



past, the advisory recommendations of administrative law judges were not made public prior to the time the Commission acted upon them. Although AB 3383 (Moore), effective January 1, 1987, now requires that ALJs circulate proposed decisions to all parties to a case prior to the Commission's consideration of a recommendation, the PUC has rejected a proposal which would further discourage off-the-record lobbying of PUC members. The plan would have required the Commissioners to report off-the-record conversations during the early part of a rate case and would have banned off-the-record discussions after the ALJ had rendered his/her initial decision. At an October meeting, the Commission instead took a wait-and-see approach to the proposal, preferring to evaluate the effect of AB 3383 before adopting stricter rules regarding ex parte contacts. The PUC majority stated that the circulation of a judge's recommendation before a final PUC decision would make parties aware of key issues and promote on-the-record comments rather than private lobbying.

Trailways Lines Inc. is a passenger bus company which operates between San Francisco, Los Angeles, and San Diego and travels across California's borders into Oregon, Nevada, and Arizona. At October 21-22 PUC hearings in San Francisco, Trailways requested a rate increase and alleged that it operated at a loss of \$1.1 million during the twelve-month period ending March 31, 1986. The United Transportation Union protested Trailways' rate increase request. On November 17, the Commission authorized the bus company to increase its fares by 13%.

In a recent meeting, the PUC decided to hold an additional year of public hearings on the feasibility of various methods to block calls made to "976" numbers. In response to complaints from parents whose children make unauthorized, repeated, and expensive calls to the 976 numbers, PUC previously established rules governing operation of the lines and ordered telephone companies to cancel (on a one-time-only basis) bills consisting of unauthorized calls. The additional hearings will investigate and review alternative measures to block all calls to "976" numbers, at the customer's option.

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 100,000 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 22 members: fifteen licensed attorneys elected by lawyers in nine geographic districts, six public members appointed by the Governor of California and confirmed by the state Senate, and a representative of the California Young Lawyers Association (CYLA) appointed by that organization's Board of Directors. Beginning in 1983, the Senate Committee on Rules and the Speaker of the Assembly each appoints one public member every three years. The Governor will continue to fill the remaining four public member seats. With the exception of the CYLA representative, who serves for one year, 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, 12 sections in ten substantive areas of law, three regulatory boards, 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, including publishing the *California Lawyer* magazine.

MAJOR PROJECTS:

Emeritus Attorney Pro Bono Participation Program. The Board of Governors recommended a proposed rule which would allow emeritus attorneys to provide services without compensation to legal service organizations. For purposes of the Emeritus Attorney Pro Bono Participation Program, an "emeritus

attorney" is any person admitted to practice law in California but is retired from the active practice of law. Additionally, to qualify for the program, the attorney must have engaged in the active practice of law for a minimum of ten of the fifteen years immediately preceding application to the program. He/she must also be a member of the State Bar, in good standing, with no record of discipline for professional misconduct within the last fifteen years.

A legal services organization wishing to use emeritus attorneys must file a petition with the Bar certifying that it is a nonprofit organization and must list the types of legal services performed. Under the direction of a supervising attorney, an emeritus attorney may appear in any court or administrative tribunal in California on behalf of a client if the client has consented in writing to that appearance and a supervising attorney has given written approval.

The Board's Committee on Legal Services reviewed the comments on the program on December 19. The Committee decided to redraft the proposal to allow retired attorneys to obtain active, rather than inactive, State Bar status for the purpose of providing pro bono legal services. The active status would eliminate the need to delineate special discipline rules for participants in the program, since the participants would then be subject to the same rules of professional responsibility as are other State Bar members.

The Office of General Counsel is presently redrafting the proposal in accordance with the Committee's recommendations.

Bar Studies Plan for Mandatory Malpractice Insurance. The Board of Governors is studying the possibility of establishing mandatory malpractice insurance for California lawyers. Under the proposal, lawyers who work for state or local governments would be excluded from having to carry malpractice insurance since they do not have clients in the traditional sense.

In September, Governor Deukmejian vetoed a mandatory malpractice bill because it did not expressly exclude government lawyers from its provisions.

The panel in charge of the study will conduct a survey of California lawyers regarding their insurance experience, and will study alternative ways of providing insurance on an affordable basis. Currently, Oregon is the only state which requires lawyers to carry malpractice insurance, so the panel will travel there to study its plan. Oregon excludes gov-



REGULATORY AGENCY ACTION

ernment lawyers from its program if they sign a declaration promising not to practice law privately.

Legal Services for Indigents Accused of Crimes. The State Bar has proposed Supreme Court rules seeking to establish a commission of the Bar to provide legal services to indigents accused of crimes. The Commission on the Delivery of Defense Services to the Indigent Accused would consist of three criminal lawyers, a retired appellate or Supreme Court justice, and a public member. The Commission's responsibilities would include advising jurisdictions about legal services for indigents where statutory public defender services are unavailable.

The members of the Commission would serve by appointment by the Board of Governors. The appointees would receive no compensation for their services but would be reimbursed for their expenses.

The Commission would also have duties to prepare an annual report with recommendations for the improvement of systems for the delivery of indigent criminal defense services in the state; to provide technical assistance to jurisdictions requesting assistance in facilitating systems for the delivery of indigent criminal defense services; and to recommend to the Supreme Court new rules or changes in rules regarding systems for the delivery of indigent criminal defense services.

