

State Bar of California, Office of Governmental Affairs

The Sacramento Scene

Vol. 2, No. 34

September 12, 2003

LEGISLATURE WRAPS UP FOR 2003

The California Legislature completed its deliberations for 2003 early Saturday morning, September 13, and began its interim recess. Barring a special session (of which none are currently contemplated), the Legislature will reconvene on Monday, January 5, 2004.

GOVERNOR SIGNS FEE BILL

Governor Davis has signed into law [AB 1708](#) (Assem. Judiciary Committee), the bill which would extend for another year the State Bar's funding authority. The measure is now Chapter 348, Statutes of 2003.

In addition to keeping the State Bar functioning, the bill would permit the Bar to seek money judgments against attorneys who have had discipline costs imposed or whose actions have resulted in payments from the Client Security Fund. It also substantially narrows a loophole in existing law that permits well-compensated attorneys to take advantage of fee scaling provisions intended for their low-income counterparts.

The bill also includes a provision sponsored by lead author [Ellen Corbett](#) (D-San Leandro), Chair of the Assembly Judiciary Committee, which would require the Bar to report back to the Legislature by January 1, 2005, on the status of its regulatory and disciplinary efforts concerning alleged abuses of the state's Unfair Competition Law (B&P Code §17200 *et seq.*) by attorneys bringing private actions on behalf of the general public, and makes several technical, clean-up changes.

UCL BILL DEFEATED ON ASSEMBLY FLOOR

A contingent of moderate Democrats joined with Republicans Thursday – and again Friday -- to defeat [SB 122](#) by Senate Judiciary Committee Chair [Martha Escutia](#), thereby ending all legislative efforts this year to reform the state's Unfair Competition Law (B&P Code §17200 *et seq.*).

The bill's defeat rendered moot any action on a linked companion measure, [AB 95 \(Corbett\)](#), which was not taken up in the Senate.

Thursday's [vote](#) on SB 122 was 35-38, with six Democrats joining all Assembly Republicans in voting 'No' on the bill, and an additional six Democrats abstaining (one Democratic member was

absent). Friday's [vote](#) was virtually identical, with one Democrat shifting from "Not Voting" to "No."

Although the sponsoring [Consumer Attorneys of California](#) (CAOC) last week amended SB 122 to delete its most controversial provision – a proposal to make disgorgement an appropriate remedy in UCL action – opponents of the bill argued that it did not go far enough in making changes to the UCL.

Speculation is that the business-backed opponents of the CAOC didn't want the enactment of the SB 122/AB 95 package to confuse voters if they proceed with plans to place a sweeping overhaul of the UCL on the November 2004 ballot via the initiative process. The [Civil Justice Association of California](#), an industry-backed organization, is drafting the initiative proposal.

The defeat of SB 122 ends (for the moment) a legislative episode that began with the introduction in February of 11 bills proposing changes in the Unfair Competition Law following revelation that unscrupulous attorneys had been using the "private attorney general" provisions of the law to "shake down" minority-owned small businesses. Three of those attorneys, the members of the Trevor Law Group, were investigated and suspended by the State Bar, and eventually resigned from the practice of law with disbarment proceedings pending.

COURT FEE FIX SENT TO GOVERNOR

After some 11th hour bill-shuffling, legislation to address issues relating to the court fee increases in the recent budget compromise ([AB 296 – Oropeza](#)) has been sent to Governor Davis.

The changes had been slated to be considered as part of another bill ([AB 1769](#)), but had to be shifted to AB 296 at the last minute when Assembly Republicans refused to vote in support of any 2/3-vote measures. The bill passed the Senate, [29-5](#), and the Assembly, [49-27](#).

The changes address a number of issues, technical and substantive, surrounding the fee increases implemented through the Budget implementation bill, [AB 1759](#), to spare massive cutbacks in court operations statewide. In particular, plaintiffs' attorneys raised concerns that language increasing the complex case filing fee to \$500 per party, rather than per case, stood to increase the cost of filing such cases by tens of thousands of dollars in multi-plaintiff cases, effectively pricing low-income plaintiffs out of the courthouse.

