The State Bar of California was created by legislative act in 1927 and codified in the California Constitution at Article VI, section 9. The State Bar was established as a public corporation within the judicial branch of government, and membership is a requirement for all attorneys practicing law in California. Over 165,000 California lawyers are members of the State Bar.

The State Bar Act, Business and Professions Code section 6000 et seq., designates a Board of Governors to run the Bar. The Board President is usually elected by the Board of Governors at its June meeting and serves a one-year term beginning in September. Only governors who have served on the Board for three years are eligible to run for President.

The Board of Governors consists of 23 members: sixteen licensed attorneys, six non-lawyer public members, and the Board President. Fifteen of the sixteen attorney members are elected to the Board by lawyers in nine geographic districts; the sixteenth attorney member is a representative of the California Young Lawyers Association (CYLA), appointed by that organization’s Board of Directors each year for a one-year term. The six public members are variously appointed by the Governor, Assembly Speaker, and Senate Rules Committee. Each Board member serves a three-year term, except for the CYLA representative (who serves for one year) and the Board President (who serves a fourth year when elected to the presidency). Members’ terms are staggered to provide for the election of five attorneys and the appointment of two public members each year.

The State Bar maintains numerous standing and special committees addressing specific issues; seventeen sections covering substantive areas of law; Bar service programs; and the Conference of Delegates, which gives a representative voice to local, ethnic, and specialty bar associations statewide.

The State Bar and its subdivisions perform a myriad of functions which fall into six major categories: (1) testing State Bar applicants and accrediting law schools; (2) enforcing the State Bar Act and the Bar’s Rules of Professional Conduct, and promoting competence-based education; (3) ensuring the delivery of and access to legal services; (4) educating the public; (5) improving the administration of justice; and (6) providing member services.

Much of the Bar’s annual budget is spent on its attorney discipline system. The system includes the nation’s first full-time professional attorney discipline court and a large staff of investigators and prosecutors. The Bar recommends sanctions to the California Supreme Court, which makes final discipline decisions. However, Business and Professions Code section 6007 authorizes the Bar to place attorneys on involuntary inactive status if they pose a substantial threat of harm to clients or to the public, among other reasons.

On March 1, State Bar Executive Director Steve Nissen announced his resignation in order to accept a position within Governor Gray Davis’ administration. Nissen, who officially left on March 19, had served at the Bar for only 16 months, arriving just prior to then-Governor Wilson’s veto of the Bar’s dues bill in October 1997. [16:1 CRLR 191] On March 20, Jeffrey T. Gersick—who has spent the past ten years as the Bar’s corporate secretary—was named to serve as Acting Executive Director pending a search for Nissen’s successor.

At this writing, the Board of Governors is functioning with vacancies in four of its six public member positions. Additionally, the term of public member Dorothy Tucker has expired, but she may continue to serve until she is reappointed or replaced. The term of the sixth public member, John Morris, expires in October 1999.

MAJOR PROJECTS

Bar Begins to Rebuild Attorney Discipline System

Armed with funds from a special assessment ordered by the California Supreme Court, the State Bar has begun to slowly rebuild the attorney discipline system it was forced to dismantle after former Governor Pete Wilson’s October 1997 veto of legislation authorizing the Bar to collect mandatory licensing fees from its members. [16:1 CRLR 190–94]

In its December 1998 ruling, the Supreme Court adopted new Rule 963 of the California Rules of Court (Interim Special Regulatory Fee for Attorney Discipline), requiring every lawyer actively practicing law in the state to pay $173; the funds raised are to be used only for disciplinary purposes. To ensure that the money collected is used properly, the court appointed retired Court of Appeal Justice Elwood Lui as a special master to oversee the collection and disbursement of the special assessment. The Bar is responsible for day-to-day management of the discipline system, with Justice Lui evaluating the functions and expendi-
tures of the Bar and reporting back to the court. Justice Lui issued his first report on the progress of the Bar on February 12. His report noted the following accomplishments:

♦ Segregated Account for Discipline Assessment. During December 1998, Justice Lui established separate bank accounts to ensure that the special assessment monies are segregated from the Bar’s other funds; ensured that the Bar’s 1999 Membership Fee Statement included a proper billing for the assessment; and required the Bar to establish a budget for the expenditure of the assessment funds consistent with that presented in its petition to the Supreme Court.

