children. The bill would require a law enforcement officer requesting this information to prepare and sign a written affidavit supporting the request, and would provide that specified persons and entities shall not be subject to criminal or civil liability for reasonably relying on an affidavit pursuant to this provision. *[S. Appr]*

AB 1879 (Peace). Under existing law, the meetings of the PUC are required to be open and public, in accordance with the specified provisions of law. The Commission is required to include in its notice of meetings the agenda of business to be transacted, and no item of business may be added to the agenda subsequent to the notice, absent an unforeseen emergency situation. A rate increase is specified as not constituting an unforeseen emergency situation. As amended April 22, this bill would provide that a rate decrease may constitute an unforeseen emergency situation. *[S. E&PU]*

SB 1147 (Rosenthal), as amended April 15, would require the PUC to determine the total statewide dollar amount of social costs, as specified, which are embedded in regulated utility rates for delivered natural gas, and spread that amount equally as a surcharge to all consumers of natural gas in the state, whether regulated or unregulated, utility or nonutility. *[S. Appr]*

SB 335 (Rosenthal). Existing law permits the PUC to authorize natural gas utilities to construct and maintain compressed natural gas (CNG) refueling stations to be owned and operated by the utility, or to be transferred to nonutility operators; support the construction and maintenance of CNG vehicle conversion and maintenance facilities; provide incentives for conversion of motor vehicles to CNG-fueled vehicles, and incentives to promote the purchase of factory-equipped CNG-fueled vehicles; and recover through rates the reasonable costs associated with the above projects. These provisions are to be repealed on January 1, 1997.

As amended April 19, this bill would expand these provisions to include all natural gas and permit the Commission to authorize natural gas utilities to conduct research development and demonstration of advanced natural gas vehicles and natural gas vehicle refueling technologies. In addition, the bill would permit the PUC to authorize electric utilities to purchase and demonstrate to the public electric vehicles and other forms of electric transportation; conduct electric vehicle battery research, demonstration, and leasing programs; construct and maintain electric vehicle recharging facilities and equipment to be owned and operated by the utility, or to be transferred to nonutility persons or enterprises; and provide electric vehicle consumer incentives to offset all or part of the estimated initial battery costs of electric vehicles. *[A. U&C]*

AB 2363 (Moore). Existing law prohibits gas, heat, or electrical corporations and their subsidiaries that are regulated as public utilities by the PUC from conducting work for which a contractor's license is required, except under specified conditions. As amended April 19, this bill would also permit the work to be performed if the work is incidental to another utility function and is performed by a utility employee who is present on the premises for the other function. *[A. Inactive File]*

AB 2028 (Bronshvag), as amended April 13, would require the PUC to implement the consensus recommendations contained in the report of the California Electromagnetic Field Consensus Group dated March 20, 1992. *[12:2&3 CRLR 260] [S. Appr]*

AB 766 (Hauser). Existing law defines a gas plant for purposes of the jurisdiction and control of the PUC pursuant to the provisions of the Public Utilities Act as all facilities for the production, generation, transmission, delivery, underground storage, or furnishing of natural or manufactured gas except propane. As amended May 26, this bill, notwithstanding the provision summarized above or any other provision of law, would require the PUC to assume, no later than July 1, 1994, regulatory jurisdiction over the safety of propane pipeline systems, including inspection and enforcement, for mobilehome parks, condominiums and other multi-unit residential housing, and shopping centers. *[13:2&3 CRLR 213]* It would require the PUC to establish a uniform billing surcharge designed to cover the PUC's cost in implementing these provisions, with all surcharge fees to be deposited by the PUC in the Public Utilities Commission Utilities Reimbursement Account in the general fund, to be used, upon appropriation by the legislature, for these purposes. *[S. E&PU]*

AB 173 (V. Brown), as amended August 30, would limit the amount of salary paid to the President and each member of the PUC, on or after July 1, 1994, to an amount no greater than the annual salary of members of the legislature, excluding the Speaker of the Assembly, President pro Tempore of the Senate, Assembly majority and minority floor leaders, and Senate majority and minority floor leaders. *[S. Inactive File]*

FUTURE MEETINGS

The full Commission usually meets every other Wednesday in San Francisco.

STATE BAR OF CALIFORNIA

President: Margaret Morrow
Executive Officer:
Herbert Rosenthal
(415) 561-8200 and
(213) 580-5000
TDD for Hearing- and Speech-Impaired:
(415) 561-8231 and
(213) 580-5566
Toll-Free Complaint Hotline:
1-800-843-9053

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. Today, the State Bar has over 137,000 members, which equals approximately 17% of the nation's population of lawyers.

The State Bar Act, Business and Professions Code section 6000 *et seq.*, designates a Board of Governors to run the State Bar. The Board President is 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 consists of 23 members—seventeen licensed attorneys and six nonlawyer public members. Of the attorneys, sixteen of them—including the President—are elected to the Board by lawyers in nine geographic districts. A representative of the California Young Lawyers Association (CYLA), appointed by that organization's Board of Directors, also sits on the Board. The six public members are variously selected by the Governor, Assembly Speaker, and Senate Rules Committee, and confirmed by the state Senate. 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). The terms are staggered to provide for the selection of five attorneys and two public members each year.

The State Bar includes twenty standing committees; fourteen special committees, addressing specific issues; sixteen sections covering fourteen substantive areas of law; Bar service programs; and the Conference of Delegates, which gives a representative voice to 291 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, which are codified at section 6076 of the Business and Professions Code, 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.

Almost 75% of the Bar's annual $56 million budget is spent on its new attorney discipline system. The system includes the first full-time professional court for attorney discipline in the nation 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 July 16, the Bar's Board of Governors elected attorney Margaret M. Morrow as its new president. Morrow is the first woman president of the Bar in its 66 years of existence, and the first president elected by her colleagues on the first ballot since 1988. Morrow is a partner at the Los Angeles firm of Quinn, Kully & Morrow; she is a former president of the Los Angeles County Bar Association.

Five lawyers were recently elected by Bar members in their districts to the Board of Governors. The results of the balloting, which closed on September 9, were announced on September 16. District 4 (Marin and San Francisco counties) elected John H. McGuckin Jr., senior vice president and general counsel of the Bank of California in San Francisco. District 6 (Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura counties) elected Michael W. Case, a partner with Ferguson, Case, Orr, Patterson & Cunningham in Ventura. District 7 (Los Angeles County) elected Eileen N. Kurahashi, a partner/principal with Quan, Cohen, Kurahashi, Hsieh & Scholtz in Los Angeles; and Thomas G. Stolpman, a partner with Silver, McWilliams, Stolpman, Mandel, Katzman, Krissman & Eber of Wilmington. Finally, District 8 (Orange County) elected Maurice L. Evans, chief assistant district attorney for Orange County.

