



signed by the Governor on September 29 (Chapter 1551, Statutes of 1988).

*AB 4075 (Katz)* would have required costs of deleting 976 access to be borne by the 976 service provider, but was withdrawn by its author.

*AB 4174 (Moore)* directs the PUC to conduct an investigation and hearings on the establishment of telephone rates with respect to whether there should be no additional charge to subscribers for tone-dialing service. This bill was signed by the Governor (Chapter 673, Statutes of 1988).

*AB 4579 (Moore)*, which requires specified disclosures by owners/operators of coin-operated telephones for public use which provide operator-assisted services by other than a telephone corporation, was also signed by the Governor (Chapter 648, Statutes of 1988).

*SB 680 (Rosenthal)*, as amended on June 27, would have required the PUC to complete its ongoing investigation into the regulation of telephone corporations operating within service areas, but was vetoed by the Governor on September 26.

*SB 1762 (Rosenthal)*, requiring the PUC to order phone companies to develop a program for inside wiring repair in rental housing, died in the Assembly Committee on Utilities and Commerce.

*SB 1822 (Rosenthal)*, as amended on June 9, requires every electrical, gas, and telephone corporation to prepare and submit an annual report to the PUC describing all significant transactions between the corporation and subsidiaries. This bill was signed by the Governor on September 7 (Chapter 759, Statutes of 1988).

*SB 1844 (Russell)*, as amended on August 23, declares that the PUC has no jurisdiction and control over the billing and collection practices of a telephone corporation for its services to an information provider furnishing any live or recorded video text or audio information or interactive message service. This bill was signed on September 23 (Chapter 1261, Statutes of 1988).

*SB 2656 (Rosenthal)*, as amended on August 1, directs the PUC to adopt and enforce operating requirements governing coin-operated and credit card-activated telephones available for public use, and owned and operated by a corporation or person other than a local telephone corporation. This bill was signed on September 20 (Chapter 1058, Statutes of 1988).

*SB 2787 (Nielsen)* directs the PUC

to prepare and submit to the legislature by July 1, 1989, a report on the availability to residential subscribers of the option to delete 976 service sexually explicit messages, including the capabilities for deletion of access which are in place on January 1, 1989, and an analysis of the costs and benefits of extending the deletion of access option to those subscribers in areas where deletion is not now available. This bill was signed by the Governor (Chapter 474, Statutes of 1988).

*SB 2402 (Roberti)* was vetoed by the Governor on August 26. This bill would have required the PUC to submit its annual report to the Governor, which lists its transactions and proceedings for the previous fiscal year, to specified members of the legislature.

*SB 2582 (Mello)* was signed by the Governor on August 20 (Chapter 472, Statutes of 1988). This bill permits the PUC access to the property of a charter party carrier of passengers, and authorizes it to inspect and copy the accounts, books, papers, and documents of the carrier.

*AB 3554 (Moore)*, which would have subjected the PUC to the Administrative Procedure Act's procedure for the adoption, amendment, and repeal of regulations, died in the Assembly Committee on Utilities and Commerce.

*AB 3490 (Moore)*, as amended on August 23, precludes the PUC from issuing a certificate of public convenience and necessity to specified carriers unless the carrier shows capability of complying with highway safety rules; and that it will observe state and federal hours of service regulations for its drivers; and that it has a preventive maintenance program for its vehicles, regularly checks the driving records of its drivers, has a safety education and training program, and maintains its vehicles in safe operating conditions. This bill was signed by the Governor on September 22 (Chapter 1175, Statutes of 1988).

*AB 4031 (Polanco)* was signed by the Governor on September 9 (Chapter 784, Statutes of 1988). The bill requires the PUC, after January 1, 1989, to publish its orders and decisions within one year after issuance.

#### FUTURE MEETINGS:

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

#### STATE BAR OF CALIFORNIA

*President: Colin Wied*

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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.

In August, five new attorneys were elected to the Board of Governors for 1988-89. The members will serve for three years. The new Board members are: Darrell W. Stevens, a sole prac-



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itioner from Oroville (District 1); Catherine C. Sprinkles, currently a member of the State Bar Commission on Judicial Nominees Evaluation, from San Jose (District 3); Robert H. Oliver, a shareholder of the Professional Law Corporation of Wild, Carter, Tipton and Oliver, from Fresno (District 5); Robert M. Talcott, a senior intellectual property attorney at McDonnell Douglas Corporation in Long Beach, from Los Angeles (District 7); and John M. Seitman, a principal in Lindley, Lazar and Scales and past president of the San Diego County Bar Association, from San Diego (District 9).

