



District Court of Appeal and the California Supreme Court. As requested, and over the objection of plaintiffs, the superior court entered a modified judgment and injunction against plaintiffs. Moore objects to the modified injunction on grounds it improperly expands the scope of the action by broadly prohibiting "the unlicensed practice of public accountancy," when both the First District and the California Supreme Court specifically found that the Board has not alleged Moore has engaged in the unlicensed practice of public accountancy. Moore also disputes the modified judgment, which characterizes the Board as the "prevailing party" in the litigation. Moore notes that throughout this lengthy action, the Board has consistently urged the position that non-CPA accountants should be absolutely prohibited from any use of the terms "accountant" or "accounting"; that position was expressly rejected by both the First District and the California Supreme Court. While Moore's primary position—complete invalidation of the rule—was not adopted either, the courts' decisions now permit her and other non-CPA accountants to use the terms "accountant" and "accounting" with a disclaimer. Thus, Moore has appealed the trial court's injunction and judgment to the First District Court of Appeal, filing her opening brief on May 10; at this writing, the Board is expected to file a response in late June.

On February 26, the First District Court of Appeal retroactively applied *Bily v. Arthur Young*, 3 Cal. 4th 370 (1992), and overturned a trial court's ruling which granted a new trial to determine damages against Touche Ross in a professional negligence and negligent misrepresentation proceeding. In *Industrial Indemnity Co. v. Touche Ross & Co.*, No. A055844, the First District found that because Industrial did not contract for or engage Touche's audit services, it may not recover for general negligence under the *Bily* decision, which limits an auditor's liability for general negligence in the conduct of an audit of its client's financial statements to the person who contracts for or engages the audit services. [12:4 CRLR 51] The court also found that Touche is not liable to Industrial for negligent misrepresentation under *Bily*, which found that auditors retained to conduct an annual audit and to furnish an opinion for no particular purpose generally undertake no duty to third parties, even though such an auditor "knows that the financial statements, accompanied by an auditor's opinion, are customarily used in a wide variety of financial transactions...and may be relied

upon by lenders, investors, shareholders, creditors, purchasers, and the like..." The court found no evidence in the record to support a departure from this general rule.

In *Edenfield v. Fane*, 113 S.Ct. 1792 (1993), the U.S. Supreme Court struck down a Florida rule prohibiting CPAs from engaging in "direct, in-person, uninvited solicitation" to obtain new clients. Although acknowledging that though the purposes behind the ban are to protect consumers from fraud and maintain the fact and appearance of CPA independence in auditing financial statements, the court found that the Florida Board of Accountancy failed to demonstrate that the ban advances those interests in any direct and material way. Accordingly, the Court ruled that Florida's outright ban against truthful, nondeceptive information proposing a lawful commercial transaction is commercial speech which is protected by the first and fourteenth amendments.

In *Reves v. Ernst & Young*, No. 91-886 (Mar. 3, 1993), the U.S. Supreme Court held that accountants, lawyers, and other professionals must actually participate in the operation or management of an illegal enterprise in order to be liable under the federal Racketeer Influenced and Corrupt Organizations Act (RICO). The Court upheld the Eighth Circuit Court of Appeals' decision affirming the trial court's decision to grant summary judgment and dismiss a case brought against the accounting firm Ernst & Young for its role in a stock offering that was later the subject of a RICO suit by investors.

RECENT MEETINGS

At its February meeting, BOA adopted a CPA firm namestyle designation policy, which provides that only the CPA credential may be part of the official namestyle of a firm; a specialty designation may not be used within a namestyle. Also, if a licensee obtains a designation related to the practice of public accountancy, such a designation must appear separate from the firm name and may be used only if it meets the following conditions: (1) any specialty designation must clearly identify the specific individual who has obtained the designation and the specific organization that issued the designation; and (2) to avoid public confusion, the designation may not appear after or follow the licensee's CPA designation. Only academic credentials appropriately earned are permitted after the licensee's CPA designation.

FUTURE MEETINGS

November 18-19 in Sacramento.
February 4-5 in Los Angeles.

