that was the subject of collective bargaining. The bill would also provide that all terms or conditions of employment that are contained in a collective bargaining agreement are presumed to be reasonable. This bill is pending in the Senate Committee on Energy and Public Utilities.

SB 497 (Stirling) would require a vote by the residents of the service area of a public utility before the PUC could approve an acquisition of the utility. This bill is pending in the Senate Energy and Public Utilities Committee.

SB 560 (Rosenthal). Existing law authorizes the PUC to provide compensation for ratepayer advocates' fees, expert witness fees, and other reasonable costs to public utility customers for participation or intervention in any rate hearing or proceeding of the Commission. This bill would extend these provisions to customers of highway carriers, passenger stage corporations, and charter-party carriers. Any award made for participation in cases involving transportation rates shall be paid from the PUC's Transportation Rate Fund. This bill is pending in the Senate Committee on Energy and Public Utilities.

SB 796 (Deddeh) would require public utilities to file an environmental impact report (EIR) pursuant to the California Environmental Quality Act before acquiring or merging with another public utility. The bill would also provide that all public agencies which are affected by the project are "responsible agencies" with respect to the preparation of an EIR. Existing law only requires an environmental assessment. This bill is pending in the Senate Energy and Public Utilities Committee.

SB 909 (Rosenthal) would direct the PUC to report to the legislature by September 30, 1990, on the feasibility and appropriateness of public utilities selling "extra space" in billing envelopes and of requiring them to sell that space to commercial advertisers. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 1 for background information on this issue.) The revenues generated would be used to provide grants in advance of PUC proceedings to promote consumer and subscriber participation in those proceedings. This bill is pending in the Senate Energy and Public Utilities Committee.

SB 993 (Rosenthal) would require the PUC to report to the legislature by January 1, 1991, on specific issues relating to the growth of unsolicited telefacsimile (fax) marketing communications. The bill would mandate the PUC to explore the cost to both sender and receiver, revenue projections to the utility in connection with growth projections, preventive measures, and legal issues related to the prohibition of unsolicited fax marketing communications. This bill is pending in the Senate Committee on Energy and Public Utilities.

SB 1375 (Boatwright) would require every telephone corporation to inform each new subscriber that the subscriber may be listed in the directory as a person who chooses not to receive telephone solicitations. The telephone corporation would then be required to provide for each subscriber who so chooses a listing in the directory accompanied by a special symbol which indicates that the subscriber does not wish to receive telephone solicitations. This bill is pending in the Senate Energy and Public Utilities Committee.

The following is a status update on bills discussed in CRLR Vol. 9, No. 1 (Winter 1989) at page 106:

SB 52 (Rosenthal), which would prohibit significant action to acquire control of any public utility without prior PUC approval and would specify the factors the PUC must consider in granting approval, is pending in the Senate Committee on Energy and Public Utilities.

SB 53 (Rosenthal). Existing law prohibits a public utility from purchasing or acquiring the capital stock of any other public utility in California without PUC authorization. This bill would extend that prohibition to any subsidiary or affiliate of, or corporation holding a controlling interest in, a public utility. This bill would permit the Commission to establish categories of stock acquisitions which it determines will not be harmful to the interests of the acquired public utility, and would exempt purchases within those categories from these provisions. This bill is also pending in the Senate Committee on Energy and Public Utilities.

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 by 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 110,000 members, more than one-seventh of the nation's population of lawyers.

The State Bar Act designates the 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: fifteen licensed attorneys elected by lawyers in nine geographic districts; six public members variously appointed by the Governor, Assembly Speaker, and Senate Rules Committee and confirmed by the state Senate; a representative of the California Young Lawyers Association (CYLA) appointed by that organization's Board of Directors; and the State Bar President. With the exception of the CYLA representative, who serves for one year, and the State Bar president, who serves an extra fourth year upon election to the presidency, each Board member serves a three-year term. The terms are staggered to provide for the selection of five attorneys and two public members each year.

The State Bar includes 22 standing committees, 16 sections in 14 substantive areas of law, Bar service programs, and the Conference of Delegates, which gives a representative voice to 127 local bar associations throughout the state.

