



The Capitol Connection

ADMINISTRATIVE OFFICE OF THE COURTS • OFFICE OF GOVERNMENTAL AFFAIRS

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Legislative Calendar

Legislature Reconvenes
December 6, 2004

HOWARD NAMED NEW DIRECTOR OF AOC'S OFFICE OF GOVERNMENTAL AFFAIRS



Kate Howard, Director Office of Governmental Affairs.
Photo: Russell Stiger

Kate Howard was named to succeed Ray LeBov as the Director of the Administrative Office of the Courts' Office of Governmental Affairs (OGA), effective Monday, October 18, 2004. OGA directs the Judicial Council's legis-

lative advocacy program for the California courts.

The appointment was announced at the October 15 meeting of the Judicial Council by William C. Vickrey, Administrative Director of the California Courts. Mr. LeBov, who has headed OGA since 1991, will retire from state service and continue his legislative advocacy career in the private sector.

Ms. Howard, Assistant Director of OGA, has been employed by the AOC since 1990,

and worked in the legal and finance divisions before joining the staff of OGA in late 1993. She has been responsible for coordinating the development of Judicial Council-sponsored legislation on a wide range of issues affecting state courts since 1997.

"I am very pleased that William Vickrey, Administrative Director of the Courts, has selected Kate Howard as the new Director of the AOC's Office of Governmental Affairs," said Chief Justice Ronald George. "For several years, Kate has played a leadership role in that office and has served as an excellent representative of the judicial branch. It has been a pleasure for me and for the entire Judicial Council to work with her, and I know she will continue OGA's close and cooperative relationships with the Governor's office and with members of the legislative branch. I look forward to working closely with her to further our branch's ef-

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BENCH-BAR COALITION ANNOUNCES NEW LEADERSHIP AT STATE BAR ANNUAL MEETING

Bench-Bar Coalition (BBC) members worked through an ambitious agenda at a standing-room only meeting during the State Bar's annual conference in Monterey. Judges and leaders from state and local bar associations, legal service organizations, and justice community coalitions met for two hours on October 8 to begin planning for the next legislative session and to formally introduce the new Bench-Bar Coalition leadership team.



BBC 2004-05 leadership and honorees, from left: William Vickrey; Sen. Chuck Poochigian; Anthony Capozzi, BBC Co-chair 2004-05; Miriam Krinsky, BBC-Co-chair 2004-05; OGA Director Ray LeBov; James Fisher, BBC Chair 2003-04. Photo: Howard Watkins

Chief Justice Ronald M. George mingled with coalition members before being formally introduced by BBC Chair James I. Fisher. Chief Justice George stressed the critical nature of the BBC's role in supporting the Judicial Council's strategic and operational goals, and thanked them for their active participation during the 2003-04 Legislative Session. Citing the effectiveness of the BBC's 2004 "Day in Sacramento" and the imminent arrival of nearly 30 new legis-

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JUDICIARY COMMITTEE CHAIRS COMMENT ON THE 2003-04 LEGISLATIVE SESSION

This month, *The Capitol Connection* looks back on a historic year that witnessed a change of leadership in the executive branch midway through legislative session. We invited the chair and vice-chair of the Assembly Judiciary Committee to share their perspectives on the impact of these changes on the legislative process and on matters affecting the judicial branch.

HON. ELLEN M. CORBETT, CHAIR,
ASSEMBLY JUDICIARY COMMITTEE



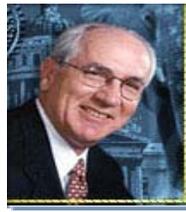
As I begin to look back on my years in the Assembly, it is already quite clear that my tenure as Chair of the Assembly Judiciary Committee has been one of the most rewarding, and of course challenging, experiences I have ever undertaken. In this leadership role, I was given the opportunity to spearhead a number of measures to improve our civil justice system and, most importantly, maintain needed court resources and preserve critical access to our justice system in these budget-challenged times. My watchword throughout my term as Judiciary Committee Chair has been providing the less fortunate and the less able whatever tools we can to give them the best chance to navigate our increasingly complicated and expensive civil justice system.

I have also been gratified to be able to lead efforts to bring greater fairness to our ever-expanding private judging industry. One of my bills sought to bar the unfortunate practice by some employers of forcing employees to involuntarily waive the protections of our civil rights laws in the workplace. Unfortunately, I will have to continue my efforts on this important issue in the future because, even though the bill passed both houses of the Legislature, it was vetoed by the Governor.

Another area of great concern for me has been shoring up the civil rights of all Californians, regardless of their skin color, disability, gender, or other unique qualities. I have worked especially hard to eliminate illegal discrimination. For example, I have sought to increase the minimum statutory penalty for violating the Disabled Persons Act to encourage stronger efforts to help those with disabilities. I also successfully authored a measure rejecting a misplaced court of appeal decision that held employees in California are not protected against workplace sexual harassment perpetrated by customers, vendors, and other third parties. Harassment of all types simply must be stamped out once and for all in this great state of ours, and I have truly been honored to be

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HON. TOM HARMAN, VICE-CHAIR,
ASSEMBLY JUDICIARY COMMITTEE



Legislators must restore the voice of the people to the state Capitol. It's time to get serious about solving the many pressing issues facing our state, such as creating new jobs, improving education accountability, creating new judgeships to keep up with the state's growth and stabilizing the economy.