♦ Urgency Rule and Policy Revisions. Shut down since June 1998, the Bar’s discipline system is facing an unprecedented backlog of over 7,000 open complaints and reports against attorneys from consumers and courts. In January, the Bar formulated a strategic plan for the revival of its disciplinary system, which included the adoption of emergency revisions to its Rules of Procedure, Rules of Practice, and the policies of its prosecutorial arm, the Office of the Chief Trial Counsel (OCTC)—all intended to streamline the intake and disposition of cases. The revisions, which were drafted by representatives of the Board of Governors, the Bar’s Office of General Counsel, OCTC, and the defense bar, with Justice Lui acting as facilitator, became effective on February 1 and will remain in effect until June 30, 2000.

While OCTC’s prior policy had been to treat all accepted complaints equally, regardless of the severity of the alleged attorney misconduct, the Bar approved a prioritization policy under which complaints will be categorized into one of four priority groups according to perceived seriousness. Priority I cases include those which present the greatest risk of harm to clients, including misappropriation of client funds and multiple violations by a single attorney. Priority II cases include criminal violations and matters with disciplinary sanctions less than one year. Priority III and IV cases are all lesser violations, ranging from fee disputes to unauthorized practice. Under the new policy, the Bar’s investigators and prosecutors are authorized to look into Priority I and II cases only; Priority III and IV cases will be referred to other agencies or entities (see below) and closed by the Bar. Thus, while Bar prosecutors may be able to handle serious cases effectively, the Bar is relatively incapable of handling minor but very real violations. Many of the serious cases under investigation will have been pending for over two years when they finally go to hearing.

Another aspect of OCTC’s new policy is the reactivation of the Bar’s alternative dispute resolution (ADR) program under Business and Professions Code section 6086.14 and Rules 4401–07. Priority III and IV cases will be sent to ADR rather than adjudicated before the State Bar Court. In his February 12 report, Justice Lui states that “local bars may eventually participate in this program, and OCTC has committed itself to study the possible implementation of a broad ADR program.”

The Bar also adopted Rule 75, to permit either the Bar or a prospective respondent to request an “early neutral evaluation” before a State Bar Court hearing judge before the Bar files a formal Notice to Show Cause. According to Justice Lui, “it is anticipated that this procedure will facilitate early resolution of cases and thus time and cost savings for both the State Bar and attorneys against whom a complaint has been lodged.”

OCTC also adopted a discovery policy based on Brady v. Maryland, 373 U.S. 93 (1963). This policy provides that, prior to filing a formal Notice to Show Cause against an attorney, OCTC will provide that attorney “with access to, and an opportunity to copy, non-privileged materials and all exculpatory evidence from the State Bar’s investigation file.”

Finally, the urgency rule revisions streamline existing procedures for the consolidation of cases before the State Bar Court that involve an attorney against whom multiple complaints have been filed. The Board of Governors approved the strategic plan and the rule revisions at its January 30 meeting.

Additionally, at its March meeting, the Board approved emergency interim amendments to Rules of Procedure 200, 201, 205, and 206, to streamline the State Bar Court’s default proceedings when a member fails to respond to the Bar’s accusations included in a Notice to Show Cause. Under the current rules, a member’s default—which occurs in approximately 35% of the cases in which formal disciplinary charges are filed—usually results in the institution of three separate proceedings against the member: (1) discipline (usually including actual suspension and probation) based upon the charges in the notice; (2) a subsequent Bar motion to revoke probation for failure to comply with the terms of probation; where the actual suspension then imposed exceeds 90 days, the member is required to comply with Rule 955, California Rules of Court, by notifying his/her clients and opposing counsel of the suspension; and (3) yet another proceeding for failure to comply with Rule 955. Among other things, the emergency amendments provide that a member who is actually suspended for a specified period of time in a default case will remain on suspension until he/she files a motion with the State Bar Court to terminate the suspension. Although the Board of Governors approved the emergency amendments at its March meeting, it has released them for a public comment period ending on June 11.