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 professional standards and enhancing competence; (3) supporting legal services delivery and access; (4) educating the public; (5) improving the administration of justice; and (6) providing member services.

MAJOR PROJECTS:

Fourth Progress Report of the State Bar Discipline Monitor. In his Fourth Progress Report issued on March 1, State Bar Discipline Monitor Robert C. Fellmeth reported, for the first time, indications of improvements in the State Bar's discipline system. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 122; Vol. 8, No. 2 (Spring 1988) p. 124; Vol. 8, No. 1 (Winter 1988) pp. 108-09; Vol. 7, No. 4 (Fall 1987) p. 108; and Vol. 7, No. 3 (Summer 1987) pp. 1 and 133 for background information.) These improvements are due to significant administrative reforms, including the adoption of

some fifty recommendations made in previous Progress Reports, and an equivalent number proposed by Bar staff.

Other improvements noted by the Monitor include the fact that "statements of the case" (investigative summaries upon which formal charges are based) are now flowing into the Bar's Office of Trial Counsel at almost double the rate of six months ago. The Bar's backlogs in its Intake Unit, Office of Investigations, and Office of Trial Counsel have finally leveled off, and all three are beginning to dissipate.

While encouraged by the Bar's progress, the Monitor noted several problems yet to be addressed, including an overall backlog that remains at an unacceptably high level; important structural reforms needed in the Bar's judicial system that have yet to be put in place; and lack of publicity of the Bar's toll-free complaint number, which is still not in accessible locations or readily available from directory assistance.

The Monitor emphasized the passage of two significant bills, effective January 1, 1989. AB 4391 (Brown) and SB 1498 (Presley) have enabled the Bar to substantially increase the number of disciplinary investigators and attorneys, and have strengthened and broadened reporting requirements so the Bar can detect errant attorneys at an earlier stage. (See CRLR Vol. 8, No. 4 (Fall 1988) pp. 123-24 for background information on these bills.) This legislation, coupled with the Bar's extensive administrative reforms, support an optimistic assessment by the Monitor, tempered by a focus on the problems yet to be resolved.

State Bar Court Judges. The Board of Governors recently narrowed a pool of 374 applications for full-time positions as State Bar Court Judges to 33 applicants. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 107 for background information.) Written comments were solicited and public hearings held in both Los Angeles and San Francisco on March 8. No less than three nominees for each of nine positions were scheduled to be submitted to the California Supreme Court by April 1.

The Supreme Court will appoint nine individuals (eight attorneys and one non-attorney) to six-year terms as judges for the Bar's revamped discipline system. Beginning in July 1989, the judges will hear and review disciplinary and other regulatory proceedings that the State Bar Court conducts as the administrative arm of the state Supreme Court.

Attorney Advertising: Use of the Term "Specialist". March 13 marked the end of the public comment period concerning two proposed rules that would regulate the use of the term "specialist" in attorney advertising. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 107 for background information.) According to Lauren McCurdy of the Bar's Office of Professional Standards (OPS), approximately thirty comments were received. The comments have not been summarized at this writing, but OPS will address this project in the near future.

OPS will present its summary to the Board's Professional Standards Committee, which will analyze the comments and make a recommendation to the Board of Governors. The Board will then either approve the proposed rule change and present it to the Supreme Court for approval, or return the rule proposal to OPS for further revision.

Bar Creates New Professional Liability Insurance Program. A State Bar-approved professional liability insurance (PLI) program will be established pursuant to a unanimous decision by the Board of Governors at its February 24 meeting. This program is not a mandatory insurance program, but will theoretically allow attorneys to purchase PLI at competitive rates, while offering a number of loss control services. The policy and application, written specifically for the California program, includes claims-made coverage offered on a full prior acts basis; former partner coverage; predecessor firm coverage; full fiduciary coverage; incidental related professional services; worldwide coverage; coverage for part-time attorneys; and innocent partner coverage. Kirke-Van Orsdel Incorporated will act as broker, and Reliance National Risk Specialists will issue individual insurance policies.