There is hope. Despite the ongoing reckless spending and irresponsible policymaking by the majority party, Gov. Arnold Schwarzenegger is moving forward on his promise to reform government.

Among his promises was a commitment to thoroughly review state government. Shortly after his election, Schwarzenegger commissioned a board of experts to comb through government to identify waste, fraud and abuse in state spending. The result: the California Performance Review report, with more than 2,500 pages of findings and suggestions to improve efficiency, productivity and quality.

In a statement about the Performance Review, the Governor said, "We can begin to eliminate the fat within the government, but we need to go a step further - we need to make permanent changes in how the state does business."

The review committee came up with more than 1,200 recommendations, with a potential to save hard-working taxpayers approximately \$32 billion in state costs over the next five years. This is the type of reform measure that gives Republicans hope that change is coming.

Reflecting on the last legislative session, Republicans were able to negotiate a number of positive new laws including protections for local government funds, significant increases to education and public safety funding, revisions to a bad business law, important changes to Megan's Law and money for desperately needed transportation projects.

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A LOOK BACK: REFLECTIONS FROM RAY LEBOV

Next month, former OGA Director Ray LeBov will leave state service after 30 years. *The Capitol Connection* is pleased to be able to mark the occasion by asking Ray to reflect on his 13 years representing the Judicial Council in Sacramento.

Capitol Connection: How has the standing of the Judicial Council and the judiciary changed with the other branches of state government?

LeBov: For a number of reasons, the Council is much more central to the decision-making process in Sacramento. Among other things, I attribute the progress to the Chief Justice's leadership and Bill Vickrey's vision and, I like to think, to the efforts of our Office of Governmental Affairs. Additionally, the maturation of the branch in terms of its understanding of the political and other dynamics in Sacramento has been critical.

The contributions of our partners in the justice system have also been essential. For example, many judges and lawyers have worked diligently through the Bench-Bar Coalition to help bring the message of fairness and access in our courts to the legislative and executive branches. One other key aspect of maturation is the ability and willingness of the judiciary to "speak with a single voice." The branch has demonstrably heeded Senate Judiciary Committee Chair Martha Escutia's warning that to do otherwise would result in our being ignored. One example is that the last three times that new judgeships were created, the other branches deferred to the council's ranking of comparative need among the courts of the state. If some courts had not been willing to support the statewide agenda, it is clear that there would not have been any positions created for any court.

Capitol Connection: How did your 16 years of experience as counsel to legislative committees, including the Assembly Judiciary Committee, prepare you for your role as director of the Council's Office of Governmental Affairs?

LeBov: When I started my first job in the Capitol 30 years ago, I felt as though I had landed on a strange planet. I quickly figured out what I knew regarding the culture, mores and workings of the capitol: next to nothing. I then made the best decision of my career: to be a sponge. I closely observed who succeeded here and why they were successful as well as learned the reasons why others failed. The incorporation of the knowledge gained through that process is really what prepared me best.

On another level, my legislative staff career enabled me to learn the subject matter and the "rules of the game" and to develop important personal relationships with legislators, staff, lobbyists and others.

Capitol Connection: What are the most significant accomplishments during your tenure with the Administrative Office of the Courts?

LeBov: It has been an incredible 13 years of positive changes. The most important is state trial court funding which has had so many dramatic positive impacts: equal access, statewide policies, funding and budget stability, and elimination of the goofy dual-funding responsibility between state and county government. Other important accomplishments include trial court unification, the Court Facilities Act, "one-day, one-trial" jury legislation, and the Trial Court Employees Governance and Protection Act.

Capitol Connection: What qualities are necessary to be an effective legislative advocate?

LeBov: Nearly everyone correctly cites subject matter knowledge, knowledge of the rules and workings of the Legislature, credibility, integrity, resourcefulness, flexibility and "people skills." One particularly insightful former OGA employee adds "patience and timing." It is critical not only to do the right things but also to be sure to do them in the right order and at the right time. Phil Jackson said it best in his book *Sacred Hoops*: "The farmer who's so eager to help his crops grow that he slips out at night and tugs on the shoots inevitably ends up going hungry."

I would add that the best advocates are outstanding at all four components of the job: diagnosis, analysis, strategy, and implementing tactics.

Capitol Connection: How did term limits affect your approach to advocacy?