In addition, the California Supreme Court has appointed David S. Wesley, a solo practitioner in Los Angeles, as a hearing judge of the State Bar Court, replacing Hearing Judge Christopher W. Smith. Wesley, appointed to a six-year term, served for eight years as a public defender in Los Angeles, then became a partner in Overland & Gits.

MAJOR PROJECTS

Bar Reacts to San Francisco Shootings. In the wake of the tragic July 1 murders of three attorneys, a law student, and several others at the San Francisco law firm of Pettit & Martin, then-Bar President Harvey Saferstein held a press conference in which he suggested that the murders were related to a recent surge of "lawyer bashing." He stated that mean-spirited criticism and jokes about lawyers constitute "hate speech that is as heinous as all other forms of bigotry," and that attorneys should be given protected status under proposed "hate crimes" legislation.

The remarks, which were made by Saferstein in his capacity as Bar President but apparently without the knowledge or consent of the Board of Governors, backfired and set off an unprecedented nationwide firestorm of criticism, lawyer jokes, and lawyer bashing. Other Board members distanced themselves from Saferstein's comments, rejecting the notions that lawyer jokes are "hate speech" and that attorneys deserve special protection.

In August, during the controversy spawned by Saferstein's comments, the American Bar Association and the *National Law Journal* released a new public opinion poll showing that, while the number of people using lawyers has increased, the public image of the legal profession has declined since 1986. When asked their overall impression of lawyers today, 60% of the respondents to the survey said "fair" or "poor," with 23% in the latter category. Nearly 40% said that lawyers are not "honest and ethical," while 22% said they are. Almost half (48%) said that as many as three in ten lawyers lack the ethical standards necessary to serve the public. Greed, excessive fees, and advertising are seen as major problems contributing to the public's poor image of lawyers.

When the dust finally cleared, Saferstein established a three-member ad hoc committee to come up with a plan to repair the image of the legal profession in California. At the Board of Governors' August meeting, the committee announced an 18-point "client relations" plan aimed at enhancing lawyer relationships with clients and the community at large, and educating the public about the role of lawyers in the justice system and realistic expectations about the functioning of lawyers and the system in general. For example, the committee suggested that lawyers explore new ways to price their services and improve their communication skills. The committee also recommended that the Bar combat the perception that it protects bad lawyers by more heavily publicizing the activities of its disciplinary system, and adopting new standards more strictly regulating attorney advertising (*see* "State Bar Rulemaking" below).

Following her selection, Board of Governors President-elect Margaret Morrow pledged to make the Bar's "client relations" emphasis more than a cosmetic attempt at enhancing the poor image of lawyers. She stated that public perception might take care of itself if the Bar and the profession were to make honest attempts to clean their own houses.

Commission on the Future of the Legal Profession and the State Bar. During the summer, 24 distinguished judges, academics, and Bar activists were appointed to the Bar's new Commission on the Future of the Legal Profession and the State Bar. The Commission was established by the Board of Governors at its January 1993 meeting, partly in response to AB 687, Assembly Speaker Willie Brown's 1992 bill which would have abolished the State Bar and delegated the state's regulation of attorneys to a new Attorneys' Board of California within the Department of Consumer Affairs; Speaker Brown later amended that language out of AB 687. *[13:1 CRLR 140–41; 12:4 CRLR 233]*

The new Commission, chaired by former Board of Governors member Patricia Phillips, was originally created to study the future of the legal profession and the role of the "integrated" State Bar—as currently structured—in regulating it. However, that mission has broadened considerably. In a September 8 memo, Phillips stated that the Commission will "(1) identify and examine factors which will significantly influence the delivery of legal services and the administration of justice over the next quarter-century; (2) develop a vision of the California legal profession of the future which anticipates and effectively meets societal challenges over the next quarter-century; and (3) recommend to the Board of Governors strategies and structures for meeting the future needs of the public and the profession and, in light of those future needs, proposals regarding the best frameworks for the governance of the lawyers of California."

This expanded and somewhat ambiguous focus has been the object of criticism, even from Commission members. Peter Keane, currently a member of the Board of Governors and a Willie Brown appointee to the Commission, has been joined by other Commission members in expressing concern that the Commission is straying

far afield from the original intent of the Board of Governors, and that anything less than a forthright attempt to come to grips with the continued need for an integrated Bar will only lead to a repeat of AB 687.

In September, the Commission announced that it would hold a series of public hearings to solicit views from lawyers, judges, academics, private and public sector groups, and the public at large. At this writing, the Commission is scheduled to hold public hearings on October 2 in San Francisco, October 8 in San Diego (in conjunction with the Bar's annual meeting), and October 29–30 in Los Angeles. The Commission is required to submit interim reports to the Board of Governors every six months, and a final report by the end of 1994.

Bar to Review New Discipline System. In September, Bar President-elect Margaret Morrow announced that the Bar will conduct a complete audit of its four-year-old revamped discipline system. The study will be conducted by a special committee to be appointed by Morrow; although she called it an "outside committee," the committee will consist of Board of Governors members and some non-members.

The Bar's discipline system was overhauled in 1989 largely due to the efforts of Senator Robert Presley and independent State Bar Discipline Monitor Robert C. Fellmeth. Senator Presley authored SB 1543 (Presley) (Chapter 1114, Statutes of 1986) which, among other things, created the post of State Bar Discipline Monitor, an outside investigator charged with examining the Bar's discipline system and making recommendations for reform. Then-Attorney General John Van de Kamp appointed Professor Fellmeth to the position in January 1987; during his five-year tenure, Fellmeth published an initial report, eight progress reports, and a final report. *[11:4 CRLR 1; 7:3 CRLR 1]* Presley and Fellmeth also drafted SB 1498 (Presley) (Chapter 1159, Statutes of 1988) which, among other things, created the nation's first full-time panel of professional administrative law judges to preside over attorney discipline hearings. The judges are appointed by the California Supreme Court and are entirely independent of the Board of Governors and the profession; one of the judges is a non-lawyer. The enhanced system, which required a substantial increase in the Bar's annual attorney licensing fees, is now producing at least three times the disciplinary actions historically taken by the Bar; further, the California Supreme Court has indicated its confidence in the quality of the Bar's internal disciplinary decisionmaking by adopting the so-called "finality rule," under which Bar disciplinary recommendations are final unless the Supreme Court grants a discretionary petition for review by the respondent attorney. *[11:1 CRLR 148]*

However, some attorneys and members of the public continue to express concern and criticism about the system. Consumers continue to believe that the system, which is controlled by attorneys, only serves to protect incompetent, impaired, and dishonest attorneys, while some lawyers complain about what they call overly aggressive tactics by Bar prosecutors and investigators *[12:4 CRLR 234]* and the high dues level needed to finance the system.

