



CAPITOL INSIDER

OSB Public Affairs Newsletter for Bar Leaders

Holiday 1999 Edition

Interim Judiciary Committee

The Joint Interim Judiciary Committee met on November 15, 1999, at the State Capitol. Co-chaired by Sen. Neil Bryant and Rep. Lane Shetterly, the committee reviewed projects that it will address before next session. Along with the civil commitment process, judicial selection, and child abuse reporting, the committee will be reviewing diversion in domestic violence assault cases, sentencing in criminal cases, criminal appeal costs and procedures, and minority shareholder rights in closely held corporations.

The committee began with an overview of civil commitment process issues in Oregon. It has been over twenty years since the last major overhaul of the statutes dealing with civil commitment to state institutions. The invited speakers raised several problems with the current procedures and practices, and urged careful reform in this area. The committee agreed to continue this hearing process throughout the interim.

Committee staff reported on the judicial selection issue brought about by SJR 7 regarding changes in judicial selection. Draft language for a proposed constitutional amendment was distributed. (LC 84 is available on request.) The LC draft creates a Judicial Merit Selection Commission; the Governor must appoint judges from the commission's recommendations. Chair Bryant

suggested that the draft was a proposal intended to satisfy the legislative mandate of SJR 7 and, if passed, could appease proponents of more legislative involvement in the selection process. However, the committee was not prepared to discuss the draft details at that meeting.

Additional testimony from the proponents of SJR 7 and Hardy Myers, the Attorney General, is likely to be scheduled for a later meeting. This issue will be closely monitored by the bar, but it is unlikely major new developments will surface until the legislative leadership weighs in next session. In the meantime, it is important to consider whether the new proposal improves the current system of judicial selection.

Interim Judiciary Committee:

Sen. Neil Bryant, Co-chair
Rep. Lane Shetterly, Co-chair
Sen. Kate Brown
Sen. Ginny Burdick
Sen. Peter Courtney
Sen. Verne Duncan
Sen. David Nelson
Rep. Kathy Lowe
Rep. Kevin Mannix
Rep. Floyd Prozanski
Rep. Max Williams

Note: Rep. Shetterly, Sen. Brown, Rep. Lowe, and Rep. Williams and Sen. Courtney are the four lawyer-members expected to return next session.

The committee also circulated an LC draft

of a bill that addresses the issue raised by HB 2226 (regarding child abuse) from last session. That bill, dealing with mandated child abuse reporting found in ORS Chapter 419B, passed the legislature last session but was vetoed by the Governor. LC 44 contains the same general concepts as HB 2226, raising the statutory penalty and eliminating civil liability for failing to report, as well as making some additional acts subject to the reporting mandate. The committee took no action on the LC at that meeting. The draft may be modified later.

Judiciary Committee Schedule

February 23, 2000

April 26, 2000

June 21, 2000

September 6, 2000

Agendas will be developed within one month before the meeting date. Contact committee staff Bill Taylor or Anne Tweedt at (503) 986-1474.

The 2001 Legislature

Recent discussions with lobbyists and legislative leaders suggest that the 2001 session of the Oregon Legislature could be more challenging than ever before for the bar, the court system, and the legal profession. Limits to the number of terms that a legislator can serve and the resulting turnover in veteran lawyer-legislators, such as Neil Bryant, Judy Uherbelau, and Kevin Mannix, will exacerbate the problem.

Interim committee work by bar groups for the next session is critical to our success at the legislative poker table. It is essential that the bar maintain a visible presence at the capitol to help fend off attacks on the independent judiciary, equal access to justice and the judicial branch.

Civil Procedure Changes

The 1999 legislature made some significant changes in the law. New legislation took effect

on October 23, 1999, unless otherwise stated. Please note October 23 was a Saturday.

Changes to civil procedure rules made by the Council on Court Procedures (ORCP 7, 39, 47C, 55, 68, 70A) are effective January 1, 2000, and can be found in the *1999 Oregon Appellate Court Advance Sheets*, Vol. 2-3 (February 8, 1999). Changes made to the Uniform Trial Court Rules (UTCR 1.010, 1.040, 1.050, 1.150, 1.160, 2.010, 7.030, 13.040, 6.120) were effective August 1, 1999, and can be found in the *1999 Oregon Appellate Court Advance Sheets*, Vol. 11 (May 31, 1999).

Changes to the Oregon Rules of Appellate Procedure became effective January 1, 1999, and can be found in *1998 Oregon Appellate Court Advance Sheets*, No. 22. In addition, other changes to civil procedure were made by the legislature and can be found in the *1999 Oregon Laws Advance Sheets* published by the Oregon Legislative Assembly.

The Oregon State Bar CLE book, *1999 Oregon Legislation Highlights*, is available through the Oregon State Bar Order Desk, 503-684-7413 for \$60. Audiotapes of the Bar Convention CLE sessions on legislation and the CLE book are available for \$125.