LeBov: For us it has been a two-edged sword. Pre-term limits, the concentration of legislative power meant that we had to persuade only a few people: generally legislative leadership and committee chairs. Most of the other members, willingly or not, deferred to them on most issues. This often meant that leaders saw an opportunity to "leverage" us, sometimes on completely unrelated issues, before they would agree to support our initiatives. Today, the opportunity to do that has diminished. So the job is more difficult in that there are many more people to inform and persuade, but the plus side is that the process

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JUDICIAL COUNCIL-SPONSORED LEGISLATION SIGNED BY GOVERNOR

Among the hundreds of bills signed into law by Governor Schwarzenegger in September were two bills co-sponsored by the Judicial Council – AB 129 by Assembly Member Rebecca Cohn, and AB 3079, by the Assembly Judiciary Committee.

AB 129, which was co-sponsored by the Children's Law Center of Los Angeles, will authorize counties to implement dual-status protocols to allow children under the jurisdiction of the juvenile court to be dependent children and delinquent wards simultaneously. Under existing law, when a child meets the statutory definitions for both jurisdictions, the court must designate one status for the child as concurrent jurisdiction is expressly disallowed. This approach has some significant limitations that make it difficult for the juvenile court to fulfill all aspects of its statutory mission. For example, when a dependent child commits a delinquent act, and it is determined that the child needs to be under the management of the juvenile justice system, it is necessary to terminate the court's dependency jurisdiction. If that child then completes the terms of their probation, but still cannot be safely reunified with their family, it is difficult to return that child to the child welfare system.

AB 129 authorizes counties to implement new approaches to these cases, as long as these approaches do not result in duplicative case management. As a result, counties would be able to provide a streamlined approach to the management of these children, and ensure that all of their needs are appropriately addressed. In order to document the results of this change, the bill requires the Judicial Council to evaluate the implementation of the new protocols, and to report its findings and recommendations to the Legislature within two years. Staff at the AOC's Center for Children, Families

and the Courts are currently working on an evaluation plan, and were encouraged by the Governor's signing message, which directed the Department of Social Services to implement the programming changes necessary to track these cases in its case management system.

AB 3079, which was co-sponsored by the California Judges Association, contains numerous provisions designed to increase the efficiency of the courts, improve the handling of juvenile cases, and make necessary technical adjustments to existing law. Most notably, it would authorize courts to compensate retired subordinate judicial officers similarly to retired judges and retired county employees, and provide for the extension of temporary restraining orders that would expire because an emergency court closure prevents a hearing on the permanent order.

In addition, AB 3079 eliminates appellate filing fees in mental health conservatorship proceedings under the Lanterman-Petris-Short Act in both the Courts of Appeal and in the California Supreme Court, and makes clear that the exemptions from appellate filing fees in juvenile cases and in cases seeking freedom from parental custody or control apply in both the Courts of Appeal and the Supreme Court. These changes are designed to eliminate confusion, and are not expected to impact revenue collections.

Four other Judicial Council-Sponsored bills were signed in 2004: AB 1306 (Leno), AB 3078 (Assembly Judiciary Committee), SB 246 (Escutia), and SB 749 (Escutia). ■

REFLECTIONS

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focuses much more on the merits of issues than on extraneous considerations.

Capitol Connection: What changes would you like to see in Sacramento?

LeBov: Acknowledging that the system currently functions pretty well and the political impossibility of what I would propose, I believe that a comprehensive package that includes open primaries, fair redistricting, more realistic term limits, elimination of the 2/3 vote requirement for the budget, and elimination of budgeting by initiative would

greatly enhance the process.

Capitol Connection: What are your post-AOC plans?

LeBov: I will continue my career as an advocate in Sacramento in some capacity, probably in the private sector. I intend to stay involved in some of the same important issues and certainly will strive to maintain the great friendships that I have been fortunate to have with so many people in the judicial branch. ■

HON. ELLEN M. CORBETT

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able to be a part of that march.

I am also pleased to have been the author of a number of measures protecting the privacy rights of Californians. For example, one of my measures provides members of the State Bar with the ability to limit the sale or disclosure of their personal information. Another bill prohibits rental car companies from using global positioning systems to track renters and impose fines on them. I also authored a measure helping to prevent telemarketers from charging consumers for products or services without the consumer's knowledge or consent. Our privacy rights are terribly threatened, and we must sprint to try to preserve at least the most cherished parts of our private identities.

Finally, I authored a measure which seeks to add new protections in the law to keep children from suffering damaging emotional or psychological abuse. Though not yet successful, this effort reflects my deeply held commitment to make sure those least powerful in our civil justice system, our children,

are provided greater consideration and protection. Regardless of where my road now takes me, I will continue to fight for such needed civil justice reforms, for in the end, I have always agreed with the comments of President Theodore Roosevelt when he said "Far and away the best prize that life offers is the chance to work hard at work worth doing."

It is my hope to continue this work in the Senate. I am running for the Senate in District 10. I plan to stay involved in my community in the time leading up to the election by teaching classes in government. My goal is to share the knowledge I have acquired and provide insight on how the legislative process works to inspire others to get involved and make a difference.

