



CAPITOL INSIDER

OSB Public Affairs Newsletter for Bar Leaders

September 29, 2000

Trial Court Resources

The Joint Bar-Bench Committee on Trial Court Resources, also known as the "Gleaves Committee" on New Judgeships, recently completed its organizational work. On October 6 and 7, the committee will "interview" 15 presiding judges who have submitted requests that total approximately 30 new judgeships.

According to OSB President Larry Rew, "It is important to seek creative ways to look for alternatives to the old mindset of each judge having his or her own courtroom." The "Gleaves Committee" will likely play a role in this discussion. Although nobody's expecting a large number of new judgeships to be created next session, there is great value in having this committee assess resource needs and review local judicial district operations.

The committee also revisited the topic of referees. Although it does not favor requesting referees to perform any specific types of judicial work, this issue is likely to resurface next session. It is worth noting that the 1998 committee issued a minority report that outlined how the state could use nonelected employees as judicial officers. The judiciary and the public's elected representatives could have very different perspectives and positions on this issue.

For more information contact Vern Gleaves at (541) 686-8833 or Bob Oleson at (503) 431-6317.

Secrets of the Legislature CLE

On Thursday, December 7, 2000, Dave Barrows Associates and the Oregon State Bar Public Affairs Program will sponsor a one-day CLE workshop designed for attorneys who are "occasional" lobbyists or interested in the legislative process. (approved 6.5 MCLE credits)

The keynote speaker, Chief Justice Wallace P. Carson, Jr. will kick off the CLE. Lobbyist Dave Barrows will lead panel discussions with legislative leaders: Sen. Kate Brown, Sen. David Nelson, Sen. Rick Metsger, Rep. Lane Shetterly, and Rep. Max Williams.

The workshop will cover the 2001 legislative session:

- Lobby ethics;
- Lobby strategies;
- How to testify;
- How to overcome the attorney stigma; and
- Secrets of the Capitol Coffee Shop.

To register contact:
Lara Smith,
Dave Barrows Associates
Phone: (503) 227-5591
Fax: (503) 227-1781
Email: lsmith@teleport.com

Thursday, December 7, 2000
8:30 a.m. – 4:30 p.m.
Double Tree Hotel, Lloyd Center, Portland

State Court Facilities

One area of activity this past summer has involved a state task force on court facilities. Spearheaded by the Association of Oregon Counties (AOC), the group has found nobody willing to turn over to the counties a dedicated revenue stream to maintain facilities. Various participants have expressed reservations about a proposal to increase filing fees and place greater government costs on the backs of litigants.

Many counties are facing serious financial problems. Consequently, they are desperate to give up next biennium's financial burden of maintaining court facilities which has an estimated statewide price tag of up to \$100 million. In the face of a more serious state budget crises, legislators have shown little interest in the courthouse facilities problem.

It is important for local bar leaders to work with AOC on this issue, because some county commissioners are again threatening to block the creation of new judgeships until the courthouse facilities problems are solved. State bar leaders will continue to monitor and discuss the various fiscal items on the growing list of competing funding priorities.

Information to Share?

If you have information about a particular race or candidate, or if you have insights on any of the ballot measures, please let us know. Contact Bob Oleson at (503) 431-6317 or 1(800) 452-8260, ext. 317 or by email at boleson@osbar.org.

Budget Outlook Bleak

Interest groups dependent on state money and services are preparing their budgets for next session. At the same time, the governor is finalizing a very tight budget proposal for the Legislative Assembly. The state revenue picture remains bleak. The \$500 million dollar budget deficit forecast for the 2001-2003

biennium is likely to increase. Moreover, the state is in the process of resolving several lawsuits (overtime pay for state managers, retired federal employees, and disabilities wait list). that will reduce available state funds by at least \$200 million in 2001-2003.

It is expected that if some combination of the McIntire and Sizemore initiatives pass in November, it is likely that deep cuts in current and future state budgets will be required. In anticipation of that possibility, the Chief Justice and agency heads have been asked to prepare 30% budget reduction alternatives.

HOD Acts on Initiatives

The Bar's House of Delegates debated a number of resolutions before it on Saturday, September 23 at the Airport Sheraton. Probably the most volatile discussion of the day was on a resolution to support Ballot Measure 94 on the November ballot to repeal Measure 11 dealing with mandatory minimum sentencing requirements. After lengthy discussion, the House voted to amend the resolution to include reference to statewide forums to educate the public on the pros and cons of this issue. The House then passed the resolution.

The House also voted to oppose initiative measures 8 and 91 set for the November ballot. Measure 8 would limit state appropriations to a percent of state's prior personal income. Measure 91 makes federal income taxes fully deductible on state income tax returns. In addition, the HOD voted to reinstate the bar's Annual Meeting and voted down a proposal to further study and develop rules on Multi-Disciplinary Practice.

Indigent Defense Commission

The State Indigent Defense Commission is scheduled to meet with Oregon Criminal Defense Lawyers and the Oregon State Bar Task Force on Indigent Defense October 26

and 27 at Ottercrest. The purpose of the meeting is to discuss the future organization and delivery of trial level defense services in Oregon.

Council on Court Procedures

The Council on Court Procedures met on September 9 at the bar office to discuss potential changes to the Oregon Rules of Civil Procedure. After this meeting the council will provide notice of the proposed amendments in the advance sheets and will solicit comments with respect to those changes. A final vote on proposed changes will take place at the council's December meeting. After that time, a formal report and recommendations will be submitted to 2001 legislature.