BOARD OF ARCHITECTURAL EXAMINERS

Executive Officer:
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The Board of Architectural Examiners (BAE) was established by the legislature in 1901. BAE establishes minimum professional qualifications and performance standards for admission to and practice of the profession of architecture through its administration of the Architects Practice Act, Business and Professions Code section 5500 *et seq.* The Board's regulations are found in Division 2, Title 16 of the California Code of Regulations (CCR). Duties of the Board include administration of the Architect Registration Examination (ARE) of the National Council of Architectural Registration Boards (NCARB), and enforcement of the Board's statutes and regulations. To become licensed as an architect, a candidate must successfully complete a written and oral examination, and provide evidence of at least eight years of relevant education and experience. BAE is a ten-member body evenly divided between architects and public members. Three public members and the five architects are appointed by the Governor. The Senate Rules Committee and the Speaker of the Assembly each appoint a public member.

MAJOR PROJECTS

Oral Exam/Appeals Process Update.

In addition to NCARB's national standardized written exam, BAE administers a supplemental oral examination in California, the stated purpose of which is to ensure that the entry-level architect understands all phases of architectural practice and the architect's responsibilities as they relate to each other. At numerous meetings during 1992, the Board considered the possible elimination of its oral exam; however, at its October 2 meeting, BAE decided to extend its contract with CTB MacMillan/McGraw-Hill (CTB) to provide oral exam administration, scoring, and reporting services through June 30, 1993, and directed staff to develop a request for proposals (RFP) for future exam services. [13:1 CRLR 19-20]

At its January 29 meeting, BAE's Internship and Oral Exam Committee reviewed and approved the RFP, which was advertised in the *State Contracts Register* on February 11; in response, the Board received two bids. On March 18, a five-person evaluation team consisting of



Board members Betty Landess and Dick Wong, Internship and Oral Exam Committee member P.K. Reibsam, BAE Exam Program Analyst Michelle Rankin, and Darlene Atkinson-Stroup of the Department of Consumer Affairs' Central Testing Unit awarded the highest number of points to CTB, which was selected as the successful bidder.

Also at its October 1992 meeting, BAE directed the Internship and Oral Exam Committee to develop recommendations regarding whether BAE should develop an appeals process for its oral exam. [13:1 CRLR 20] At its January 29 meeting, the Committee noted that Board staff would be compiling data on the number and type of complaints received from oral exam candidates for review by the Committee; at its May 4 meeting, the Committee reviewed a chart which summarized the number and type of candidate complaints received after the January 1993 oral exam results were released. Following discussion, the Committee agreed to continue monitoring the need for an appeals process on an ongoing basis, and postponed development of such a process indefinitely.

BAE Considers Future Role. BAE recently decided to begin considering what the requirements for California architectural licensing should be in the next century [13:1 CRLR 20]; as a result, BAE's Written Examination Committee devoted time at its February 19 meeting to discuss the level of formal education the state should require, given the increasing complexity, computerization, and demands of practice; whether the public would be better served by having architects in each state more or less meeting similar licensing requirements; whether the citizens of California would be better served by having more educated and thoroughly trained architects; and whether architects would be able to practice competently in the next century without some type of formal education. Following discussion, the Committee agreed that it does not want to restrict California's current entrance requirements by following NCARB's stricter requirements; the Committee also directed staff to identify further issues and options for general discussion at its June 1 meeting.

Board Accepts NCARB Scores from the 1984 Dual Grading Session. In June 1983, NCARB began administration of a revised form of its ARE; as part of the transition to the new ARE format, NCARB adopted a resolution which required member boards to participate in regional grading sessions and to delegate the grading to NCARB designees. How-

ever, the California Attorney General opined that, under the statutes in effect at that time, the Board could not delegate the grading of the graphic design portion to NCARB; in June 1984, the Board conducted a California design grading session and required that candidates pass both the California grading as well as that of NCARB in order to receive credit for California licensure. Difficulties in this arrangement led to BAE's break from NCARB in 1986, and its administration of its own California Architect Licensing Examination (CALE) from 1987 through 1989. [9:2 CRLR 44]

During negotiations with NCARB for California's return to the ARE in June 1990, legislation was enacted which authorized the Board to delegate the grading of California examinations to the vendor under contract to BAE; BAE subsequently adopted regulations which granted credit to candidates who passed divisions of the ARE administered prior to and during the period that California was administering the CALE. However, no formal vote of the Board was taken at any time that authorized staff to grant credit to candidates whose solutions failed the 1984 California grading but received a passing score from the 1984 NCARB grading session.

