Gender & Justice Commission, I am involved in educational, research, and collaborative efforts to address gender barriers to access to justice.

What law firms or public law offices (i.e. King County Prosecutor's Office) have you worked for? Have you served as a prosecutor or a public defender? Please include dates, and title for each position that you have held, as well as areas of law practiced.

I have never been a Prosecutor. I have served as a public defender, and after opening my own firm in 1989, I continued to accept court appointments to represent indigent criminal defendants in state and federal courts from time to time.

Legal Experience

Washington State Supreme Court Justice ~ 2013 – present

Law Offices of Sheryl Gordon McCloud ~ 1989 – 2013

Complex civil and criminal appellate litigation in State and Federal courts

Adjunct Professor of Law, Seattle University ~ 1999 – 2007

Staff Attorney, Seattle-King County Public Defender ~ 1986-88

Associate Attorney, Hufstedler, Kaus & Ettinger, Los Angeles ~ 1985-86

Law Clerk, Hon. Warren J. Ferguson, 9th Circuit U.S. Court of Appeals – 1984-85

Instructor of Legal Writing, University of Southern California Law Center ~ 1983-84

Research Assistant, Prof. W.D. Slawson, University of Southern California Law Center ~ 1982-83

Have you ever served as a mediator or arbitrator? (If so, please describe your experiences.)

No.

What do you believe are the most important qualifications for a judge or justice?

The most important qualifications for a judge or justice are fairness, independence, hard work, intellect, and the ability to listen. Fairness comes first, particularly in a system of elected judges, because it is the quality that forms the foundation for everything else. It is the quality that compels a judge to take the time to do their homework, to be willing to change their preconceived notions, to address new arguments, and to treat litigants, lawyers, and other participants in the system with respect. Independence is in stiff competition for first place, though – particularly in these times. Independence is the quality that compels a judge to check themselves to see whether implicit assumptions, alliances, or biases, or fear of losing their position, is improperly influencing how they address an issue. Both fairness and independence also force one to put in the background time and effort to fully review the record, research the record, and deliver a clear and well-reasoned decision.

Have you been a judge pro-tem? If so, what was that experience like? What did you learn from it? Have you completed the pro-tem training in King County? For which judges do you regularly pro-tem?

I have never served as a Judge Pro Tem; however, I have been a Supreme Court Justice since January, 2013.

Do you support making it easier for Washingtonians who are not members of the bar to access public records, particularly at the Superior/District court levels, where per-page fees are charged?

YES. Our state constitution guaranties the right to open access to the courts, and that includes our public records. User fees hamper access to many court facilities, including records. In recent years, however, we have taken significant steps to reduce that problem by updating our use of electronic databases. The key problem is that updating our digital tools takes money, and the judiciary does not control the budget. We have been advocating for additional funding to meet our basic need for updated computerized systems for years; the problem is most acute at the district and municipal court levels, which are probably our most underfunded and overcrowded courts.

Do you have any thoughts on how our courts should address the growing use of smartphones during court proceedings, particularly by jurors?

Yes, the Washington Pattern Instructions Committee is addressing this issue. I am the Court's liaison to that Committee. It is charged with the responsibility for drafting uniform jury instructions available to all Washington trial courts, at all levels, in all parts of the state, for all types of cases. The Committee is aware of problems caused by electronic and other media use by jurors, and is in the process of addressing it through jury instructions and the juror orientation video. The bottom line, of course, is that jurors must decide cases based on the evidence and argument presented in court – not based on individual electronic research or commentary.

Is Washington relying too much on court fees to cover the cost of operating our judicial system? How do you believe our courts should be funded?

Yes, Washington is relying too much on court user fees to fund the judicial branch. The judicial branch of government is equal in stature and importance to the legislative and executive branches. Despite the critical importance of the judicial branch, though, we are the branch that lacks budget power and lacks police power. That makes us dependent on the legislature for allocation of sufficient resources to operate. And although our courts do a tremendous amount with very little, the truth is that we are woefully underfunded -- especially in the district and municipal courts, who see the largest number of people. The lack of funding shows in their overcrowded dockets, their old and out of date equipment, their inability to hire law clerks or legal researchers, and the insufficiency of their security. Court user fees cover some of the shortfall. But it is contrary to a democratic government to rely on fees generated by taxing some of our most needy citizens as they try to access a government resource (the courts), for the purpose of resolving disputes in a peaceful manner. Instead, a democratic government should fully fund its courts in a way that makes it easier for them to serve people fairly and safely. That money should come from our state's general fund, not by taxing users who deserve service from our court system.

