

The Recorder - April 6, 2004

Kuehl floats bill on citation of unpublished opinions

Say the name "Schmier" in front of Chief Justice Ronald George and you'll probably see a flicker of irritation behind his eyes.

That's because Kenneth and Michael Schmier, two Emeryville attorneys, have for years waged a singular crusade to make all California appellate opinions citable - something the Judicial Council, which George chairs, believes is unnecessary and unfeasible.

Now the Schmiers have persuaded Sen. Sheila Kuehl, D-Santa Monica, to take up their cause. She's introduced a Senate bill to make all appellate opinions fair game for case cites. Although her bill is raising eyebrows around the Capitol - if only because the Schmiers have failed so many times before - Kuehl said the issue has bugged her for years.

Kuehl said that because citability is governed by court rules, the courts - including the Supreme Court - "can influence the law with rule-setting, as opposed to a public hearing."

But Ray LeBov, director of the Judicial Council's office of legislative affairs, said the court rule was made pursuant to the state Constitution. He said no one has ever brought forward examples of cases that demonstrate the inadequacy of the rules.

Kuehl also said she hadn't seen examples but that Michael Schmier told her he had "horror stories of judicial opinions where there's very little explanation of the decision."

The bill isn't the Schmiers' first attempt to go through the Legislature. They've also sued the state Supreme Court and the Judicial Council.

And Michael Schmier has run for Congress, state attorney general and the State Bar Board of Governors in the hopes that voters will sympathize with his view that letting courts determine which opinions are citable and which aren't "constitutes an invitation to error, incompetence, corruption and tyranny," according to the brothers' Web site.

Michael Schmier said he's hopeful for Kuehl's bill, in part because there's also a move afoot in federal courts to make all appellate rulings citable.

Kuehl admitted that, so far, "most everyone" she's talked to about the bill said it was a terrible idea.

- Jeff Chorney