♦ Hiring of Discipline System Staff. After the strategic plan was approved in January, Justice Lui approved the Bar’s hiring of new employees and, in some cases, its recall of former employees laid off during 1998 to staff the discipline system. This latter activity was complicated due to existing union agreements requiring the Bar to comply with various rules and restrictions when hiring and rehiring staff.

Justice Lui authorized the OCTC to hire 215 employees (or 65% of its former discipline system workforce) with the special assessment funds. The first discipline system personnel to return to the Bar were the complaint analysts who staff the Bar’s toll-free complaint line, which resumed operation on March 1. Because of the overwhelming backlog of existing complaints, the analysts staffed the hotline on a
half-time basis, and used the rest of their time to process the backlog. Following the return of the complaint analysts, the OCTC hired clerical support staff, paralegals, investigators, and prosecutors. By mid-March, however, the OCTC had only succeeded in filling 141 of the authorized 215 positions (exactly one-half of its staffing as of June 1998, when the mass layoffs occurred), forcing it to rely heavily on temporary workers to provide the backlog. Following the return of the complaint analysts, the clerical, secretarial, and administrative support necessary to service the professional staff while the recruitment, hiring, and training processes take place. The understaffing of the discipline system means that Bar prosecutors and investigators are suffering enormous caseloads when they are least able to handle them.

Justice Lui also approved the recall and hiring of employees to assist the five State Bar Court hearing judges who preside over disciplinary hearings, and the three-judge Review Department which hears appeals of hearing judge decisions and makes the Bar’s final disciplinary decisions. Since June 1998, these judges have functioned with minimal staff, and a huge backlog of fully investigated cases which were abated during the Bar’s shutdown now await hearing and decision. Further, the eight State Bar Court judges agreed to share the salary of three judges during the latter half of 1998; Justice Lui reinstated all eight to their full salaries as of January 1, 1999.

Consistent with the court’s ruling, Justice Lui approved funds to reopen the Bar’s Ethics Hotline, which assists members with ethics-related inquiries, and other Bar functions related to member competence. The Ethics Hotline resumed operation on March 15. Justice Lui also allocated funds to (1) reopen the Bar’s Membership Records Office, which prepares and mails annual fee statements, tracks member payment of discipline costs, and responds to inquiries from courts, the public, and other states concerning the discipline records of California attorneys; (2) authorize the recall and hiring of employees in the Bar’s Office of the General Counsel who handle discipline-related matters, such as defending challenges to the State Bar’s discipline system, representing the Bar in appeals of discipline cases before the Supreme Court, and responding to subpoenas for discipline records; (3) hire staff to assist with the Fee Arbitration Program, which arbitrates certain complaints in an attempt to avoid formal prosecution before the State Bar Court (Justice Lui noted that “a substantial backlog of arbitration requests has developed”); and (4) hire additional staff to support the substantive functions of the discipline system, including staff in the Bar’s Human Resources, Administrative Services, Staff and Building Services, Computer Services, and Finance offices.

At this writing, Justice Lui’s next progress report is due on June 22.

**Senate Judiciary Committee Chair to Carry Bar’s 2000 Dues Bill**

Next to rebuilding its discipline program, the Bar’s highest priority is to seek dues legislation authorizing it to collect licensing fees from its members during 2000 to fund not only discipline but many other Bar programs. The Bar must accept some limitations on its former activities in order to ensure passage of the fee bill, and reprioritize its spending if it is to fully reinvigorate its discipline system.

SB 144 (Schiff) would require members to pay total annual dues of $395 per year, about $80 less per lawyer than the high of $478 in 1997; in addition, the bill would mandate a 25–50% reduction in the fee for lawyers with low family incomes. Under the April 21 version of the bill, the Bar’s Conference of Delegates and subject-matter sections may not be funded with mandatory licensing fees; however, the bill would permit the Bar to collect voluntary contributions toward both entities as part of its annual collection of membership dues (see LEGISLATION). Both the Conference of Delegates and the sections have agreed to become self-funding.

