



CAPITOL INSIDER

OSB Public Affairs Newsletter for Bar Leaders

April 19, 2002

Judicial Department Update

By Bob Oleson

Numbers. Special session action significantly reduced the Judicial Department's 2001-2003 budget. SB 5575 includes an overall \$10.5 million reduction to the operations appropriation. On the surface, this amount represents a 4.3 percent reduction to the 2001-2003 biennium legislatively approved budget for operations. In reality, this is equivalent to a 6.7 percent cut. Excluded from cuts are budget items that are constitutionally mandated, such as judicial compensation and statutorily mandated assessments (*e.g.*, interpreter fees, jury costs, and unemployment costs). Because the reduction must be taken over the remaining months in the 2001-2003 biennium, it amounts to about a 10 percent reduction in operating funds for the remaining 14 months.

Stars. This result would have been far worse had it not been for the political struggle to achieve fairer treatment led by such lawyer legislators as Max Williams, Lane Shetterly, Rob Patridge, Kate Brown, and Peter Courtney. Also important is that these leaders worked with the state judges' association to protect its top priority: pay raises for judges.

Cuts. Judicial system operations will be impaired noticeably by the reductions. Many court staff positions will disappear in each region of our state. And certain courts will reduce hours of operation. Consequently, the overall system will become weaker and less uniform.

Indigent Defense. Another setback for a past State Bar priority was a \$12,353,663 reduction in the Indigent Defense Fund. This reduction, 7.5 percent over the biennium, will likely result in a reduction in contract capacity, which may be offset by reductions in prosecutions as counties adjust budgets to reflect reductions in state funding for prosecution resources and declining local revenues for prosecution and law enforcement

The Future. Reductions to the legislatively approved budget for the Judicial Department for 2001-2003 now put the judicial system at a disadvantage for the next biennium (major state agencies for the executive branch were treated much better). Remember that the kicker gets returned if the state budget is 2% over revenue projections. The reduced budget becomes the standard for future funding. Funding removed from the 2001-2003 legislative appropriation is not automatically restored for 2003-2005; many of the access to justice initiatives implemented

by the Department and the legal community are in jeopardy for years to come.

Upcoming elections. What the future Judicial Department budget will look like depends on the status of our economy and whether more court-friendly legislators are elected. Please pay close attention to this year's elections and state candidates. You can help make sure that legislators and our next Governor give fair treatment to the judiciary and indigent defense in 2003. Legislative candidates should be quizzed about how they will provide and pay for these important public services. It is also important for you and local county bar officials to keep a close eye on what happens to court related services in your community. We look forward to hearing about your local efforts.

Note: Background information used above provided by state administrators, opinions from Bob Oleson.

SB 1006: Judges and Courts

SB 1006 was passed during the first special session in February. The bill successfully maintained the six judicial positions included in the Oregon Judicial Department budget from the 2001 session. However, in order to do so, the bill delays commencement of three of the six positions. The terms of the first three judges begin in January 2003 in Jackson, Marion, and Yamhill counties. The second three begin June 30, 2003, in Multnomah, Wasington, and Deschutes counties. All are elected positions.

The bill also reduces juror fees beginning April 1, 2002, reduces third-day juror fees from \$50 to \$25, and reduces mileage to .20 cents per mile. Furthermore, the bill extends statutes of limitations to the next judicial day if the court is closed on the day that a statute of limitations runs.

SB 1000: Lien Notice

SB 1000, passed during the second special session in March, delays the effective date of the provisions of HB 3842 to January 2004. SB 1000 essentially suspends the cautionary lien notice requirements and eliminates any civil or criminal liability that may have accrued between January 1, 2002, and the effective date of this new legislation.

The legislation was suspended to allow further work on the mechanics of the process and language of the notice to ensure that both are workable. The original bill, HB 3842, would have required that all owners of real property give a cautionary lien notice to the buyer when the property is being sold. The purpose of the legislation was to educate a buyer of real property about potential lien claims that could be made against the property up to 75 days after the work is performed. The bill would have required all sellers or builders to provide the cautionary lien information to the buyer.

This consumer protection legislation was contemplated in response to an increasing number of incidents where innocent buyers have been held responsible for liens filed against an original developer or seller of the property. For a copy of the cautionary notice, see www.ccb.state.or.us or contact Senator Merkley's office at (503) 986-1416.

Gatti: DR 1-102

At a special OSB House of Delegates meeting in January 2002, a revision to DR 1-102 was passed regarding the *Gatti* issue. The purpose of DR 1-102(D) is to clarify that lawyers who supervise covert investigations involving deception or who advise the investigators about how to conduct such an investigation are not themselves violating the disciplinary rules. This new rule applies to

lawyers involved in federal and state criminal prosecutions or civil enforcement matters, as well as lawyers who work with housing or employment testers. The Legal Ethics Committee is drafting an opinion interpreting the rule in various situations.

Budget Leader Comments

On April 5, 2002, Jackson County lawyers joined members of OSB Board of Governors at a reception in Ashland. Legislative leaders from southern Oregon included Senator Lenn Hannon, Representative Rob Patridge, and Representative Cheryl Walker. Senator Hannon, a long-time friend of the judiciary, served last session as co-chair of the powerful Ways and Means (budget) Committee. He commented on the growing competition from educators and others for finite state resources. Hannon also referred to the limited contact between Oregon legislators and county bar association members, which makes it difficult to give a budget priority to the needs of Oregon courts. He urged local bar leaders to communicate with and educate their legislators. There are limits to what state legislators can do on their own.

