



the Assembly Utilities and Commerce Committee.

SB 497 (Stirling), which would have required a vote by the residents of a service area of a public utility before the PUC could approve an acquisition of the utility, failed passage in the Senate Energy and Public Utilities Committee.

SB 560 (Rosenthal), which would extend the PUC's intervenor compensation system to trucking proceedings, is pending in the Assembly Committee on Utilities and Commerce.

SB 796 (Deddeh), which would require an environmental impact report to be conducted before the PUC approves any purchase of a public utility, is pending in the Assembly Utilities and Commerce Committee.

SB 909 (Rosenthal), which would require the PUC to report to the legislature on the feasibility and appropriateness of public utilities selling "extra space" in billing envelopes, is pending in the Senate Energy and Public Utilities Committee.

SB 993 (Rosenthal), which would require the Commission to report to the legislature on the impact of unsolicited telefacsimile marketing communications, is pending in the Assembly Ways and Means Committee.

SB 1375 (Boatwright), which would require 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, is pending in the Senate Energy and Public Utilities 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 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:

Lawyer Competence Proposals Issued. On April 15, the Board of Governors voted unanimously to release for public comment thirteen proposals prepared by its Consortium on Competence. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 122 for background information.) The thirteen proposals were open to public comment for a ninety-day period ending July 24 and were the subject of public hearings on June 12 in Los Angeles and June 26 in San Francisco. The proposals are as follows:

1) adoption of a lawyering skills requirement and implementation of an internship requirement as conditions for admission to the Bar; development of minimum criteria for certification of a two-year residency program and development of a model program;

2) encouragement of law schools to

assess policies regarding development of teaching materials focusing primarily on performance skills, utilization of practitioners as faculty, and adoption of tenure and sabbatical policies that encourage faculty to practice law;

3) creation of a Law Student Section to supplement academic training with practical training, networking, and law practice awareness;

4) modification of the proposal for mandatory continuing legal education to substantially enhance the requirements for law practice management, and introduction of requirements for law performance skills competency;

5) establishment of a voluntary peer assistance program, operating through state and county bar sections, and development of a "peer review" panel to work in conjunction with the State Bar Court as probation monitors for attorneys found to have violated the Rules of Professional Conduct;

6) taking steps to ensure that preventive law education is included in law school curricula and in mandatory continuing legal education;

7) hiring a consultant who would, when requested by an attorney, review that attorney's law practice management procedures and make recommendations for improving those procedures;

8) expansion of the current substance abuse and stress management programs;

9) development and aggressive distribution of educational materials to the lay public as a means of assessing and monitoring lawyer performance;

10) preparation and dissemination of a pre-law curriculum pamphlet to law schools, colleges, and high schools;

11) referral to the Council of Section Chairs of the State Bar's program ideas to assist sections to improve attorney competence within their membership;

12) amendment of requirements for specialty certification to include a requirement for courses on practice management and performance skills; and

13) adoption of a policy requiring persons seeking admission to law school to demonstrate proficiency in communications skills as a prerequisite to admission.

The Board of Governors approved in principle only proposals 11 through 13; the remaining have not yet been approved.

Committee Recommends Redistricting Plan. In April, the Bar's Redistricting Committee voted to recommend that the State Bar districts, unchanged since 1933, be redrawn to put Orange County in a district by itself.



REGULATORY AGENCY ACTION

(See CRLR Vol. 9, No. 2 (Spring 1989) p. 122 and Vol. 8, No. 4 (Fall 1988) p. 122 for background information.) Specifically, the proposal would move Inyo, Riverside and San Bernardino counties out of District 8 and into District 5 along with Fresno, Kern, Kings, Madera, Merced, Stanislaus, and Tulare counties. Also under the plan, Napa, Solano, Sonoma, and Marin counties would join District 1, which includes Butte, Colusa, Del Norte, Humboldt, and Lassen counties. The four newly added counties would rotate in electing a Bar governor with the rest of the counties in the district every three years.

At its May meeting, however, the Board of Governors was unable to agree on the Committee's proposal or any other alternative presented, apparently leaving the Bar's redistricting up to the legislature. On an 11-10 vote, the Bar's official position was to take no position on redistricting.

In the meantime, due to the urging of local bar associations in Riverside, Senator Robert B. Presley has proposed SB 818, which will give Riverside and San Bernardino counties a seat of their own, adding one member to the Bar's 23-member governing board. (See *infra* LEGISLATION.)

Supreme Court Rejects Proposed Rule of Professional Conduct. In March, the California Supreme Court rejected proposed Rule of Professional Conduct 2-400, which would have prevented attorneys from making settlement offers that oblige opposing attorneys to waive their fees (see CRLR Vol. 8, No. 4 (Fall 1988) p. 123 for details). The rule was backed by public interest lawyers who said it would prevent government defense counsel from creating a conflict of interest between a lawyer and his/her client in class action civil rights cases. No explanation for the court's rejection was given in the order signed by Chief Justice Lucas. Disapproval by the Supreme Court means the issue is at an end, unless supporters of the proposed rule can convince the legislature to formally enact it as law.