Assembly Member Corbett (D-San Leandro) represents cities in the East Bay Corridor. She has been a member of the Judicial Council and departs the Legislature in December 2004 due to term limits. ■

HON. TOM HARMAN

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Through our efforts, we were able to craft a budget and negotiate important legislation that is a step in the right direction. Following are a few key Republican victories:

- "Sue Your Boss" Law: Revising California's "Sue Your Boss" law is a necessary step toward improving our state's business climate and opening California for business again. Signed in the final days of the Davis administration, Senate Bill 796 created an environment where businesses, school districts, non-profits and local government could be subject to multi million-dollar judgments for minor employer violations, such as not having current posters or the correct font size on notices. Revising the "Sue Your Boss" law has been an important priority for legislative Republicans from the moment it was enacted. Revising Senate Bill 796 was a common-sense solution that will help stimulate the state's economy.
- Megan's Law: Republicans successfully negotiated several significant changes to Megan's Law, including the addition of home addresses in the registry database for the worst offenders. However, there's still much more to do to make certain that Californians have the necessary tools to protect themselves, their children and their communities from dangerous sex offenders. Assembly Republicans

will continue to fight for permanent and more substantive changes to Megan's Law. More than 40 other states and the District of Columbia have placed sex offender information on the Internet. California is a leader in Internet technology, was a leader in passing Megan's Law in 1996, but is decidedly behind the curve on making this information available online.

I've already mentioned the Governor's commitment to reforming government, as demonstrated by the California Performance Review (CPR). The Governor presented the initial findings of the CPR in a 2,500-plus-page report. You can view the report at www.cpr.ca.gov.

We've made some progress, but there's still more to do. It's time to get serious about solving the many pressing issues facing our state, such as creating jobs, improving education accountability, creating new judgeships to keep up with the state's growth and stabilizing the economy.

Assembly Member Harman (R-Huntington Beach) represents portions of Orange County including the cities of Anaheim, Cypress, Los Alamitos, and Seal Beach. He was elected to the State Assembly in 2000 and is also a member of the Assembly Budget Committee. ■

NEW DIRECTOR

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forts to improve the administration of justice."

"Kate Howard is uniquely qualified to serve as Director of the Office of Governmental Affairs because of her outstanding advocacy on behalf of the Judicial Branch and her years of respected professional leadership characterized by creativity, integrity, and commitment to service," said Mr. Vickrey. "I am confident that Kate will be successful in meeting the complex challenges presented in her new state-wide leadership position and that she will demonstrate the same dedication, excellence, and collaborative spirit that she has shown in her previous service at the Administrative Office of the Courts."

Mr. LeBov, widely respected during his tenure as OGA director, praised Ms. Howard's selection as his successor.

"I am extremely pleased with Kate Howard's selection," he said. "She bring extraordinary talents and experience to the position, including a nuanced understanding of the unique dynamics of the other branches of state government. She has established an outstanding reputation with all three governmental branches through her work as an advocate and as Assistant Director of the Office of Governmental Affairs."

Howard's service on behalf of California courts spans numerous critical issues and committees, ranging from gender fairness and family law to trial court funding and judicial retirement. She was the lead OGA staff to the council's Court Fees Working Group earlier this year and was

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BENCH-BAR COALITION NEW LEADERSHIP

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lators in December, he encouraged coalition to continue their legislative outreach efforts to promote the judicial branch as a co-equal branch of government.

Following the Chief Justice's remarks, Administrative Director of the Courts Bill Vickrey updated members on recent Judicial Council activity and shared his perspectives on the 2003-04 Legislative Session. AOC Office of Governmental Affairs Director Ray LeBov and Assistant Director Kate Howard reported on court-related legislation recently signed by Governor Arnold Schwarzenegger, and discussed details of a Uniform Civil Fee legislative proposal for next year.

Chairman Fisher announced that BBC leadership duties for 2005-2006 will be co-chaired by Miriam Krinsky of Los Angeles and Anthony Capozzi of Fresno.



Attorney James Fisher (left), outgoing BBC Chair, is shown with Director Bill Vickrey. Photo: Howard Watkins

Ms. Krinsky is past president of the LA County Bar Association, and currently serves as the executive director of the Children's Law Center of Los Angeles. Mr. Capozzi, whose term as president of the State Bar ended during the annual meeting, is a solo practitioner who has also served as president of the Fresno



Ray LeBov and BBC members listen to remarks by Chief Justice Ron George. Photo: Kate Howard

County Bar. Both bring a wealth of experience and ideas to the BBC.

State Senator Joseph Dunn (D-Santa Ana) received recognition from the BBC for his efforts in support of the judicial branch, and Senator Charles Poochigian (R-Fresno) accepted recognition on behalf of Senate Republican Leader Dick Ackerman (R-Irvine). Other BBC honorees included James Fisher, who presided over his final meeting as BBC chair; Ray LeBov, who is retiring from the Administrative Office of the Courts this fall; Judge Eric Taylor, immediate past president of the California Judges Association; and Mr. Capozzi.



