



CAPITOL INSIDER

OSB Public Affairs Newsletter for Bar Leaders

July 7, 1998

New Faces in Legislature

By Bob Oleson

Determining the outcome of the November general election in Oregon is more difficult than predicting the weather. During the months ahead expectations about these election results will determine political agendas while fueling battles over leadership and control of the legislature.

Why is it important to elect more

legislators friendly toward the justice system and the legal profession? Because there are a lot of important issues at stake, including the need to maintain an independent judiciary and to ensure continued state financial support for legal services to the poor. We should all talk to local legislative candidates and exchange information with each other.

Almost all of the lawyer candidates who survived the primary election now stand a good chance of being elected in November. At least some of these races should be among the ones in which you take a direct interest.

New Judges or Referees?

By A. Carl Myers

If the Legislature wants to use referees it must comply with the Oregon Constitution which means referees can only be used in limited types of cases, Vern Gleaves reported June 17 before the Senate Interim Budget Committee, chaired by Bend attorney Neil Bryant. In his statement before the Budget Committee, Gleaves gave an overview of the final report issued by the Joint Committee on the Creation of New Judgeships (referred to as "the Gleaves Committee") which was highly critical of the use of referees instead of elected judges.

The genesis of the Gleaves Committee report was a budget note to the Chief Justice from the 1997 Ways and Means Committee. The budget note instructed the Chief Justice to convene a task force to study the use of Judge pro tems and non-elected employee

Lawyer Legislator Candidates

HOUSE

Max Williams (R) Tigard, #9
Kathy Lowe (D) Milwaukie, #26
Andrea Hungerford (D) West Linn, #27
Loren Collins (D) Salem, #31
Kevin Mannix (R) Salem, #32
Lane Shetterly (R) Incumbent, Dallas, #34
Mike Lehman (D) Incumbent, Coos Bay, #47
Rob Patridge (R) Medford, #50
Judy Uherbelau (D) Incumbent, Ashland, #52
Vicki Walker (D) Eugene, #41
(Non-lawyer, Court reporter)

SENATE

Brad Avakian (D) West Portland, #3
Kate Brown (D) Portland, #7 (not running)

Randy Miller (R) Incumbent, Lake Oswego, #13
Peter Courtney (D) Salem, #17
Neil Bryant (R) Bend, #27 (not running)

judicial officers to meet future state court workloads.

The Gleaves Committee report firmly states that a class of non-elected employee judicial officers, or circuit court magistrates should not be created. The presentation to the budget committee emphasized the need to comply

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with constitutional requirements and to use referees only in limited circumstances with the agreement of the parties, for a limited duration with de novo review, because of the difficulties presented by the dual status as both judicial officer and Judicial Department employee.

While Budget Committee members listened closely and asked no questions about the report, it is clear that some legislators were not happy with the conclusions of the Gleaves Committee. In jurisdictions where a need for additional judicial resources is acknowledged it is likely that the legislature will fund referees rather than judicial positions. This is, in part, because some legislators view referees as a cost saving measure, while others see referees as more fungible than judges. In addition, there are a few legislators that want to minimize the independence of the Judicial Branch and view referees as more subject to control by the legislature.

The Gleaves Committee report, which has formally become a judicial conference recommendation, is expected to be controversial with some legislative leaders. More will be known about its future after the subject is addressed in a fall hearing before the Interim Judiciary Committee. Fortunately, Representative Lane Shetterly of Dallas is a key participant in both groups and should be able to help everyone begin to see the big political picture on this important set of inter-related issues.

New Judgeships

The "Gleaves Committee" will meet at the Capitol on July 25th to assess the need for new judges. The committee will continue to fine-tune the judicial weighting system used to accurately determine the need for new judicial officers.

Later the committee will meet with the dozen or so presiding judges who are requesting new judgeships. The committee timeline is to evaluate requests and issue a recommendation by the end of September. Beginning with the availability of potential funding and the strength of political relations, a number of other factors will determine the response of the 1999 Legislature.

