

Law

It's the off season for lawyers/legislators

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Lawyers who are also Maryland legislators get an annual three-month Annapolis-based education in state law. They have greater name recognition and the ability to influence the laws that will impact their practice areas in a very direct way.

But being a member of the General Assembly can also mean having to put your practice on hold from January to April, say leaders of the Senate and House judiciary committees.

By statute, lawyer/lawmakers are entitled to continuances in their cases during the 90-day legislative session. But such stop-and-go litigating can discourage prospective clients and frustrate current ones who want their cases resolved quickly, said Sen. Brian E. Frosh, D-Montgomery, a partner at Karp, Frosh, Lapidus, Wigodsky & Norwind P.A. in Bethesda and chairman of the Senate Judicial Proceedings Committee. "Most people don't want a lawyer who's going to be gone three months of the year," he added.

For an attorney, handling cases on such a schedule is also difficult.

"You're slamming on the brakes and then stepping on the gas," Frosh said. "That's not a good way to drive."

Improvising in private practice

Frosh said he fully discloses to clients — and prospective clients — that his attention becomes divided for the three months he is in Annapolis. And those clients who choose to retain him are not abandoned between January and April, though tending to their cases does require Frosh to be "improvising all the time," he said.

"I do it on the fly," Frosh said of handling cases during the session. "I do it when I get five minutes in Annapolis

or at night or in the morning.”

Frosh has been managing his law practice this way for the 14 years he has been a lawyer/lawmaker, yet he said the system is not a well-oiled machine.

“Science is far too grand a term for what it is,” he said. “It’s a constant shuffling.”

Frosh added that his law-firm colleagues assist whenever possible.

“I’m used to it at this point,” he said. “[But] it’s not a great system for running a law practice.”

However, his twin roles of lawyer and legislator do have benefits.

Frosh, 62, said the titles of Senator and Committee Chair do not hurt when businesses are looking for a lawyer — “I’d be lying if I said people didn’t think it was a good credential” — but he added that he’s declined to represent clients who “think that because I’m a state senator ... I’m going to have special influence.”

Client recruitment aside, the legislative session is “like having a three-month continuing education course,” he said.

Judicial Proceedings and the House Judiciary Committee are among the General Assembly’s most influential panels, as they are perennially the center of legislative activity on major criminal and civil litigation. The judiciary committees’ broad criminal and civil jurisdiction ranges from the death penalty to the intricacies of when one has standing to sue an individual, a company or the state.

“Sooner or later, it all seems to come before us,” Frosh said of the issues before his committee. “In the process, you learn about what the law is.”

For example, when discussing real-estate issues with clients, he’ll often say to himself, “Wait, we just had a bill on that last year.”

Likewise, his work as a lawyer has exposed some holes in the legislative fabric that have prompted him to write legislative fixes — like a bill requiring the disclosure of deed transfers. Frosh said he got the idea about five years ago after a fellow lawyer told him about a scam artist who preyed upon people facing foreclosure.

“The cross-fertilization is very useful to me,” he said.

The defense lawyer

By contrast, Frosh’s counterpart in the House of Delegates said his legislative position has very little influence on his law practice.

“Criminal defendants are generally not up-to-date on the General Assembly,” said Judiciary Committee Chairman Joseph F. Vallario Jr., of Vallario & Collins in Suitland.

But judges and fellow lawyers are another matter. Vallario said they frequently contact him — “in the courthouse, at the crab feast” — regarding legislation they would like to see introduced and enacted.

For example, a judge recently told him that, while it is a crime for a minor to possess ammunition, Maryland law does not provide for a penalty. Vallario, 72, said he will consider introducing legislation next session to provide one.

Vallario, a 34-year General Assembly veteran, has a reputation as a master of the legislative process.

His critics say he has ruled over the Judiciary Committee since 1993 with an iron fist, seeing that his favored legislation clears the panel and is debated on the House floor — while ensuring that proposals he disfavors die in committee. In the 2008 session, for example, Vallario stymied proposals by Baltimore City State’s Attorney Patricia C. Jessamy and Police Commissioner Frederick H. Bealefeld III to require gun owners to report lost firearms and to decrease diminution credits.