Senator Joseph Dunn with Bill Vickrey. Photo: Kate Howard

Building on the momentum gained from 2003-04 BBC activities, the coalition discussed tentative plans to meet with legislators twice during the first half of the 2005-06 legislative session: once in late January or early February to familiarize legislators with the coalition's goals and objectives in support of the judicial branch, and again after the release of the May Revision to the proposed 2005-06 state budget act.



Judge Barry Goode and Mr. Sheldon Sloan. Photo: Kate Howard

• For more information on the Bench-Bar Coalition, contact Dia Poole in the Office of Governmental Affairs at (916) 323-3121 or by email at dia.poole@jud.ca.gov. ■

CHIEF JUSTICE SPEAKS ON THE STATE OF JUDICIARY



Chief Justice
Ronald M. George

On Saturday, October 9, Chief Justice Ronald George delivered the State of the Judiciary address at the State Bar of California annual meeting in Monterey. Excerpts from the address follow:

- Courts must secure adequate funding so they can remain immune to financial threats and pressures.
- In California, our quest for establishing predictable, adequate funding for courts statewide has acquired more and more urgency. The demands and expectations placed on the judicial branch have greatly expanded as the diversity and complexity of our state has grown. By the early 1990s, the situation had become critical. The existing combination of individual county support for local courts and limited state support resulted in major variations in the administration of justice from courthouse to courthouse.
- It became impossible to ignore the gross inadequacies of the fiscal structure as some courts came perilously close to bankruptcy, and others cut back vital services to the public in order to retain the ability to maintain core pro-

grams. The range of services for the public, the time to get to trial, the hours of clerk's office access, all differed from county to county. Consistency in the actual administration of justice was elusive at best, and in some areas the ability of courts to serve public needs was at grave risk.

The shift to state funding for the trial courts in 1997 was a major curative step, along with the efficiencies achieved by unification of the superior and municipal courts into a single level of trial court, combining 220 trial courts into 58—one in each county. These changes not only guaranteed more stable and dependable funding across California, but also helped solidify the court system as not merely a loosely affiliated group of individual venues, but as a more fully realized branch of government with a statewide perspective and presence.

The benefits of this approach are reflected in the growth of the budget for the state courts during the past four years. And . . . recognition of our status as

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NEW DIRECTOR

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instrumental in organizing the Stable Funding Conference for court and bar leaders in 2003. She also served as lead staff for the Select Committee on Judicial Retirement from 1992 to 1994.

For several years, Ms. Howard was the council's advocate on family law, domestic violence, and juvenile dependency issues, in addition to legislation related to the State Bar, judicial education, subordinate judicial officers, and judicial retirement.

She served as staff to the Advisory Committee to Implement the Gender Bias Recommendations in the Courts (1990-1991), which was chaired by then-Court of Appeal Justice Ronald M. George. She also staffed the Advisory Committee on Court Interpreters (1992).

- Ms. Howard can be contacted in the Office of Governmental Affairs at (916) 323-3121. ■

THE CAPITOL CONNECTION SAYS "FAREWELL" TO WENDY BAHAM

The Office of Governmental Affairs recently said "Farewell" to Wendy Baham, production manager for *The Capitol Connection*. Ms. Baham, who left to pursue other interests, also served as our receptionist and as support to the legislative advocates. Wendy joined the AOC in May 2002 and will be missed by all. ■

LEGISLATIVE REVIEW

The following is an update of the second year of the 2003-2004 legislative session on selected bills of interest to the courts.

COURT OPERATIONS

AB 3079 (Judiciary Committee), as amended July 15, 2004.

Court operations

Authorizes the compensation of retired subordinate judicial officers sitting on assignment in a manner analogous to retired judges. Authorizes the extension of temporary restraining orders set to expire because a court emergency prevents a hearing. Eliminates appellate filing fees in specified mental health and juvenile cases. Provides Court Appointed Special Advocates with access to a social worker's complete report to the court. Clarifies the scope of a Rule of Court concerning attorney contact information in dependency cases. Corrects obsolete statutory references.

Status: Chaptered September 27, 2004, No. 811

JC Position: Co-sponsor with the California Judges Association

CRIMINAL

SB 1287 (Kuehl), as amended May 20, 2004. Prisoners: incarcerated parents

Requires the court to advise a defendant at arraignment that if the defendant is a custodial parent, conviction may have consequences for the defendant's parental rights.

Status: Vetoed

JC Position: Neutral as amended

SB 1744 (Dunn), as amended August 17, 2004. Bail reform

Enacts numerous reforms to the bail system. Among other things, the bill specifies that when a forfeited bond is not paid within the permitted timeframe and a summary judgment is entered against the bondsman by the court, the amount of the summary judgment issued is due and payable within 30 days of the judgment. On appeal of the summary judgment, this bill requires the full amount of the summary judgment to be deposited with and placed in escrow by the superior court, to be returned along with any interest that has accrued within 30 days of the reversal of that judgment. Also requires the clerk of the court to file a notice of a surety's failure to pay a summary judgment with the Department of Insurance within 30 days following the entry of notice of summary judgment. Authorizes the court to impose a fee of up to \$50 for the cost of maintaining the escrow account.