Complainants' Grievance Panel Annual Report. In May, the Complainants' Grievance Panel (CGP) issued its Fifth Annual Report covering the period of January through December 1992. Created in 1986 in Business and Professions Code section 6086.11, the CGP was established to review—at the request of the complainant—complaints which have been dismissed by the Bar's discipline system at an early stage, and report to the Board of Governors and the legislature its findings regarding the Bar's standards for investigation and closure of complaints. Thus, the Panel serves two functions—it provides a last review of closed disciplinary complaints, and it audits the performance of the Bar's discipline system. Although it appears to be an outside check on the Bar, it is a Bar program housed within the discipline system and financed by Bar dues.

In addition to a summary of the cases reviewed pursuant to complainant request and random case audit during 1992, the report also contains a synthesis of prior reports and recommendations covering the Panel's observations of the Bar's discipline system since its inception. The report is a culmination of five years of Panel activity, including the review of 6,800 case files. It contains several recommendations which, if implemented, CGP believes would result in a decrease in the number of cases returned by the Panel for additional work.

Specifically, in the foreword to the Report, CGP Chair A. Charles Dell'Ario stated that "files closed at the Office of Intake and Office of Investigation reflect a predisposition toward closure on the part of these offices. That is, the cases are investigated with a view toward closing them. Unarticulated issues are overlooked. Respondent replies are not corroborated. This trend, observed in our earlier reports, appeared to have been checked only to rise again during 1992." CGP further found that "many of our observations over the years concerning deficiencies in the operation of the Office of the Chief Trial Counsel remain uncorrected....Once again we are forced to conclude that, in the language of Business and Professions Code section 6086.11, too many cases are being closed and varying standards are being used."

CGP made specific recommendations applicable to the Bar's Office of Intake/Legal Advice (Intake), Office of Investigations (OI), and Office of Trials (whose prosecutors handle Bar discipline proceedings before the State Bar Court), including the following:

- Intake and OI should carefully supervise and train staff in legal, investigative, and procedural matters and communication techniques.
- Intake should consistently apply a uniform standard in determining whether a complaint will be forwarded to OI for investigation; the standard should be whether complainant's allegations, if true, constitute prima facie violations of the State Bar Act or Rules of Professional Conduct.
- Investigative staff should contact respondents in writing and obtain their written replies in all cases where complainants have stated prima facie violations.
- Intake and OI should always check for patterns of misconduct and note their findings in files and computer records.
- Intake and OI should corroborate respondents' replies and consistently obtain rebuttals from complainants.
- Intake and OI should provide careful, consistent supervision and legal review of investigations to prevent premature closure of files and to assure the thorough preparation of cases to be prosecuted.
- Intake and OI should provide closing letters to complainants that are understandable and contain reasonably specific explanations supporting the decisions to close files.
- Intake should notify all complainants in writing of their right to appeal the closure of their cases to the Complainants' Grievance Panel.
- OI should close all cases involving ethical violations with appropriate sanctions and so advise complainants or forward the case for prosecution.
- The Office of Trials should thoroughly document its decisions to dispose of cases prior to prosecution.
- The Office of the Chief Trial Counsel should clearly define and articulate its prosecutorial priorities to prevent the premature closure of cases.

SB 645 (Presley), which has been signed by the Governor (*see* LEGISLATION), makes some fundamental changes in the structure and operation of the Panel. Effective January 1, the majority of the seven-member CGP will be non-attorney public members; the Panel will audit the new alternative dispute resolution discipline mediation program authorized by the bill; CGP will notify affected attorneys of complainants' requests for review and of the Panel's ultimate decisions; and the Panel's annual report, the reply of the Chief Trial Counsel, and the resultant directions of the Board of Governors' Committee on Discipline and Client Assistance will be provided to designated state officials.

Annual Report of the Client Security Fund. In September, the Bar's Client Security Fund (CSF) released its 1992 Annual Report. Created in 1972, CSF offers monetary compensation to clients who have had money or property stolen through direct attorney dishonesty which is generally not covered by malpractice insurance. Currently, all active California attorneys contribute $40 per year to CSF. The Fund is administered by the Client Security Fund Commission, which determines whether applicants are eligible for compensation. *[8:4 CRLR 1]*

During 1992, the Fund paid out $4.1 million on 604 awards, a substantial increase over its $3.2 million payout in 1991. CSF also reports that it experienced a 12% increase in new applications during 1992. As in 1991, the largest number of applications filed (49.4%) fell into the "unearned fees" category; CSF pays out on these claims only when it believes an attorney's failure to refund fees is tantamount to theft. In 1992, unearned fee applications totalled over $2.8 million, or 21.7% of all dollar losses reported. The second largest category of applications filed (36.5%) was "misappropriation" applications; these cases represented over $6.6 million, or 51.2% of all dollar losses reported. CSF pays a maximum of $50,000 to clients victimized by dishonest attorneys.

In the Annual Report, the CSF Commission noted that it works closely with the Bar's disciplinary system, which has recently instituted some early warning devices to detect attorney misappropriation from client trust funds. The Commission stated that the Bar must focus on prevention of attorney misconduct generally and theft in particular, and noted that it would support a requirement that insurance carriers notify claimants directly when third-party settlement checks are sent to the claimant's lawyer or other representative, to reduce the possibility of forged endorsements on settlement checks.

State Bar Rulemaking. The following is a status update on proposed regulatory amendments considered by the State Bar in recent months:

• ***Attorney Advertising.*** On July 16, the public comment period closed on the Bar's proposed amendments to Rule of Professional Conduct 1-400. Among other things, the six amendments would prohibit attorneys from advertising "no fee" contingency arrangements unless the ad also specifies whether clients are liable for the attorneys' expenses in handling a case; advertisements which list a trade or fictitious name without including the name of the lawyer behind the ad; dramatizations, unless they include a disclaimer stating "this is a dramatization"; advertising that does not contain the name and State Bar number of the attorney responsible for it; and mailers (except for professional announcements) that do not bear the word "advertisement" or "newsletter" on every page. At this writing, Bar staff are reviewing the proposed comments and hope to place the matter on the Board of Governors' October agenda. *[13:2&3 CRLR 219]*

At its August meeting, the Committee on Admissions and Competence released two additional proposed advertising standards which, at this writing, are circulating for public comment until December 2. First, the proposed rules would require attorneys who regularly solicit business through the mail to disclose to the recipient where the attorney obtained his/her name. This standard is intended to regulate mail solicitation efforts by attorneys, which frequently are widespread after a disaster such as the recent toxic cloud incident in Richmond. Solicitation letters often suggest, incorrectly, that the recipient has a duty to contact the attorney. Second, the proposed rules would require attorneys to charge no more than the fee originally advertised; this is intended to preclude the "bait and switch" technique of advertising a low fee and then raising the fee once a client hires the attorney. Under the proposed standard, fees advertised in telephone directories must be adhered to for one year, and fees advertised elsewhere must be effective for 90 days.