Task Force Proposes Plan for Attorney Clinical Education. The State Bar Task Force on Lawyer Education (also known as the Cornell Commission on Lawyer Education) has proposed a voluntary plan giving lawyers the opportunity to take task-oriented hands-on classes to improve specific skills. According to the proposal, lawyer volunteers would be trained to teach specific basic skills (e.g., will drafting) to a small group of attorneys. The State Bar would

control the standards to be met by these volunteer trainers and the courses they teach. A list of approved materials would focus on basic lawyering skills and could be used in connection with courses given by the licensed trainers, alone or in conjunction with live presentations by continuing legal education providers.

The State Bar would train the volunteer lawyers for free, and after licensing, those trained would have the right under conditions prescribed by the State Bar to produce training programs in the subject(s) covered by the license. They would be compensated for the work by registrants' tuition fees and would pay the Bar a portion of the registration fees so the State Bar can recoup its initial investment.

The task force is currently identifying the basic lawyering tasks associated with various fields of law, such as litigation, real property, estate planning and probate, family law, business law, criminal law, and law practice management and ethics. Input about these tasks is being sought from a variety of sources, including local, minority, and specialty bar associations, consumer groups, law school deans, legal education providers, and section chairs. Once these basic lawyering tasks are identified, the task force intends to ask the Board of Governors in August to approve the list as well as the creation of a Continuing Legal Education (CLE) Office.

Task Force on Substance Abuse. The proposed State Bar diversion and/or intervention program for alcohol- or drug-impaired attorneys is gradually progressing through the appropriate Bar committees. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 109; Vol. 8, No. 4 (Fall 1988) p. 122; and Vol. 8, No. 3 (Summer 1988) pp. 128-29 for detailed background information.)

Part of the program would be implemented through passage of SB 246 (Stirling), which eliminates the initial determination of probable cause by a local administrative committee when the State Bar applies to a superior court for assumption of jurisdiction over the law practice of an attorney who is found to be using alcohol or drugs to an excess. (See *infra* LEGISLATION.)

An aggressive effort to inform attorneys about programs available to assist those facing difficulties resulting from substance abuse or physical/mental impairment is under way through the State Bar's Office of Trial Counsel (OTC). OTC staff are visiting local bar associations and presenting the details of programs to assist those in need.

Further suggestions concerning the intervention side of the proposed substance abuse program are currently being reviewed by the Board's Professional Standards Committee, to determine whether legislation will be required in order to confront the attorney and convince him/her to obtain treatment prior to discipline proceedings.

State Bar Court Judges. On June 1, the California Supreme Court announced its selections for nine State Bar Court Judge positions created pursuant to SB 1498 (Presley). (See CRLR Vol. 8, No. 4 (Fall 1988) pp. 123-24 for detailed background information on SB 1498.) Oakland attorney Lise Pearlman will preside over the court, which consists of a six hearing judges and a three-member Review Department, one of whom is a nonlawyer. The court replaces the Bar's previous use of volunteer practicing attorneys to preside over Bar discipline and appeals. Each judge will serve a six-year term, and may be reappointed for additional six-year terms. The new State Bar Court will hear all attorney discipline cases effective September 1.

Professional Liability Insurance Program. Policies issued by Kirke-Van Orsdel Specialty (KVI), broker for the new State Bar-approved professional liability insurance program, became generally available in early June. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 121 for background information.)

KVI submitted \$250,000 to the State Bar to help finance the organization of lawyer competency and basic skills training programs for attorneys who enroll in the insurance program. Additional funds will be submitted dependent upon the premium volume generated by State Bar members. Although the Bar is currently actively determining the kinds of programs to be established under the program, there is no requirement that KVI funds be used for the loss prevention activities.

Implementation of the competency and training programs is still under discussion at State Bar headquarters. Attorneys may be required to enroll in the program as a prerequisite for purchasing the reduced rate insurance, or course completion may result in premium credit subsequent to purchasing the policy. This decision will be made shortly, according to the Bar.

Ethnic Minority Lawyer Seat on Board of Governors. In March, the Ethnic Minority Relations Committee (EMRC), created by the State Bar to address issues relative to minority lawyers in California, recommended that the Board of



Governors add one ethnic minority seat to the Board.

In announcing this proposal, EMRC noted the underrepresentation of minority lawyers on various governing bodies of the State Bar and, in particular, on the Board of Governors. EMRC estimated that in over 62 years of existence, only two minority lawyers have served on the Board; this underrepresentation means that minority lawyers have been without direct input into the policy-making body of the official organization which governs their professions.