Status: Vetoed

JC Position: Neutral as amended.

FAMILY

AB 252 (Jackson), as amended June 22, 2004. Paternity

judgments

Provides that specified judgments or orders establishing paternity may be set aside by the court, upon motion by a party, if genetic testing indicates that the previously established father of a child is not the biological father of the child, and other specified conditions are met.

Status: Chaptered September 28, 2004, No. 849

AB 2228 (Garcia), as amended June 16, 2004. Child custody investigations: release of information

Requires family, juvenile, and probate courts in child custody, welfare, and guardianship proceedings, to share upon request, all available information the court deems necessary to make a determination regarding the best interest of a child, as specified. Authorizes the release of juvenile court file information to probate investigators and court appointed child custody evaluators.

Status: Chaptered September 18, 2004, No. 574

JC position: Support

TRAFFIC

SB 1269 (Morrow), as amended June 16, 2004. Traffic violators: Judicial Council report

Requires the Judicial Council, by June 1, 2005, to collect information and compile a report on how courts work with traffic violator schools, home study programs and Court Assistance Programs (CAPs), and the fees charged by the CAPs. Also requires the Judicial Council, by June 1, 2005, to recommend approaches to setting a fiscal policy for CAP fees charged to traffic violators who attend traffic schools.

Status: Chaptered September 21, 2004, No. 665

AB 3049 (Assembly Transportation Comm.), as amended August 23, 2004. Commercial vehicle safety

Specifies that a court may not order or permit a commercial driver's license holder to complete traffic violator school in lieu of adjudicating any traffic offense. Similarly, specifies that a court may not order or permit a person, regardless of driver's license class or seriousness of the offense, to complete traffic violator school in lieu of adjudicating any traffic violation that occurred in a commercial motor vehicle.

Status: Chaptered September 30, 2004, No. 952

JC Position: Oppose unless amended and funded

The Office of Governmental Affairs will soon publish a special edition of Court News that will contain summaries of all the court-related bills chaptered in 2004. ■

STATE OF JUDICIARY SPEECH

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a separate and independent and co-equal branch has led to the concrete changes in our budget process that were developed during the last legislative session.

- The recent budget cycle involved more than successful advocacy to restore judicial branch resources to a manageable level. A budget trailer bill, strongly backed by Senators Dunn and Ackerman, as well as Senate President pro Tem John Burton, Assembly Speaker Fabian Nunez, and Governor Schwarzenegger, included a very important revision to the process by which the judicial branch budget is considered by the other two branches. This new provision will go a long way toward ensuring stable and predictable trial court funding.

Under the new approach, an automatic adjustment to the base funding for trial court operating costs will be included each new budget year [in the budget we submit]. The adjustment will be based upon the percentage change in a figure called the State Appropriations Limit—a measure used by the Legislature to calculate its own year-to-year budget adjustments. The State Appropriations Limit is determined through a formula that includes changes in per capita personal income and changes in population.

This represents a true sea-change in our branch's relationship with its sister branches. The judiciary's budget no longer will be treated as that of just another state agency, but instead will be accorded the deference and consideration due an equal branch of government.

This does not mean that the courts will have free rein to demand increases. Far from it. The process contemplated is a collaborative one, in which the judicial branch properly has the responsibility to carefully and completely justify its budget requests.

These modifications ultimately benefit the judicial branch, the state, and the public at large by establishing responsible—and responsive—growth. As a result of the revised budget structure, we anticipate a new era of predictable and stable funding, equal funding across the state, and ade-

quate funding to permit quality operations to meet the public's needs.

- Independence as a branch encompasses more than budgeting and facility transfers. . . of course. These ultimately are means to an end: building the trust and confidence of the public and maintaining a judicial system capable of dispensing fair and accessible justice. The service provided by the courts to the public has come to include far more than the basic adjudication of cases. As you know, improving access and expanding court-community interchanges to ensure better responsiveness to the public's needs have been hallmarks of our judicial system. The list of programs developed by local courts, often in close coordination with local bars, and on a statewide basis continues to grow.

These programs include, for example, drug and domestic violence courts, alternative dispute resolution programs, complex litigation courts, self-help centers and websites to assist unrepresented litigants, and community outreach efforts—including special Supreme Court sessions conducted in nontraditional venues with an educational component focused on students.

“As a result of the revised budget structure, we anticipate a new era of predictable and stable funding, equal funding across the state, and adequate funding to permit quality operations to meet the public's needs.”