In spite of the Bar's rulemaking effort, Assemblymember Paul Horcher pursued AB 208 (Horcher), which was signed by Governor Wilson on September 26 and enacts a comprehensive regulatory scheme for lawyer advertising (*see* LEGISLATION). Whether AB 208 preempts the Bar's rulemaking remains to be seen.

• ***Gifts to Attorneys From Clients.*** On July 30, Governor Wilson signed AB 21 (Umberg), which invalidates bequests made in wills, trusts, and similar instruments to the attorney who prepared the instrument (*see* LEGISLATION). This action may moot the Bar's current rulemaking proceeding in which it proposes to amend Rule of Professional Conduct 4-400. The revised rule would prohibit State Bar members from (1) inducing a client to make a gift, including a testamentary gift, to the member or the member's parent, child, sibling, or spouse, except where the client is related to the member, and (2) preparing an instrument giving any gift from a client to the member or the member's parent, child, sibling, or spouse, except where the client is related to the member. *[13:2&3 CRLR 220]* At its June meeting, the Committee on Admissions and Competence postponed discussion of the matter pending the outcome of AB 21.

• ***Deposit of Advance Fees in Trust Account.*** In June 1992, the Board of Governors adopted amendments to Rules of Professional Conduct 3-700 and 4-100, to require that all advance fees paid by a client to a State Bar member be placed in the member's client trust account unless the member's written fee agreement expressly provides that the fee paid in advance is earned when paid or is a "true retainer" as that term is defined in Rule 3-700(D)(2). *[12:4 CRLR 235]* Although the Bar submitted these rule changes to the California Supreme Court in October 1992, the court has not yet approved them at this writing.

• ***Attorney Confidentiality.*** On June 3, the California Supreme Court rejected without explanation the Bar's proposed Rule of Professional Conduct 3-100, which describes State Bar members' duty of confidentiality to clients. The rule would have specified an attorney's duty "to maintain inviolate the confidence, and, at every peril to himself or herself, to preserve the secrets of a client," and provided permissive exceptions to a member's duty of confidentiality (1) where the client consents to disclosure, and (2) to the extent the member reasonably believes necessary to prevent the commission of a criminal act that the member believes is imminently likely to result in death or substantial injury. The court's decision marks the second time since June 1988 it has rejected this rule. *[11:2 CRLR 182]* However, Senator Presley amended SB 645 to include the latter exception; SB 645 was signed by the Governor on October 9 (*see* LEGISLATION).

• ***Use of the Term "Certified Specialist."*** On July 16, the public comment period closed on the Bar's proposal to adopt a new version of Rule of Professional Conduct 1-400(D)(6), which would prohibit a California attorney from advertising as a "certified specialist" unless the attorney is certi-

fied by the Bar's Board of Legal Specialization or by another entity approved by the Bar to designate specialists. *[13:1 CRLR 142]* Bar staff is currently reviewing the comments received; at this writing, this proposal has not been scheduled on the Board of Governors' agenda.

• ***Discrimination in Management of a Law Practice***. In March 1993, the Board of Governors adopted proposed Rule 2-400, which would provide that "in the management or operation of a law practice a [State Bar] member shall not unlawfully discriminate or knowingly permit unlawful discrimination on the basis of race, national origin, sex, sexual orientation, religion, age or disability in: (1) hiring, promoting, discharging or otherwise determining the conditions of employment of any person; or (2) accepting or terminating representation of any client." *[12:4 CRLR 235–36]* This rule was filed with the California Supreme Court in July, but has not been approved at this writing.

• ***Copies of Documents for Clients***. At its June meeting, the Board of Governors approved proposed new Rule of Professional Conduct 3-520, which would require attorneys to provide to a client, upon request, one copy of any significant document or correspondence received or prepared by the attorney relating to the employment or representation. *[13:1 CRLR 142]* At this writing, the rule has not yet been approved by the California Supreme Court.

• ***Attorney Communications with a Represented Party***. At its August meeting, the Board's Committee on Admissions and Competence voted not to amend Rule of Professional Conduct 2-100 (Communications with a Represented Party). The amendment would have clarified that the rule is not intended to apply to government prosecutors during the investigative phase of a criminal, disciplinary, or civil law enforcement proceeding.

• ***Employment of Disbarred, Suspended, or Inactive Lawyers***. At its July meeting, the Board's Committee on Admissions and Competence agreed to release for public comment proposed Rule of Professional Conduct 1-311, which would prohibit a State Bar member from employing a disbarred, suspended, or inactive status lawyer unless (1) the activities of such employee do not constitute the practice of law; (2) the employee has no direct contact with the clients of the member; and (3) the employee does not receive, disburse, or otherwise have any involvement with client trust funds or property. The proposed rule would require a member to provide specified notice to the State Bar prior to, during, and following employment of such an employee. At this writing, the public comment period is scheduled to close on October 18.

California Legal Corps Task Force Members Appointed. With Governor Wilson's signature on SB 536 (Petris) on October 6 (*see* LEGISLATION), the California Legal Corps will become an official State Bar program on January 1. Under this new law, the Legal Corps will be eligible to receive money from unclaimed residue of class action judgments. The Corps will award grants to preventive law projects, alternative dispute resolution efforts, legal support for victims of disasters, and other activities designed to help improve access to justice for all Californians; the money may not be used for lobbying, electoral politics, initiative campaigns, or to promote class action suits. *[13:2&3 CRLR 2–19]*

During the summer, then-State Bar President Harvey Saferstein appointed a task force comprised of attorneys, judges, members of the business community, and representatives of bar associations and legal services programs to guide the creation and development of the Legal Corps. Bob Burkett, president of The David Geffen Foundation, and Johnnie L. Cochran Jr., a Los Angeles attorney, will serve as co-chairs of the task force.

Sexual Orientation Discrimination Committee Members Appointed. In June, the Bar named twelve attorneys and three non-attorneys to its new Standing Committee on Sexual Orientation Discrimination. The chair is Eric A. Webber, a Los Angeles attorney and co-president last year of Lawyers for Human Rights in Los Angeles. Susan V. Gelmis, supervising attorney with the Ninth Circuit Court of Appeals in San Francisco, is vice-chair.

The Board of Governors created the committee at the request of Bay Area Lawyers for Individual Freedom and Lawyers for Human Rights. The committee is charged with examining and reporting to the Board the prevalence of bias against lesbians, gays, and bisexuals in the legal system and in the legal profession. *[13:2&3 CRLR 219]*

Guide to Legal Literacy. In June, the Bar began distributing its complimentary publication entitled *A Guide to Legal Literacy*. This 52-page booklet was created to answer non-lawyers' questions about the legal system. Explanations address topics such as where laws come from, how cases come to court, types of courts, stages of a criminal case before trial, stages of a civil lawsuit before trial, the role of attorneys, and a glossary of legal terms. A free copy of the guidebook is available to consumers who send their name, address, and $2 for shipping and handling to *A Guide to Legal Literacy*, State Bar of California, 555 Franklin Street, San Francisco, CA 94102.