At the time, Jessamy said prosecutors and the police “were beat up together” by the defense lawyer’s

committee.

Despite his decades in Annapolis, Vallario said being in the General Assembly still provides an education in Maryland law. For example, he said he learned in committee meetings about Maryland law governing penalties for probation and parole violations.

"A day doesn't go by in Annapolis that you don't learn something," said Vallario, a Democrat from Calvert and Prince George's counties. "We get 90 days of a refresher course. Every day there's something new that you pick up on."

Vallario added that his firm's criminal practice is unaffected by the General Assembly session, as other attorneys at Vallario & Collins fill the void left by his absence.

"We've got lawyers that can cover, so everything is taken care of in a pretty orderly fashion," Vallario said.

The public defender

Like Vallario, Sen. Lisa A. Gladden, D-Baltimore City and vice chair of Frosh's committee, is a criminal defense lawyer. She handles primarily alleged drug offenses in the misdemeanor trial division of the public defender's office in Baltimore.

During the three months Gladden is in Annapolis, the trial division borrows an attorney from the district court unit of the Baltimore public defender's office, said Kirk R. Osborn, the division's chief attorney. This temporary replacement is kept "quite busy" as Gladden's caseload is quite thick, Osborn said.

While the division is proud to have one of its own in the Senate, the public defender's office feels the pinch of Gladden's three-month absence, Osborn added.

"Given the state's budget cuts, we're severely understaffed," he said. "It's not easy."

Gladden herself was out of the country last week and could not be reached for this article.

As a public defender, she doesn't need name recognition to get clients. And, in an interview shortly after the session ended in April, Gladden said being a committee vice chair and General Assembly member for 10 years is of no help when representing criminal defendants in court. Judges are not impressed by titles, she said.

Gladden added that the skills needed to defend the accused dovetail with those required to legislate.

"If you're a public defender, the facts aren't going to be with you, so you need to know the rules," said Gladden, 44. "If the facts aren't with you, the rules can certainly help you."

In the legislature, Gladden last session exploited the rules to get a death-penalty repeal bill to the Senate floor — even after her committee rejected the legislation. The Senate, through a series of votes, took the unusual step of essentially withdrawing the defeated bill from the committee and approving it for floor debate.

The General Assembly eventually passed a compromise measure that limits the death penalty to murder convictions based on biological evidence such as DNA, a videotape of the slaying or a voluntary, on-camera confession.

"The bill died in committee," Gladden said. "[But] we used the rules to get the bill to the floor."

The educator

Unlike the other three committee leaders, Del. Samuel I. "Sandy" Rosenberg, D-Baltimore and vice chair of Vallario's panel, is not a practicing attorney. Instead, he teaches legislative-process courses as an adjunct professor at both the University of Maryland School of Law and the University of Baltimore School of Law.

Rosenberg said he is spending the summer preparing for this fall's classes, which he has taught the past 15 years.

The 2009 legislative session will provide the fodder for classroom topics and discussion, added Rosenberg, who

has been in the General Assembly 26 years.

Topic A this fall will be the death penalty legislation, which Rosenberg sponsored in the House.

After Gladden's procedural moves resulted in the Senate's compromise, Rosenberg acceded to Gov. Martin O'Malley's request to abandon his repeal effort in favor of a consensus on the limitations.

In class, the discussion will focus on "how your amended bill becomes a law," Rosenberg said. Another topic will be the effect, for good or ill, that dwindling press coverage of Annapolis has had on legislators and the legislation that emerges, he added.

The classes will — as they have in the past — feature guest speakers, including fellow lawmakers, lobbyists and advocacy group representatives. Gladden is among the past speakers.

Rosenberg, 59, said he enjoys being an adjunct, even though "nobody's going to retire on what we get paid."

The committee vice chair said he is not looking for a full-time professor job, adding that his focus remains on legislating.

"I want to stay on the 'faculty' in Annapolis," he said.