HIPAA

SB 104, passed in the 2001 legislative session, established an advisory committee on the Privacy of Medical Information and Records to study the relationship between the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and state information privacy laws. The "104 Committee," chaired by former Senator Neil Bryant, is charged with recommending changes to state laws to conform to federal law and implement the act.

A variety of bar groups, the Council on Court Procedures, and other interest groups

have been asked to provide feedback to the 104 Committee to determine necessary changes to state law and the Oregon Rules of Civil Procedure. For more information, go to www.cbs.state.or.us and look for Insurance Division Advisory Committees or contact the Public Affairs Department at (503) 431-6376 or 1(800) 452-8260, ext. 376.

Antiterrorism Bill

On April 12, 2002, co-chairs of the Joint Judiciary Committee met to discuss antiterrorism. The purpose of the meeting was to discuss whether state laws need to be amended to help fight terrorism. A wide range of people participated in the meeting, including representatives of the Oregon Department of Justice, various law enforcement agencies, health care organizations, and the American Civil Liberties Union of Portland. The Joint Judiciary Committee is expected to draft several bills related to fighting terrorism for consideration by the 2003 Oregon Legislature.

Reciprocity

Tri-state reciprocity allows lawyers from Oregon, Idaho, and Washington to engage in the lawful multi-jurisdictional practice of law. Beginning in January 2002, Oregon, Idaho, and Washington lawyers may now apply for admission to practice law in any of the other two states in the three-state region without having to take their respective bar examinations.

The OSB and Board of Bar Examiners have been continuously addressing implementation issues of the tri-state reciprocity rule. These issues include malpractice coverage, continuing legal education, and the application of ethic rules.

For more information on reciprocity, see www.osbar.org.

Lawyer Candidates

The following lawyers are running for legislative seats:

Candidate	Party	Dist. #	Region
Bryan Johnston	D	SD 10	Salem
Peter Courtney	D	SD 11	Salem
Ken Crowley	D	SD 13	Hlsbr, Tigard
Charlie Ringo	D	SD 17	Beaverton
*Bill Witt	R	SD 17	Beaverton
**Bob Tiernan	R	SD 19	SW Ptld, L.O.
Kathy Lowe	D	SD 20	Oregon City
Kate Brown	D	SD 21	SE Ptld, not filed
*Dave Nelson	R	SD 29	Pendleton
Dennis Richardson	R	HD 4	Medford
Rob Patridge	R	HD 6	Medford
Floyd Prozanski	D	HD 8	Eugene
Phil Barnhart	D	HD 11	Eugene
Robert Ackerman	D	HD 13	Eugene
Jim Buchal	R	HD 18	Molalla
Dan Doyle	R	HD 19	Salem
Mike Swaim	D	HD 21	Salem
Lane Shetterly	R	HD 23	Dallas
Keith Parker	R	HD 28	Beaverton
*Betsy Johnson	D	HD 31	Astoria
V Brad Avakian	D	HD 34	Beaverton
Robert Steringer	R	HD 34	Beaverton
Max Williams	R	HD 35	Tigard
**Randy Miller	R	HD 37	Lake Oswego
Jim Zupancic	R	HD 38	SW Ptld, L.O.
Greg Macpherson	D	HD 38	SW Ptld, L.O.
**Katherine Cowan	D	HD 38	SW Ptld, L.O.

*Not admitted to Oregon State Bar

**Inactive OSB member

If you would like a complete list of candidates, please contact us.

New MCLE Rule (diversity)

The Supreme Court and the OSB Board of Governors adopted a number of changes to the MCLE Rules and Regulations for 2001 and subsequent reporting periods. MCLE Rule 3.3

on “Professional Responsibility” now incorporates a “diversity” requirement. The amended rule requires three hours of CLE activities pertaining to racial, ethnic, and gender bias and access to justice issues in the legal profession. This diversity requirement is effective for lawyers whose reporting periods begin on 1/1/2002 and thereafter.

May 1, 2002, Deadline

If your bar group intends to pre-session file proposed legislation for the 2003 Legislature, the deadline to submit the proposal(s) for BOG approval is May 1, 2002. Please note that due to special session activity this interim, this deadline has become more serious than in the past.

We strongly recommend pre-session filing because, in general, these bills are introduced and have hearings scheduled at the beginning of the legislative session. As a result, legislators and other groups have more time to consider the merits of the proposed bill. Educating new legislators and candidates about the pre-session filing process through the interim judiciary committee is more important than ever for the legal community and the public. If you have any questions, please contact the Public Affairs Department at (503) 431-6376 or 1(800) 452-8260, ext. 376.

OSB Public Affairs

The OSB Public Affairs Committee (“PAC”) oversees legislative activities and makes recommendations on major policy issues. Chaired by Hillsboro attorney John Tyner, other members include: James Brown, Salem; William Carter, Medford; Nena Cook, Portland, David Hytowitz, Portland; and Charles Williamson, Portland. Angel Lopez, OSB President, is also an ex-officio member of the PAC.

If you have questions on legislative issues, contact the Public Affairs Committee chair John Tyner at (503) 648-5591 or the Public Affairs staff at (503) 620-0222 or in Oregon at (800) 452-8260. You can reach Bob Oleson, Public Affairs Director, at ext. 317 or by e-mail at boleson@osbar.org; contact Susan Grabe, Public Affairs Attorney, at ext. 380 or by e-mail at sgrabe@osbar.org.