



REGULATORY AGENCY ACTION

for appeal of any interim, interlocutory, or other order of the PUC to a state court of appeal. This two-year bill is pending in the Assembly Utilities and Commerce Committee.

FUTURE MEETINGS:

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

STATE BAR OF CALIFORNIA

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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 128,000 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 non-lawyer 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; six-

teen 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.

During the State Bar's annual meeting on September 13-16 at the Anaheim Hilton, John M. Seitman was sworn in as the Bar's new President. Seitman, a San Diego attorney from the firm of Lindley, Lazar and Scales, graduated from the University of Illinois School of Law in 1966. President of the San Diego County Bar Association in 1986, Seitman is the fourth San Diego attorney to become State Bar President.

Along with the President, six newly-elected attorney members were sworn into their positions on the Board of Governors. They include Pauline Gee of Marysville, Joseph Bergeron of San Mateo, Donald Fischbach of Fresno, Glenda Veasey of Los Angeles, Edward Huntington of San Diego, and CYLA representative Edward Wright, Jr., of Sacramento.

Four public members appointed by the Governor to the Board were also sworn in at the annual meeting. They include Peter F. Kaye, associate editor of the *San Diego Union* and a resident of Del Mar; Kathryn G. Thompson, chief executive of the Kathryn G. Thompson Development Corporation and a resident of Dana Point; William S. Davila, president of the Vons supermarket chain and a resident of Arcadia; and former Republican Assemblymember Bruce Nestande, a self-employed land consultant from Santa Ana. Nestande graduated from law school but does not practice law.

MAJOR PROJECTS:

Final Report of the State Bar Discipline Monitor. On September 20, Professor Robert C. Fellmeth and the Center for Public Interest Law released the Final Report of the State Bar Discipline Monitor, culminating a five-year investigative effort to reform the State Bar's attorney discipline system. (See

supra FEATURE ARTICLE for condensed version of the Final Report; see also CRLR Vol. 11, No. 2 (Spring 1991) pp. 179-80; Vol. 10, No. 4 (Fall 1990) p. 184; and Vol. 7, No. 3 (Summer 1987) p. 1 for extensive background information.)

The Discipline Monitor position was created by the legislature in 1986 (Business and Professions Code section 6086.9), and Professor Fellmeth was appointed to fill the position by former state Attorney General John Van de Kamp in January 1987. The 1986 legislation came in response to widespread public dissatisfaction with the speed, fairness, independence, and adequacy of the State Bar's discipline system. The position was created to investigate the Bar's attorney discipline system and recommend reforms.

During the past five years, the Bar has made several hundred changes to all aspects of its discipline system. Many of these changes were implemented administratively at the suggestion of the Monitor; some were initiated by the Bar itself. The most important structural reforms occurred in 1988 with the passage of Senate Bill 1498 (Presley) (Chapter 1159, Statutes of 1988), which was drafted by Professor Fellmeth. Both SB 1498 and SB 1543 (Chapter 1114, Statutes 1986), the statute creating the Bar Monitor position, were authored by Senator Robert Presley of Riverside, who received special acknowledgment in the Final Report. Fellmeth's term (and the Discipline Monitor position) sunsets on December 31.

The voluminous Final Report acknowledges that the discipline system of the State Bar has made substantial progress over the past five years. Highlights of that progress include the dissipation of huge consumer complaint backlogs which have historically choked the system. For example, the backlog in the Bar's Office of Investigations has been reduced from almost 4,000 cases to fewer than 100 cases. Most important, the Bar has agreed to divest itself of making discipline decisions. Instead of its previous system of using volunteer practicing attorneys to investigate and preside over disciplinary hearings concerning their colleagues, the Bar has created a professional and independent State Bar Court: One of six, full-time judges presides over the accused attorney's hearing, and a three-judge panel handles a one-step appeal. None of these persons is a practicing attorney, and one of the appellate panel members is a non-lawyer public member. State Bar Court judges are appointed directly by the California Supreme Court.



The aggregate statistical impact of these changes is momentous. According to the Final Report, the Bar's discipline system has achieved substantial time savings in numerous respects, and the total output of the new system has increased steadily and substantially since 1987. Public discipline of attorneys has at least tripled in 1988-1991 over the base level of 1982-1987. Informal discipline (e.g., reprimands or letters of warning) during 1990-1991 is meted out at levels more than twelve times their incidence during 1981-86 (from 40-60 cases per year then to a rate of 800 per annum in 1991).