State Bar of California, Office of Governmental Affairs

The Sacramento Scene

Vol. 2, No. 34

September 12, 2003

The amendments to AB 296 impose a limitation of \$10,000 on the total amount of complex case fees collected from plaintiffs and \$10,000 on the total amount of complex case fees collected from defendants, intervenors, and respondents. The amendments also impose an additional court security surcharge on filing fees of \$20 for unlimited civil cases, \$20 on limited civil cases above \$10,000, and \$10 on limited civil cases below \$10,000. This new surcharge, which would be collected between January 1, 2004 and June 30, 2004, nearly offsets the revenue loss from the complex filing fee adjustment.

Other amendments clean up and effectuate the implementation of other fee increases enacted as part of the compromise, including the new graduated probate filing fees.

LIMITED CONFIDENTIALITY BILL BACK TO GOVERNOR

Assembly Member [Darrell Steinberg](#) Thursday sent his [AB 1101](#) back to enrollment, from which it had been withdrawn the week before preparatory to sending the bill to Governor Davis. Steinberg had pulled the bill back in order to meet with representatives of the Governor on concerns about the implications on having California join all other U.S. jurisdictions in permitting (and in many cases requiring) attorneys to disclose confidential client information "to the extent that the attorney reasonably believes the disclosure is necessary to prevent a criminal act that the attorney reasonably believes is likely to result in death of, or substantial bodily harm to, an individual."

The meetings with the Governor's staff took place, but did not result in further amendments to the bill. It is unknown what action the Governor will take.

AB 1101 passed the Assembly on a 75-1 vote and the Senate on a vote of 35-1. If signed, it would not take effect until July 1, 2004, to provide time for a Task Force appointed by the President of the State Bar to draft a corresponding rule of professional conduct to flesh out issues regarding the statute.

ASSEMBLY LEADERSHIP POLITICS

In the midst of all the bill-related confusion, Democrats and Republicans in the state Assembly took time out during the week to take what appear to be diametrically opposed approaches to transitions in leadership.

Looking to the future, the Assembly Republicans unanimously selected first-term member [Kevin McCarthy](#) of Bakersfield as their Leader-Elect at a Monday caucus meeting. McCarthy, a former aide to Congressman Bill Thomas (R-Bakersfield) and a prodigious fund-raiser, will assume the reins of power from current Assembly Republican Leader [Dave Cox](#) of Sacramento in January 2004. Because he is not termed out until 2008, McCarthy conceivably could serve four or more years in the post.

On the other side of the aisle, Assembly Speaker [Herb Wesson](#) of Los Angeles reportedly informed his caucus that he had no intention of resigning the speakership until term limits force him out of office towards the end of next year. The announcement reportedly prompted the house's 15-member Latino caucus to meet in an effort to unite behind a single candidate to replace Wesson. Names mentioned as possible Speaker candidates from the Latino Caucus are [Jenny Oropeza](#) (D-Long Beach), [Dario Frommer](#) (D-Los Angeles), and [Fabian Nunez](#) (D-Los Angeles). [Joe Nation](#) (D-San Rafael) also has acknowledged being in the hunt.

In recent years (at least the past six), the transition from one Speaker to the next has occurred smoothly in the early months of the outgoing Speaker's final year, with the outgoing leader assuming the titular post of "Speaker Emeritus" and moving to a spacious suite of offices above those of the new Speaker.

Our Senate sources report that [John Burton](#) (D-San Francisco) will continue as President pro Tem of that house well into 2004.

DEADLINES UPCOMING

- [October 7 \(Tuesday\)](#) – Scheduled special election on recall of Governor and, if recall is approved, election of a successor. Two initiative measures also on ballot.
- [October 12 \(Sunday\)](#) – Last day for Governor to sign or veto bills.
- [January 5, 2004 \(Monday\)](#) – Legislature reconvenes.
- [January 31, 2004 \(Saturday\)](#) – All bills introduced in the first year of the 2003-04 legislative session which have not been approved by their house of origin die by operation of the state Constitution.