

The Capitol Connection

A publication of the Judicial Council of California's Office of Governmental Affairs
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Judicial Council-Sponsored Legislation for 2001

Each year the Judicial Council sponsors a variety of bills pertaining to court administration. Legislative proposals may be submitted to the Judicial Council by members of the public, the council's advisory committees, or by court-related organizations. Each proposal sponsored by the Judicial Council works toward improving the administration of justice throughout California.

This year's proposals tackle a wide range of issues including civil procedure, family law, and trial court operations. The Office of Governmental Affairs has begun advocating for the introduction, passage, and funding of these proposals during the 2001 legislative session. Following are highlights.

CIVIL PROCEDURE

AB 223 (Frommer) Makes several changes related to discovery, including:

- Clarifying the council's authority to approve new form interrogatories;
- Simplifying the process of issuing commissions for out-of-state depositions by allowing the clerk to issue the commission instead of a judicial officer; and,
- Adding claims of attorney work product to this list of claims to which the rules in that section on disclosure of privileged materials apply.

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INTERVIEW

Assembly Member Darrell Steinberg, Chair Assembly Judiciary Committee

Assembly Member Darrell Steinberg was appointed chair of the Assembly Judiciary Committee late last year. The Assembly Judiciary Committee has one of the largest bill loads and broadest subject-matter jurisdictions in the Legislature. During the 1999-2000 legislative session, the Assembly Judiciary Committee considered over 350 bills. He recently spoke with the *Capitol Connection* about his role.

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INTERVIEW

Senator Martha Escutia, Chair Senate Judiciary Committee

Senator Martha Escutia was first elected to the California Legislature in November 1992. As an Assemblywoman, Escutia chaired the Assembly Judiciary Committee from January 1997 to November 1998. Senator Escutia was recently selected to chair the Senate Judiciary Committee. She summarized her goals for the upcoming year with the *Capitol Connection*.

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FAMILY LAW

Family Law and Domestic Violence Clean-up

- Conforming procedures and notice requirements for the issuance of restraining orders within the Domestic Violence Prevention Act, Civil Harassment Prevention Act, Workplace Violence Safety Act, and Elder and Dependent Adult Abuse Act.

CASA Employees and Volunteers: Mandated Reporting of Child Abuse

- Adding Court Appointed Special Advocates (CASA) employees and volunteers to the list of persons required to report known and suspected child abuse.

TRIAL COURT OPERATIONS

Trial Court Funding

- Providing a more uniform process, ensuring that the authority and responsibility for trial court budget and fiscal affairs are appropriately placed, making appropriate changes to the relationships between the trial courts and the counties and the Judicial Council in light of full state funding of the trial courts, correcting statutory and drafting errors; and, removing obsolete provisions involving the courts.

Trial Court Employees

- Making necessary technical changes to bring existing statutes into conformity with the Trial Court Employees Act.

CC: What was your biggest accomplishment in 1999-2000 legislative session?

DS: There were some highlights. AB 2034, my bill representing a continuing effort to rebuild California's community mental health system, reflects my top priority here in the Legislature. Last year, through AB 34, we were able to secure \$10 million; the first funding augmentation in over a decade for community mental health. The bill created three pilot programs for the homeless mentally ill, and included outreach services. It was so successful; in just a few months the results were reduced incarceration, reduced hospitalization, reduced homelessness, and cost savings for the system. This year we were able to secure over \$55 million, and we are going to expand to twenty counties. I am very excited about that.

My work as a participant in the oversight investigation of the Insurance Commissioner was also significant. I took one of the lead roles in the oversight investigation and it was very important to be a part of the Legislature exercising its proper oversight role. We all know what occurred.

I would also mention AB 2509, which helps attack the underground economy. It requires penalties for bounced checks and has a number of provisions, which tighten the reins on those employers who don't follow the law. One of the reasons the bill got signed is that it also protects legitimate businesses because they are put at a big disadvantage when they have to compete against those who are cheating.