However, the Final Report states that the Bar has not yet achieved the optimum system within its capability. In this regard, the Monitor's list of needed further reforms is lengthy, and includes the following:

- The State Bar should ensure that its toll-free complaint number is listed in all state telephone directories; and establish a clear policy requiring all local bar associations to affirmatively notify callers with complaints about attorneys that only the State Bar has the authority to discipline an attorney, and requiring local bars to disclose on their own the Bar's toll-free hotline number.

- More information on attorney misconduct should be added to the Bar's computerized intake system, including implementation of the Attorney General's Arrest Notification System and the filing of malpractice and fraud complaints against licensees.

- The confidentiality rules of the Bar should be legislatively changed to allow disclosure of important public information about attorneys by the Bar to inquiring consumers, including civil malpractice/fraud filings, contempt orders, sanctions, and criminal arrests.

- The Bar's Office of Trials must verticalize its handling of more cases and make much greater use of the interim remedies available to it, particularly Business and Professions Code section 6007(h) restrictions on practice to protect the public.

- The Office of the Chief Trial Counsel should be structurally independent of the State Bar. The Governor or Attorney General should appoint the Chief Trial Counsel, subject to Senate confirmation.

- The Bar's Complainants' Grievance Panel (CGP), which is authorized to review cases closed by the Bar at an early stage, now has a large and debilitating backlog approximating 2,700 cases. This backlog must be attacked by adding investigative resources, shifting to audits of closed cases (rather than

individual review), and adding two public members to the Panel to facilitate three divisions, each able to decide appeals.

- The scope of coverage of the Bar's Client Security Fund, which provides compensation to clients injured through attorney dishonesty, should be expanded to guarantee payment of final arbitration orders or malpractice judgments where the attorney subject to them refuses to pay, with full subrogation rights to the Fund. The coverage caps in the Fund should be lifted.

- The Bar should fund the *State Bar Court Reporter* to publish the opinions of the State Bar Court in a systematic and official manner.

- The Bar should seek legislation to require malpractice insurance meeting minimum standards for all practitioners.

- The Bar must address a continuing lack of public protection from attorney incompetence, and search for ways to deter attorney deceit, particularly in the practice of civil law.

- There is still a need for more effective early intervention to protect the public from alcohol- and drug-abusing counsel.

- The Bar should deputize, train, and supervise local practitioners to help with the filing and handling of attorney disability and major client abandonment cases under Business and Professions Code sections 6180 and 6190, and use such local volunteer "monitors" for prevention, probation, and other functions.

State Bar Demographic Survey. At its annual meeting in September, the Bar released the results of a demographic survey conducted by SRI International. The survey showed that California attorneys are still predominantly white male (93% of lawyers who have been practicing for 20 years or more are white males). However, the trend in the last five years has been toward a more balanced gender distribution; attorneys who have been practicing five years or less are 49% white male and 45% female. The survey further indicated that minority representation is still minimal (9% of California lawyers). Addressing this disparity, Bar President John Seitman stated, "Elimination of barriers which inhibit the full participation in our profession of women and persons of color must be one of our highest priorities."

The survey also revealed other statistics about geographical concentration of attorneys; number of hours worked per week by type of practice; income by type of practice; and pro bono practice. Former State Bar President Charles S. Vogel noted that the survey has provided the Bar with valuable statistical

information which will aid in both policy decisions and current program modifications. The Bar plans to conduct follow-up studies, particularly in the area of minority participation.

Bar Abandons Legal Technician Proposal. After four years of wrestling with the concept of allowing nonlawyers to perform legal services to enhance low-income consumers' access to the legal system, the Board of Governors gave up on the whole idea at its August 24 meeting, and is apparently content to let the legislature handle the issue. (See *infra* LEGISLATION; see also CRLR Vol. 11, No. 3 (Summer 1991) p. 198; Vol. 11, No. 2 (Spring 1991) p. 181; and Vol. 8, No. 3 (Summer 1988) pp. 129-30 for background information.)