There are currently 46 candidates who received a passing score from NCARB in 1984, but did not pass the California grading session. According to BAE, 34 of these candidates are considered inactive since they have not taken the examination for at least five years; of the remaining twelve active candidates who took the graphic divisions in 1984, five still need to pass the multiple choice division and seven have yet to pass only the graphic divisions.

At its January 22 meeting, BAE discussed whether it should grant credit to candidates who received a passing score from NCARB for either design division on the 1984 ARE. Because the Board accepts all other ARE passing scores, the Written Examination Committee recommended and the Board agreed to accept the NCARB scores for the 1984 dual grading session.

Examination Committee Addresses Experience, Academic Issues. At its February 19 meeting, BAE's Examination Committee discussed the following topics: foreign work experience credit; credit for work experience obtained while in school; and results of a survey of California architectural schools regarding the definition of "full-time" status.

Regarding credit for foreign work experience, the Committee noted that an increasing number of individuals are moving to foreign countries to gain work ex-

perience in architecture after obtaining a degree; as a result, the number of candidates requesting that foreign work experience be given credit by BAE is also increasing. BAE's Table of Equivalents (section 117, Title 16 of the CCR) allows the Board to grant 50% credit for foreign work experience with a maximum credit of seven years; the work experience must be performed "under the direct supervision of an architect licensed in the foreign country where the experience occurred." Because all countries do not require the same qualifications for licensure, current BAE policy defines the term "licensed in the foreign country" in similar terms to licensure in the United States (a license to practice architecture issued by a government agency which has oversight authority for the profession).

However, some countries license architects simply upon graduation from a recognized architectural school; in other countries, the practice of architecture is overseen by a professional association rather than a government agency. Following discussion, the Committee unanimously agreed to limit the credit given for foreign work experience to those countries that have standards for licensure similar to California and to recognize such standards if they are enforced by a professional organization in lieu of a government licensing agency. Individuals will still need to complete an additional year of work experience under the supervision of a U.S.-licensed architect and pass the ARE in order to qualify for California licensure.

Currently, BAE allows a candidate to count only twelve months of in-school work experience toward the required eight years of practice/education needed for licensure. The Committee agreed that the one-year maximum credit places an unfair burden on candidates who work their way through college. Accordingly, the Committee unanimously agreed to eliminate the one-year maximum for candidates with the professional bachelor's or master's degree in architecture. The Committee also directed staff to develop recommendations concerning other educational degrees for its consideration at a future meeting.

Finally, the Committee discussed the varying standards used by architectural schools to determine full-time status. Because a recent survey indicated that most schools use the number of units taken to determine full- or part-time status, the Committee agreed that BAE's definition of the term "full-time student" should be amended to mean a student enrolled in twelve or more units instead of three or more classes. This change requires an



amendment to BAE's regulations; at this writing, notice of the proposed amendment has not been published in the *California Regulatory Notice Register*.

LEGISLATION

SB 842 (Presley), as amended April 13, would permit BAE to issue interim orders of suspension and other license restrictions against architects; the bill would require notice and hearing on the proposed issuance of an interim order, except where it appears that serious injury would result to the public before the matter is heard on notice. [A. CPGE&ED]

AB 1807 (Bronshvag), as amended May 3, would authorize BAE to establish by regulation a category of inactive licensure. [A. W&M]

AB 295 (Eastin), as amended May 11, would specify that architects and other specified design professionals contracting on or after January 1, 1994 for public or private works of improvement are entitled to payments due under the contract from the project owner thirty days after written demand, except as to amounts in good faith dispute; violations would be subject to a penalty of 2% per month on the amount wrongfully withheld, to a maximum of 12% of the total amount due. [A. Floor]

RECENT MEETINGS

BAE welcomed new public member Betsy Weisman at its January 22 meeting; appointed by Governor Wilson on December 18, Weisman has been senior planner for the City of San Diego since 1987, and served as an urban planner for New Horizons Planning Consultants.

Also at its January 22 meeting, BAE noted that under Governor Wilson's proposed 1993-94 fiscal year budget, it would have an expenditure authorization of \$3.7 million, an increase of \$500,000 over the Board's expected operating budget of \$3.2 million for fiscal year 1992-93. According to staff, BAE would be able to meet its obligations with actual expenditures of \$3.5 million during 1993-94.

