



PUC's Transportation Division made inspection and correction of gauge and other crucial track defects a high priority. Human factor accounted for 15% of accidents, and mechanical failures for 16%.

FUTURE MEETINGS:

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

STATE BAR OF CALIFORNIA

President: Terry Anderlini

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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 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 the 113 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:

Second Progress Report of the State Bar Discipline Monitor. In his 118-page report released on April 1, State Bar Discipline Monitor Robert C. Fellmeth stated that although the Bar has moved progressively and constructively toward remedying major discipline system problems, critical defects still exist in several areas. (See CRLR 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.) According to the report, these defects include a remaining case backlog in the Office of Investigations (OI), a growing number of cases awaiting the drafting and filing of an accusation in the Office of Trial Counsel (OTC), a serious lack of resources, and a structurally defective hearing and appeal process within the State Bar Court.

At the time of the Monitor's First Progress Report in November 1987, the backlog in OI included about 2,500 investigations over six months old. By March 1988, the backlog had been reduced to 1,500 cases. However, the current OI backlog consists of a ratio in excess of 50% of hard-core cases which merit issuance of formal accusations, rather than the anticipated 10% ratio. The result is that 700-1,000 cases warranting notices to show cause (NTSC) remain in the OI backlog. Investigators are burdened by a caseload at well above manageable levels (between 90-110 cases per investigator). Also, intervention by OI attorneys to help OI reduce the backlog has resulted in a backlog of over 600 cases (involving over 300 accused attorneys) in OTC awaiting the filing of formal charges. Thus, the number of cases requiring investigation has been reduced but has resulted in a backlog of meritorious cases awaiting NTSC filing. Since these cases are still technically under investigation, they are not made public, and the attorneys involved continue to practice.

A problem related to the backlog is the Bar's difficulty in employing the remedy of interim suspension pending disciplinary proceedings, under Business and Professions Code section 6007(c). Less than ten attorneys have suffered interim suspension during the past year, according to the Bar Monitor's report.

The Bar does not have the resources needed to remedy discipline problems. The report states that at least ten more OI investigators are needed, as well as ten OTC attorneys. In addition, the OTC is seeking additional paralegal help and the report suggests the paralegal pay

rate should be studied to determine whether it is at market level.

The Second Progress Report also found that the Bar does not have adequate financial resources to tackle reduction of the complaint backlog in order to comply with the legislative mandate to do so. If the Bar is not granted its requested budget for 1989 in early 1988 (to shore up the 1988 deficiency resulting from the Bar's failure to request an additional discipline surcharge in 1988), "the discipline system will become a shambles," according to the report.

Bar Dues Increase. In January, the Board of Governors voted to ask the legislature for permission to raise dues to \$470 in 1989 for attorneys practicing three years or more—nearly \$200 more than this year's rate. At this writing, the Bar intends to increase its "basic dues" (that is, dues to maintain the Bar's regular programs) by approximately \$30; and it will request an additional dues surcharge of \$165, of which \$145 would go toward improvement of the disciplinary system. The other \$20 is earmarked for the Client Security Fund, which compensates clients who have had money stolen from them by attorneys.

At the March meeting, the Board of Governors tentatively approved recommendations made by the Board's Committee on Administration and Finance to scale down Bar dues for attorneys in certain income brackets, and allow Bar members to use credit and installment plans to pay Bar dues. A final vote is pending the results of a study of the financial impact of such procedures, and a thirty-day public input period which was scheduled to begin in April. A subcommittee proposed that dues scaling would be based on adjusted gross income listed in federal income tax returns. Attorneys who make between \$18,500 and \$23,500 would receive a fee reduction to the 1989 "basic dues" \$207 rate charged attorneys in practice from one to three years; attorneys who made less than \$18,500 would receive a reduction to the \$177 rate charged attorneys in practice for less than one year.

Transferring Discipline Cases to State Court of Appeal. In February, a blue-ribbon commission recommended that Bar discipline cases be transferred from the state Supreme Court to the state court of appeal. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 109 for background information.) Currently, all disciplinary recommendations go directly to the Supreme Court for adoption. Members of the Select Committee on the Internal



Procedures of the Supreme Court were selected by Chief Justice Malcolm Lucas last June to study ways to streamline the court's procedures.