Four years and many proposals after the Bar's Public Protection Committee issued an April 1988 report urging the licensing of legal technicians to perform legal services in underserved substantive areas, the Bar rejected the most modest of pilot projects presented by the Board's Committee on Admissions and Competence. Under the proposed three-year pilot program, a regulatory agency to license legal technicians would be established in the Department of Consumer Affairs (DCA). The agency would be governed by a 15-member board consisting of eight active members of the Bar appointed by the Board of Governors, three legal technicians appointed by the DCA Director; two public members appointed by the Governor; and two public members appointed by the Senate Rules Committee and the Assembly Speaker, respectively. Legal technicians would be permitted to practice only in the area of landlord-tenant law. The board would be required to establish a comprehensive list of the specific legal tasks legal technicians are authorized to perform; standards for admission as a legal technician, including education and/or experience and the passage of a written examination; a code of professional conduct; standards for the professional discipline of legal technicians; continuing education requirements; a "client security fund" to provide compensation to victims of legal technician theft; and a mechanism for monitoring the effectiveness of the pilot program.

At the August 24 meeting, attorneys opposed to the pilot project argued that it does not provide sufficient public protection; consumer representatives and members of HALT (Help Abolish Lawyer Tyranny) contended that the Bar's proposal was much too restrictive. The proposal was defeated by a vote of 14-4, and the Board failed to recommend



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further study or future action. The legislature has been presented with two proposals for the legalization and regulation of legal technicians, and will resume discussion of them when it reconvenes in January.

Minimum Continuing Legal Education. At the end of June, members of the State Bar received a comprehensive booklet explaining the requirements and regulations for the Bar's fast-approaching MCLE program. The publication featured the answers to 45 frequently-asked questions about the MCLE program regarding reporting compliance, activity approval, computation of credit hours, and special cases and exemptions. Also included are the Bar's MCLE regulations adopted by the Board of Governors in December 1990.

MCLE officially takes effect on February 1, 1992; however, classes for credit began in September. Under the MCLE program, California attorneys are required to take 36 credit hours every three years. However, attorneys whose last names start with N-Z are required to have completed their first 12 hours by January 31, 1993.

Lawyer-Client Sex Rule. On August 28, the California Supreme Court returned the Bar's proposed ethics rule restricting sex between lawyers and their clients for an additional 90-day public comment period. The court expressed concern over one provision of the rule requiring an accused attorney to prove that a sexual relationship with his/her client did not effect his/her ability to provide sound legal counsel. (See CRLR Vol. 11, No. 3 (Summer 1991) pp. 198-99 for background information.)

Assemblymember Lucille Roybal-Allard expressed disappointment after the Court's announcement. "My hope is it's merely a procedural issue and not a reflection of the court's inclination to disapprove the proposed rule." Roybal-Allard authored AB 415 (Chapter 1008, Statutes of 1989), which required the Bar to address this issue through rulemaking.

Under a compromise between Roybal-Allard and State Bar officials, the controversial burden-shifting provision had been added to "Draft F" of the proposed rule. Before the compromise, Roybal-Allard had introduced a bill that would completely prohibit sexual relationships between attorneys and their clients (*see infra* LEGISLATION). Roybal-Allard does not plan to pursue this legislation until the Supreme Court has made a final decision on the proposed rule.

Following a 90-day public comment period which was scheduled to end on

December 2, the rule will be resubmitted to the Supreme Court for approval.

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

-The Bar is still considering proposed amendments to Rule of Professional Conduct 4-100(C), regarding client trust account recordkeeping standards. The proposed amendments would require attorneys to retain for a five-year period all records related to client trust accounts, including billings to clients, agreements entered into with clients, bank statements, records of payments on behalf of clients to others (e.g., investigators, process servers), and all documents relating to the attorney's acquisition of an ownership, possessory, security, or other pecuniary interest adverse to a client. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 199 and Vol. 11, No. 2 (Spring 1991) p. 180 for background information.) Two Board committees were scheduled to review the proposed amendments, as well as comments received during the public comment period, at their December meetings.

-The comment period on the Bar's proposed revisions to Rule of Professional Conduct 3-100 ended on July 24. The amended rule would repeat section 6068(e) of the Business and Professions Code that it is a lawyer's duty "to maintain inviolate the confidence, and, at every peril to himself or herself, to preserve the secrets of a client," but would add exceptions to the rule, including revealing a confidence upon "the lawful order of a tribunal," in order to prevent the commission of a crime, or to defend oneself in a dispute with a client. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 199 and Vol. 11, No. 2 (Spring 1991) p. 182 for background information.) The Education and Competence Committee was scheduled to consider the proposed revisions at its November meeting.

LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 3 (Summer 1991) at pages 200-01:

SB 717 (Boatwright), as amended August 22, would have provided that it is unethical in all circumstances for an attorney to undertake the representation of both the prospective adoptive parents and the birth parents of a child in any negotiations or proceedings in connection with an independent adoption. This bill would also have required the attorney representing the prospective adoptive parents to inform them both

verbally and in writing that the birth parent(s) may change their minds and any moneys expended in negotiations or proceedings in connection with the child's adoption are not reimbursable. This bill was rejected by the Assembly on August 30.