Also in January, the Board reviewed preparations for the administration of the June 1993 ARE, scheduled for June 14-17 in San Jose, Pasadena, Pomona, and San Diego. The San Jose location represents a consolidation of three Bay Area sites used in 1992; this modification will save BAE approximately \$80,000 in site rental costs.

Also at the January meeting, BAE elected its officers for 1993: Betty Landess will serve as president, Dick Wong will serve as vice-president, and Paul Robinson will serve as secretary. All three are architect members of the Board.

FUTURE MEETINGS

To be announced.

ATHLETIC COMMISSION

Executive Officer:
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The Athletic Commission is empowered to regulate amateur and professional boxing and contact karate under the Boxing Act (Business and Professions Code section 18600 *et seq.*). The Commission's regulations are found in Division 2, Title 4 of the California Code of Regulations (CCR). The Commission consists of eight members each serving four-year terms. All eight members are "public" as opposed to industry representatives. The current Commission members are Willie Buchanon, William Eastman, Ara Hairabedian, H. Andrew Kim, Jerry Nathanson, Carlos Palomino, Kim Welshons, and Robert Wilson.

The Commission has sweeping powers to license and discipline those within its jurisdiction. The Commission licenses promoters, booking agents, matchmakers, referees, judges, managers, boxers, and martial arts competitors. The Commission places primary emphasis on boxing, where regulation extends beyond licensing and includes the establishment of equipment, weight, and medical requirements. Further, the Commission's power to regulate boxing extends to the separate approval of each contest to preclude mismatches. Commission inspectors attend all professional boxing contests.

The Commission's goals are to ensure the health, safety, and welfare of boxers, and the integrity of the sport of boxing in the interest of the general public and the participating athletes.

MAJOR PROJECTS

Commission's Budget Problems Continue. At the Commission's January 15 and February 26 meetings, Executive Officer Richard DeCuir reported that the Commission's dire fiscal situation is not improving, and estimated that the Commission could face a \$225,000 deficit at the end of the fiscal year. [13:1 CRLR 21] The Commission's budget woes have already resulted in the closure of its Los Angeles office, lay-offs of most of its professional staff, and an inability to conduct gym inspections, implement its martial arts regulations, develop a program for the management of its pension fund monies [12:4 CRLR 56-57] and afford to pay Attorney General counsel to advise it at

meetings. Further, the Commission expects to receive an additional \$200,000 budget cut as of July 1. In light of this possibility, the Commission asked for a \$225,000 loan, partially from its neurological exam account and partially from the Bureau of Automotive Repair; DeCuir reported on February 26 that the Department of Finance had approved the loan, based on DeCuir's ongoing efforts to produce a plan which will provide a fiscal solution for the Commission.

On January 15, the Commission issued a press release to publicize the Commission's serious budget problems. Among other things, the release stated that the proposed budget cut will require the Commission to cease operations unless legislation is enacted to increase its licensing fees and derive funds from pay-per-view boxing.

At the Commission's April 16 meeting, DeCuir reported that two bills had been introduced to help alleviate the Commission's budget crisis: AB 2275 (Tucker) would raise licensing fees and AB 2313 (Cortese) would authorize the Commission to regulate all martial arts studios and schools (*see* LEGISLATION). If both are enacted, the Commission could receive an additional \$250,000 per year in revenue. DeCuir noted that he could not find any legislator willing to carry the pay-per-view legislation.

Neurological Examination Update. At the Commission's January 15 meeting, Executive Officer DeCuir updated the Commission on the proposed joint neurological study involving the Commission and Johns Hopkins University; the study would involve the University's review and evaluation of the Commission's neurological data on approximately 300 California professional boxers collected over the next four to five years, in order to more accurately assess the risk of chronic brain damage as a result of participation in professional boxing. [12:4 CRLR 56] DeCuir reported that Drs. Walter Stewart and Barry Gordon of Johns Hopkins' Department of Epidemiology will be submitting a \$1.5 million grant proposal to the National Institutes of Health; the doctors also requested that the Commission establish an external advisory committee which could provide assistance in setting policies for the study. In response, the Commission appointed Commissioners Eastman and Welshons, Executive Officer Richard DeCuir, and Dr. Richard Drew, the Commission's psychologist, to an external advisory committee to assist in the administration of the study.

At its February 26 meeting, the Commission discussed possible changes to its