In August, Governor Deukmejian reappointed two public members to the Board of Governors: Gil Olivarría, a Riverside police lieutenant, who chaired the Discipline Committee during 1987-88; and Glee Ewell, assistant director of the Fresno Regional Foundation, who headed the Committee on Communications and Bar Relations last year.

## MAJOR PROJECTS:

*Third Progress Report of the State Bar Discipline Monitor.* In his Third Progress Report issued on September 1, State Bar Discipline Monitor Robert C. Fellmeth stated that critical problems continue to impede the efficiency of the State Bar's discipline system. (See CRLR 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 problems include a remaining backlog in the Office of Investigations; a growing backlog of cases approved for issuance and awaiting the drafting and filing of an accusation by the Office of Trial Counsel; a new and growing backlog of "inquiry" cases in the Intake/Legal Advice Unit; an overall lack of Bar discipline authority; a serious lack of resources; and structural infirmities within the State Bar Court. The report also noted that the backlog in the Office of Investigations, reduced due to the intervention of Office of Trial Counsel resources in early 1988, is once again increasing.

The Monitor suggested several adjustments and refinements to his original suggestions and to the Bar's own extensive set of self-generated reforms. These include initiation of "warning letters" as a disposition; the inclusion of comprehensive computer entry of inquiries, investigations, criminal arrests, court contempt and sanctions, and malpractice insurance claims for pattern detection; a fifth Intake Unit phone line;

a 45-day deadline for the investigation of "inquiries"; the addition of two investigators to the Intake Unit; enhanced public disclosure of criminal arrests and pending Bar investigations; streamlining investigative case review; revised rejection letters to consumers; a file retention policy; cancellation of automatic high priority for Complainants' Grievance Panel reinvestigation orders; enhancement of Administrative Compliance Unit staff; and a focus on Panel audits of inquiry closures over individual decision reviews.

The Monitor noted that a natural lag factor inevitable in the reform of a complex adjudicatory system, coupled with the pendency of two necessary bills—Senate Bill 1498 (Presley) and Assembly Bill 4391 (Brown)—has contributed to many of these remaining problems. (See *infra* LEGISLATION for an update on these bills.)

The Monitor's report emphasizes that the indispensable requisite of a professional licensing system is the prevention of irreparable harm to consumers and to the judicial system. The report states that a model system requires aggressive preventive measures to preclude dishonesty, abandonment, and incompetence, as well as a mechanism for financial redress to those who have suffered because of the failure of the discipline system to prevent harm flowing from dishonesty and incompetence. For the first time, the Monitor's report focuses in detail on some of these mechanisms, including compulsory malpractice insurance, continuing education and retesting, deregulation of "legal technicians", and alcohol/drug abuse intervention and diversion programs.

The Monitor's next progress report is scheduled for March 1989.

*Task Force on Substance Abuse.* In June, the Discipline and Professional Standards Committee began its discussion of the 110-page report by the Bar's Staff Task Force on Substance Abuse. (See CRLR Vol. 8, No. 3 (Summer 1988) pp. 128-29 for detailed background information.) The report is currently being studied by a special subcommittee composed of members of the two committees.

The Bar's tentative discussion plan includes consideration of the suggested diversion program at its October 21-22 meeting, and consideration of the proposed intervention program during its November 18-19 meeting. The implementation of the suggested programs promises to be a lengthy process, as details for the programs are worked out

and appropriate funding is obtained.

*Redrawing of Board of Governors' Election Districts.* Three plans to redraw State Bar election districts were unveiled in August as the latest proposals in a twelve-year effort to redistrict the Board of Governors' representation of the Bar's membership. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 127 for background information.) Two of the plans, which were discussed at a special meeting held in August, would add a new member to the 23-person Board. This proposal stems from dissatisfaction expressed by Orange County attorneys, who say they are underrepresented on the Board.

Fifteen of the sixteen lawyer members of the Board now represent nine geographical districts within California, the boundaries of which have not been changed since they were established in 1933. As a result, the 1,530 lawyers in 19-county District 1 (which encompasses the northernmost part of California) have the same representation on the Board as the 9,983 attorneys in District 8, which consists of Inyo, San Bernardino, Riverside, and Orange counties.