SB 396 (Petris), as amended July 2, would have required judgments in class actions to be amended pursuant to a specified procedure to allocate undistributed moneys paid in satisfaction thereof in any manner the court determines is consistent with the underlying purposes of the action, or to the State Bar to provide additional funding for the provision of legal services to indigent persons. This bill was vetoed by the Governor on October 4.

AB 687 (Brown), as amended May 29, would provide that an attorney may not be disciplined by the Bar for accepting compensation for professional services in excess of specified fee limitations if the client consents to the fee arrangement, a court approves the fee arrangement, and the fee arrangement is not the product of fraud. The May 29 amendments do not require the attorney to disclose to his/her client or the court the application of a statutory fee limit. Hence, State Bar Discipline Monitor Robert Fellmeth and the Discipline Committee of the State Bar oppose the bill, arguing that it would preclude the discipline of attorneys who knowingly charge unlawful fees.

The State Bar, sensitive to the Speaker's control over the Bar budget, recently refused to take a position before the legislature against the bill, notwithstanding a vote to oppose by its Discipline Committee. The Bar contends that the recent U.S. Supreme Court's decision in *Keller v. State Bar* precludes it from becoming involved in this type of legislative matter. (*See infra* LITIGATION for background information.) Critics of the Bar point out that the *Keller* decision, in fact, specifically allows Bar involvement in legislation affecting its own operations, particularly its discipline system. AB 687 is pending in the Senate Judiciary Committee.

AB 1689 (Filante), as amended May 20, would prohibit any public adjuster from portraying himself/herself, either in advertisement or through personal contact, as having the ability to provide legal service, counsel, or assistance unless he/she is an active member of the State Bar or the company the adjuster represents has one or more staff members that are active members of the State Bar. This two-year bill is pending in the Senate Committee on Insurance, Claims and Corporations.



SB 140 (Robbins), as amended March 18, would provide that the definition of an "athlete agent" shall not include a member of the Bar acting solely as legal counsel for any person. This two-year bill is pending in the Senate Business and Professions Committee.

SB 711 (Lockyer), as amended May 30, would provide, as a matter of public policy, that in actions based on personal injury or wrongful death, no confidentiality agreement, settlement agreement, stipulated agreement, or protective order shall be entered or enforceable, other than as to provisions requiring nondisclosure of the amount of money paid to settle the claim, unless a protective order is entered by the court after a noticed motion. This bill, which would also prohibit the sale or offer for sale by an attorney of information obtained through discovery, is pending in the Senate inactive file.

AB 1400 (Roybal-Allard), as introduced March 7, would provide that any act of sexual contact, as defined, by an attorney with his/her client constitutes a cause for suspension or disbarment, except as specified. This two-year bill is pending in the Assembly Judiciary Committee.

AB 306 (Friedman) was substantially amended on July 15 and is no longer relevant to the State Bar.

AB 168 (Eastin) and **Preprint SB 1 (Presley)** would provide for a new class of legal practitioners called "legal technicians." Both bills create a system of regulation by the Department of Consumer Affairs by narrow specialty, e.g., legal technician-consumer bankruptcy, legal technician-landlord/tenant, legal technician-immigration. Both include measures to discipline the new licensees, require legal technicians to notify consumers that they are not attorneys, prohibit misapplication of fees received from consumers, and establish a fund for the payment of consumers who have been damaged through licensee dishonesty.

There are, however, some differences between the two measures. AB 168 is sponsored by HALT (Help Abolish Legal Tyranny), a consumer organization. HALT is also supported by practitioners currently offering legal advice without Bar membership, many of whom may be vulnerable to prosecution for unauthorized practice of law, a misdemeanor criminal offense—albeit one inconsistently enforced. The HALT bill would abolish the notion of unauthorized practice of law, partly to protect these practitioners. It would establish fourteen legal technician specialties, limit qualifications for licensure to a

single examination, and create a five-member board to regulate the new trade (consisting of four public members and one legal technician). As to consumer complaints, the HALT bill deemphasizes discipline of licensees in favor of an informal system of mediation, and contains a lengthy statutorily established system of mediation and arbitration. AB 168 is pending in the Assembly Committee on Consumer Protection, Governmental Efficiency and Economic Development.