If your county is affected you should confirm that local bar association leaders are part of this process because they can help make a big difference in Salem.

Central Administrative Panels

A gubernatorial task force is developing criteria to assess whether it is appropriate to use a centralized administrative law judge panel. Costs of changing the old system and maintaining the new one are being assessed by the same group. Representative Lane Shetterly, a Dallas attorney, intends to submit a bill in the 1999 Oregon legislative session that will put the Task Force's recommendations before the legislators.

At the end of the 1997 session Governor Kitzhaber vetoed HB 2948, which would have established an independent Administrative Law Judge (ALJ) Panel. At that time, he promised an interim task force, chaired by his legal counsel Chip Lazenby, would try to craft a compromise to address the problems of the bill. Chaired by Mr. Lazenby, that task force has been meeting regularly. Other members include attorneys Senator Kate Brown, Representative Lane Shetterly, and state agency representatives potentially affected by changes in the current system of use of in-house hearings officers by agencies.

Ballot Measure 40 invalidated

The Oregon Supreme Court unanimously held Measure 40 invalid in its entirety stating that it violated the Oregon constitution because it contained more than one constitutional amendment which must be voted upon separately. The court did not address any of the specific provisions of the measure. Because SB 936 put many of the provisions of Measure 40 into law, future court rulings will be necessary to determine the validity of individual provisions of the measure.

Civil Commitment Overhaul

Once again in Oregon legal and medical experts are trying to get their arms around that slippery thing called mental illness. This is the kind of thorny issue, amongst others, that the next legislature will be asked to deal with next session. A task force under the Attorney General and his Special Counsel are developing legislation to change the existing civil commitment process. (A rough draft of tentative proposals should be available in early August.) In addition to identifying additional resource needs, the ability to civilly commit mentally ill individuals and the confidentiality of relevant information are also under review.

Even before dealing with any implementation issues related to the civil commitment process, the diverse task force will continue to wrestle with important philosophical and policy questions. For example, to what degree can the coercive power of the state be used against the will of a person who has diminished mental capacity? Exactly how much of a right do these individuals have to be protected against state interference? How can resulting situations be better addressed when court orders are not followed? Can existing tools like guardianships and out-patient commitments be made more workable for those situations? Do judges need bigger hammers? better training? How big and expensive should the state safety nets be for non-dangerous individuals with chronic mental problems.

US Chamber of Commerce Assault on Lawyers

The U.S. Chamber of Commerce has unleashed a lobbying and advertising attack on lawyers. The chamber has asked its members to contribute money to the chamber to support an attack on tort and product liability laws and employee bias litigation. Other aspects of its agenda includes loser pay rules and judicial reform in states where judges are elected, requiring lawyers to recuse themselves if they have contributed to a judge's campaign.

In an effort to defuse this attack and find some middle ground for compromise, the ABA has developed a message platform for lawyers and bar associations to use in response.

The ABA's Proposed Message:

There are many things the Chamber and lawyers can do together to make the legal system work better:

- Support campaign finance reform
- Support filling federal judicial vacancies
- Call for merit selection of judges
- Call for increased use of alternative dispute resolution, where appropriate
- Educate the public about how to use the system correctly and the role litigation plays in consumer protection, product safety and the fair treatment of employees.

For more information on the Chamber's agenda or the ABA's response contact our office at (503) 620-0222, ext. 376.

Don't miss the HOD Deadline!