New Bar Publication to Commence in New Year. Last April, the Board of Governors approved the publication and distribution of *State Bar Bulletin*, a new monthly tabloid newspaper, to its members starting in January 1994. At this writing, development of the publication is progressing on schedule and under budget. At the Board's August meeting, staff noted that a special preview edition would be distributed at the Bar's annual meeting in October. The preview edition will be approximately twelve pages in length and will contain a representative sample of planned regular features and columns. *[13:2&3 CRLR 219]*

Bar Senior Communications Executive Christy Carpenter, one of the instrumental forces behind the new publication, left the Bar on June 15 to become executive vice-president and chief operating officer of the Wine Institute.

LEGISLATION

Coalition to Propose Ballot Initiative Limiting Contingency Fees. In August, Californians for Fair Liability Laws (CFLL), a coalition of business groups headed by former Senator Barry Keene, announced it would seek to place an initiative on the November 1994 ballot limiting attorney contingency fees to $25,000 or less for the first $100,000 of an award, and to an even lower percentage on larger amounts. At this writing, CFLL plans to submit its proposal to the Attorney General's office in October.

SB 645 (Presley), as amended September 2, increases the number of judges on the State Bar's hearing panel from six to seven judges. The bill also revises the membership of the Bar's Complainants' Grievance Panel to four public members and three attorney members, revises the duties of the Panel, imposes additional responsibilities on the Panel with respect to the audit and review of complaints, and provides for funding for the Panel (*see* MAJOR PROJECTS).

This bill authorizes the State Bar to establish an alternative dispute resolution discipline mediation program to resolve complaints against attorneys that do not warrant the institution of formal investigation or prosecution.

Existing law provides in certain cases that a written fee agreement or contract containing specified information is required between an attorney and his/her client. That agreement or contract is required to include a statement disclosing

whether the attorney maintains malpractice insurance coverage applicable to the services to be rendered and, in specified circumstances, the policy limits of that coverage. This bill instead requires, until January 1, 1997, that agreement or contract to include, if the attorney does not maintain malpractice coverage or has not filed a specified guaranty agreement with the State Bar, a statement disclosing that fact.

Existing law, with certain exceptions, makes privileged any confidential communication between a lawyer and a client. This bill creates an exception to the lawyer-client privilege if the lawyer reasonably believes that disclosure of any confidential communication relating to representation of a client is necessary to prevent the client from committing a criminal act that the lawyer believes is likely to result in death or substantial bodily harm. This bill was signed by the Governor on October 9 (Chapter 982, Statutes of 1993).

AB 1544 (W. Brown), as amended September 2, would have required disciplinary complaints against attorneys received by the Bar on and after January 1, 1994, to be in writing and signed by the complainant; the bill also required the Bar's acknowledgement of a complaint to contain a statement that any person who makes a complaint, knowing it to be false and malicious, is guilty of a misdemeanor. The bill also would have provided that complaints made by health care providers, their agents, or assignees over a dispute involving the enforcement of liens, are not grounds for disciplinary action; the State Bar has no jurisdiction to prosecute an attorney for a disciplinary matter unless the complaint is received within one year of the complainant's actual knowledge or discovery of the alleged violation, with specified exceptions; the State Bar has two years, which may be tolled under certain circumstances, after receipt of a complaint or after discovery by the State Bar of an alleged violation to file a notice to show cause; and before disciplinary charges are filed with the State Bar Court, a settlement conference before a representative of the Office of the Chief Trial Counsel may be held upon request of the respondent attorney. The bill also would have required the Bar to disclose exculpatory evidence to an accused attorney.

Governor Wilson vetoed this controversial bill on October 11. In his veto message, the Governor stated that "the one-year statute of limitations contained in this legislation would unduly restrict the ability of individuals to bring legitimate complaints against unscrupulous attorneys. This limitation on the grievance procedure is unprecedented and restricts the ability of the State Bar to pursue its regulatory function."

SB 373 (Lockyer), as amended September 8, establishes annual Bar membership fees for the years 1994 and 1995 in the same amounts as those set for 1993.

Existing law, until January 1, 1994, requires the Board of Governors to increase the annual membership fees by an additional fee of $110 to be used exclusively for discipline augmentation. This bill continues that requirement for the years 1994 and 1995 and also extends the repealer in the provision to January 1, 1996. This bill was signed by the Governor on October 6 (Chapter 862, Statutes of 1993).

SB 536 (Petris), as amended September 9, creates the California Legal Corps within the State Bar and provides a source of funding for the Corps (*see* MAJOR PROJECTS). The bill requires courts to determine the total amount payable to all class members in a class action, set a reporting date for notifying the court of actual amounts received by class members, and amend the judgment to direct the defendant to pay any unpaid residue, plus interest, in any manner the court determines is consistent with the objectives and purposes of the underlying cause of action, including payment to child advocacy programs and to the California Legal Corps. The bill requires the State Bar to annually report to the Governor and the judiciary committees of the legislature on the programs supported by these funds, the amount of funding allocated for each, and other pertinent information. The bill specifies the purposes of the California Legal Corps, requires regulations pertaining to it to be approved by the Supreme Court, and requires the program to be periodically audited by the Judicial Council. This bill was signed by the Governor on October 6 (Chapter 863, Statutes of 1993).

AB 21 (Umberg). Under existing law, nothing precludes a person who is instrumental in the drafting of an instrument making a donative transfer for another from receiving a gift thereunder. As amended September 8, this bill, with certain exceptions, invalidates a donative transfer to the person who drafted or transcribed such an instrument, or who caused the instrument to be drafted or transcribed, and persons having certain business and other relationships thereto. The bill defines persons to whom the bill invalidates those transfers as "disqualified persons." The bill provides exceptions for transfers to persons related by blood or marriage to, or who cohabit with, the transferor or where the instrument is reviewed by an attorney not related to, or associated with, the drafter or proposed transferee, or where the transfer is approved by a court, as specified.

The bill specifies forms for attorney certification, for purposes of the above, which would certify that the transfer was not the product of fraud, menace, duress, or undue influence. The bill also specifies that where a sole trustee is a disqualified person, as described above, it shall be presumed that he/she shall be removed by the court as trustee, except as specified. The bill provides that any limitation or waiver of the obligation of a sole trustee who is a disqualified person to provide an accounting to certain beneficiaries, as specified, is against public policy and shall be void.

An attorney violating certain provisions of the bill will be subject to professional discipline. This bill was signed by the Governor on July 30 (Chapter 293, Statutes of 1993).