Preprint SB 1 (Presley) was drafted by State Bar Discipline Monitor Robert Fellmeth of the Center for Public Interest Law (CPIL). It is substantially less complex than the HALT measure. The CPIL version would create seven initial categories of legal technician, focusing on the areas of greatest substantive deficiency. It would not abolish the offense of unauthorized practice of law. Legal technicians would be regulated by a five-member board (all public members) in the Department of Consumer Affairs. However, an advisory committee of attorneys and legal technicians would be established to provide advice and expertise where appropriate. The bill would allow the Board to establish a mediation/arbitration system, but does not statutorily prescribe one. The bill sets forth in greater detail, however, a discipline system applicable to practitioners designed to remove dishonest or incompetent practitioners from the trade expeditiously. The CPIL alternative also allows for some minimal educational requirements in addition to a single examination to qualify for a license under a specific specialty (e.g., a paralegal degree). The CPIL measure also requires the periodic retesting of licensees.

AB 1394 (Speier), as amended September 10, would, among other things, amend Civil Code section 4370 to incorporate changes included in SB 324 (Lockyer) (Chapter 500, Statutes of 1991), relating to the recovery of attorneys' fees in dissolution proceedings. This bill was approved by both the Senate and Assembly; however, the Assembly refused to concur in Senate amendments to the bill on September 13.

LITIGATION:

The challenge to the State Bar's implementation of the U.S. Supreme Court's 1990 ruling in *Keller v. State Bar* has proceeded to arbitration. At this writing, a total of 178 attorneys contest the sufficiency of the Bar's \$3 "Hudson deduction" refund of compelled dues, the pro rata amount of the Bar's \$44 million budget which the Bar claims is spent on political or

"nonchargeable" activities under the *Keller* decision. (See *supra* report on PACIFIC LEGAL FOUNDATION; see also CRLR Vol. 11, No. 3 (Summer 1991) pp. 38 and 201-02; Vol. 11, No. 2 (Spring 1991) pp. 35 and 183; and Vol. 11, No. 1 (Winter 1991) pp. 31 and 150-51 for extensive background information.)

On July 19, American Arbitration Association arbitrator David Concepcion granted the Bar's request to close the hearings to the public over the strenuous opposition of the Pacific Legal Foundation (PLF), which represents most of the challengers. However, on July 25, the Bar reversed itself and asked Concepcion to open the hearings "so that the state's attorneys will be able to know what is going on in proceedings that could have a major impact on the State Bar's future"; Concepcion granted this request.

During the first days of the arbitration proceeding in July, Bar General Counsel Diane Yu and senior financial officer Bill Melis described the nature of various Bar programs and how they believe they relate to the two functions which may be financed by compelled Bar dues under *Keller*—"regulating the legal profession or improving the quality of legal service available to the people of the state." The arbitration hearings lasted throughout September, and a decision is not expected before the end of the year.

On June 27, the U.S. Supreme Court issued a badly fractured opinion in *Gentile v. State Bar of Nevada*, No. 89-1836. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 202 for background information.) The Court was reviewing a disciplinary action of the Nevada State Bar against a prominent criminal defense lawyer for statements he made about his client's case during a press conference six months before trial. One 5-4 majority held that Nevada Supreme Court Rule 177, which prohibits extrajudicial statements by an attorney which the attorney knows or reasonably should have known would have a "substantial likelihood of materially prejudicing an adjudicative proceeding," does not, in itself, violate the first amendment's free speech clause. Led by Chief Justice Rehnquist, this majority rejected attorney Gentile's argument that a lawyer's free speech rights should not be curtailed unless his/her comments present a "clear and present danger" of actual prejudice, a much more rigorous test than the "substantial likelihood" standard in Rule 177. Thus, it appears that states may punish attorneys for speech related to their profession based



on a lower standard than applies to the press and other individuals.

However, in another 5-4 opinion in the same case, the Court found that Rule 177, as interpreted by the Nevada Supreme Court, is void for vagueness. "[I]ts safe harbor provision, Rule 177(3), misled petitioner into thinking that he could give his press conference without fear of discipline." The Court held that, given the grammatical structure of the rule, "[t]he lawyer has no principle for determining when his remarks pass from the safe harbor of the general to the forbidden sea of the elaborated."