CC: What was your biggest disappointment in the 1999-2000 legislative session?

DS: I had a few bills vetoed. My biggest disappointment was on the issue of teacher quality in low performing schools. I chaired a select committee, and we had a series of hearings this past year. I think there were a lot of things accomplished. A disappointment was the fact that we couldn't get signed into law the piece that would provide ongoing training to new administrators and principals. That is an indispensable part in attracting good quality teachers, so we'll try again this year.

CC: What are your plans and expectations for your upcoming chairmanship of the Assembly Judiciary Committee?

DS: The great thing about chairing the Judiciary Committee is the variety of challenging issues. Some of the most complex and controversial issues that come before the Legislature come before the Judiciary Committee.

There have been vexing ideological disputes that have existed in the Legislature, and many of them centered in the Judiciary Committee, for many years, if not decades. They generally involve consumers and consumers' attorneys and business interests-insurance companies. I've been a very consumer-oriented member and my voting record is clear along those lines. I oppose mandatory pre-dispute arbitration. But my number one goal as chair of the Judiciary Committee is to focus like a laser beam on whether or not there is a third way to look at some of these disputes. In fact, we held a hearing in January to focus on models of alternative dispute resolution as a way of solving one or more of these ideological issues that have been part of the legislative landscape for many, many years.

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There are models out there. In the employment arena, for example, you have the post office – which has never had a great reputation for its employment relations – now modeling an early intervention program for disputes between an employer and an employee. There is help immediately to try to resolve disputes, and maybe instead of a five-year lawsuit it is an apology or a simple change in a work assignment. There are other companies doing the same in the health care arena where we are looking at models that work to resolve disputes between patients and doctors or health care providers.

In construction defect litigation, ADR is a major topic. I want to look at models around the state that help ensure that when there is a defect it gets fixed right away and life goes on. I believe in an all-voluntary ADR because I think that is the way it best works. I want to look and see whether in county X they are dealing with healthcare disputes in a certain way whether consumers are satisfied. Is it reducing the amount of actual litigation that takes place? You need to go from the theory to the actual experience. I'm going to use the chairmanship in part to highlight those actual models that are getting results for people and for parties.

Having said that, I have no illusions that I can use ADR to solve this whole range of problems. But I want to put the spotlight and the focus and the emphasis on doing that in a meaningful way and maybe we will find one or two vexing issues we can actually deal with.

CC: How does your previous career and life experience affect the way you view judiciary-related issues?

DS: For ten years I was an attorney with the California State Employees Association, and then for about five years I was an Administrative Law Judge, part-time arbitrator doing mostly employment work with the State Personnel Board. I found that where I could bring the parties together at the beginning and talk to them in a calm manner about what was really at issue, talk to them separately and bring them together and facilitate discussion, that eight out of ten times we could resolve the case. And I know that there are methods that need to be brought to light that could potentially serve as a model for resolving very contentious bills. My previous career and life experience as an Administrative Law Judge, as a settlement judge, and my experience mediating have taught me that there ought to be more of an emphasis on and more education around the issue of voluntary Alternative Dispute Resolution and how to make it work to solve more problems.

CC: What will be different in the way that business is conducted in the Judiciary Committee under your leadership?

DS: First of all, when you look at the history of this committee, I follow in some tremendous footsteps. I just want to keep the standard. I have my ideology, which is publicly well known. I've sat on the Judiciary Committee for two years and cast my votes. I do want to see if there are better ways to solve problems that don't take away peoples' rights and access to the courts.

CC: What do you hope to achieve through your membership on the Judicial Council?

DS: I am very excited about serving as a member of the Judicial Council. At least at the beginning, what I hope to be doing is a lot of listening. I want to hear what the judges around the state have to say about how what we do in the Legislature impacts their profession and their ability to do their job. The flip side of that, of course, is that I can bring the sense of the Legislature to the workings of the Judicial Council.

