rates the amount utilities pay for buying power from affiliates; *SB 1124 (Rosenthal)*, which would have established standards for PUC approval of natural gas pipelines; *SB 1125 (Rosenthal)*, which would have established rules governing ex parte "off-the-record" communications with PUC Commissioners, staff, and ALJs; *SB 1126 (Rosenthal)*, which would have removed the PUC's authority to employ ALJs and would instead have required that all ALJs be employed by the Office of Administrative Hearings; *SB 1219 (Rosenthal)*, which would have provided a financial incentive for utilities to use cleaner-burning natural gas in place of fuel oil; *SB 1544 (Rosenthal)*, which would have required the PUC to establish standards for determining when a particular telecommunications market has become competitive; *SB 136 (Montoya)*, which would have prescribed the use of any funds received from payphones used by inmates in prisons; *SB 909 (Rosenthal)*, which would have required the PUC to report to the legislature on the feasibility and appropriateness of public utilities selling "extra space" in billing envelopes; *SB 1375 (Boatwright)*, which would have required telephone companies to inform each new subscriber that the subscriber may be listed in the directory as a person who does not want to receive telephone solicitations; *AB 902 (Killea)*, which would have established a rule for determining the value of a utility that is acquired under eminent domain proceedings; *AB 903 (Killea)*, which would have required any challenges to the validity of a municipal utility district incorporation to made within thirty days; *AB 1351 (Kelley)*, which would have repealed existing law and enacted new provisions for the regulation of dump truck drivers; *AB 1472 (Moore)*, which would have prohibited any telephone corporation from providing a new telecommunications service without first receiving authorization to do so from the PUC; *AB 1478 (Moore)*, which would have required the PUC to limit the amount an electrical corporation whose incremental fuel is natural gas could pay for electricity purchased from a private energy producer; and *AB 1797 (Moore)*, which would have required the PUC to license natural gas brokers and marketers.

LITIGATION:

Pacific Bell and General Telephone's efforts in trying to block "dial-a-porn" phone services have suffered another setback. In a recent case, Sable Communications alleged that Pacific Bell and GT lobbied local prosecutors to bring charges against Sable concerning its dial-a-porn service under obscenity laws. The phone companies then attempted to utilize PUC Rule 31, which would have required the immediate cut-off of such phone service once a magistrate found probable cause to believe a crime was being committed. In *Sable Communications of California v. Pacific Telephone & Telegraph*, No. 88-5586 (Nov. 22, 1989), the Ninth Circuit Court of Appeals ruled that application of Rule 31 would violate Sable's first amendment rights, and ordered PacBell and General Telephone to pay $150,000 to Sable in legal fees. The PUC was excused from paying legal fees because recent U.S. Supreme Court rulings have increased state agency protection against certain civil rights suits for damage.

FUTURE MEETINGS:

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

STATE BAR OF CALIFORNIA

President: Alan I. Rothenberg
Executive Officer: Herbert M. Rosenthal
(415) 561-8200
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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 122,000 members, more than one-seventh 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; nine 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 282 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.

MAJOR PROJECTS:

Redistricting. Redistricting may be the most pressing of the State Bar's duties during 1990. The current nine-district division of the state has not changed since it was established by legislation in the 1930s. But due to the passage in September of SB 818 (Presley), a bill designed to force the Bar to redraw its district lines, redistricting has become a priority. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 137 and Vol. 9, No. 3 (Summer 1989) pp. 128-29 for background information.) SB 818 repeals the current district system as of June 30, 1990. And, in order to give adequate notice to would-be candidates for the Board of Governors, the new plan must be approved and in place between February and April.

When SB 818 was approved, the Bar hired a consultant, who subsequently presented the Board's Committee on

Redistricting with several proposed plans. The committee opted for a configuration that leaves untouched the rural District 1 (comprised of 19 counties in the northern stretches of the state), District 7 (Los Angeles County), and District 9 (San Diego and Imperial counties); creates a massive District 5, encompassing 13 rural counties in the central state; places Marin County in San Francisco's District 4; leaves Orange County alone in District 8; and creates an odd noncontiguous District 6, with San Luis Obispo, Santa Barbara, and Ventura counties to the west, and San Bernardino and Riverside counties to the east.

The committee members chose the plan because it creates an equitable distribution of attorneys to Governors, in accordance with Business and Professions Code section 6012.5. The committee considered factors such as topography, geography, location of court districts, communities of interest, and population growth.