The Board of Governors has opposed the recommendation for several reasons: (1) the need for consistency in the review of discipline cases; (2) if the legislature approves funding for the hiring of six to ten new administrative law judges to replace the volunteer hearing referees in the State Bar Court (*see infra* LEGISLATION), the higher-quality and more consistent decisionmaking at the hearing level would reduce the court's work in reviewing the Bar's recommendations for disbarment or suspension of attorneys; and (3) since attorneys could still appeal to the Supreme Court, the court of appeal review would only add another layer to the process. The state Supreme Court is considering the proposals.

Malpractice Insurance Survey.

Results of the most thorough and comprehensive survey on legal malpractice insurance ever performed in the United States were released in an inch-thick final report by State Bar officials on February 16 and sent to the legislature on February 18.

Information was gathered from 10,734 California lawyers—an 89% return rate. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 109 and Vol. 7, No. 4 (Fall 1987) p. 108 for background information.) In capsule, the survey showed that (1) demographically, 78% of California's attorneys are engaged in private practice; of those, 81% practice full time; 27% practice with no other lawyers; and 40% practice with one to ten other lawyers; and (2) economically, of the full-time attorneys, 16% earn less than \$25,000 per year, 44% earn less than \$50,000, and 77% earn less than \$100,000, while 16% earn between \$100,000 and \$200,000, and only 7% earn over \$200,000; of the part-time attorneys, 66% earn less than \$25,000 per year, 84% earn less than \$50,000, and 98% earn less than \$100,000 as attorneys. Part-timers devote an average of 12.3 hours per week to lawyering and 74% of them have another paid or unpaid occupation.

The survey discovered that 36% (approximately 28,000) of the lawyers in private practice in California are not covered by legal malpractice insurance, and 47% of all lawyers have never been covered by professional liability insurance. Of the lawyers who have dropped their insurance, 54% did so since 1985 when premiums began to soar. Still, of the reported claims (which equal approximately two claims for every ten attor-

neys), 80% of them were covered by insurance.

Lawyers Mutual Insurance Company, currently the largest provider of malpractice insurance in the state (insuring 17,000 California lawyers), raised its premiums 10-20% this year alone. Lawyers Mutual charges approximately \$4,500 for a policy with \$100,000-\$300,000 coverage, and \$7,500 for a policy with \$1 million to \$3 million coverage. A company officer defended the increases as necessary because of larger awards: Lawyers Mutual's incurred losses (cost estimates to cover claims in a given year) rose from \$32 million in 1986 to \$46 million in 1987. However, no recent rate increases have been issued by the two other major providers of malpractice insurance in California. Those two are Home Insurance Company (covering about 4,000 lawyers) and the Los Angeles County Bar Association (covering about 6,000 lawyers).

According to the State Bar, the survey confirms that an "insurance crisis" exists in the state. Legal malpractice insurance has become unaffordable or unavailable, concluded Bar President Terry Anderlini.

To forestall a mandatory malpractice insurance law, however, state and local Bar leaders, at the February 20 meeting of the Conference of Bar Leaders in Costa Mesa, reached a compromise. The agreement requires Bar leaders to provide, to lawyers who cannot obtain it now, affordable malpractice insurance through the creation of a non-profit "voluntary captive" insurance company. By creating more competition, the captive insurance company might lower or stabilize rates in the marketplace. Lawyers Mutual supports the agreement.

Senior Citizens Handbook. The *Handbook* is a special project of the State Bar's Legal Services Section Standing Committee on Legal Problems of the Aging, and is available to seniors for \$10 (\$20 for others) per copy. This easy-to-read resource guide explains a number of programs, including financial assistance (e.g., Social Security, SSI, pension rights, veterans' benefits, and food stamps) and health care (e.g., Medi-Cal, Medicare, seniors' rights regarding medical treatment, and nursing homes and alternatives). In addition, the *Handbook* contains chapters on "Managing Your Affairs and Planning for the Future," "Problems as a Consumer," and "Making Final Arrangements." Lists of social services and other resources are included.