Lawyers know this better than anyone, we have an ethical obligation to represent clients and we also have the obligation to share honestly with clients what we see really happening. I think I can bring to the council a sense of where the Legislature is on various issues and that can help frame the Judicial Council objectives.

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CC: What was your biggest accomplishment in the 1999-2000 legislative session?

ME: There were three bills that I am particularly proud to have authored that were signed by the Governor. The first was SB 26, which overturned *Marks v. Loral*, a 1997 court of appeal decision that allowed discrimination against workers over the age of 40 simply because of their status. Marks said that an employer could fire a higher- paid older worker in favor of a younger employee at a lower rate of pay, and that such an employment practice was lawful even if it disproportionately affected older workers. I felt that the ruling was both cold-hearted and poor public policy. Age discrimination attacks a person's sense of self-worth and is just as invidious as race or sex discrimination, which are also prohibited forms of discrimination. I was really pleased to have SB 26 enacted because Governor Wilson, before he left office, had vetoed a nearly identical measure of mine a year before.

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The second bill was SB 1237, which would have given third-party claimants a limited right to sue an insurer for acting in bad faith in failing to settle a meritorious automobile injury claim for bodily injury. I carried this bill because it became clear to me that many insurers in California were systematically stonewalling the payment of valid claims. Why? Because the longer they can keep the money, the longer they can use those funds to earn more investment income or interest. In the meanwhile, many injured consumers were waiting three or four years or more for a fair settlement of their valid claims. So, I authored SB 1237 to establish a more even playing field. The measure and its companion bill (AB 1308) were narrowly drafted, and had to be in order to get the Governor's signature. It did not, like the \$70 million in insurance advertisements claimed, restore Royal Globe. It created a limited right to sue and gave insurers the ability to avoid any bad faith liability exposure by creating a "safe harbor" for them and protected insurers when they made an honest mistake in judgment in connection with the claim settlement. Governor Davis signed the bill but the insurance industry spent millions of dollars to put it on the March ballot and spent another \$70 million to defeat it. Even though the insurance industry won the last round, I am convinced that the inequalities of the current situation deserves reform.

The third bill grew out of my hearings as the chair of the Senate Judiciary Subcommittee on Bad Faith Liability and Consumer Rights. While a lot of the public's attention was focused on the Quackenbush scandal, and with reason, I felt it was important to also focus on the insurers' conduct in handling insurance claims filed by victims of the Northridge earthquake. Seven years after the event, earthquake victims were still complaining that their insurance claims had not been settled, or had been settled for an inadequate amount because the insurer simply refused to pay the coverage the homeowners believed was promised. In the course of our work, we learned that market conduct examinations by the Department of Insurance staff had found that certain insurers routinely engaged in settlement practices that violated the insurance laws governing fair claims practices. Violations included low-ball settlement tactics; misrepresentation of coverage under the policy; and providing misinformation about the statute of limitations. When my subcommittee released copies of the reports as part of our work, the insurers sued to keep them out of the public eye. I thought that was ridiculous. Public employees, for the benefit of the public, prepared these reports to ensure that insurers were treating their insureds fairly. Therefore, I decided to carry SB 1805 to make it clear that any adopted report of a market conduct examination of unfair or deceptive insurance practices shall be available for public inspection. In addition, all fully executed stipulations, orders,

decisions, settlements or other forms of agreement resolving market conduct examinations, whether the examinations were finalized, terminated, or suspended, that pertain to unfair or deceptive insurance practices, shall be subject to public inspection. I carried this bill for two reasons: first, to protect the public's right to know; and secondly, to prevent the reports of future market examinations from being bargained away for a political payoff. I was very pleased when Governor Davis signed the measure into law.

CC: What was your biggest disappointment in the 1999-2000 legislative session?