The bill also attempts to address the dissatisfaction of many members and policymakers over the Bar’s use of mandatory licensing fees to engage in lobbying and other advocacy outside the permissible range of topics established in *Keller v. State Bar*, 496 U.S. 1 (1990). In Keller, the U.S. Supreme Court struck down the Bar’s use of compelled licensing fees for political or ideological activities unrelated to the regulation of the legal profession or improving the quality of legal services available to the people of the state. *10:2&3 CRLR 215* Since then, the Bar has been dividing its expenses into “chargeable” expenses permitted by *Keller*, and “nonchargeable” expenses prohibited by *Keller*, and has been permitting members who do not wish to fund “nonchargeable” activities to request a refund of that proportion of their dues (as calculated by the Bar). *15:4 CRLR 251; 15:1 CRLR 179* The whole process has resulted in nothing but dispute and litigation for the past seven years (see LITIGATION). SB 144 would attempt to address the problem by allowing members to deduct $4 from their dues if they do not want them used by the Bar to lobby on legislation outside the limits of *Keller*, and limit the Bar’s use of mandatory dues on non-*Keller* lobbying and related activities to an amount specified by formula.

As was the case last year *16:1 CRLR 193, 195–96*, several Republican legislators introduced competing legislation...
that would further restrict the Bar’s funding and authorities. SB 757 (Morrow) would authorize the Bar to collect only $345 in total dues during 2000, limit Bar activities to those approved by the legislature, and limit Bar lobbying to specified issues directly related to the regulation of the legal profession. However, both SB 757 and a similar bill, AB 1153 (Ackerman), failed passage in committee in late April (see LEGISLATION).

At a special May 1 meeting, the Board of Governors heard presentations from staff on ways to cut spending in various Bar programs to accommodate the $395 dues level currently in SB 144 (Schiff). One of the proposals calls for elimination of the Bar’s existing “Quality Assurance and Assessment Program,” which gives a complainant who is unhappy with the Bar’s handling of his/her complaint a second chance to convince the Office of the Chief Trial Counsel to take disciplinary action. Other suggestions included conversion of the Bar’s toll-free complaint line to an Internet-based system or to a 900 number, cutting the number of supervisors in OCTC from 17 to 11, asking volunteer lawyers to take over the practices of dead or disbarred lawyers, eliminating some staff in the Bar’s Membership Records Office (as much of its information is being transferred onto the Internet), and cutting staff in offices that support the Bar’s legal services programs.

The Board will continue these discussions if and when SB 144 is enacted.

**Board of Governors Approves Bar’s 1999 and 2000 Budgets**

At its March 13 meeting, the Board of Governors approved a $73 million budget for 1999, which is based on members’ existing mandatory fees of $77 ($27 is earmarked for discipline, $10 for the Bar’s building fund, and $40 for the Client Security Fund), the special discipline assessment of $173, the fees of inactive members, other fees voluntarily contributed by members, revenue from self-funding Bar programs, and reserve funds. Discipline will consume over $25 million of the total budget. The 1999 budget also includes $478,000 for the Bar’s Commission on Judicial Nominees Evaluation, which had been funding itself during 1998 through voluntary contributions from law firms and corporate law departments whom the Bar declined to identify. [16:1 CRLR 194–95]

Also at its March meeting, the Board tentatively approved a 2000 budget which assumes passage of a dues bill authorizing collection of at least $384 per member, more than the $250 per member being collected in 1999, but far less than the $478 per member collected in 1997. The 2000 budget includes $920,000 in savings from a proposed overhaul of the State Bar Court suggested by the Court itself, which will cut the number of staff positions from 52 to 37. Overall discipline expenditures in 2000 will approach $36 million. Obviously, the 2000 budget is contingent upon the passage of SB 144 (Schiff) (see above and LEGISLATION).

