



CAPITOL INSIDER

OSB Public Affairs Newsletter for Bar Leaders

May 12, 1999

Rising Star Profiles:

Two experienced lawyers who are new members of the legislature serve on the House Civil Judiciary Committee this session. They have both spent many hours assisting volunteers from various bar groups. Their wide range of knowledge and a steady stream of probing questions have already established them as powerful political voices. Unfortunately some key legislative committees have no lawyer members.

Max Williams

Max Williams (R) is a Bend native who now lives in (and represents) Tigard. His wife Gina is an accountant and they have two children. He is an attorney from the Portland firm of Miller, Nash, with a strong background in commercial litigation. Max was able to hit the ground running at the Capitol this year because he served as a counsel to the Senate Judiciary Committee in the 1995 session.

Kathy Lowe

Kathy Lowe (D) was born in Roswell, New Mexico, and is a long-time resident of Clackamas County who lives with her family in Jennings Lodge. Kathy has maintained a private practice for many years and is regarded as an effective community activist in the Oregon City area. There is no truth to the rumor that her spouse, Judge John Lowe, works as a file clerk in her legislative office.

SB 546: Minority Shareholders

SB 546 proposes a new solution to the problem of unresolvable conflicts between members of closely held corporations, who usually are family members or friends. This bill would authorize courts to grant equitable relief or dissolve closely held corporations when the reasonable expectations of any shareholder have not been met.

In addition, the proposed amendment to ORS 60.661 would open the door for judicial intervention if illegal, oppressive, or fraudulent conduct toward a shareholder, in his or her capacity as a director, officer, or employee, as well as a shareholder, has been established.

The author and proponent of this bill, Steve Naito, is a minority shareholder of the H. Naito Corporation, and has been involved in recent litigation regarding the family business. He believes this change is necessary to address inequities that minority shareholders face as a result of oppressive conduct of majority shareholders.

After extensive review and input from a variety of interest groups, including Steve Naito, the Business Law Section of the bar determined that pushing SB 546 in its proposed form through this legislative session would not be in the best interest of Oregon's legal and business community. Senate Judiciary Chair Neil Bryant, a Bend business lawyer has listened closely to concerns of this section.

The section has agreed to establish an interim task force, chaired by Professor Robert

Art of Willamette University, to study this issue. SB 546 author Steve Naito has agreed to serve on this committee. If you are interested in this proposed legislation, please contact Business Law Section chair Donald L. Kramer at (503) 224-5560 or dlk@bhlaw.com.

Although this bill has some momentum, it appears likely that an interim task force will be formed to work under the direction of the Oregon Law Commission. This will give all interested parties the opportunity to carefully study the bill with section input.

HB 2985: Vicarious Liability

Later this week the House Judiciary Civil Law Committee is expected to advance a new version of this bill. The original version of the bill, relating to the assumption of risk, has been replaced by a new concept that would limit the expansion of an employer's vicarious liability. Sponsored by Rep. Max Williams, the amendments are intended to address two recent Supreme Court opinions that could make it easier to sue employers for the bad acts of their employees. Legislators are concerned that liability for employers will be expanded beyond the sexual abuse scenario envisioned by those cases.

New language in the bill will probably attempt to undo the Supreme Court rulings. Former Republican lawmaker Kelly Clark won the right to proceed under an extension of vicarious liability on behalf of two sex-abuse victims. Clark believes that institutions of trust, such as the Boy Scouts and the church, should not be able to shield themselves from liability by simply claiming that they did not know the abuse occurred.

HB 2805: Anti-SLAPP Suit

HB 2805, sponsored by Rep. Kurt Schrader (D), from Canby, would prohibit "Strategic Law Suits Against Public Participation" or "SLAPP" suits. The bill is intended to protect citizen participation in public hearings, which most frequently arise in community development and land use cases. Proponents of HB 2805 claim that these defamation suits by well-financed interests are designed to intimidate or punish

citizens who exercise their free-speech rights at public hearings.

Opponents of HB 2805 have been successful in narrowing the original language of the bill. Thus, the bill would grant immunity from lawsuits to people participating in proceedings conducted by public bodies, but individuals would still be liable for making statements that they know to be false and that are not material to the issues under consideration. The bill would also require courts to expedite motions for summary judgment by defendants asserting this immunity.

HB 2805 also allows for punitive damages to discourage SLAPP-suit harassment. This bill has cleared the House Judiciary Committee and should be on the House floor soon. It has a fair chance to pass through the Senate and be signed into law. However, the land development community will probably continue its efforts to narrow the scope of the bill.