In *In Re Complex Asbestos Litigation*, No. A047921 (July 19, 1991), the First District Court of Appeal upheld the trial court's disqualification of a plaintiffs' law firm from nine asbestos cases because it hired a paralegal who had previously worked on asbestos litigation for a defense firm. In a case of first impression (because it involves nonlawyer employees rather than attorneys), the appellate court held that "disqualification is appropriate unless there is written consent or the law firm has effectively screened the employee from involvement" in the litigation to which attorney-client confidences gleaned from the prior employment relate. Placing the burden of closely scrutinizing the employment history of prospective employees squarely on the hiring firm, the court noted that "[a]lthough a law firm has the ability to supervise its employees and assure that they protect client confidences, that ability and assurance are tenuous when the nonlawyer leaves the firm's employment. . . . Certain requirements must be imposed on attorneys who hire their opposing counsel's employees to assure that attorney-client confidences are protected." (See CRLR Vol. 10, No. 1 (Winter 1990) p. 155 for background information on this case.)

In *Skarbrevik v. Cohen, England & Whitfield and Comis*, No. B039981 (June 25, 1991), a \$925,000 fraud and negligence award against a Ventura County law firm was reversed as a matter of law by the Second District Court of Appeal, which ruled that counsel for a closely held corporation owes no legal duty to a non-client stockholder; the court stated that the ruling is consistent with a "substantial body of law" narrowly limiting the right to sue an attorney for negligent advice.

The plaintiff, Gunnar Skarbrevik, was an officer, employee, and 25% shareholder in American Pacific Insurance Brokers, Inc. Stating that they were unhappy with him and could not afford to keep him on the books, the three

other shareholders in the corporation agreed to buy Skarbrevik out for \$540,000, to be paid in monthly installments of \$4,500 for ten years. Skarbrevik was told that Comis, the corporation's attorney, would prepare the necessary documents to effect the buyout. Based on the agreement, Skarbrevik agreed to resign as director and officer of the corporation. Comis prepared the necessary documents and a letter to Skarbrevik advising him to retain independent counsel; however, the remaining shareholders did not forward either the documents or the letter to Skarbrevik. Several weeks later, when Skarbrevik inquired whether the papers were ready, one of the other shareholders told him that, "on legal advice," the corporation had decided not to pay him anything for his shares.

Skarbrevik subsequently filed a lawsuit against Comis and his law firm, alleging professional negligence and that Comis had conspired with the remaining shareholders to defraud Skarbrevik of the value of his shares. At trial, Skarbrevik produced two letters written by Comis, advising the corporation on how to circumvent a preemptive rights provision in the corporation's articles (which provided that 25% of any additional stock issued must be offered to Skarbrevik); the plan entailed diluting Skarbrevik's interest by issuing new shares of stock to the other shareholders, effectively preempting Skarbrevik's rights without informing him. The legal advice was followed and, consequently, Skarbrevik's stock was diluted to 4.7%. The jury found that Comis was negligent and imputed that negligence to his firm; the jury also found that Comis had conspired to defraud Skarbrevik.

On appeal, the Second District noted that "the jury could infer that Comis knowingly participated in the majority stockholders' fraud." While the court did not condone those activities, it ruled that, as a matter of law, there was no attorney-client relationship between Comis and Skarbrevik, nor was Skarbrevik an intended beneficiary of the attorney-client relationship; therefore, the lawyer could not be held liable to Skarbrevik for professional negligence. As to conspiracy to defraud, which was premised solely on a theory of fraudulent concealment, the court held that Skarbrevik failed to establish that Comis had the requisite fiduciary relationship with Skarbrevik upon which to base a duty of disclosure. Therefore, the court held that Comis, as attorney for the corporation, had no personal duty to disclose the facts intentionally concealed.

RECENT MEETINGS:

At its July 13 meeting, the Board of Governors amended section 7.4 of its minimum continuing legal education (MCLE) regulations. As amended, education activities approved for continuing legal education credit by another state which has MCLE standards and requirements similar to those in California shall count toward a member's compliance with California's MCLE requirements. An attorney would not need to seek California approval for such activities.

Also in July, the Board of Governors amended section 21 of its Rules of Procedure for the Hearing of Fee Arbitrations by the Bar's Fee Arbitration Unit. If a fee dispute involves less than \$7,500, one arbitrator will be assigned. If the dispute involves \$7,500 or more, a panel of three arbitrators (one of whom is a public member) will be assigned; a decision by two of the three arbitrators will constitute a quorum.

FUTURE MEETINGS:

January 16-18 in Los Angeles.
February 20-22 in San Francisco.
March 19-21 in San Francisco.
April 30-May 2 in Los Angeles.
June 4-6 in San Francisco.