AB 208 (Horcher), as amended September 8, enacts a comprehensive scheme for the regulation of attorney advertising. The bill prohibits lawyer advertising (in any form) from containing any of the following: any guarantee or warranty regarding the outcome of a legal matter as a result of representation by the attorney; statements or symbols stating that the attorney featured in the advertisement can generally obtain immediate cash or quick settlements; an impersonation of the name, voice, photograph, or electronic image of any person directly or implicitly purporting to be that of the attorney or client of the attorney featured in the advertisement, or a dramatization of events, unless disclosure of the impersonation or dramatization is made in the advertisement; and a statement that the attorney offers representation on a contingent basis unless the statement also advises whether a client will be held responsible for any costs advanced by the attorney when no recovery is obtained on behalf of the client. Any advertisement created or disseminated by a lawyer referral service shall disclose whether the attorneys on the organization's referral list, panel, or system paid any consideration, other than a proportional share of actual cost, to be included on that list, panel, or system. This bill was signed by the Governor on September 26 (Chapter 518, Statutes of 1993).

SB 401 (Lockyer). Existing law requires specified civil matters in which the amount in controversy does not exceed $50,000 to be referred for judicial arbitration in superior courts with ten or more judges. Existing law authorizes other superior courts and municipal courts to pro-

vide for this judicial arbitration by local court rule. As amended September 8, this bill requires all courts in Los Angeles County, and authorizes other courts, to implement a prescribed program of mediation of specified civil matters where the amount in controversy does not exceed $50,000. In courts providing judicial arbitration, the bill authorizes an alternative referral for mediation under the bill. The bill requires the Judicial Council to adopt prescribed rules for mediation and to submit a report to the legislature on alternative dispute resolution programs by January 1, 1998. The bill revises existing law specifying what aspects of mediation are excluded from evidence and would also exclude these matters from discovery.

Under existing provisions of the Trial Court Delay Reduction Act, delay reduction rules are required to preclude referral to arbitration before the elapse of 210 days following the filing of the complaint, excluding a specified stipulated continuance not exceeding 30 days. This bill authorizes making a referral to arbitration or mediation at any status conference, but provides that arbitration may not commence until the above specified 210-day rule is complied with. It excludes referrals to mediation pursuant to the provisions added by this bill from the above 210-day rule, as specified.

Under existing law, with certain exceptions, petitions for the enforcement of arbitration agreements are required to be filed in the superior court. With certain exceptions, this bill gives municipal and justice courts jurisdiction to enforce arbitration agreements where the arbitration award is, or would otherwise be, within the jurisdiction of the municipal or justice court. This bill was signed by the Governor on October 11 (Chapter 1261, Statutes of 1993).

SB 312 (Petris), as amended August 26, allows a professional law corporation to be incorporated as a nonprofit public benefit corporation if (1) the corporation complies with the provisions of the Nonprofit Public Benefit Corporation Law, and additional specified requirements, or (2) the corporation is a qualified legal services project or a qualified support center as specified. The bill exempts, until January 1, 1996, those corporations from a requirement of obtaining errors and omissions liability insurance if the board of directors has made all reasonable efforts to obtain available insurance. The bill also exempts qualified legal service projects and support centers from certain filing requirements. This bill was signed by the Governor on October 9 (Chapter 955, Statutes of 1993).

SB 1053 (Watson). Existing law authorizes the legislative body of any public or municipal corporation or district to contract with and employ any persons for the furnishing of special services and advice in various matters including legal matters. As amended May 25, this bill would have required, in specified circumstances, the disclosure of the names of private law firms so employed by local public agencies and the amounts of money paid to those firms in each fiscal year by publication in newspapers of general circulation, as specified. The bill would have stated the intent of the legislature that the disclosure of information regarding private legal contracts of public or municipal corporations or districts is a matter of statewide concern, not a municipal affair. This bill was vetoed by the Governor on September 24.

AB 1272 (Connolly). Existing law requires the Board of Governors to establish a system for the arbitration of disputes concerning fees and costs charged by attorneys, which is administered by the State Bar. Existing law, except as to an action filed in small claims court, requires an attorney to forward a written notice to a client at the time of service of summons in an action against the client for recovery of fees or costs. As amended September 8, this bill eliminates the exception for actions filed in small claims court. This bill provides for a procedure to enforce an unpaid arbitration award that has become final by requiring the State Bar to place the attorney on involuntary inactive status until the award is paid, and to impose on that attorney administrative penalties and costs, or both.

Existing law provides for binding arbitration upon agreement of the parties in the case of a dispute over attorneys' fees. In the absence of an agreement, either party is entitled to a trial after arbitration in a court of appropriate jurisdiction. This bill permits a municipal or justice court to conduct a trial pursuant to an action for declaratory relief, after a nonbinding arbitration where the amount in controversy is $25,000 or less, or to confirm, correct, or vacate a fee arbitration award where the arbitration award is $25,000 or less. This bill permits a small claims court to confirm, correct, or vacate a fee arbitration award not exceeding $5,000, or to conduct a hearing de novo after nonbinding arbitration of a fee dispute involving no more than $5,000. This bill was signed by the Governor on October 11 (Chapter 1262, Statutes of 1993).

AB 498 (Goldsmith). Existing law provides that a party to a cause of action may move for summary judgment if it is contended that the action has no merit or that there is no defense to the action or proceeding. The motion must be supported by affidavits, declarations, and other documents, including a separate statement setting forth plainly and concisely all material facts which the moving party contends are undisputed. Existing law imposes similar requirements on the party opposing the motion. Existing law provides that once the plaintiff or cross-complainant has met his/her burden of showing that there is no defense to a cause of action, and once the defendant or cross-defendant has met his/her burden of showing that a cause of action has no merit, the burden shifts to the opposing party to show that a triable issue of one or more material facts exists as to that cause of action. As amended July 1, this bill instead provides that the burden shifts to the opposing party to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The bill prohibits the opposing party from relying on the mere allegations or denials of the pleadings to show that a triable issue of material fact exists, and requires the opposing party to set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto. The bill also provides that the granting of a motion for summary adjudication shall not operate to bar any cause of action, affirmative defense, claim for damages, or issue of duty as to which summary adjudication was either not sought or denied. It also prohibits a party, a witness, or the court from commenting upon the grant or denial of a motion for summary adjudication, or upon the failure of a party to seek summary adjudication as to any issue. This bill was signed by the Governor on July 30 (Chapter 276, Statutes of 1993).