The *Oregon Laws Advance Sheets* and the *Amended and Repealed Tables* can be ordered for \$90 from Legislative Counsel's distribution center in Salem at 503-986-1243. The *Oregon Laws Advance Sheets* contain all of the legislative changes. The softbound *1999 Oregon Revised Statutes* will most likely be available in February.

Oregon Law Commission

The Oregon Law Commission met December 1, 1999, at the Capitol to review the progress of its work groups, the program committee and the status of the funding for the commission's executive director. Currently the Oregon Law Commission has a number of ongoing work groups:

Juvenile code revision - Sen. Kate Brown
Elective shares – Prof. Bernie Vail
Judgments and garnishments - Rep. Max Williams
Civil rights - Jeff Carter
Public body issue – Prof. Bernie Vail
Conflict of laws – Prof. Dom Vetri
Trichotomy of landowner liability - Prof. Dom Vetri
Judicial review of government action – Atty. Gen.
Hardy Myers

The 1997 Legislative Assembly created the Oregon Law Commission to provide a continuous substantive law revision program. Chaired by Rep. Lane Shetterly with Sen. Kate Brown as vice chair, the commission works closely with the three law schools, the AG, and bar groups in achieving its objectives.

The next meeting of the Oregon Law Commission will be March 3, 2000. If you have questions or are interested in the progress of these work groups, contact committee staff Bill Taylor at (503) 986-1485 or Dave Heyndrickx at (503) 986-1243.

OSB Legislative Process

May 2000 deadline for OSB section and committee bills

If your bar group intends to pre-session file proposed legislation for the 2001 Legislative Session, then the deadline to submit the proposal(s) for BOG approval is **May 1, 2000**.

Yes, it's true. Even though we just finished the 1999 Legislative Session, we are encouraging bar groups to meet the pre-session filing deadline. 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. This approach has been successful in the past.

What is law improvement?

In general, bar groups are encouraged to participate in law improvement activities.

This includes proposing legislation to:

- clarify statutory ambiguities;
- modify “glitches” in major legislation passed in previous sessions; or
- codify case law.

In addition, bar groups are also encouraged to provide neutral technical analysis of proposed legislation to the Legislature through oral testimony or letters. And remember, routine law improvement measures often become major policy issues. Procedural change to one person is policy change to another.

Positions on bills, rules etc.?

OSB sections and committees must receive approval from the BOG Public Affairs Committee before taking any position on proposed legislation. *See BOG Policies, Chapter 11, Legislation and Public Policy.* These written requests must include the intended position of the group and an explanation of how this position is appropriate under the legislative guidelines established by the BOG. *Id.*

Measures Referred by the 1999 Legislative Assembly

The 1999 legislature referred a number of measures to the voters. Below is a list of measures and dates for upcoming elections.

May 16, 2000, Primary Election

- Measure 77 (SJR 1): allows adjustment in local taxing districts
- Measure 78 (SJR 3): extends deadline for I & R signature verification
- Measure 79 (HJR 21): modifies signature requirements on state I & R
- Measure 80 (SJR 11): allows motor vehicle fees and fuel taxes to be used for policing highways
- Measure 81 (HJR 2): allows legislature to limit damages in civil actions

Nov. 7, 2000, General Election

- Measure 83 (SJR 2): extends eligibility to receive veterans' farms or home loans

Measure 84 (SJR 39): state must continue paying local governments for state-mandated programs
Measure 85 (HJR 28): allows formation of county
Measure 86 (HJR 17): returns excess general funds to taxpayers
Measure 87 (HJR 52): zoning of sexually oriented business
Measure 88 (SB 535): increases from \$3,000 to \$5,000 the allowable deductibility of federal income taxes
Measure 89 (HB 2007): dedicates use of tobacco settlement money by legislature

UCC Revised Article 9 Secured Transactions

A workgroup to review proposed UCC Article 9 revisions for introduction to the 2001 legislature is underway. Anyone interested in this endeavor should contact the bar office at 1(800) 452-8260 or (503) 620-0222, ext. 376.

legislative information and links at your fingertips. Please let us know your suggestions for ways to make the site more useful.

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 toll-free in Oregon at (800) 452-8260. You can reach Bob Oleson at ext 317 or by e-mail at boleson@osbar.org; Susan Grabe at ext 380 or by e-mail at sgrabe@osbar.org; or Anastasia Meisner at ext. 358 or by e-mail at ameisner@osbar.org.

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. It is co-chaired by 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.

The Web

You can access legislative information, the text of bills, and background information from staff measure summaries to bill history through the archive on the internet at <http://www.leg.state.or.us>. In addition, please visit the OSB homepage at www.osbar.org. The Public Affairs Department has useful