ME: My biggest disappointment was the loss of SB 673 on the last night of session. That bill would have used California's share of the tobacco litigation proceeds to provide "stop smoking" services to minors and adults and to expand access to health care services for uninsured or underinsured families and individuals, including basic health care services for uninsured children and adults and working uninsured families. The loss was particularly bitter because it also meant the loss of over \$600 million in federal matching funds for the Healthy Families Program. SB 673 passed the Assembly on a 48 – 25 vote, but somehow got lost in transmittal on its way to the Senate. Thus, when I could not take up the bill in the Senate for concurrence before the clock stuck twelve, the bill died. You can imagine my frustration at having worked for nearly two years, only to lose the bill at the last minute because it got lost in a paper shuffle.

CC: What are your plans and expectations as the chair of the Senate Judiciary Committee?

I have three immediate goals, two of which have been re-enforced by my recent experience of being called for jury duty. First, jury reform is far from complete and we need to take additional steps to build public confidence and support for jury services. I recently spent seven days on jury duty. I wasn't selected so I spent a lot of time sitting and waiting, and watching the court staff in one district watch their soap operas while juror requests for information were rudely dismissed. If my experience is at all typical, I can see why some courts are having trouble finding enough jurors to meet its needs. As chair, one of my first priorities is to learn why one-day/one-trial has not been implemented statewide, and what steps are needed to do so. If one-day/one-trial is simply impossible to implement, then that court should at least have a telephone call-in or notification system. We as policymakers, and court personnel as administrators of that policy, need to be sensitive to the fact that persons summoned for jury duty are giving up their work or leisure day to perform an essential civic duty.

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Jurors and the sacrifices they make need to be treated with respect, and at one district, they were not. I know this issue is also an important one for Chief Justice George and I look forward to working with him on it.

Courthouse construction is another major priority. Just to use one example, the Huntington Park courthouse is woefully inadequate to serve the needs of the community. Built almost 50 years ago, the surrounding communities have far outstripped the facility's resources. The jury room seems more like a large closet, with many prospective jurors having to wait in the hallways outside courtrooms. On a "needs assessment" basis, it and Southgate have been ranked #1 by Los Angeles County. As chair, I intend to explore all possible funding sources, whether it be state funds or local assessments, to finance the construction of new courthouse facilities where needed to serve local communities. To that end, I also intend to engage in a vigorous dialogue with affected parties to advance the concept that the local courthouse should not just be a civil and criminal justice center, but should also be available as a facility and source for community education and information. That idea has taken hold in parts of the east coast, and I would like to see if we could also do it in California.

A third major priority will be the passage of legislation to prohibit secrecy settlement agreements that compel the non-disclosure of known information relating to a dangerous product defect, environmental hazard, unfair insurance claims practice, or financial fraud. I know that the Judicial Council has adopted Rule 243.1 to prohibit the sealing of court records without a showing of compelling need. It was a gigantic first step and I applaud the council's action. However, the adopted rule only applies to materials actually filed with the court. Many documents evidencing dangerous product defects or environmental hazards are discovered in litigation, but are never filed with the court and are thus not subject to the court rule. As sadly illustrated by tragic examples such as the defective Firestone tires, we as policymakers need to go one step further and also create a presumption against secrecy for these other documents.

CC: Will your previous experience as chair of the Assembly Judiciary Committee cause you to handle things differently in the Senate?

ME: If anything, my prior experience will make this job easier. Also, I have been a member of the Senate Judiciary Committee for the past two years, so I am

very familiar with the types of issues that will be coming before the committee.

CC: How does your previous career and life experience affect the way you view judiciary-related issues?

ME: As a former court staff attorney, I know how hard judges and court personnel have to work in order to ensure that our civil and criminal justice system does not collapse due to the sheer weight of increased filings. Court congestion is a never-ending problem, and I appreciate, firsthand, the length of court calendars. This prior experience, along with my overall life experience of having grown up in East Los Angeles, sensitizes me to the need for a fair and accessible justice system. Hence, as noted earlier, two of my three top Judiciary-related priorities for the upcoming session relate to the operation of the courts.