AB 1757 (Caldera). Under existing law, with certain exceptions, evidence of anything said or of any admission made in the course of mediation is not admissible in evidence; disclosure of any such evidence may not be compelled in any civil action, and no document prepared for the purpose of, in the course of, or pursuant to, the mediation is admissible in evidence; and disclosure of such a document may not be compelled in any civil action, unless the document otherwise specifies, provided that a specified confidentiality agreement is executed prior to the mediation. Existing law provides that no arbitrator shall be competent to testify in any subsequent civil proceeding as to any statement, conduct, decision, or ruling related to the arbitration, except as to a statement or conduct that could give rise to civil or criminal contempt, constitute a

crime, be the subject of specified investigations regarding attorneys and judges, or give rise to certain disqualification proceedings regarding judges. As amended April 20, this bill includes mediators in the latter provision, except with regard to the mediation of visitation and custody issues, as specified. This bill was signed by the Governor on July 12 (Chapter 114, Statutes of 1993).

SB 9 (Lockyer). Existing law provides that a cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike unless the court, after considering the pleadings and supporting and opposing affidavits, determines that there is a probability that the plaintiff will prevail on the claim. This provision also states that if the court determines that the plaintiff has established a probability that he/she would prevail, neither that determination nor the fact of that determination would be admissible in evidence at any later stage of the case nor would it affect the burden or degree of proof. It requires the recovery of attorneys' fees and costs by a prevailing defendant on a special motion to strike, and authorizes recovery of attorneys' fees and costs by a prevailing plaintiff if the court finds that the motion was frivolous or solely intended to cause unnecessary delay. As amended August 16, this bill makes recovery of attorneys' fees and costs by a prevailing plaintiff under this provision mandatory rather than permissive if the motion to strike was frivolous or solely intended to cause unnecessary delay. The bill also requires the Judicial Council to report to the legislature on or before January 1, 1998, regarding these motions, as specified. This bill was signed by the Governor on October 11 (Chapter 1239, Statutes of 1993).

AB 55 (Hauser). Under existing law, the covenants and restrictions in the declaration of a common interest development are enforceable as equitable servitudes, and the prevailing party in any enforcement action is entitled to costs and attorneys' fees. As amended July 2, this bill generally requires that, before a common interest development association or the owner of a separate interest therein brings an action solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, other than association assessments, not to exceed $5,000, relating to the enforcement of the governing documents of the common interest development, the association or owner shall endeavor to submit the matter to alternative dispute resolution as provided in the bill. Under the bill, any party to such a dispute may request another party to submit to alternative dispute resolution by serving a prescribed Request for Resolution. The above requirements will not be applicable where the statute of limitations would run within 120 days, or to the filing of a cross-complaint. The bill makes anything said in the course of alternative dispute resolution under the bill inadmissible in any civil action in which testimony can be compelled unless consented to by both parties, and precludes compelling testimony or disclosure of specified related documents and any statement or admission made in the course of the alternative dispute resolution.

The bill, with certain exceptions, requires that a certificate certifying compliance with the above requirements be filed with a civil action arising out of such a dispute. Failure to file the certificate, with certain exceptions, will render the plaintiff's complaint subject to a motion to strike or demurrer. This bill also allows the court to stay a pending action and refer it to alternative dispute resolution, upon stipulation of the parties. In any action for declaratory relief or injunctive relief related to enforcement of the governing documents of a common interest development, the bill entitles the prevailing party to an award of attorneys' fees and costs, but requires the court to consider the prevailing party's refusal to engage in alternative dispute resolution in making such an award of attorneys' fees and costs. The bill requires common interest development associations to provide their members annually with a summary of the provisions of the bill, as specified, and requires any Request for Resolution sent to an owner by the association to also include a copy of the provisions of the bill.

Under the bill, the costs of the alternative dispute resolution will be borne by the parties. This bill was signed by the Governor on August 25 (Chapter 303, Statutes of 1993).

AB 58 (Peace). Existing law provides for specified motions by a defendant prior to pleading; requires, upon request, a statement of the nature and amount of damages claimed in certain superior court actions; specifies the grounds for answer or demurrer; provides for the dismissal of civil actions and the granting of default judgments; specifies that certain orders are open on appeal; limits the amount of a default judgment to the amount demanded in the complaint; and specifies the judgments or orders of a superior court from which an appeal may be taken, the circumstances in which an undertaking is required in order for the enforcement of a judgment or order to be stayed on appeal, and the compensation of specified expert witnesses who are deposed.

As amended August 19, this bill adds a motion for dismissal, as specified, to the motions which may be made by a defendant prior to pleading; provides for a motion for judgment on the pleadings, as specified; revises the requirement for a statement of the nature and amount of damages; revises certain procedures for the dismissal of civil actions and the granting of default judgments; specifies that additional orders are open on appeal; increases the threshold amount of monetary sanctions imposed by a superior court which may be appealed prior to final judgment; specifically limits the amount of a default judgment to the amount demanded in the complaint or the amount specified in a statement of damages filed in a personal injury or wrongful death action in superior court; and revises the circumstances in which an undertaking is required in order for the enforcement of a judgment or order to be stayed on appeal, and instances in which attorneys' fees are allowed as costs. This bill was signed by the Governor on September 25 (Chapter 456, Statutes of 1993).

AB 1287 (Moore), as amended September 8, would, until January 1, 1997, enact a comprehensive scheme for the identification, study, and regulation of nonlawyer providers (also called "legal technicians" or "independent paralegals") under the jurisdiction of the Department of Consumer Affairs. The Bar has consistently opposed Assemblymember Moore's attempts to create a registration program to certify non-lawyer "legal technicians" to practice in underserved areas of law such as landlord-tenant, immigration, and consumer law. Several years ago, the Board of Governors opposed a full-blown registration program requiring training, testing, retesting, and limited areas of practice. Since then, the bill has been watered down by its sponsors in an attempt to secure Bar neutrality, but the Bar now opposes the watered-down version of the bill because it does not require training and testing. *[A. Inactive File]*

AB 600 (Speier). Existing law establishes the crime of intentionally blocking the entrance or exit of a health care facility, place of worship, or school, as specified. Existing law also provides for the award of exemplary damages, in addition to actual damages, in certain civil actions where the defendant has been proven guilty of oppression, fraud, or malice. As amended September 9, this bill would make it unlawful, and specify it is the tort

of commercial blockade, to intentionally prevent ingress or egress to or from a health care facility, as defined, or a lawful business, professional, or occupational facility, or to disrupt the normal functioning of such a facility. The bill would require the courts to safeguard the privacy of patients, licensed health care practitioners, and facility employees, clients, and customers. *[A. Inactive File]*

AB 602 (Speier), as amended September 8, would authorize recovery of attorneys' fees by a prevailing plaintiff in an action to recover prescribed hospital, medical, or disability benefits for a life-threatening cancer condition; and make unenforceable any contractual waiver of the right to attorneys' fees under the bill. *[S. Inactive File]*