Existing carriers, including Lawyers' Mutual Insurance Company, objected to the Bar's backing of a particular carrier. They believe the Bar's plan will destroy competition among legal malpractice carriers. Proponents of the plan counter that the current carriers require substantial up-front fees to become insured, which has inhibited some 30,000 practicing attorneys who are currently uninsured; and they have sought out a carrier willing to provide service with a loss prevention program. Furthermore, this program is for a temporary, limited term; in several years, existing carriers will be eligible to bid to have the Bar sponsor their particular firm.

Registration of Legal Technicians. The issue of provision of law-related services by non-lawyers has generated five binders of comments at the State Bar's San Francisco office. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 107; Vol. 8, No. 4 (Fall 1988) p. 123; and Vol. 8, No. 3 (Summer 1988) pp. 129-30 for background information.)

An April 1988 report by the Bar's Public Protection Committee recommended that non-lawyer "legal technicians" be permitted to advise consumers in certain limited areas. Two public hearings on the report, one held January 10 in San Francisco and the other held January 26 in Los Angeles, drew advocates from both sides of this controversial issue.

With the written public comment period ending March 13, the Bar now has the difficult task of summarizing the comments for presentation to the Committee on Professional Standards and Admissions. According to schedule, the summary should be presented at the June Board meeting.

Proposed California Fund for Children's Legal Services. In November 1988, the Board's Committee on Access passed a resolution delegating to the Legal Services Section the task of developing a program for the collection and distribution of contributions for legal service programs serving children. Money contributed to the California Fund for Children's Legal Services will be used to develop and expand programs which provide free, comprehensive, and direct legal services to children who are poor, victims of abuse, abandoned, or disabled. The Fund will be accompanied by a program to encourage private California attorneys to donate their time to pro bono agencies and organizations which serve such children.

Legal services would include not only the services provided by members of the State Bar and similar or complementary services of a law student or paralegal under the supervision of a Bar member, but could also include professional services of a social worker, counselor, or other professional serving children's needs, working in conjunction with a Bar member.

The Fund will be distributed in the form of grants, with the grantees to be chosen by a Selection Committee. The Selection Committee will develop procedures for grant applications, including appropriate procedures for those seeking funding to demonstrate how their proposals will serve the Fund's goals. Grants will be available only to nonprofit corporations (applying individually or jointly) qualified under section 501(c)(3) of the Internal Revenue Code.

Donors may contribute directly to the State Bar, designating that the gift is

for the California Fund for Children's Legal Services. Donors may also elect to make their gifts to a nonprofit corporation which has agreed to donate an amount to the Fund equal to any such gift it receives. Donations will be devoted solely to grants. The Fund's administrative and fundraising expenses will be borne by volunteers and by separate donations specifically for that purpose.

Redrawing of Election Districts for Board of Governors Members. At the annual Conference of Bar Leaders in February, Bar President Colin Wied announced that the Board of Governors had revived its Redistricting Committee under Board member frank d. winston, after the Bar could not agree on any of three plans presented last year for revamping the Board. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 122 for background information.) Lawyers from Orange, Riverside, and San Bernardino counties have complained that they are underrepresented on the Board, and suggestions have been advanced to redraw the district boundaries or add more governors to the 23-member Board to handle the problem. State Bar districts have not changed since they were established in 1933.

In early March, Senator Robert Presley gave State Bar leaders until June 1989 to come up with a plan to redistrict the Board before pressing legislation to reorganize it. Presley's bill (SB 818) would create a new State Bar District 10, consisting of the 2,500 lawyers in San Bernardino, Riverside, and Imperial counties. San Joaquin and Mono counties would be moved from District 2 (centered in the Sacramento area) to District 5, which takes in most of the San Joaquin Valley. Inyo County, now part of District 8, would also be moved to District 5 under the plan. Presley's concern, however, is that the number of attorneys on the Board should not be increased without a corresponding increase in the number of public members. Currently, six public members and 17 attorneys serve on the Board, with 15 of the attorneys elected by other lawyers in the nine current Bar districts.