- These days we sometimes hear the courts and the bar criticized as impediments to the best interests of our nation. I disagree. The judges and lawyers of our state are committed guardians of the rule of law and of the rights of all Californians. Every day they can be found reaching out to all segments of the community, developing programs to assist self-represented and underserved litigants, contributing pro bono services, representing clients ethically and effectively, and impartially adjudicating civil disputes and criminal charges. In my view, our legal and judicial system—and those who labor in its law offices and courthouses—deserve praise and gratitude from those who cherish our nation and the freedoms it extols. ■

RIPPED FROM THE HEADLINES



"Ripped From the Headlines" highlights news stories of interest including headlines and lead paragraphs, without editorial comment from *The Capitol Connection*.

"Gerrymandering Takes the Drama Out of California's Election Season" *Los Angeles Times* (September 20, 2004)

It's the political season, but just try to find a real election race in California. Put it this way: The chance of living where one of these races might be interesting is, at best, 1 in 7 for the Assembly, 1 in 13 for the state Senate and 1 in 53 for Congress. Blame old-fashioned gerrymandering.

The only reason campaign handicappers are even listing some contests as possibly competitive is the "Arnold factor." They look at districts that voted solidly for the recall of Gov. Gray Davis and the election of Gov. Arnold Schwarzenegger and see potential trouble for Democrats.

"Republicans are sniffing glue looking at the Schwarzenegger results," says Allan Hoffenblum, a former GOP consultant who now publishes the Target Book.

Ten years ago, there were twice as many Assembly and four times as many Senate seats that were competitive, Hoffenblum recalls. That's because the state Supreme Court took over redistricting.

Assembly Republican Leader Kevin McCarthy of Bakersfield and recall initiator Ted Costa are collecting signatures for an initiative that would strip the Legislature of its redistricting power.

"It's inherently wrong for politicians to draw their own lines," McCarthy says. "When politicians draw their own lines, they're beholden to politicians."

"Plaintiff's Bar Gives Up Trying to Shape Governor" *Daily Journal* (September 24, 2004)

Gov. Arnold Schwarzenegger has vetoed one of two bills the Consumer Attorneys of California sponsored this year while they withdrew the other. He has thrown his support to a tort reform measure on the ballot, and he plans to introduce more litigation reform.

The governor had offered the plaintiffs lawyers clues about his direction before the recall, but they had hoped to help shape the new governor's "evolving philosophy."

Then came the governor's budget proposal, veto pen and government reorganization proposal. Now the lawyers have given up trying to mold Schwarzenegger and are pinning their hopes on future legislators to advance their proposals.

"We'll see the governor continue to try to muscle in tort reform, which couldn't get through [legislative] committee hearings, through the budget by saying I'll give you that if you give the [California Chamber of Commerce] tort reform," said Bruce Brusavich, former president of the consumer lawyers group.

"I think it's setting up the governor and Democrats in a legislative head-to-head," Brusavich said, brushing off the suggestion of a collision between trial lawyers, who have controlled the judiciary committees, and Schwarzenegger. "Democrats have to stand up and say enough is enough. We're not going to bypass the legislative process, the open hearing process to get backroom deals in the budget."

John Sullivan, president of the Civil Justice Association of California, said it's the plaintiffs lawyers, not the governor, who have been slipping in bills at the end of legislative sessions. He referred to a bill in 2002 that made it harder to file summary judgment motions.

"I think in the area of civil justice lawmaking, the plaintiffs bar has been the perpetrators of last-minute, gut-and-amend, meaningless-hearing lawmaking," Sullivan said. "When it comes to new legislation, the governor and the Legislature will be working together openly to do the best thing for California's citizens and California's economy."

Schwarzenegger Advisor Warns Judges Not to Expect Any Additional Judicial Appointments This Year *Metropolitan News Enterprise* (October 12, 2004)

Gubernatorial Judicial Appointments Advisor John Davies told members of the California Judges Association Friday not to expect the appointment of new judges until early 2005.

Davies said that while the process for vetting judicial applications is in place, it will be "January or February actually before any appointments are made. We have just started."

Davies also said that Schwarzenegger has asked not to be informed of the political affiliation of the judicial applicants he considers until after he has made his selections. He called Schwarzenegger's view regarding partisanship "revolutionary," saying the governor is seeking to establish a "merit system that does not have political overtones to it."

"Some Reforms Blocked, but Prison System Is Improving, Senator Says" *Los Angeles Times* (October 14, 2004)

A state senator who spent the past year investigating problems in California's \$6-billion correctional system summed up the fruit of that labor Wednesday, declaring that many major

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reforms were blocked but that positive changes are afoot.

In a briefing with reporters, Sen. Gloria Romero (D-Los Angeles) said that her top worry as chairwoman of a special committee on corrections remains California's prisons for the young, which she believes do little to rehabilitate delinquents.

"It was a year of crisis in corrections, but out of crisis rises opportunity," she said. "We saw an unprecedented example of the three branches of government tackling an issue that had largely been invisible in California politics."

Major changes in how youths spend their time behind bars have not happened.

Still, Romero said the state's vast prison system—the nation's largest with 168,000 inmates—is "absolutely" in better shape than it was this time last year.