Public Image Survey. In November

1986, the State Bar commissioned a study to determine the true nature of the legal profession's public image. (See CRLR Vol. 7, No. 1 (Winter 1987) p. 98 for background information.) Outside consultant Manning, Selvage & Lee (a public relations firm) spent \$40,000 to produce a 175-page report which verifies that the public finds lawyers to be ethically mediocre and highly overpriced, at best.

Specifically, the survey found, among other things, that: (1) for honesty, lawyers rank in the middle compared to other professions; and (2) for affordability, lawyers rank lower than all other professions except psychiatrists. Few people know that lawyers sometimes do *pro bono* work. Although many think lawyers are intelligent, knowledgeable, and experienced problem solvers, the public generally characterizes lawyers as greedy, arrogant, dishonest, expensive, untrustworthy, and generally "not nice." Perhaps the most surprising finding, however, is that even lawyers don't think very highly of lawyers.

State Bar President Terry Anderlini stated that the lawyers' image problem are a result of the Watergate scandal, a few bad apples, and the media's unfavorable stereotyping. William Shakespeare disagreed. A few years prior to Watergate, he summarized the public's feelings toward lawyers when he wrote: "The first thing we do, let's kill all the lawyers." (*King Henry VI*, Part II, Act IV, Sc. 3, Line 86.) Larry R. Feldman, Los Angeles County Bar Association president, thinks the poor image is simply a by-product of the adversarial litigation process.

Whatever the reasons, the report devoted 26 pages to recommendations for bettering that image. Some of those included (1) the expansion of media relations; (2) the production of "television-quality" public service announcements; (3) the distribution of video news releases and features; (4) the development and distribution of supplemental education programs to primary and secondary schools; and (5) expansion of the State Bar's budget to fund a more aggressive communications program.

LEGISLATION:

SB 1498 (Presley), as introduced, would require rather than authorize the State Bar to set up a Client Security Fund to relieve or mitigate pecuniary losses caused by the dishonest conduct of active State Bar members. The bill would authorize the State Bar to assess its active members a fee (differentiated



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from the annual dues amount) to be used only for the purposes of the Fund.

On March 15, SB 1498 was extensively amended. The bill now includes a large package of structural and other reforms which would enhance the authority and quality of the State Bar's disciplinary system. The changes were 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 disciplinary officials. Among the proposed reforms included in SB 1498 are the following:

-The bill would create a State Bar Court judge system. Upon recommendation from the Board of Governors, the California Supreme Court would appoint six to ten administrative law judges to preside over disciplinary hearings; and three additional judges to serve as the appellate Review Department. One of the Review Department judges would be a nonlawyer. Creation of a State Bar Court judge system would eliminate the current panel of 450 voluntary attorney hearing referees, and the existing eighteen-member Review Department (which includes twelve practicing attorneys).

-The bill would enhance the ability of the Bar to detect attorney misconduct in a variety of ways: the fingerprints of Bar examinees would be transferred to the state Arrest Notification System so as to alert the Bar of the arrest of an attorney at point of arrest. The bill would broaden the required reporting of legal malpractice actions and adverse judgments; prevent the sealing of court records regarding attorney dishonesty or negligence from Bar investigators; give Bar authorities access to attorney client trust fund records, attorney work product, and records kept in nondisciplinary Bar entities, where relevant to Bar disciplinary investigations; require banks to report to the Bar NSF checks written against attorney client trust accounts; and require service of attorney professional malpractice civil complaints on the Bar.