Meanwhile, the Redistricting Committee has come up with a new plan which would not involve adding another member. Its new plan would move all four of the northern Bay Area counties—Marin, Napa, Sonoma, and Solano—into District 1, which comprises the 19 northernmost counties in the state. Riverside and San Bernardino counties, now sharing a fast-growing district with Orange County, would be shifted to District 5, which takes in most of the San Joaquin Valley counties.

The State Bar's new plan is tentative; at this writing, local attorneys have not yet had a chance to comment on it.

Mandatory Continuing Legal Education Proposal Revitalized. Two Board committees (Professional Standards and Admissions and Legislation and the Courts) recently approved a revival of the 1988 drive to require lawyers to take continuing legal education courses. AB 2618 (Harris) would have required the Bar to establish and administer such a program on or after January 1, 1990 and authorized a $5 surcharge on State Bar membership fees for the cost of the program. The bill died unexpectedly at the close of the 1988 legislative session. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 124; Vol. 8, No. 2 (Spring 1988) p. 126; and Vol. 8, No. 1 (Winter 1988) pp. 109-10 for background information.) The proposal is now on the Bar's 1989 Legislative Program.

Lawyering Skills Proposal. The Bar's Consortium on Competence, in addition to other recommendations, presented lawyering skills proposals to the Committee on Professional Standards in February. The proposals would require courses in practical lawyering skills and an internship before applicants would be allowed to practice law in California. The Consortium also recommended that:

-the Bar develop a videotape program and pamphlet for distribution in the state's high schools and colleges outlining the kinds of courses someone interested in becoming a lawyer should take at the secondary and undergraduate levels;

-the Board of Governors adopt a policy requiring students to demonstrate a proficiency in communications skills as a prerequisite to law school admission;

-the Bar expand its current substance abuse and stress management programs;

-the Bar promote the use of alternate dispute resolution programs by developing brochures and videotapes that educate lawyers and clients about the best ways to stay out of court;

-the Bar's specialty certification program be amended to require courses in practice management and lawyering skills;

-the Board of Governors urge all California law schools to modify their curricula in light of the Consortium's recommendations on internships;

-the Bar establish voluntary programs throughout the state that would work in conjunction with the State Bar Court to provide peer review of lawyers who have been put on probation for violations of the Rules of Professional Conduct;

-the Bar consider establishing a two-year residency program under which lawyers would be allowed only a limited practice in their first two years after passing the California Bar exam. During that period, they would receive coaching in the day-to-day realities of law practice.

The Board was scheduled to further discuss these proposals at its April meeting.

Proposed Statewide Code of Professional Courtesy. At its March meeting, the Board approved in principle the adoption of a proposed Statewide Code of Professional Courtesy. The courtesy plan is the product of the Statewide Committee on Professionalism and Public Action (SCOPAPA), whose goals include education of the public about the legal system and profession, and improvement of the profession's poor public image. The idea of a courtesy code, along with two similar codes adopted by bar groups in other parts of the country, will be circulated for ninety days of public comment. One of the codes circulated includes provisions ruling out "cheap shots," and calling on lawyers to return telephone calls, show up on time for appointments and court appearances, prepare cases fully, cooperate with opponents "as much as possible," know and follow court rules, and "scrupulously observe all mutual understandings." At the end of the comment period, Bar Governors plan to draft their own version of a professionalism code.

LEGISLATION:

AB 163 (Floyd) would direct a court to award reasonable attorneys' fees to the prevailing party in an action or proceeding for the return of property wrongfully seized by any state or local law enforcement agency. AB 163 is pending in the Assembly Judiciary Committee.

AB 234 (McClintock) would extend provisions limiting the amount of contingency fees an attorney would receive for representing any person seeking damages in connection with an action for injury or damage against a health care provider based upon the person's alleged professional negligence to all actions for damages for bodily injury or death.