The deadline to submit resolutions for consideration at the September 26 House of Delegates meeting in Eugene is:

Aug. 28 for HOD (30 days)

Aug. 13 for other OSB members (45 days)

OSB Legislation

Bar groups have submitted their legislative proposals for the 1999 session. The package of bills was reviewed by the board's Public Affairs Committee and approved by the Board of Governors at its May meeting. The bills have been forwarded to Legislative Counsel's office for pre-session bill drafting

and filing. In all, bar groups have submitted some 35 bills for review:

OSB/PLF

Bob Oleson (OSB) (503) 620-0222, ext. 317

- Change due date for annual bar dues

PLF

Kirk Hall (PLF) (503) 639-6911

- Confidentiality issues in SLAC statute

Business Law

Dave Culpepper (503) 205-2513

- Changes to LLC Act
- Cross-entity merger legislation

Consumer Law

Dick Slottee (503) 222-6429

or Jay Cosgrave (503) 246-7900

- Attorney fees under Unlawful Trade Practices Act
- New Car Lemon Law
- Used Car Lemon Law changes
- Changes to the Unlawful Trade Practices Act and the Oregon Unlawful Debt Collection Practices Act
- Recoupment or setoff as defense
- Dealer title change

Criminal Law

Charles Kochlacs (541) 608-9122

- Expunge meritless or frivolous discipline complaints (referred to DRBR Committee)
- Adopt FRCP 11(a)(2) ability to accept plea bargain

Debtor-Creditor

Tom Stilley (503) 227-1111

- Consolidate lien record abstract/certificate requirements into ORCP 70
- Garnishment form change re: minimum wage

Estate Planning

Bernie Vail (503) 768-6656

or Cinda Conroyd (503) 364-7000

- Uniform Testamentary Additions to Trust Act
- Changes to Uniform Simultaneous Death Act,
- Notice regarding distribution of a revocable living trust
- Repeal common law marriage in intestate succession

Family Law

Tammi Dentinger (503) 581-1501

or Shawn O'Neil (503) 227-1515

- Repeal welfare reform sunset provisions (HB 2324)
- Modify class order support obligation once child ineligible

Adoption subcommittee

Robin Pope (503) 297-6150

- Extends notice requirement regarding consent to adopt

Juvenile Law

John Richardson (503) 391-1545

- Create commission to do comprehensive study of Juvenile Code

Real Estate Law

Dean Alterman (503) 222-353

- Amend statutory deed forms to include land use disclosure, ORS 93.040(1)

Land Use Law

Ken Helm (503) 797-1882

- Staggered LUBA ALJ terms
- Comprehensive cleanup of ORS Chapter 197
- Resubmit HB 2244 (1997) to require notice of adoption of amendment under ORS 197.615 contain certificate of mailing with date of deposit
- Amend ORS 215.416(11)(a) and 227.1745(10)(a) to eliminate notice requirement

Lawyer Referral

Jim Lucas (503) 324-0114

- Non-attorney expenses in indigent defense cases

Procedure and Practice

Vivian Raits Solomon (503) 219-8141

- Amend ORCP 39 to incorporate Fed rule and Multnomah County Depo guidelines(referred to CCP)
- Future medical liens
- Increase attorney fee cap from \$4,000 cap to \$7,500, ORS 20.080
- Amend ORE 609-1 to make foundation requirements consistent
- Create ORE 706 learned treatise exception to hearsay rule

Other law related issues

- Juvenile law changes re SB 689 and conformity with federal legislation
- Administrative law judge panels
- Gleaves Committee recommendations
- Family Law Legal Services Commission and courthouse facilitators to assist pro se
- Dangerous sex offender workgroup
- Civil commitment of sex offenders
- Redraft of civil commitment process (AG)
- Clergy-penitent privilege
- Independent Paralegals
- Accountant-client privilege (federal level)
- No Fault Vehicle Insurance(federal level)
- Status of IOLTA programs
- Judgment Lien Certificate fix

For the complete text of any proposal contact the OSB Public Affairs Department at (503) 620-0222 ext. 376. If you have questions feel free to call the contact person directly or Public Affairs staff. You can reach Bob Oleson at ext. 317 or by e-mail at boleson@osbar.org; contact Susan Grabe at ext. 380 or by e-mail at sgrabe@osbar.org.