-The bill would also enhance the authority of the Bar to discipline unethical attorneys in several ways: it would clarify the interim suspension power of the Bar and shift the burden to the attorney (to show unlikely recurrence) after a showing of substantial harm to three or more different clients in separate acts; give the Bar clear remedies, including interim remedies, short of license suspension to protect consumers; give the Bar authority to

enforce Supreme Court orders against attorneys after their resignation or disbarment; make the unauthorized practice of law a "wobbler" misdemeanor-felony; prevent disbarred attorneys from benefiting from use of their names as attorneys; require notification to criminal prosecutors when criminal acts are uncovered by the Bar; clarify the Bar's power to enforce terms of probation and provide that a probation violation may be a basis for disbarment in and of itself; allow superior courts to appoint a receiver, hire temporary counsel, and take other measures to protect the clients of an attorney who is disabled or who has abandoned his/her practice; allow the Bar to take a default judgment to enroll an attorney as inactive upon two written warnings without response; and provide for the possibility of lifetime disbarment.

-SB 1498 would also increase the Bar dues discipline surcharge (*see supra* MAJOR PROJECTS) to provide the Bar with resources to pay for these reforms, and to effectuate several administrative reforms which the Bar has agreed to implement, including improved public outreach regarding the disciplinary system; market level salaries for Bar investigators and counsel; increased secretarial and word processing resources; an increase in the number of investigators and prosecutors; and a special operations unit for serious and complex cases.

SB 1498 is pending in the Assembly Judiciary Committee. (For background information on the Bar Monitor's recommendations, see CRLR Vol. 7, No. 3 (Summer 1987) p. 1.)

AB 4391 (W. Brown) is the State Bar's dues bill and was introduced on February 22. It would authorize the Bar to assess "basic dues" at the following rates: for 1988, persons admitted to practice law for three years or longer would pay \$215; persons admitted to practice less than three years but longer than one year would pay \$147; and persons admitted to practice less than one year would pay \$116. For 1989, the rates would be \$245, \$177, and \$146 and for 1990, \$280, \$212, and \$181, respectively. At this writing, the bill is pending in the Assembly Judiciary Committee.

AB 1933 (M. Waters). As amended, this bill would require that any California governmental entity which awards contracts for professional bond services must have annual statewide participation goals for minority and women business enterprises of not less than 15% and 5%, respectively, except where the contract of an underwriter is to be obtained by

competitive bid. The same goals would be required for contracts for construction and certain related purposes, except for contracts let by the Department of Corrections.

Both the Senate and the Assembly adopted a March 9 conference report, and the bill was sent to the Governor for approval on March 22.

AB 2618 (Harris), which would prohibit renewal of the annual membership of a member of the State Bar who has been admitted for five years or more unless he/she submits proof of forty hours of continuing legal education within the preceding five years, passed the Assembly on January 21 and is pending in the Senate Judiciary Committee. The State Bar's report on mandatory continuing legal education (MCLE) was reviewed by the Board Committee on Professional Standards on March 6, and was scheduled for presentation to the full Board in April. AB 2618 and the Bar's report agree on many principles, but disagree on many details; a compromise will be necessary. (See CRLR Vol. 8, No. 1 (Winter 1988) pp. 109-10 for background information on MCLE.)

AB 3039 (Connelly) was introduced on February 8, passed the Assembly on March 24, and has been forwarded to the Senate. The bill provides that after a person has applied to, and received payment from, the State Bar's Client Security Fund for relief or mitigation of pecuniary losses caused by the dishonest conduct of an active Bar member, the State Bar would become subrogated, to the extent of payment, to the rights of that person against the injuring attorney. The applicable statute of limitations for the subrogation action would be three years from the date of the payment to the injured client.

AB 4134 (Speier, Friedman, Vasconcellos) would require a court to award reasonable compensation for the legal services provided and reasonable litigation expenses and costs incurred to an attorney who was involuntarily appointed by the court in a civil action, to represent an indigent party who has a constitutional right to be represented by counsel. A presumption shall apply that the lowest rate for appointed counsel in the county is reasonable. A judge may, if stated on the record, award a different rate, but in no event shall it exceed \$60 per hour. The bill would also appropriate \$1 million from the General Fund to the Controller to make such payments. This bill was introduced on February 19 and is pending in the Assembly Judiciary Committee.