CC: What will be different in the way that business is conducted in the Judiciary Committee under your leadership?

ME: The hearings will definitely be shorter. I am a firm believer in cleaning up bills before they are heard in committee. I do not believe that rewriting bills in committee is the best approach for making good public policy or for effectively utilizing the valuable time of members. Bills rewritten in committee often produce awkward compromise language that courts have to interpret to divine legislative intent. The better method is to have the bills cleaned up beforehand so that the committee can spend its time considering the policy merits of the bill rather than rewriting its language.

CC: What do you hope to achieve through your membership on the Judicial Council?

ME: I want to work with the Chief Justice and Judicial Council on issues of common concern. Jury reform, courthouse construction, reducing court congestion, access to justice, and equality in the law are some of the issues that come to mind. The recent economic boom may provide us with an unparalleled opportunity to make institutional changes that would not be possible in leaner times. I hope we can use this opportunity to agree upon necessary reforms and then work together to jointly persuade Governor Davis of the worthiness of our ideas.



Senate and Assembly Committee Rosters

The membership of legislative committees that deal most directly with court and judicial issues follow.

Assembly Judiciary

| | |
|---------------------------------|----------------------|
| Hon. Darrell Steinberg, Chair | D – Sacramento |
| Hon. Robert Pacheco, Vice Chair | R – Walnut |
| Hon. Patricia Bates | R – Laguna Niguel |
| Hon. Ellen Corbett | D – San Leandro |
| Hon. John Dutra | D – Fremont |
| Hon. Tom Harman | R – Huntington Beach |
| Hon. Hannah-Beth Jackson | D – Santa Barbara |
| Hon. Christine Kehoe | D – San Diego |
| Hon. John Longville | D – Rialto |
| Hon. Kevin Shelley | D – San Francisco |
| Hon. Howard Wayne | D – San Diego |

Assembly Public Safety

| | |
|-----------------------------|-------------------|
| Hon. Carl Washington, Chair | D – Paramount |
| Hon. Jay LaSuer, Vice Chair | R – La Mesa |
| Hon. Gil Cedillo | D – Los Angeles |
| Hon. Richard Dickerson | R – Redding |
| Hon. Fred Keeley | D – Boulder Creek |
| Hon. Paul Koretz | D – W. Hollywood |
| Hon. Gloria Romero | D – Los Angeles |

Assembly Budget Subcommittee #4

| | |
|---------------------------|--------------------------|
| Hon. George Nakano, Chair | D – Torrance |
| Hon. John Campbell | R – Irvine |
| Hon. Rod Pacheco | R – Riverside |
| Hon. Louis Papan | D – Millbrae |
| Hon. Roderick Wright | D – S. Ctrl. Los Angeles |

Senate Judiciary

| | |
|-----------------------------|---------------------|
| Hon. Martha Escutia, Chair | D – Montebello |
| Hon. Ray Haynes, Vice Chair | R – Riverside |
| Hon. Dick Ackerman | R – Fullerton |
| Hon. Sheila Kuehl | D – Santa Monica |
| Hon. Jack O'Connell | D – San Luis Obispo |
| Hon. Steve Peace | D – El Cajon |
| Hon. Byron Sher | D – Palo Alto |

Senate Public Safety

| | |
|------------------------------------|-------------------|
| Hon. Bruce McPherson, Chair | R – Santa Cruz |
| Hon. John Vasconcellos, Vice Chair | D – Santa Clara |
| Hon. John Burton | D – San Francisco |
| Hon. Bob Margett | R – Arcadia |
| Hon. Richard Polanco | D – Los Angeles |
| Hon. Byron Sher | D – Palo Alto |

Senate Budget and Fiscal Review Subcommittee #4

Members have not been appointed as of February 20, 2001.



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The Capitol Connection is a publication of the Judicial Council's Office of Governmental Affairs and is designed to inform judges and court personnel of current events in and around the California Legislature.

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