of Law and a talented administrator who in January replaced the previous receiver, Robert Sillen. In his work in various previous positions—such as interim insurance commissioner and chief information officer for California's executive branch—Kelso has developed a reputation for getting things done.

"Everyone is very hopeful about Mr. Kelso's appointment," says the Prison Law Office's Norman. "But it is a monumental undertaking."

In addition, two California legislators introduced older-prisoner bills earlier this year. Senator Sheila Kuehl (D-Santa Monica) introduced SB 1555, which would provide elder ID cards granting priority treatment in some daily activities for prisoners 55 and older, age-specific prerelease planning, and training for prison staff working with aging prisoners. Meanwhile, Assemblymember Sandré R. Swanson's (D-Oakland) AB 1965 would make receiving parole more routine for nonviolent offenders—age 55 and older—who have served half their sentence, suffer from a chronic illness, can pass a re-offender risk-assessment analysis, and can secure health care benefits upon release.

And in April, Gov. Arnold Schwarzenegger proposed spending an additional $7 billion on the construction of new and the improvement of existing medical and mental health care facilities at prisons statewide. But it was unclear at press time how the Legislature would respond to a budget request nearly as large as the state's deficit. —*Sarah Arnquist* CL

PENDING LEGISLATION

AB 1965 proposes summary parole for some offenders age 55 and up.
Sponsor: Assemblymember Sandré R. Swanson
Introduced: February 14

SB 1555 proposes elder ID cards and priority treatment for prisoners 55 and older.
Sponsor: Senator Sheila Kuehl
Introduced: February 22

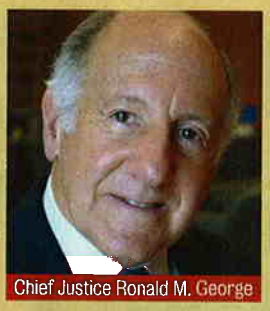
[INFORMATION OVERLOAD]

Debate Heats Up Over Unpublished Opinions

DO UNPUBLISHED OPINIONS OPEN the door to inconsistencies in the law and a lack of judicial accountability? A federal lawsuit against the California Supreme Court recently raised the stakes over this question, asking the district court to overturn the state's prohibition on citing unpublished opinions.

Hild v. California Supreme Court (No. C-07-5107-JCS (N.D. Cal. filed Oct. 4, 2007)) argues that the state's publication rules violate Californians' due-process and equal-protection rights by creating "a de facto policy of refusing review of unpublished decisions in civil cases."

The suit came about after a jury awarded $704,633 to Joshua Hild, a Big Creek teenager who was blinded in one eye when an employee of Southern California Edison fired a paintball gun. On appeal, the Court of Appeal for the Second District rejected the verdict in an unpublished opinion.


Chief Justice Ronald M. George

California appellate courts publish only 8 percent of their opinions.

While a petition hearing was pending in the state Supreme Court, personal injury firm Bisnar Chase then filed the federal lawsuit in California's Northern District. According to the suit, the high court routinely declines review of unpublished decisions in civil cases except in "extremely rare" instances in which it has previously granted review from a published decision presenting the same issues. This practice, the firm alleges, violates the 14th Amendment.

Earlier this year, U.S. district Judge Thelton E. Henderson roundly rejected that argument, saying the suit's "claims are doomed to fail on the merits." Bisnar Chase has appealed the case to the Ninth Circuit.

Although federal Rule of Appellate Procedure 32.1 has, since 2006, allowed unpublished opinions to be cited, the California Constitution lets the courts decide which opinions they publish. However, California's appellate courts still publish only 8 percent of their opinions, Chief Justice Ronald M. George said last year.

The question of publication in California divides, roughly, the bar and the bench. A 2006 survey found that two-thirds of attorneys favored the citing of unpublished opinions, compared with only 28 percent of jurists—who, after all, must labor over the writing of those opinions.

For those who want to change the rules, the heart of the matter is the principle of stare decisis, says Ventura solo appellate attorney Greg May, author of The California Blog of Appeal.

Defenders of the current system, meanwhile, point to the already overburdened courts. Chief Justice George has said that allowing citation of all decisions would force judges, lawyers, and law clerks to sift through twelve times as many cases as they do now.

"The amount of work ... would drastically increase the cost of delivering legal services," adds David Axelrad, a partner with Encino appellate firm Horvitz & Levy. "One hundred percent of the appellate court decisions [would be] citable precedent—you'd have to read all of them!"

Kimberly Kralowec, an appeals attorney at San Francisco's Schubert & Reed, agrees that a change would mean extra work for lawyers. But she also finds some truth to the claim that the state Supreme Court is much less likely to grant review of unpublished decisions. "I can hear the frustration that is coming through in [the *Hild*] complaint," says Kralowec, who blogs at The Appellate Practitioner. "Whether it rises to a constitutional violation is a different story." —*Lorelei Laird*

S. Todd Rogers