SB 1737 (Kopp) was introduced on January 7. As amended on March 8, SB 1737 would increase the limit on reasonable attorney fees from \$1,500 to \$7,500, computed at \$100 per hour, recoverable when a complainant prevails in a civil action to appeal or review an administrative determination, if 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 is pending in the Senate Appropriations Committee.

The following is an update of legislation designated as two-year bills and discussed in CRLR Vol. 7, No. 4 (Fall 1987) at pp. 109-10: *ACA 3 (Harris)* failed passage in the Assembly Committee on Elections, Reapportionment and Constitutional Amendments, but was granted reconsideration. A February 10 hearing was cancelled at the request of its author. *AB 659 (McClintock)* died in committee. *SB 203 (Presley, Nielsen)* passed as amended and was signed by the Governor on February 17.

RECENT MEETINGS:

In February, the Bar eliminated eight positions in its Communications Department in order to spend more money on attorney discipline. Effective February 29, the positions of director of media relations, manager of media relations, community education manager, information services coordinator, manager of news information center, editor of "Grapevine" (the employee newsletter), a research attorney, and an unfilled writer's position were eliminated. The layoffs come just months after a public opinion and information survey called for a boost in the Bar's public relations efforts in order to change the attitudes of the general public about lawyers and the legal system, and to improve the overall image of the profession.

At its March 7 meeting in Sacramento, the Board of Governors voted to amend Rules 101 (Departments) and 110 (Executive Committee Composition) of its Rules of Procedure to create a new department within the State Bar Court. The newly-created Fee Arbitration Department would be separate from the State Bar Court's Hearing Department and would handle all mandatory fee arbitrations conducted by the State Bar. The action was a necessary part of the Board's recent decision to use full-time State Bar Court judges to hear all disciplinary cases other than mandatory fee arbitration. (See CRLR Vol. 8, No. 1 (Winter 1988) pp. 108-09 for background information.)

In other action affecting the State Bar Court, the Board clarified certification requirements for admitting applicants to the Bar. The State Bar Court's Review Department will now review Bar applicants' moral character proceedings. The Committee of Bar Examiners may not certify an applicant until all admissions requirements have been met, including the good moral character requirements.

Also in March, the Board created a redistricting study committee with funding of \$3,000. The eleven-member Ad Hoc Committee to Consider Redistricting of State Bar Districts will be comprised of one representative from each of the nine Bar districts, one member appointed by the California Young Lawyers Association, and one public member selected by the Board's six public members. The Board's President will name the Committee's chair. Composition of the Board of Governors, the Conference of Delegates, the Conference's Executive Committee, and the California Young Lawyers Association's Board of Directors will be affected by any redistricting. Recommendations from the Committee will be presented to the Board before the Board's August meeting.

The Board recently approved the schedule of dates for the 1988 Bar Governors' elections. Five seats on the Board are up for election in Districts 1, 3, 5, 7, and 9. Nominating petitions must be filed by June 22; voting ends on August 12; and results will be certified on August 18.

Finally, the Board tabled a proposal to increase the time from ten to not more than thirty days for response to a client's request for a bill. After approving the idea at its January 22 meeting, the Committee on Legislation and Courts had sent the proposal to the Board. Several other standing committees had endorsed the proposal as well. Board approval would have allowed the State Bar to support an amendment to Business and Professions Code section 6148, which presently (as pertinent) requires: "upon request by the client, the attorney shall provide a bill to the client no later than ten days following the request."

The amendment would stretch the response time to thirty days, but require the billing statement to be as of the end of some accounting cycle within that thirty-day period and would allow expenses to be billed separately. The reason given for the proposal is that since law firms generally bill on monthly cycles, it is difficult to provide accurate statements for time and expenses anytime before the end of the firms' cycles. Where there is no such periodic billing,

however, the client would still, as under present law, be entitled to a statement within ten days of his/her request. The present sanction for failure to comply with this section would not be affected; that is, failure renders a fee agreement voidable at the option of the client, although the attorney is entitled to collect a reasonable fee, under section 6148(c).

FUTURE MEETINGS:

June 17-18 in San Francisco.

July 22-23 in Los Angeles.

August 26-27 in San Francisco.

September 27 in Monterey.