**Bar Adopts Regulations to Implement SB 2086 (Keeley)**

At its March meeting, the Board of Governors adopted proposed Rule of Court 983.4 to implement SB 2086 (Keeley), which became effective on January 1, 1999. SB 2086 was enacted in response to the California Supreme Court’s ruling in Birbrower v. Montalbano, Condon & Frank v. Superior Court (ESQ Business Services Inc., Real Party in Interest), 17 Cal. 4th 119 (Jan. 5, 1998; as modified Feb. 25, 1998), in which the court held that out-of-state attorneys not licensed to practice law in California may not enforce a fee agreement for representing a California client in a California arbitration proceeding. Until January 1, 2001, SB 2086 amends section 1282.4 of the Code of Civil Procedure to permit out-of-state attorneys who meet specified requirements to represent a party in an arbitration proceeding in California, or to render legal services in California in connection with an arbitration proceeding in another state. [16:1 CRLR 196–98]

Rule 983.4, which originally became effective on January 1 on an emergency basis, creates the Bar’s Out-of-State Attorney Arbitration Counsel program, as required by SB 2086. The rule incorporates by reference the requirements of section 1282.4 (which requires an out-of-state attorney seeking to represent a client in a California arbitration proceeding to serve a certificate containing specified information on the Bar, the arbitrator, and all parties and counsel in the arbitration whose addresses are known to the attorney) and imposes a $50 filing fee on out-of-state counsel. Under Rule 983.4, an attorney who files a certificate containing false information is subject to discipline by the Bar.

At this writing, the Bar’s permanent adoption of Rule 983.4 is pending approval by the California Supreme Court.

**LEGISLATION**

SB 144 (Schiff), as amended April 21, is a Bar-sponsored bill that would restore the Bar’s authority to require members to pay annual licensing fees (see MAJOR PROJECTS). In addition to its existing authority to require members to pay $77 per year (which amount is earmarked for specific programs), SB 144 would authorize the State Bar to collect $318 as membership dues for the year 2000, for a total annual dues bill of $395. The bill would provide a 25% fee reduction if a lawyer’s gross family income is less than $40,000, and a 50% offset if gross income is less than $25,000.
SB 144 would also: (1) reduce the Bar's existing minimum continuing legal education (MCLE) requirement from 36 hours every 36 months to 25 hours every 36 months, and require the Bar to develop low-cost or no-cost options for fulfilling self-study requirements; (2) repeal the existing exemption from the MCLE requirement for retired judges (see LITIGATION); (3) make the Conference of Delegates and the State Bar sections self-funding (no mandatory dues would be used to fund these Bar activities), but allow the Bar to collect voluntary fees on their behalf and to provide administrative support services at cost; (4) allow members to deduct $4 from their dues if they do not want their dues used by the Bar to lobby on legislation outside the limits of Keller v. State Bar, and limit the Bar's use of mandatory dues on non-Keller lobbying and related activities to an amount specified by formula; and (5) require an independent comprehensive financial audit of Bar expenses prior to an authorization to collect dues for 2001.

SB 144 would also incorporate the provisions of SB 143 (Burton) relating to attorney discipline (see below). [S. Jud]

SB 143 (Burton), as amended April 6, would provide that an attorney who is being investigated by the State Bar for possible disciplinary action (1) may not be compelled to waive any statutory or constitutional privilege in meeting his/her duty to cooperate with a request for information from the Bar; (2) may not be compelled to comply with a request for information within an unreasonable period of time; and (3) must be given fair and adequate notice of the charges and a fair and adequate opportunity to respond.

This bill would also require the Bar to study its disciplinary practices to review whether there exists any institutional bias which may cause more disciplinary actions to be filed against solo and small firm practitioners than against attorneys in large firms. [A. Jud]

SB 757 (Morrow), as amended April 5, was an alternative to SB 144 (Schiff) that would have authorized the Bar to collect $345 in total dues during 2000; in setting the total annual dues figure at $345, the bill would have repealed the Bar's existing authority to collect separate dues of $25 for discipline, $2 for the State Bar Discipline Monitor (whose term ended in 1992), $40 for the Client Security Fund, and $10 for the Bar's Building Fund.