AB 108 (Richter). Under existing law, every pleading is required to be signed by the party or his/her attorney. Existing law authorizes every trial court to order a party, the party's attorney, or both, to pay any reasonable expenses, including attorneys' fees, incurred by another party as a result of bad faith actions or tactics, as defined, that are frivolous or solely intended to cause unnecessary delay, as specified. As amended June 22, this bill would provide as a pilot project applicable only in Butte, San Diego, San Bernardino, and Riverside counties, until January 1, 1998, unless that date is extended or deleted by later enacted legislation, that, except as specified, the signature of an attorney or party on any pleading, motion, and any other paper filed or served in a civil action, constitutes a certificate that he/she has read the paper, has made a reasonable inquiry into the allegations, and presents it in good faith and not for an improper purpose. The bill would require any pleading, motion, or other paper that is not signed to be stricken unless it is promptly signed after the omission is called to the attention of the pleader or moving party. The bill would require an appropriate sanction to be imposed by the court if a paper is signed in violation of these requirements. The bill would also require the Judicial Council to conduct a specified study of the pilot project and report its findings to the Legislature on or before January 1, 1997. *[S. Jud]*

AB 335 (Ferguson). Existing law authorizes the State Bar to establish and administer a minimum continuing legal education program. Existing law also exempts from this program retired judges, officers and elected officials of the State of California, full-time law professors, and full-time employees of the state of California, as specified. As amended June 9, this bill would delete the exemptions for officers and elected officials of the state of California. *[S. Jud]*

AB 500 (Goldsmith). Existing law provides with respect to the settlement of civil actions that, if an offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment, the plaintiff shall not recover his/her costs and shall pay the defendant's costs from the time of the offer. A similar provision, at the discretion of the court, applies to offers by a plaintiff which are not accepted by the defendant. As amended June 8, this bill would add reasonable attorneys' fees, at the discretion of the court, from the time of the offer to the costs recoverable under this provision, but these new provisions would not apply to personal injury actions in superior court. The bill would also authorize, in lieu of accepting a settlement offer, an offeree to request binding arbitration which would, at the discretion of the court, preclude the offeror from recovering attorneys' fees under the above provisions. *[A. Jud]*

AB 2302 (Morrow), as amended May 4, would require mandatory mediation in certain civil actions upon the filing of a request for mediation by a party against whom a complaint or cross-complaint has been filed, within thirty days of the latter filing. *[A. Jud]*

AB 2300 (Morrow). Existing law authorizes, and in certain cases requires, the courts to submit civil matters for arbitration by retired judges or licensed attorneys. Under these provisions of existing law, the parties are entitled to a trial de novo after arbitration, but, with certain exceptions, are liable for specified costs of the arbitration and prescribed expert witness fees, and may not recover costs as a prevailing party, unless the party obtaining the trial de novo obtains a more favorable judgment, in either the amount awarded or the type of relief granted, than under the arbitration award. Under existing law, in superior courts with ten or more judges where the amount in controversy, in the opinion of the court, will not exceed $50,000, the court is required to submit the matter to this arbitration. Under existing law, other superior courts may provide for submittal of these cases to this arbitration by local court rule where the amount in controversy, in the opinion of the court, will not exceed $50,000. Under existing law, in superior courts with fewer than ten judges and which have not adopted such a local rule, matters are required to be submitted to this arbitration if the plaintiff files an election therefor and agrees that the arbitration award shall not exceed $50,000. As amended June 9, this bill would, until January 1, 1996, increase the above $50,000 maximums to $100,000. *[S. Jud]*

SB 102 (Lockyer). Existing law, as determined by the California Supreme Court in *Neary v. Regents of University of California*, 3 Cal. 4th 273, authorizes an appellate court to reverse a trial court judgment upon the stipulation of the parties. As amended May 13, this bill would specify that an agreement or stipulation of the parties may not be the basis for reversing or vacating a judgment duly entered by a court of competent jurisdiction, except upon a showing of substantial legal or factual justification. The bill would declare agreements to the contrary to be violative of prescribed public policy, except upon a showing of substantial legal or factual justification. *[A. Jud]*

LITIGATION

In ***Nichols v. Keller***, No. F015725 (May 24, 1993), the Fifth District Court of Appeal overturned a summary judgment in favor of two northern California law firms who were sued for malpractice by an injured construction worker who was allegedly not advised of the possibility of filing a third-party claim against the general contractor of the construction project based on the special risk exception to the exclusivity of workers' compensation laws. Although the defendant attorneys said they were hired for only for the limited purpose of processing and prosecuting a workers' compensation claim, the court determined that an attorney may still have a duty to alert the client to all available legal remedies which are reasonably apparent, even though they fall outside the scope of retention. Defendants' counsel regarded the decision as "a new and rigorous standard for lawyers not previously recognized in caselaw." Defendants plan to appeal the decision to the California Supreme Court.

In ***In the Matter of Frank Swan***, No. SA-CR 92-53 (Sept. 14, 1993), a federal judge sanctioned a male defense attorney for making derogatory, gender-based comments in a letter to a female prosecutor during a tax evasion case. Judge Alicemarie H. Stotler ordered attorney Frank Swan to write a formal apology to Assistant U.S. Attorney Elana S. Artson. Judge Stotler ruled that Swan violated a local federal court rule that "no attorney shall engage in any conduct which degrades or impugns the integrity of the court or in any manner interferes with the administration of justice." Similarly, the court held that Swan had violated the State Bar Act, which requires attorneys "to abstain from all offensive personality."

In an unpublished decision in ***Taylor v. Sunwest Insulation Inc.***, No. G010998 (Aug. 1993), the Fourth District Court of

Appeal rejected a $260,000 attorneys' fees claim in a case worth $47,000, stating that arbitration could have resolved the controversy more cheaply and efficiently. In a footnote, Justice Thomas Crosby Jr. said the State Bar and legislature should consider outlawing or greatly restricting hourly billing in civil cases because it is heavily abused and puts attorneys in a perpetual conflict of interest with their clients.

In ***Opinion No. 93-303*** (August 30, 1993), Attorney General Dan Lungren found that Business and Professions Code section 6125, which states that no person shall practice law unless he/she is an active member of the State Bar, does not create any private causes of action. Rather, the section authorizes the State Bar and local law enforcement officials to take legal action against anyone engaged in the unauthorized practice of law. However, a violation of section 6125 may form the basis for a cause of action under other statutes or legal theories, such that monetary damages may be collected for personal injuries sustained as a result of a person practicing law who is not an active member of the State Bar. Finally, the AG found that a private attorney may not recover monetary damages under the Unfair Competition Act, Business and Professions Code section 17200 *et seq.*, from a person practicing law without a license. While the private attorney may have standing to sue someone engaged in the unlicensed practice of law under section 17200, and while the court may order the defendant to relinquish any profits earned as a result of his/her illicit practice or make restitution to any person victimized by the practice, the private attorney may not collect monetary damages under the Unfair Competition Act.

FUTURE MEETINGS

January 3–4 in Los Angeles.
February 25–26 in San Francisco.
April 8–9 in Los Angeles.