Part IV – Access to justice

If elected, how will you work to improve access to justice, particularly for communities and constituencies that do not understand the American legal system?

I will continue much of the work in favor of access to justice that I am already doing. As the Chair of our statewide Gender & Justice Commission, I have been involved in statewide projects ranging from education

of judges and the lower bench on easing access for underserved communities, to translating forms relating to domestic violence protection, to preparing written materials for judges and court users on various legal issues (to name just a few). As the Washington Supreme Court's representative on the Washington State Bar Association's Council on Public Defense, I have been involved in ensuring that poor people charged with crimes have fair and adequate resources and lawyers.

As a Justice, I teach seminars on a variety of topics, including seminars that encourage people of color to consider careers in the judiciary. And as a Justice, I have participated in our court's decisions barring trial court judges from imposing legal and financial obligations on convicted criminal defendants who cannot afford them; I have written decisions on the right of a criminal defendant to have access to an appointed lawyer and not always be forced to pay for that lawyer; and as a member of our Court's Rules Committee, I have participated in our adoption of a rule barring imposition of such costs on indigent appellants. And it's not only litigants who need a fair chance to get a fair shot at access to the courts. So do jurors. Along with my fellow Justices, I have struggled with whether jurors have been barred from service because of implicit bias against their race or ethnicity. There is much to do on this access to justice issue.

What does the phrase *Black Lives Matter* mean to you as a judicial candidate?

Black Lives Matter is a phrase that captures the fact that black lives have historically been treated differently in this country than white lives. It means that our country was built on a foundation of slavery, Jim Crow, prison contract labor, and racial discrimination, that we still need to address the impact of that history, and that no other group in our country shares that same history. Specifically, it means that most white lives have always mattered in this country. But black lives have not. And that is the problem that still needs to be addressed.

What do you see are the legal issues in the #timesup and #metoo movements?

The legal questions raised by these movements relate to how women's lack of power in the workplace causes all of the following problems: systematically lower wages, systematically lesser chances for advancement, systematic devaluing of women's contributions, actual assaults, and harassment. But that doesn't really capture what the movement means in context. In fact, these workplace issues were being raised when I started high school in 1968 (along with family and childcare issues, educational issues, health care issues, etc.). The principal legal issues at that time, about 50 years ago, were equal pay for equal work, explicit gender barriers to entry into certain trades and other jobs, exclusion of women from clubs and other institutions that were pathways to positions of power in employment, and stopping rape and assault inside and outside the workplace. Then, when policies that explicitly discriminated against women were increasingly eradicated, the next set of legal issues arose: equal pay for equivalent (but not completely equal work), toppling de facto gender barriers such as lack of sufficient family leave policies, ensuring appropriate health care and child care so that women could compete on an equal footing in the workplace, attacking discrimination in the workplace based on pregnancy, examining barriers to women taking on positions of power in industry and government, and stopping harassment at work that doesn't rise to the level of rape or assault. I would like to say that the movements now are addressing the next set of gender issues, but I don't think that's true. In fact, I think it is just a greater number of women becoming more involved and outspoken about the problems described above, centering on the workplace (rather than the family, or the home, or the religious institution, or the doctor's office, or the school).

There is one additional legal question that is raised by these movements, and that is the issue of due process - a protection that applies in legal proceedings and should also apply in campus proceedings. Complaints raised by women about unequal, assaultive, and harassing treatment should never be dismissed out of hand, as they often are. But responses and denials by alleged abusers should not be automatically

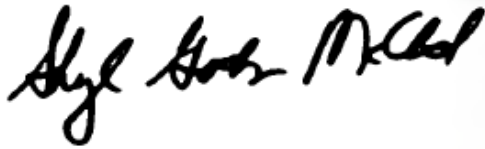
disbelieved, either. The point of the judicial system is for all parties to come in on an equal footing and have each case decided on the facts and on the credibility of the parties or witnesses, not based on predetermined presumptions about truthfulness of anyone.

What ideas can you offer to make our judicial system more open, transparent, and responsive?

The judiciary certainly needs to be aware of the values of openness, transparency, and responsiveness, by keeping court proceedings and records open and unsealed; by providing a forum for the voices in a controversy; and by giving a timely, understandable, and clear decision. But part of the problem with court scheduling and court costs is insufficient resources. Our trial courts, in particular, are burdened with high caseloads, outdated equipment, and few new resources. My idea is that the legislature should fully fund judicial operating costs.

I affirm that all the information provided in response to this questionnaire is true, complete and correct, to the best of my ability, and that no relevant matter has been omitted.

Signature



Date: March 6, 2018

Printed Name

Justice Sheryl Gordon McCloud