SB 757 would have limited Bar activities to those approved by the legislature, and limited Bar lobbying to specified issues directly related to the regulation of the legal profession. It would have separated the Conference of Delegates from the Bar, thus depriving it of funding from mandatory dues. Among other things, the bill would also have provided that continuation of the Bar's MCLE requirements is subject to Supreme Court determination (see LITIGATION); required the Bar to contract with the Bureau of State Audits to conduct an audit of Bar expenses, and required submittal of the Bar's annual budget for review by the fiscal committees of each house; subjected the Bar's Board of Governors and its committees to the Bagley-Keene Open Meeting Act; and prohibited the Bar from awarding a contract for goods or services in an aggregate amount exceeding $50,000, except under a procedure which makes use of a request for proposals. This bill failed passage in the Senate Judiciary Committee on April 27.

AB 1153 (Ackerman), as amended April 7, was somewhat similar to SB 757 (Morrow) (see above). AB 1153 failed passage in the Assembly Judiciary Committee on April 20.

AB 925 (Hertzberg). The Bar's Rules of Professional Conduct provide that lawyers may enter into business transactions with their clients or acquire pecuniary interests adverse to their clients only if certain prerequisites, including the client's informed written consent, are met. As introduced February 25, this bill would prohibit a lawyer from selling financial products to any client who is an elder or dependent adult with whom the lawyer has or has had an attorney-client relationship unless the lawyer provides that client with a written disclosure that includes certain information about the financial product and the terms of the proposed sale. The disclosure must be signed by the client, or the client's conservator, guardian, or agent under a valid durable power of attorney. This bill would provide that a client injured due to a lawyer's failure to comply with the written disclosure requirement may sue for civil damages and other civil remedies, and provide for an additional award if certain specified conditions are met. SB 925 would also provide that a violation of this prohibition shall be cause for discipline by the State Bar. [A. Jud]

AB 1042 (Cedillo). Existing law requires law students attending unaccredited law schools to pass the so-called "Baby Bar" examination after the first year, and precludes them from receiving credit for the first year or subsequent years of study until they have passed the examination. As amended April 14, AB 1042 would repeal the "Baby Bar" requirement and state legislative intent that this provision applies retroactively. [A. Jud]

AB 1452 (Alquist), as introduced February 26, would require all unaccredited law schools that are subject to the jurisdiction of the Bureau for Private Postsecondary and Vocational Education to provide reasonable access to specified library resources, including a complete and current version of the published decisions of California courts (including advance sheets); a digest or encyclopedia of California law; a citator for California cases and statutes; the annotated California codes; and, if available, a standard text or treatise for each course or subject in the curriculum of the school. "Reasonable access" to these resources may be provided via online, Internet, and CD-ROM research services. This requirement would not apply to correspondence law schools. [A. Jud; A. HiEd]

AB 1275 (Pacheco), as introduced February 26, is a spot bill that would state legislative intent to regulate the paralegal profession. [A. Jud]

AB 1157 (Steinberg), as introduced February 25, is a spot bill that would state legislative intent to provide funding
for qualified legal services projects and support centers from funds deposited in the state's Unclaimed Property Fund. [A. Jud]

LITIGATION

Almost ten years after the U.S. Supreme Court issued its landmark unanimous decision in Keller v. State Bar, Brosterhous v. State Bar of California—a 1992 case challenging the Bar’s calculation of the 1991 “Hudson deduction” that purports to satisfy the Court’s 1990 directive in Keller—is scheduled for trial on May 10 in Sacramento County Superior Court.

In Keller, the U.S. Supreme Court struck down the Bar’s use of mandatory membership fees for ideological or political purposes unrelated to the “regulation of the legal profession or improving the quality of legal services” (see MAJOR PROJECTS). The Court also required the Bar to adopt adequate procedures, such as those outlined in Chicago Teachers Union v. Hudson, 475 U.S. 292 (1986), to protect the interests of objectors. In response to Keller, the Bar adopted procedures under which it analyzes and categorizes its expenses as “chargeable” or “nonchargeable,” and offers all Bar members an opportunity to decline to pay the “nonchargeable” portion (the so-called “Hudson deduction”). Under the Bar’s procedures, challengers may dispute the Bar’s calculation of the “chargeable” portion, and the Bar will place the disputed amount in escrow; if the Bar refuses to amend its calculations, the matter will be submitted to binding arbitration.