Rule changes that the council is considering include the following:

- ORCP 7 D** Summons manner of service
- ORCP 21 A** Motion to dismiss
- ORCP 22 C** Third party practice
- ORCP 32 (N)** Class Action
- ORCP 34** Writs
- ORCP 44 A and 46 B and 55** Compelled medical exams and medical records
- ORCP 54** Dismissal of actions and compromise
- ORCP 58** Jury reform
- ORS 1.735(2)** Allows council to amend rule at final meeting and provide notice to members of bar within 60 days.

OLC projects

The Oregon Law Commission, chaired by Rep. Lane Shetterly with Sen. Kate Brown as vice chair, was created in 1997 to provide both academic and practice-based support for a few of the big, ongoing law revision and improvement projects. Responsibility for the day-to-day commission activities rests with Executive Director Dave Kenagy and Willamette University College of Law. According to Kenagy, the commission's charge is "reform, revision and law improvement." Since receiving funding from the Emergency Board this summer, the commission has been assured its ability to continue to pursue the

many important and complex projects currently underway.

A number of bar groups are directly involved in this work. There are currently 10 working groups made up of members from around the state as follows:

Civil rights – re: ORS Ch. 659 - Bill draft clarifies BOLI authority; clarifies procedures for administrative claims of unlawful discrimination and civil actions.

Conflict of laws - Codifies choice of law in contracts.

Elective shares/Community property - Consider Uniform Marital Property Act

Judgments/garnishments - Draft unified garnishment form and revise affected statutes to simplify process.

Judicial review of government action - Comprehensive statute and procedures for judicial review of government acts.

Juvenile law - Seven issues are under review: child support enforcement; tribal court transfer; juvenile court rules; termination of parental rights; post-adjudication relief; notice of appeal; consistent terminology.

Public bodies - Clarifies language regarding public bodies in ORS.

The commission will meet on the following dates: October 13, October 27, and November 17, 2000. For more information on OLC activities contact assistant executive director Michelle Mhoon, at (503) 370-6983 or by email at mmhoon@willamette.edu.

Digital Commerce Act

The Millennium Digital Commerce Act (Pub. L. No. 106-229), also known as the Digital Commerce Act, overwhelming passed both the US Senate (87-0) and House (426-4). President Clinton signed the bill into law on June 30, 2000. Oregon Senator Ron Wyden was one of the bill's cosponsors.

The bill will allow “consumers and businesses to sign contracts online and know that their e-signature is just as binding as one in ink.” Except as provided in the bill, the new legislation will be effective October 1, 2000. The bill does not clearly define “electronic signature.” An electronic signature could mean encrypted numerical codes or retinal scans.

Initiatives list

Eighteen initiatives have been certified by the Secretary of State for the November 7, 2000 election.

- Measure 1 Legislature must fund school quality goals adequately; report; est. grants.
- Measure 2 Creates process for requiring Legislature to review administrative rules.
- Measure 3 Requires conviction before forfeiture; restricts proceeds usage; requires reporting, penalty.
- Measure 4 Tobacco settlement proceeds restricted to providing low-income health care.
- Measure 5 Expands circumstances requiring background check before transfer of firearm.
- Measure 6 Provides public funding to candidates who limit spending, private contributions.
- Measure 7 Requires payment to landowner if government regulation reduces property value.
- Measure 8 Limits state appropriations to percentage of state's prior personal income.
- Measure 9 Prohibits public instruction from encouraging, promoting, and sanctioning homosexual, bisexual behaviors.
- Measure 91 Makes federal income taxes fully deductible on Oregon tax returns.
- Measure 92 Prohibits payroll deduction for political purposes without specific written consent.
- Measure 93 Requires voter approval of most new and increased taxes and fees.
- Measure 94 Repeals mandatory minimum sentences for certain felonies, requires resentencing.
- Measure 95 Job performance determines public schoolteacher pay.
- Measure 96 Prohibits making initiative process harder, except through initiative applies retroactively.
- Measure 97 Bans body-gripping traps some poisons; restricts fur commerce.

- Measure 98 Prohibits using public resources for political purposes.
- Measure 99 Creates commission ensuring quality home-care services for elderly and disabled.

Capitol Insider by E-mail Link?

On a trial basis, the Public Affairs Department is offering an electronic version of the *Capitol Insider*. E-mails will be sent to subscribers announcing that a new Capitol Insider edition is available online. In addition, the email will contain a direct web link to access the new edition.

If you would prefer not to receive the newsletter electronically, please contact Judy Coons, (503) 431-6376 or 1 (800) 452-8260, ext. 376. We will continue to fax or mail the *Insider* if you do not have an email address.

Public Affairs Mission

The Public Affairs Department works to apply the knowledge and experience of the legal profession to the public good by advising governmental bodies, proposing legislation for law improvement, and advocating on matters that affect the legal profession. The Public Affairs Committee (“PAC”) oversees these activities and makes recommendations on major policy issues. Co-chairs are Portland attorney Edwin Harnden and Medford attorney David Orf. Other members include Malcolm Scott, Eugene; Charles Williamson, Portland; Mary McCauley Burrows, public member, Eugene; and Joyce Cohen, public member, Portland.

Contacts

If you have questions or comments, contact the Public Affairs Committee co-chairs Edwin Harnden at (503) 276-2101 or David Orf at (541) 772-8494, or the Public Affairs staff at the bar office at (503) 620-0222 or (800) 452-8260. You can reach GR Assistant Judy Coons at ext. 317 or by e-mail at jcoons@osbar.org.