Foreign Lawyer Rule Approved. On January 2, the California Supreme Court approved a new rule of court which will give foreign lawyers a limited right to practice law in California. (See CRLR Vol. 6, No. 4 (Fall 1986) p. 91.) The Board of Governors had requested the rule in response to a demand from the Japanese Bar Federation that its lawyers be allowed to practice in California and four other states, in exchange for reciprocity in Japanese courts. The new rule becomes effective ninety days following its January 2 filing. Former Chief Justice Rose Elizabeth Bird dissented, contending that the new rule discriminates against U.S. attorneys by establishing special rules for foreign practitioners in California.

LEGISLATION:

AB 29 (Killea) would enable the State Bar to adopt an enforce stricter regulations for lawyer referral services. Currently, nonprofit referral services and legal aid clinics are regulated and certified by the State Bar. This bill is directed at tightening and implementing new reg-

ulations for referral services and legal aid clinics operating for profit.

If passed, AB 29 would require that the State Bar conduct a fact finding investigation of such services in the state; that applicable restrictions be implemented to the extent that such restrictions do not constitute an unlawful restraint on trade or commerce; that violations of regulations implemented by enjoined; and that the State Bar, with the approval of the Supreme Court, formulate rules and regulations governing lawyer referral services. One such proposed regulation is the requirement of an application and licensing fee to be paid by lawyer referral services in order to be certified by the State Bar.

SB 1543 (Presley) was signed by the Governor on September 24, 1986. (See CRLR Vol. 6, No. 4 (Fall 1986) for complete background information.) Pursuant to the statute, Attorney General John Van de Kamp has appointed Robert C. Fellmeth, Director of the Center for Public Interest Law, as State Bar Discipline Monitor. The Monitor will investigate and evaluate the State Bar discipline system and procedures and will submit his first report to the Legislature by June 1, 1987.

LITIGATION:

Keller v. State Bar, 181 Cal. App. 3d 471 (1986), the challenge to the Bar's use of mandatory dues to advance political causes and activities, was appealed by the Bar to the California Supreme Court, which recently announced it will review the appellate court's decision. (See CRLR Vol. 6, No. 4 (Fall 1986) pp. 92-93.) The case is still pending before the California Supreme Court, although briefs have been filed by both sides.

RECENT MEETINGS:

On November 20, the Bar's Discipline Committee met in San Francisco. In discussing the Client Security Fund program, the Committee announced that Kioki Tatsui has been selected as Director of the Program, and that six other positions are in the process of being filled. The Committee also discussed the need to raise the portion of individual dues to be allocated to the Fund from \$25 to \$40.

The Committee also discussed its Disaster Response program. In response to past incidents of unethical solicitation at the scene of disasters (such as the Cerritos air crash), members of the Discipline Committee will respond onsite within 24 hours to conduct interviews to ascertain whether solicitation has occurred.

On November 21 in San Francisco, the Board of Governors, after heated debate, approved a \$40,000 expenditure for a public relations study aimed at improving the image of the Bar and the legal profession. The Board approved the expenditure by a vote of 10-9. Bar Governor Richard Alexander spoke in favor of the proposal, and stated that the study is needed to determine whether the \$700,000 spent by the Bar each year for communication is being spent effectively.

Public member Richard Annotico opposed the proposal and stated that if the Board of Governors instead concentrates on making improvements to the Bar, the Bar's image will take care of itself. Also in opposition to the expenditure was Ron Olson, the Board's finance chairperson. Mr. Olson stated that in light of the Bar's tight budget, an expenditure of \$40,000 is premature, especially in light of the likelihood that the public relations firm conducting the study will recommend the expenditure of even more money, possibly several million dollars.

The Board also approved standards for certification and recertification of Immigration and Nationality Law Specialists. Prior to the Board's approval, the Bar certified specialists in only four fields of law: criminal law, family law, taxation law, and workers' compensation law.

The standards for certification include the following: applicants must be active members in good standing of the State Bar of California; within the three years prior to application for certification, applicants must have participated as principal attorney in 150 cases involving application for immigrant or non-immigrant status, or deportation and exclusion hearings before immigration judges; and the applicant must have participated as principal attorney in five of the following ten procedures: naturalization or nationality cases, administrative appellate practice, judicial review of immigration proceedings in federal courts, labor certifications, contested deportation exclusion hearings before immigration judges, motions and writs in criminal cases relating to collateral immigration consequences in federal or state courts, bond and custody proceedings, rescission proceedings, refugee and asylum applications, and contested consular visa cases.

Moreover, the applicant for certification is required during the three years immediately preceding his/her application to have completed 42 units of Board-approved classes on immigrant



visas, non-immigrant visas, deportation, administrative and judicial review, and citizenship and naturalization. Furthermore, the applicant must pass a written exam prior to certification to demonstrate knowledge, proficiency, and experience in immigration and nationality law sufficient to justify the representation of special competence to the legal profession and the public. The test may be waived if the applicant, during the three years preceding the application, has completed an additional sixty units accumulated either through teaching immigration classes or publishing articles on immigration and nationality law in a professional publication or journal.

The pass rate on the July 1986 California exam was the second lowest on a summer exam in two decades. Only 3,525 of 7,950 applicants passed the exam, for a passage rate of 44.3%. In contrast, the passage rate in 1974 for the summer exam was 61.7%, and has been dropping slowly ever since.

The passage rate for first-time takers from ABA-approved schools was 64% and the passage rate for non-ABA-approved schools was 44%. The passage rate for repeaters from ABA-approved school was only 29%, and the passage rate for repeaters from non-approved schools was 15%.

FUTURE MEETINGS:

To be announced.