In 1992, the Brosterhous plaintiffs challenged the $3 Hudson deduction offered by the Bar in 1991, contending that the actual “nonchargeable amount” was $87. The arbitrator essentially found for the Bar, but held that the Bar owed each of the objectors an additional $4.36. [12:2&3 CRLR 270] Instead of seeking direct review of the arbitration award, plaintiffs filed Brosterhous v. State Bar, No. 527974 (Sacramento County Superior Court), challenging the calculation of the fee and alleging that the Bar’s use of mandatory fees for unpermitted uses violates their rights to freedom of speech and association under 42 U.S.C. section 1983 and Article 1, Sections 2-3 of the California Constitution. [12:4 CRLR 237] The Bar demurred, claiming that the action is barred by the binding effect of the arbitrator’s decision as provided in the Bar’s procedures; the court sustained the demurrer in January 1993. [13:2&3 CRLR 223-24] Plaintiffs appealed.

In 1994, the Third District Court of Appeal struck down the Bar’s attempt to limit the objectors’ remedy to arbitration, holding that a binding arbitration procedure does not preclude an independent judicial action alleging violation of statutory rights under section 1983: “Congress intended such claims to be judicially enforced.” [15:1 CRLR 179] The California Supreme Court affirmed the Third District’s decision in December 1995. [15:4 CRLR 251]

The case is scheduled for trial before Superior Court Judge Morrison C. England Jr. Among other things, plaintiffs challenge the Bar’s failure to include as “nonchargeable” expenses all of its expenditures (including overhead expenses) on eight programs, including the Conference of Delegates, the Bar’s subject-matter sections, and many activities of its Office of Governmental Relations, which undertakes the Bar’s legislative lobbying. The Bar claims that it has broad discretion in determining which activities are chargeable and which are not. The Recorder, a legal newspaper, quoted Bar President Raymond Marshall as saying, “Keller only says you have to have a reasonable process; critics can’t line-item, nickel-and-dime every procedure.”

At this writing, the California Supreme Court is still considering the First District Court of Appeal’s decision in Warden v. State Bar of California, 53 Cal. App. 4th 510 (Mar. 13, 1997), a case challenging the constitutionality of the State Bar’s Minimum Continuing Legal Education (MCLE) program. [16:1 CRLR 195, 197] Created in 1989 by SB 905 (Davis) (Chapter 1425, Statutes of 1989), the MCLE program is designed “to assure that, throughout their careers, California attorneys remain current regarding the law, the obligations and standards of the profession, and the management of their practices.” Under Business and Professions Code section 6070 et seq., Bar members must complete 36 hours of MCLE during each three-year compliance period, including four hours of legal ethics, four more hours of either ethics or law practice management, and one hour each in substance abuse and elimination of bias in the legal profession. Exempt from the MCLE requirement (either as set forth in section 6070 or in Rule 958, California Rules of Court) are retired judges, officers and elected officials of the State of California, full-time professors at accredited law schools, and full-time state and federal employees acting within the scope of their employment. The First District found that the statute creating the Bar’s MCLE program is unconstitutional because there is no rational relationship between the goal of the legislation and the exemptions for state officers, elected officials, retired judges, and full-time law professors. All of these exempted members could actively represent clients, yet there is no mechanism to ensure that they are aware of current legal developments. Thus, the statute violates the equal protection rights of Bar members who are not exempt from the program. SB 144 (Schiff), currently pending in the legislature, would eliminate the exemption for retired judges (see LEGISLATION).

FUTURE MEETINGS

• June 25-26, 1999 in Los Angeles.
• August 20-21, 1999 in San Francisco.
• September 30-October 3, 1999 in Long Beach (annual meeting).
• October 29-30, 1999 in Costa Mesa.
• December 3-4, 1999 in Los Angeles.
• February 4-5, 2000 (TBA).
• March 31-April 1, 2000 (TBA).
• June 9-10, 2000 (TBA).
• August 25-26, 2000 (TBA).