Each of the three plans—labeled A, B, and C—outlined by the Bar's special redistricting committee would leave District 1 with its present boundaries, but would treat District 8 differently, leaving it with attorney populations ranging from 5,036 to 7,602. They would also move Marin County's attorneys from District 2 to District 3, which includes Alameda, Contra Costa, and Santa Clara counties. Specifically:

-Proposal A would add a new member and a new district, covering San Bernardino and Riverside counties (which are now in District 8) and Imperial County (which is now in District 9). Under Plan A, District 8 would consist solely of Orange County. Inyo County (now in District 8) and Mono County (now in District 2) would become part of District 5, which takes in much of the southern Central Valley.

-Proposal B would also add a new member, but that member would be one of two to represent a new District 8, which would lose Inyo County to District 5, but pick up Imperial County from District 9. Under that plan, each of District 8's two governors would represent 5,036 attorneys, according to State Bar membership statistics used in the study. Proposal B would shift San Joaquin and Mono counties from District 2 to District 5.

-Proposal C would redraw the District 8 boundaries to cover only Orange



County, Riverside, San Bernardino and Inyo counties would be shifted from District 8 to District 5, and Mono County would be shifted from District 2 to District 5. Under that plan, District 5 would almost equal District 1 in area, incorporating most of the southern Central Valley, the growing Riverside and San Bernardino counties from the Los Angeles metropolitan area, and almost all of California's desert areas to the southeast.

The three plans will be released for a ninety-day public comment period; the legislature must approve the chosen re-districting plan.

**Proposed Revisions to Rules of Professional Conduct.** In August, the Board of Governors recommended adoption of several changes to the Bar's Rules of Professional Conduct. Most notable is the Bar's adoption (by a 15-3 vote) of proposed Rule 2-400, providing that a member of the California Bar "shall not make or present a settlement offer in any case involving a request by the opposing party for attorneys' fees pursuant to private attorney general statutes which is conditioned on opposing counsel waiving all or substantially all fees." The discussion of the rule explains, among other things, that a member is not precluded from making or presenting a lump sum offer to settle all claims including attorneys' fees. Attorneys for the League of California Cities, the Association of Northern California Defense Counsel, the Bar's Public Law Section, the cities of Los Angeles and San Francisco, and even an appellate court judge denounced the proposed rule. Rule 2-400, which will be forwarded to the Supreme Court for approval, was backed by public interest lawyers who argue that the rule will prevent government defendants from engaging in this relatively common practice, which creates a conflict of interest between the lawyer and his/her client.

The Board also adopted revisions in three other areas of professional conduct, pursuant to a request from the Supreme Court. Specifically, the revisions deal with Rule 1-400 (Advertising and Solicitation), clarifying the definition of solicitation and adding language regarding constitutionally protected speech in relation to solicitations; Rule 2-100(B)(2) (Communication with a Represented Party), adding the "liability" test found in ABA Model Rule 4.2 to determine when an employee of a represented party is considered a party under the rule; and Rule 2-300 (Sale or Purchase of a Law Practice of Member,

Living or Deceased), providing greater protection for clients in that if the seller is alive, the seller will be responsible for giving the appropriate notice to clients and obtaining the required consent before transfer. The revisions will be forwarded to the Supreme Court for approval.

**\$15.5 Million in Legal Services Trust Fund Monies Distributed.** The State Bar's Legal Services Trust Fund program will distribute more than \$15.5 million to 96 direct service providers and 17 support centers around the state this year. This is the largest amount the Bar has distributed under its five-year-old Legal Services Trust Fund, and it again leads the nation in awarding the most legal services grant money to agencies serving the poor. The grants will be disbursed in quarterly installments, with 10% of the funds going to legal aid programs which enlist the help of lawyers who donate their time and effort as the principal means of delivering legal assistance. If no such pro bono organization exists in a county, the funds are distributed to other eligible providers.

The trust fund money is generated under a program that the State Bar proposed and the legislature approved in 1981, and comes from interest earned on funds handled by California lawyers for their clients. Cooperating financial institutions collect the money and forward it to the State Bar for processing and distribution to qualified providers through the Legal Services Trust Fund.