Existing law permits the introduction of evidence of certain collateral sources of benefits received by a plaintiff in an action against a health care provider arising out of an action involving professional negligence, and limits to $250,000 the amount a plaintiff may recover against a health care provider to compensate for pain, suffering, inconvenience, physical impairment, disfigurement, and other

nonpecuniary damages. Also under existing law, in any action for injury or damages against a provider of health care services, a court, at the request of either party, is required to enter a judgment ordering that money damages of the judgment creditor be paid in whole or in part by periodic payments rather than by a lump-sum payment if the award equals or exceeds $50,000. The above provisions would also be extended to all actions for damages for bodily injury or death.

This bill would also revise the maximum limitation on attorney contingency fees in those actions for bodily injury and death to 40% of the first $50,000 received; 33-1/3% of the next $50,000; 25% of the next $100,000 (lowered from $500,000); and 10% of any amount on which the recovery exceeds $200,000 (lowered from $600,000). This bill is pending in the Assembly Judiciary Committee.

AB 1949 (Eaves) would specify that the maximum attorney fees that may be recovered based on a contingency fee arrangement for all tort claims other than those based upon negligence against a health care provider is 25% of the first $600,000 recovered and 15% of any amount recovered in excess of that amount. This limit would apply whether recovery is by settlement, arbitration, or by judgment. This bill would also provide that this fee may be increased to a maximum of 40% in extraordinary cases if after notice and hearing, the court finds that specified conditions exist. It would also permit the review and the reduction of defense counsel's fees, and provide that the foregoing provisions may not be waived. AB 1949 is pending in the Assembly Judiciary Committee.

SB 246 (Stirling) would provide that when a superior court assumes jurisdiction over an attorney's law practice upon death, resignation, disbarment, inactive status, or suspension from active status, notice of the cessation of the law practice and copies of any applications filed or order issue by the superior court shall be served upon or provided to the Office of the Chief Trial Counsel of the State Bar. This bill would also authorize the State Bar to intervene and assume primary responsibility for conducting an action in these proceedings.

Current law provides that the superior court may assume jurisdiction over an attorney engaged in the practice of law in this state who has, for any reason, including but not limited to excessive use of alcohol or drugs, physical or mental illness, or other infirmity or other cause, become incapable of devoting the time and attention to his/her law practice. The assumption of jurisdiction may be requested by a client, the State Bar, or an interested person or entity, subsequent to a finding by a local administrative committee of probable cause to believe that the jurisdictional facts have occurred. This bill would revise that procedure to (1) provide that only the State Bar may apply to the court for assumption of jurisdiction over the law practice of an attorney where the attorney does not consent; and (2) eliminate the initial determination of probable cause by a local administrative committee. This bill is pending in the Senate Judiciary Committee.

AB 1385 (Polanco) would make it either a felony punishable by imprisonment in the state prison, or a misdemeanor punishable in county jail not exceeding one year, or by a fine not exceeding $2,500, or by both, for any person, firm, partnership, association, or corporation, to act as a runner or capper for any attorney, to solicit any business for any attorney, or to solicit another person to commit or join in these acts. Current law makes this violation a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding $2,500, or by both. This bill is pending in the Assembly Public Safety Committee.

SB 818 (Presley) would increase the number of members of the Board of Governors from 22 to 23 by adding an attorney member who would be elected from a new district that would be created by the bill, and would revise the counties comprising the State Bar districts. (*See supra* MAJOR PROJECTS for background information.) This bill is pending in the Senate Judiciary Committee.

LITIGATION:

In *Keller v. State Bar of California*, No. SF 25050, 89 D.A.R. 2259 (Feb. 23, 1989), the California Supreme Court held—on a 4-3 vote—that the State Bar may use mandatory membership dues for lobbying and to voice its view concerning particular litigation through the use of amicus curiae briefs, but may not engage in election campaigning.

The plaintiffs, 21 members of the Bar, filed suit against the Bar and its Board of Governors, attacking the use of compulsory Bar dues to finance lobbying, amicus curiae briefs, and other activities, including election campaign activities. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 110 and Vol. 6, No. 4 (Fall 1986) pp. 92-93 for background information.) Reversing the court of appeal, the Supreme Court concluded that Bar activities should be governed by the standards applicable to governmental agencies, rather than treating the Bar as a labor union or private association, as contended by the plaintiffs. While recognizing certain similarities between the Bar and a labor union, the court found that the California Constitution, statutes, and judicial decisions appear to envision the Bar as a governmental agency.