The Committee proposed adding one seat to the Board for a minority lawyer, for a term of three years, to be selected at large by the ethnic minority lawyers in the state, in accordance with rules and regulations established by the Board of Governors upon recommendations made by EMRC. This addition would require amendment of section 6013(e) and the addition of section 6013.7, Business and Professions Code.

During its May 12 meeting in San Francisco, the Board of Governors voted to add the minority seat for one three-year term.

LEGISLATION:

SB 905 (Davis) would require the State Bar to request the California Supreme Court to adopt a rule of court authorizing the State Bar to establish and administer a mandatory continuing legal education program to commence on or after January 1, 1991. The bill will require that, within designated 36-month periods, all active members of the State Bar shall complete at least 36 hours of legal education activities approved by the State Bar or offered by a State Bar-approved provider. SB 905 is pending in the Assembly Judiciary Committee.

The following is a status update on bills discussed in detail in CRLR Vol. 9, No. 2 (Spring 1989) at pages 122-23:

SB 246 (Stirling), which would provide that only the State Bar may petition a superior court to intervene and assume jurisdiction over an attorney's law practice upon death, resignation, disbarment, inactive status, or suspension, is pending in the Assembly Judiciary Committee.

SB 818 (Presley), as amended, would revise the counties comprising the State Bar districts and would require an attorney member of the Board of Governors from State Bar District 5 (Inland Empire Counties) to maintain his/her law practice within specified counties within the district. This bill is pending in the Assembly Judiciary Committee.

AB 1385 (Polanco) would increase

the penalty imposed for any person, firm, partnership, association, or corporation which solicits business for an attorney to either a felony punishable by imprisonment in the state prison, or a misdemeanor punishable by imprisonment in a county jail for not more than one year, a fine not exceeding \$2,500, or by both a fine and imprisonment. This bill is pending in the Assembly Public Safety Committee.

AB 234 (McClintock), which would extend 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, is pending in the Assembly Judiciary Committee.

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.

LITIGATION:

In *In Re Demergian*, No. S006377, 89 D.A.R. 3461 (Mar. 16, 1989), the California Supreme Court ruled that the Bar's denial of a request by a respondent facing disciplinary action for a three-member hearing panel does not violate the due process rights of the respondent. David Demergian was convicted of misdemeanor grand theft in 1986, stemming from his misappropriation of over \$25,000 from a client trust account. The State Bar ordered the case tried before a retired judge under section 6079(b) of the Business and Professions Code, which requires that a hearing estimated to last more than one day be heard by a retired judge whenever possible. Demergian asserted that the denial of his request for a three-member hearing panel violated the due process, equal protection, and privileges and immunities provisions of the California and federal constitutions.

The court found Demergian's equal protection claim also was without merit. Under the rational basis test, it was not fundamentally unfair for the legislature to minimize the burden on the State Bar Court by providing that lengthy cases be tried before a single judge.

In reference to Demergian's privileges and immunities claim, the court stated that the clause in the Fourteenth Amendment protects only those rights incident to national citizenship; it does not protect rights that depend solely on state law. The right to a three-member hearing panel is a creature of state law. Thus, it

does not provide the basis for a Fourteenth Amendment privileges and immunities claim.

The court upheld the decision of the retired judge, who recommended that Demergian be disbarred.

In *Maynard v. U.S. District Court for the Central District of California*, No. 87-07550-B (May 26, 1989), the Central District dismissed a suit challenging the constitutionality of a federal court rule limiting admission to practice before it to members of the California State Bar.

The plaintiff, Margaret Maynard, brought suit when her request for admission to the bar of the Central District was denied, on grounds that she was not admitted to the California State Bar pursuant to Local Rule 2.2.1. She is admitted to the Indiana State Bar and the bars of the U.S. District Courts of Northern and Southern Indiana.

The court rejected plaintiff's challenges to the local rule under the privileges and immunities clause, the commerce clause, the equal protection clause, and the due process clause. (See CRLR Vol. 8, No. 3 (Summer 1988) pp. 131-32 for background information on this case.)

RECENT MEETINGS:

At its May meeting, the Board adopted Rule 40 of the Client Security Fund (CSF) Rules of Procedure, to allow the CSF Commission to implement pilot projects to expedite the processing of applications for reimbursement where the amount requested by the applicant is \$5,000 or less. The CSF, which is supported by an annual fee paid by every attorney on active status, reimburses clients who lose money or property because of the dishonest conduct of an attorney acting in a professional or fiduciary capacity. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 1 for extensive background information on the CSF.)

Also in May, the Board directed that its Draft Rules for Initiating Public Comment be circulated for a ninety-day public comment period. The draft rules attempt to establish basic minimum procedural requirements for the adoption, amendment, or repeal of rules and regulations of the State Bar, which is not subject to the Administrative Procedure Act. The deadline for receipt of written comments on the Draft Rules is August 28.

FUTURE MEETINGS:

August 25-26 in San Francisco.
September 15-19 in San Diego (annual meeting).