**Community Education Proposal.** In July, the Board of Governors approved a proposal enabling California attorneys to voluntarily support a community education program coordinated through its Statewide Committee on Professionalism and Public Action (SCOPAPA). Chaired by Board members Patricia Phillips of Los Angeles and Robin Paige Donoghue of San Francisco, the program will provide materials, ideas, and projects for local bars to use in informing the public about the legal system. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 130 for background information.)

**Special Professional Responsibility Exam.** Also in July, the Board approved a proposal to develop and administer a special test on the California Rules of Professional Conduct which initially will be used to test disciplined attorneys. Once the test is established, the Committee of Bar Examiners will be requested to evaluate the exam for use in testing all applicants for admission to practice law in California, in lieu of the currently-administered multistate Profes-

sional Responsibility Examination.

**Open/Closed Meeting Policy.** Public comments on proposed amendments to the Bar's Administrative Manual regarding open and closed meetings of its standing and special committees are currently being discussed by the Bar's specially-created ACCESS committee. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 130 for background information.) A final proposal will not be presented to the Board of Governors until committee discussion is completed.

**Registration of Legal Technicians.** The State Bar Public Protection Committee's April report recommending that nonlawyers be permitted to advise consumers regarding certain legal problems has stirred up considerable controversy within the Board of Governors, although the report has yet to be released to the public. (See CRLR Vol. 8, No. 3 (Summer 1988) pp. 129-30 for details.) The report received strong criticism from immediate past President Terry Anderlini, while a consumer group called Help Abolish Legal Tyranny (HALT) demonstrated its support for the proposal prior to the Board's August 26 meeting. At its October meeting, the Board was scheduled to decide whether to release the Committee's report for public comment.

## LEGISLATION:

The following is a status update on bills described in detail in CRLR Vol. 8, No. 3 (Summer 1988) at pages 130-31:

**SB 1498 (Presley),** drafted by State Bar Discipline Monitor Robert C. Fellmeth in conjunction with Senator Presley's staff, the Office of the Attorney General, and State Bar discipline officials, was signed by the Governor on September 21 (Chapter 1159, Statutes of 1988). (See CRLR Vol. 8, No. 3 (Summer 1988) p. 130 and Vol. 8, No. 2 (Spring 1988) pp. 126-27 for detailed background information on the provisions of SB 1498.)

The final amended form of the bill, negotiated over the past eighteen months, passed the Senate by a 35-0 vote, and the Assembly by a 63-1 vote. The bill contains 35 provisions which will enhance the authority and quality of the State Bar's discipline system. Among other things, SB 1498:

- restructures the State Bar Court by creating a group of full-time, independent, professional hearing judges to preside over and decide discipline cases; and a three-judge appellate panel to review cases which have been appealed.

- enhances the Bar's ability to detect



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ethical violations by requiring fingerprints of new admittees to be maintained in the Attorney General's Arrest Notification System; requiring insurers to report legal malpractice claims to the Bar; preventing the sealing of court records from Bar investigators in legal malpractice cases; and giving State Bar investigators access to attorney work product and client trust fund records where relevant to a Bar investigation.

—clarifies and enhances the Bar's interim suspension authority; creates a rebuttable presumption in favor of immediate interim suspension where a State Bar Court judge recommends disbarment; sets forth a statutory default procedure for attorneys who fail to respond to the Bar's formal accusation; and authorizes the Bar to order a "full range of interim remedies or final discipline" short of disbarment or suspension (including measures to restrict or supervise an attorney's practice).

**AB 4391 (Brown)** was also signed by the Governor on September 21 (Chapter 1149, Statutes of 1988). As amended August 1, the two-year Bar dues bill increases attorneys' dues, in part to finance the substantial reforms contained in SB 1498 (Presley). Under AB 4391, State Bar members who have practiced for three years or longer will pay a dues total of \$417 in 1989 and \$440 in 1990. The bill additionally extends the term of the State Bar Discipline Monitor to January 1, 1992.

**SB 1975 (Davis)** was signed on September 21 (Chapter 1131, Statutes of 1988). As amended August 9, the bill revises section 473 of the Code of Civil Procedure, and requires courts to vacate a default judgment entered against an attorney's client if the attorney files a timely application on specified grounds, and accompanied by the attorney's sworn affidavit. As amended, it also requires the court to direct the attorney at fault to pay reasonable fees and costs to opposing counsel or parties, and authorizes the court to impose sanctions, no more than \$1,000, upon the offending attorney or defaulting party, as appropriate.