Finding the Bar a governmental agency, the court concluded it could use dues for any purpose within the scope of its statutory authority. This authority, expressed under section 6031(a) of the Business and Professions Code, authorizes the Bar to "aid in all matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice." Lobbying and amicus curiae briefs are deemed to fall within this scope of authority, while election campaigning does not.

Referring to the Bar's actions in connection with the 1982 election campaign, the court found that although the Bar intended to educate the reader by distributing an educational packet, the close timing in relation to an election in which six justices of the Supreme Court were up for confirmation indicated that the primary purpose of the packet was to assist in the election campaign on behalf of the justices. The court concluded that the preparation and distribution of the material exceeded the Bar's statutory authority. However, because the court concluded as a matter of law that the Board of Governors could reasonably have believed it was authorized to distribute the packet, the Governors were not held personally liable for the unauthorized expenditures.

In *Conway v. State Bar of California*, No. S004556, 89 D.A.R. 2223 (Feb. 21, 1989), the California Supreme Court handed the State Bar a decisive victory by upholding the constitutionality and application of its involuntary inactive enrollment provision, section 6007(c) of the Business and Professions Code. The court concluded that the section satisfies the requirements of due process and that petitioner Danial James Conway had not met his burden of proving he should not have been placed on inactive status.

According to section 6007(c), an attorney may be inactively enrolled upon a finding that his/her conduct "poses an imminent threat of harm to the attorney's clients or to the public." To make this determination, each of the following factors must be found, based on all avail-

able evidence, including affidavits: the attorney has caused or is causing irreparable harm to the attorney's clients or the public; there is a substantial likelihood that the harm will recur or continue; if disciplinary proceedings are pending, there is a substantial likelihood that a significant sanction will be imposed on the attorney at the conclusion of the proceedings; the balance of interests, as between the attorney on the one hand and the attorney's clients and the public on the other hand, favors an involuntary inactive enrollment; and the public interest would be served by an involuntary inactive enrollment.

Conway was involuntarily enrolled as an inactive member as a result of conduct apparently attributable to a severe cocaine addiction that began in late 1983 and allegedly reached a peak in 1985 and 1986. No formal disciplinary charges had been filed against Conway at the time the involuntary enrollment proceedings were initiated by the State Bar, but eleven matters involving client complaints were pending at the investigation stage and complaints had been filed in another seven matters.

The court considered each of Conway's numerous constitutional and specific fact-based challenges to the Bar's order enrolling him as an inactive member, and sustained the Bar in each instance.

RECENT MEETINGS:

At its January 21 meeting in San Francisco, the Board approved the establishment of a nonprofit foundation of the State Bar, whose purpose is to free the Bar from being wholly dependent on its members' fees to launch certain programs. Specifically, the foundation is to have charitable, educational, and related purposes. Its first Board of Directors will be the members of the Board of Governors' Member Benefits/Alternative Revenue Sources Committee, which is chaired by Alan Rothenberg.

Also in January, the Board adopted revisions to the Bar's rules and regulations to conform to respective changes in the Business and Professions Code, effective January 1, regarding payment of annual membership fees by credit card, definition of "poor financial condition" for purpose of waiver of fees, and the pilot program on scaling of annual membership fees.

At its March meeting, the Board decided to support the adoption by the Judicial Council of the report of the council's Advisory Committee on Telephone Appearance Procedures, dated September 21, 1988. The report makes recommendations in such areas as equipment for teleconferencing; types of matters to be heard by telephone; encouraging the use of appearance by telephone; fees and costs; other procedural matters; hearing matters in chambers; and recommends statutory and rule changes.

FUTURE MEETINGS:

June 16-17 in San Francisco.
July 21-22 in Los Angeles.
August 25-26 in San Francisco.