

1.9.04

BY LAWRENCE HURLEY

Daily Record Legal Affairs Writer

Bills introduced by eager legislators in Annapolis have a habit of disappearing, falling between the cogs of the political machine.

Most often, they end up in the bottom drawers of committee chairs, who exercise their power by refusing to schedule votes on bills they don't like unless some authority figure, like the governor, sweet-talks them into giving way.

That's why Del. Joseph F. Vallario Jr., D-Prince George's County, and Sen. Brian E. Frosh, D-Montgomery County, would have been top of many lobbyists' and fellow legislators' lists when they were sending out their holiday cards last month.

As the chairmen of the House Judiciary Committee and Senate Judicial Proceedings Committee respectively, these two men — both lawyers — have a big say on legislation that affects the legal community.

Each also has a different background and style.

Vallario, a defense attorney through-and-through, is the old hand, chairman of his influential committee since 1993, and one of Annapolis' power-brokers.

The father of six is something of a mentor to his com-

Taking their chairs

Conversations with

Vallario, Frosh

mittee members, people familiar with his style say; he's happy to give them responsibility for certain issues and allow them to grow as politicians.

A case in point is Vallario's deputy chairman on the committee, Del. Anthony G. Brown, D-Prince George's County, seen by many as one of Annapolis' rising stars, who has been a particular beneficiary of the senior politician's patronage, sources say.

In short, Vallario has the political capital to get his own way and to help other people get theirs.

Frosh, who handles commercial litigation and real estate law when not fulfilling his senatorial duties, finds himself in very different circumstances.

First and foremost, it's only his second year as chair, having taken over from Sen. Walter M. Baker, who presided over the committee with an iron fist for 16 years until he lost the 2002 election at the age of 75.

Annapolis insiders say Frosh is a breath of fresh air after Baker, as — in addition to being almost 20 years younger — he is approachable and open to new ideas.

adorning the walls around him, Vallario ponders on what the most important issue to come before him this year will be.

It doesn't take long to come up with an answer: medical malpractice.

Vallario is skeptical about most of the suggestions being made by the reform lobby, noting that the rise in insurance premiums has not been restricted to the medical community.

"I have been notified of some of the proposals being shuffled around by lobbyists," he says. "There are a lot of things that I don't think will carry much weight."

Reducing the cap on noneconomic damages, one of the tort reform group's top priorities, is certainly out of the question, Vallario stresses.

"I'm not sure if there's room to negotiate that," he says. "If the injuries are there we have a duty to protect our citizens."

However, Vallario is amenable to some potential

Last year he showed that he is his own man by standing up to Gov. Robert L. Ehrlich Jr. over Project Exile. Frosh dismissed the policy, which advocates harsher penalties for gun crimes, as "a grab bag of tweaks to the criminal justice system."

For Vallario and Frosh, as well as their colleagues, the forthcoming session — the second in the four-year political cycle — could be a big one.

Medical malpractice reform is the headline issue (see story, page 15A), but bills are also expected on gay marriage, assault weapons and changes to eligibility requirements for driving licenses.

In separate interviews over the last two weeks, both men outlined their views on the key issues, giving some indications as to the political battles that will be fought over the next three months and could continue for years.

Vallario's views

Sitting in his unassuming law office in Suitland, photographs of successive Judiciary Committees

proposals, including the imposition of mandatory mediation in malpractice cases, based on his complaint that "lawyers don't talk to each other" unless they're in a courtroom.

He also maintains that it's the insurance companies that need to make the first move if any reform is to take place.

The second biggest issue likely to raise its head is the debate over same-sex marriage, following the decision of Massachusetts' highest court to strike down a ban on such unions last November.

Vallario says Maryland's current law is clear — that marriage is between a man and a woman — but he speculates that problems could arise over what status married gay people from other states would have if they came to Maryland and, for example, filed for divorce.

"If you grant a divorce, you are recognizing the marriage," he observes.

Another problem is that Maryland has an obligation to recognize laws of other states unless there is specific legislation addressing the matter, Vallario says.

And until he hears more from both sides, like any experienced politician, the veteran is not prepared to say much else on what is sure to be a lightning rod for controversy.

But he does add that since the governor has already stated he would veto a bill legalizing gay marriage, there doesn't seem much point in venturing down that particular avenue.

"We don't have time to deal with dead bills," Vallario says.

The question of what rights undocumented immigrants should have is another subject sure to come up this session following several skirmishes last year.

It's a subject close to Vallario's heart, as he proudly states that his own father "came off the boat" in the early 20th Century.

It's because of this that he opposes legislation, expected to be introduced by Del. Herbert H. McMillan, R-Anne Arundel County, which would prevent undocumented immigrants from getting drivers' licenses.

"I would have to see a lot more evidence to convince me that we shouldn't license anyone who is capable of driving an automobile," Vallario says.

Frosh ideas

Frosh elects to lean against the wall in the conference room of his Bethesda law office while musing about the forthcoming session.

It's not that he's worried about facing the questions, he just has a bad back, he explains.

Something that does concern him, however, is the expiration of the federal ban on assault weapons in September this year.

"The question is whether Maryland can come in and fill the gap," Frosh explains.

He, along with several others, including Sen. Robert J. Garagiola, D-Montgomery County, who will co-sponsor a bill, would like to enact a state law covering all the weapons mentioned in the federal ban as well as others that have come onto the market more recently.

However, the bill is bound to run into opposition from the gun lobby; and, while Frosh's counterpart in the house supports legislation that would be similar to the federal law, Vallario says he is wary about going any further.

On gay marriage, Frosh appears to occupy the middle ground, saying that he would support some rights for same-sex couples, but not necessarily marriage.

"It seems to me there's some kind of force behind the argument that same-sex couples should not be prohibited from visiting each other in hospital or having property rights, like the right to inherit," he says. "But I can't say I have sorted out how those rights would be validated."

Irrespective of his views, Frosh believes no definitive answer will be produced by this year's session, simply because it is the first time it will have been discussed.

As for medical malpractice, Frosh advocates a Clinton-style "third way" which he hopes may dampen the debate, although, like Vallario, he opposes outright a reduction to the cap.

His idea is that doctors with excessively high insurance premiums should receive a tax credit from the state.

"I think it makes more sense from a public policy standpoint that problem should be borne by the entire population rather than just the victims of malpractice," Frosh explains.

He may have some support for his idea.

Vallario describes it as being "in the ballpark of discussion," while lawyer/lobbyist Paul A. Tiburzi, a leading player in the **Maryland Tort Reform Coalition**, calls it "creative" and says it needs to be discussed.

However, Kevin J. McCarthy of the **Maryland Trial Lawyers Association** dismisses the idea, saying he does not believe doctors should get a special tax break when other sectors of the community don't.

Frosh also has his own pet interest this session which he is hoping to bring to the attention of other lawmakers.

After making several tours of facilities in Maryland and other states, Frosh is an enthusiastic proponent of juvenile justice reform, which also happens to be an issue Gov. Ehrlich has said he plans to highlight this year.

Frosh says he was disturbed at the "very dismal" contrast between residential units in Maryland and one he visited in Fairfax County, Va.

He believes there needs to be a change in the way juvenile offenders are dealt with in an attempt to improve access to education and hopefully reduce recidivism.

"There are clearly better ways of handling kids," Frosh says. "But the resources we devote to it are insufficient."