Should the Board of Governors adopt the recommended redistricting plan, it will remain in place for ten years.

Continuing Legal Education. The Board's Education Committee has begun distributing drafts of proposed rules to govern the new mandatory continuing legal education requirements under SB 905 (Davis) (Chapter 1425, Statutes of 1989). (See CRLR Vol. 9, No. 4 (Fall 1989) p. 138 for background information.) The continuing legal education requirements will go into effect no earlier than the beginning of 1991.

Bar Operating Budget. The Board of Governors plans to spend $39.7 million during 1990, but may spend as much as $44.2 million—a spending increase of almost 17%. The Bar, however, foresees little difficulty in paying its bills. Its 1990 operating budget anticipates $46.4 million in revenues. The Board says it will apply any surplus to its lawyer discipline system.

Dues Expected to Increase, But Not Exam Fees. Bar dues, already scheduled for a 1990 increase of $23, will probably go up an additional $36 in 1991. If the increase is approved by the legislature, California's bar dues—already the highest attorney licensing fees in the country—will swell to $476 for attorneys who have been in practice for three years or more.

Meanwhile, the Board of Governors postponed for a year the request of the State Bar's Committee of Bar Examiners to increase the exam fee to $510. The proposed increase was placed on hold due to complaints that such a large fee would discourage minorities from taking the Bar exam.

Certified Legal Skills Program. The Bar is preparing to erect another barrier to the practice of law in California. The Committee on Standards and Admission would require all bar candidates to pass a "certified" legal skills program. While consumer safety and complaints are cited as the motivating factors, the program proposals have not centered on the areas that receive the most disciplinary complaints: billing, bookkeeping, and office management.

Law schools in California which already offer a skills program and are also ABA-accredited have complained that the Bar's mandatory requirements could jeopardize their ABA standing.

Military Counsel in the Courtroom. The State Bar seeks public comment on a proposed addition to the California Rules of Court—Rule 983.1—which would permit court appearances by military counsel not licensed to practice law in California. If approved by the Supreme Court, the rule would allow an officer of the Judge Advocate General's Corps to appear in a California court when the military attorney, though not a member of the California Bar, is a member in good standing of any United States court or the highest court in any state, is found to have been appointed pursuant to the Soldier's and Sailor's Relief Act, and the court further finds that retaining civilian representation will cause substantial hardship for the person in military service or his/her family. The period for written comment, announced in early December, was scheduled to end on March 6.

LEGISLATION:

The following is a status update on bills described in CRLR Vol. 9, No. 4 (Fall 1989) at page 138:

AB 1949 (Eaves), which would limit the maximum attorneys' fees that may be recovered based on a contingency fee arrangement for all tort claims other than those based upon negligence of a health provider, is pending in the Assembly Judiciary Committee.

AB 1385 (Polanco), which would have increased the penalty imposed for any person, firm, partnership, association, or corporation which solicits business for an attorney, died in committee.

AB 234 (McClintock) would have extended the limits on the amount of contingency fees an attorney may receive in an action for injury against a health care provider to all actions for damages for bodily injury or death. This bill died in committee.

Future Legislation. The Board of Governors is expected to pursue legislation in 1990 that would triple the time in which an attorney must respond to a client's request for a bill. The legislation would amend Business and Professions Code section 6148, which currently gives an attorney ten days to respond to his/her client's request; the bill would give lawyers thirty days.

The Bar is also expected to seek legislation that would warm the "chilling effect" that current law has had on a consumer's desire to challenge an attorney's fees through arbitration. The anticipated legislation would prohibit the current practice of awarding attorneys' fees to lawyers for the time they spend in arbitration, battling clients who claim they have been overcharged; prohibit an attorney from cutting off an arbitration by filing a small claims lawsuit against his/her client; and make the program inapplicable to out-of-state attorneys.

LITIGATION:

Using a new statutory power for the first time, the State Bar filed contempt of court charges against a disciplined attorney who allegedly continued to practice law while serving a suspension. Paul Ian Mostman's license was suspended for two years by the California Supreme Court in January 1989, in part as a result of his 1982 conviction on a charge of solicitation to commit assault. *In Re Mostman*, 47 Cal. 3d 725 (1989).