**AB 3605 (N. Waters)**, which would have amended section 6214 of the Business and Professions Code regarding legal service projects attempting to qualify for State Bar funding, died in the Assembly Judiciary Committee.

**AB 2618 (Harris)**, as amended August 10, would have required all applicants for admission to practice law, on or after January 1, 1992, to acquire formal training in lawyering skills, in-

cluding pretrial, trial, and other litigation courses. It would have also required the Bar to request the California Supreme Court to adopt a Rule of Court authorizing the Bar to establish and administer a mandatory continuing legal education program, to commence on or after January 1, 1990, and to authorize a \$5 surcharge on State Bar membership fees for the costs of the program. The bill died in the Senate Appropriations Committee. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 126 and Vol. 8, No. 1 (Winter 1988) pp. 109-10 for additional background information.)

**AB 4134 (Speier, Friedman, Vasconcellos)**, which would have allowed reimbursement of certain fees and expenses to involuntarily-appointed lawyers defending indigents in specified civil cases, died in the Assembly inactive file.

**AB 2723 (Friedman, Margolin)**, as amended June 15, would have required counties to meet minimum due process standards in providing timely and adequate notice, plus a hearing upon request, when the county seeks to terminate or deny an application for general assistance. This bill was defeated on August 31.

**SB 2818 (Lockyer)**, as amended August 9, providing that review of State Bar disciplinary matters by either the California Supreme Court or a court of appeal, and providing that such review must be in accordance with procedures prescribed by the Supreme Court, was signed by the Governor on September 22 (Chapter 1217, Statutes of 1988).

**SB 1737 (Kopp)**, as amended June 14, allows a complainant who prevails in a civil action to appeal or review an administrative determination to collect reasonable attorneys' fees up to \$7,500 (computed at \$100 per hour), where it is shown that the determination was the result of arbitrary or capricious action by a public entity or officer in his/her official capacity. This bill was signed by the Governor on September 13 (Chapter 903, Statutes of 1988).

**AB 1913 (Harris)**, as amended June 28, raises the monetary jurisdiction for actions in small claims courts from \$1,500 to \$2,000 and, effective January 1, 1991, to \$2,500, except as specified. This bill was signed on August 22 (Chapter 481, Statutes of 1988).

**AB 3089 (Connelly)**, regarding repayment by disciplined attorneys of disbursements to injured clients made by the Bar's Client Security Fund, was chaptered on August 22 (Chapter 484, Statutes of 1988).

## LITIGATION:

*Keller v. State Bar of California*, No. SF 25050, 226 Cal. Rptr. 448 (1986), the challenge to the Bar's use of compelled dues to advance political campaigns and causes, is still pending before the California Supreme Court. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 110 and Vol. 6, No. 4 (Fall 1986) pp. 92-93 for background information.)

## RECENT MEETINGS:

At its August 27 meeting in San Francisco, the Board adopted its Fee Scaling Subcommittee's plan to scale attorney membership fees and permit the option of fee payment by credit card upon payment of a \$23 processing charge. The plan will be in effect on a pilot program basis for 1989 fee payments due February 1, 1989.

The Board put over until its October meeting consideration of a proposal that would require all persons admitted to practice law in California to complete a certified "Lawyering Skills" course. Approved in concept by the Board in June, the new course would be designed as a training program or course of which at least three semester units (45 hours) would be devoted to teaching trial and court-related lawyering skills.

In addition, the Board adopted several amendments to its Rules of Procedures, including allowing compensated referees to hear Business and Professions Code section 6007(c) "involuntary inactive enrollment" cases to determine whether an attorney should be placed on inactive status for the protection of the public prior to a final disposition of any pending disciplinary charges (proposed rule 790); affirming the use of stipulations (proposed rule 792.1); requiring an inactively enrolled lawyer to notify clients, courts, and opposing counsel of enrollment (proposed rule 795.5); and avoiding the necessity of an evidentiary hearing (proposed amendment to rule 799). The amended rules will take effect on October 1 and apply to all pending and subsequently-filed section 6007(c) cases.

## FUTURE MEETINGS:

January 20-21 in San Francisco.

March 6-7 in Sacramento.

April 14-15 in Los Angeles.

May 12-13 in San Francisco.

June 16-17 in San Francisco.