SJR 7: What's it Look Like?

The original version of the bill required Senate confirmation of judges. As a result of ongoing discussions regarding how legislative leaders want to change the system, nobody knows what shape the bill will take. The Senate Rules Committee has scheduled another work session Thursday evening (5/13) to discuss how the legislature can have a greater role in selecting judges. Sen. Derfler's Senate confirmation proposal is now competing with various ideas for a judicial selection commission, which would be dominated by the legislature. Call us next week if you want an update on the latest developments.

SB 1215: Covenant Marriage

SB 1215, a key priority for Sen. Marylin Shannon (R), from Marion County, establishes procedures for parties to enter into and to terminate covenant marriage. The bill would require the parties to receive premarital counseling and provide a notarized affidavit that such counseling has been obtained. Circumstances under which a covenant marriage may be dissolved include: 1) adultery; 2) commission of a felony and a sentence of

death or imprisonment at hard labor; 3) abandonment for one year; 4) physical or sexual abuse of the other spouse or child; and 5) separation for two years without reconciliation.

Supporters of this bill believe that entering into a covenant marriage is a voluntary act that will help provide more stability for families and result in fewer divorces. The OSB Family Law Section, on a split vote, has just decided to express reservations about the measure. The section has a variety of concerns with the bill, including the need to go to trial to prove one of the bases for divorce. This would not only increase the cost of a divorce but also further tear families apart. The section is also concerned that it could keep some families from leaving an abusive situation, thus encouraging domestic violence to continue.

However, this bill has passed out of the Senate Judiciary Committee and will be on the Senate floor for a vote by the end of the week, where it will probably pass.

Bills of Interest

Bill # Summary

SB 6: Financial abuse of elderly
SB 50: Increase attorney fee cap, ORS 20.080
SB 66: Creates Public Defense Services Commission
SB 76: Consolidates juvenile/family custody parenting time and support proceedings
SB 177: Employment discrimination cause of action
SB 268: Public body immunity for Y2K problems
SB 467: Notice requirement for land use decisions
SB 546: Minority shareholder protection
SB 841: Victims' rights
SB 937: Genetic privacy
SB 938: Electronic filing of proxy votes
SB 1007: Commitment of mentally ill person for 2 yrs
SB 1215: Permits covenant marriages
SB 1292: Prohibits jury trials in prison
SB 1315: Est. effective date of legislation
SJR 7: Senate confirmation of judges
HB 2226: Child abuse reporting
HB 2311: Statute of repose for prod. liability actions
HB 2321: MCLE exemptions for lawyer legislators
HB 2525: Central hearing officer panel
HB 2556: Public body immunity for Y2K problems
HB 2721: Summary judgment changes
HB 2985: Limits liability for vicarious liability
HB 3245: Private body immunity for Y2K problems

HB 3386: Statute of repose and power line injuries
HB 3430: Statute of repose and commercial products
HB 3595: Lawyer business tax jurisdiction
HB 3605: Limits Employer Liability Act recovery
HJR 87: Juvenile delinquency & crimes (M 40)
HJR 88: Jury trial (M 40)
HJR 89: Jury disqualification for nonvoter reg (M 40)
HJR 90: Bailable offenses and pretrial release (M 40)
HJR 91: Modifies admission of evidence rules (M 40)
HJR 92: 11 of 12 jurors can convict for murder (M 40)
HJR 93: Prosecution on compelled testimony (M 40)
HJR 94: Prohibits set aside of sentences (M 40)

How to Obtain a Copy of a Bill

If you would like to obtain a copy of a bill or determine its status, you can call the Legislative Access Line at (800) 332-2313 or you can access legislative information on the internet at <http://www.leg.state.or.us>.

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") is chaired by Salem attorney David Hittle. Other members include David Orf; Medford, John Tyner, Hillsboro; Larry Rew, Pendleton; Sarah Rinehart, Salem; Malcolm Scott, Eugene; Mary McCauley Burrows, public member, Eugene; and Joyce Cohen, public member, Portland.

Contacts

If you have questions or comments about this newsletter or legislative issues, feel free to contact the Public Affairs Committee chair David Hittle at (503) 581-2421 or the Public Affairs staff at the bar office at (503) 620-0222 or toll-free in Oregon at (800) 452-8260. 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; or contact Anastasia Meisner at ext. 358 or by e-mail at ameisner@osbar.org.