According to the State Bar's office of the Chief Trial Counsel, Mostman held himself out to an insurance company as continuing to represent a claimant, failed to notify clients of his suspension as required by law, and continued to use letterhead indicating he was a practicing attorney.

The State Bar alleges that Mostman's actions violate Business and Professions Code section 6084(d), which states that "for wilful failure to comply with a disciplinary order or an order of the Supreme Court, or any part thereof, a member may be held in contempt of court...[in an action] brought by the State Bar...." The law went into effect on January 1, 1989, as part of SB 1498 (Presley), a bill drafted by State Bar Discipline Monitor Robert C. Fellmeth

in conjunction with Senator Presley's staff, the Attorney General's Office, and State Bar discipline officials. The bill, which was signed by the Governor in September 1988, contained 35 provisions designed to enhance the authority and quality of the State Bar's discipline system. (See CRLR Vol. 8, No. 4 (Fall 1988) pp. 123-24; Vol. 8, No. 3 (Summer 1988) p. 130; and Vol. 8, No. 2 (Spring 1988) pp. 126-27 for detailed background information.)

"We are invoking the new statute to protect the public from suspended attorneys who continue to practice law and to enforce the sanctity of the court's order," James Bascue, Chief Trial Counsel for the State Bar, said in November.

Mostman, whose license was suspended until February 1991, could be jailed for up to five days and fined as much as $1,000. He was scheduled to appear in Los Angeles County Superior Court on January 16.

The statute closed the crack into which violations of disciplinary orders often fell. The law did make violations of suspensions a misdemeanor, which were seldom pursued by State Bar attorneys and which almost never aroused the interest of prosecutors. SB 1498 clarified the remedy against those who violate those orders.

Upon hearing that the U.S. Supreme Court agreed to hear *Keller v. State Bar of California*, No. 88-1905, State Bar President Alan I. Rothenberg said: "We welcome the Court's review of *Keller v. State Bar of California* and believe this will be an opportunity for the U.S. Supreme Court to give us clear guidance as to the important distinctions between unified bars and labor unions. We believe that the State Bar's efforts to promote the administration of justice is appropriate and warrants the high court's approval and that the labor union analogy does not apply to unified bars."

On October 2, the Supreme Court granted a petition for certiorari in the case, in which 21 members of the State Bar challenge the use of compulsory Bar dues to finance political activities such as lobbying, election campaigns, amicus curiae briefs, and the Bar's annual conference at which political positions are advanced. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 138; Vol. 9, No. 2 (Spring 1989) p. 123; Vol. 8, No. 1 (Winter 1988) p. 110; and Vol. 6, No. 4 (Fall 1986) pp. 92-93 for complete background information on the Keller case.)

In *In Re Complex Asbestos Litigation*, No. 828684 (Sept. 19, 1989), a San Francisco Superior Court judge has ruled that attorneys are now responsible for possible conflicts of interest involving their non-lawyer staff. This new ethical duty was imposed after a paralegal left the employ of an asbestos defense firm and was subsequently hired by a plaintiff's attorney.

The judge criticized the State Bar for inaction on the issue. He said that the issue of "side-switching" staff members has existed since the 1970s, yet the State Bar has failed to address it. The judge said he wanted a standing Bar committee formed to study ethical problems involving paralegals. The Bar, however, does not presently have the authority to prescribe rules for paralegals.

Legal ethics experts responded to the judge's ruling with apprehension. They suggested that the decision, if upheld on appeal, would impose great hardships on the legal profession. Attorneys would be forced to perform extensive pre-employment investigations before hiring staff members, including the identities of every party involved in every case on which a paralegal has worked.

In *Lebbos v. State Bar*, No. SF-908061, a San Francisco Superior Court judge declared Betsy Warren Lebbos a "vexacious litigant" and ordered her to post a bond to reimburse the Bar for court costs. The case will technically remain open until the bond is posted. Lebbos, an oft-disciplined San Jose attorney who has been recommended for disbarment by the State Bar, has sued the Bar many times in return. She recently had eight open cases pending against the Bar. This time, Lebbos unsuccessfully attempted to have the new State Bar Court declared unconstitutional because it was not created by the California Constitution and because its judges are not subject to election. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 138 for background information.)

FUTURE MEETINGS:

May 10-12 in San Francisco.
June 14-16 in San Francisco.
July 21-22 in Los Angeles.
August 25-26 in San Francisco.