Teaming up with Sen. Jackie Speier (D-Hillsborough), Romero held nearly a dozen hearings on corrections during the past year. Among the topics investigated were the ballooning prison budget, inmate healthcare, security housing units, employee misconduct, and the use of force in the Youth Authority.

"State's Finance Chief Resigns *Mercury News Sacramento Bureau* (October 15, 2004)

Donna Arduin, Gov. Arnold Schwarzenegger's high-profile finance chief and a conservative counterbalance to more liberal members of his Cabinet, has resigned effective today, leaving the administration to look for a new budget guru as it creates a crucial second spending plan.

Arduin, who previously worked for Florida Gov. Jeb Bush, played a key role in Schwarzenegger's administration: Introducing a hard-edged budget with deep cuts to social programs and no tax increases while trying to extract California from a mire of debt.

Ironically, the greyhound-thin Arduin, 41, found herself cast as the heavy to bodybuilder Schwarzenegger. During budget talks, the Republican governor and Democrats, who control the Legislature, blunted many of her original cuts. The resulting budget left the state with a predicted \$6 billion shortfall for the coming year. And, critics contended, it looked like those of ousted Gov. Gray Davis ~ laden with gimmicks, borrowing and one-time savings.

Even though Arduin was said to frequently land on the losing end of internal debates with more liberal Cabinet members, her confidants said personal, not political, reasons prompted the resignation.

The governor said conservatives should not fret about her departure: "No matter who is in there, I will call the shots. I decide which programs we cut. I will decide to which extent we will keep our discipline with spending. And I promise to the people of California I will not spend more money than the state takes in."

"Governor Endorses Open Primary Measure" *Los Angeles Times* (October 19, 2004)

In a challenge to both political parties, Gov. Arnold Schwarzenegger on Monday endorsed a ballot measure to drastically alter how Californians pick candidates for the Legislature, Congress and statewide office.

Both the Republican and Democratic parties "have asked me not to support Proposition 62," the governor said. "I didn't come to Sacramento to make political parties happy."

The blanket primary measure would replace the current system with one similar to that in Louisiana. Under Proposition 62, voters could cast ballots for any candidate in a primary and the top two vote-getters would face each other in the general election, regardless of party.

Schwarzenegger said Californians "deserve to have an open primary so that they can vote for whomever they'd like, no matter what party a candidate represents."

"An open primary is an important reform," he said, "that will lead to more mainstream legislators from each party coming to the Capitol to solve California's problems."

Under the current system, he said, "90% of the races are locked up.... Where's the real democracy?"

Schwarzenegger called Proposition 62 one of two key steps to make Sacramento politicians more accountable.

A second reform, he said, would ban politicians from drawing district lines in a way that practically guarantees the reelection of incumbents. The governor said he would ask lawmakers to put a measure on the ballot to take redistricting away from politicians.

Schwarzenegger's announcement put the California Republican Party, which has touted his ability to influence voters, in the unusual position of downplaying his endorsement.

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LEGISLATIVE HEARINGS ON PROPOSITION 66 AND PROPOSITION 69

The Senate and Assembly Public Safety Committees recently convened joint hearings on Proposition 66 and Proposition 69, two initiatives that have the potential to impact the courts.

Proposition 66 amends the “Three Strikes” law by requiring that increased sentences be given only for “violent and/or serious felonies.” The proposition then redefines what constitutes a “violent and/or serious felony” by limiting the types of crimes eligible for that status. There are concerns that passage of Proposition 66 could necessitate widespread resentencing hearings in California; however, a recent review by the Legislative Counsel of California opines that, under the initiative, resentencing would only apply to “third strikers.” Although hearing participants largely agreed with this assessment, it was understood that many “first and second strikers” would likely file habeas petitions, arguing that, under equal protection principles, resentencing hearings should be available to them as well.

The AOC is monitoring Prop. 66 and its potential impact on the courts.

Proposition 66: www.voterguide.ss.ca.gov/propositions/prop66-title.htm

Proposition 69 would require the collection of DNA samples from all adults and juveniles arrested for or charged with specified crimes. The proposition further requires that, in five years, DNA samples be taken from adults arrested for or charged with any

felony. Hearing participants expressed concern that individuals whose DNA has already been collected might have difficulty expunging that information from the state database if they are subsequently exonerated. Under the proposition, the burden of expungement is placed on the innocent individual, meaning the individual must petition the court for removal. Opponents of the initiative point out that other states with similar DNA collection systems provide for expungement automatically once an individual is exonerated or charges are never filed.

If approved by the voters, Proposition 69 would levy an additional \$1 on every \$10 in penalties to fund the collection of DNA samples from convicted felons and certain nonfelons and arrestees. The measure would go into effect immediately and revenues would be shared by the state and local governments.

The AOC is monitoring Prop. 69 and will advise courts on implementation procedures, as appropriate.

Proposition 69: www.ss.ca.gov/elections/bp_nov04/prop_69_entire.pdf

• Questions? Contact the AOC Office of Governmental Affairs, 916-323-3121. ■

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