

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 at 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. Over 165,000 California lawyers are members of the State Bar.

The State Bar Act, Business and Professions Code section 6000 *et seq.*, designates a Board of Governors to run the Bar. The Board President is usually 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 of Governors consists of 23 members: sixteen licensed attorneys, six non-lawyer public members, and the Board President. Fifteen of the sixteen attorney members are elected to the Board by lawyers in nine geographic districts; the sixteenth attorney member is a representative of the California Young Lawyers Association (CYLA), appointed by that organization's Board of Directors each year for a one-year term. The six public members are variously appointed by the Governor, Assembly Speaker, and Senate Rules Committee. Each Board member serves a three-year term, except for the CYLA representative (who serves for one year) and the Board President (who serves a fourth year when elected to the presidency). Members' terms are staggered to provide for the election of five attorneys and the appointment of two public members each year.

The State Bar maintains numerous standing and special committees addressing specific issues; seventeen sections covering substantive areas of law; Bar service programs; and the Conference of Delegates, which gives a representative voice to local, ethnic, and specialty bar associations statewide. Effective January 1, 2000, however, neither the sections nor the Conference of Delegates may be financed with members' compulsory Bar licensing fees (see MAJOR PROJECTS AND LEGISLATION).

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 the State Bar Act and the Bar's Rules of Professional Conduct, and promoting competence-based education; (3) ensuring the delivery of and access to legal services; (4) educating the public; (5) improving the administration of justice; and (6) providing member services.

Much of the Bar's annual budget is spent on its attorney discipline system. The system includes the nation's first full-time professional attorney discipline court and a large staff of investigators and prosecutors. The Bar recommends sanctions to the California Supreme Court, which makes final discipline decisions. However, Business and Professions Code section 6007 authorizes the Bar to place attorneys on involuntary inactive status if they pose a substantial threat of harm to clients or to the public, among other reasons.

On August 21, the Board of Governors elected Andrew J. Guilford as State Bar President for 1999-2000. Guilford is a partner with Sheppard, Mullin, Richter & Hampton in Costa Mesa. Six new attorney members were recently elected to the Board of Governors and officially joined the Bar in October. Scott H. McNutt ran unopposed in District

Although the Bar retains its full complement of attorney members, only two of its six public member positions are filled; Governor Davis is responsible for filling the four vacancies.

1 (San Francisco and Marin counties); James Herman was elected from District 6 (Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura counties); Patrick R. Dixon was elected from District 7 (Los Angeles); Maria Villa ran unopposed for the other seat in District 7; and Robert Scott Wylie ran unopposed in District 8 (Orange County). Paul Smigliani also assumed a one-year term on the Board as the representative from the California Young Lawyers Association.

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MAJOR PROJECTS

Governor Resurrects Bar After Signing Dues Bill

Bar leaders were overjoyed when Governor Davis signed SB 144 (Schiff and Hertzberg) (Chapter 342, Statutes of 1999)

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on September 7. At long last, SB 144 authorizes the Bar to collect mandatory licensing fees from its members to support most of its traditional activities. SB 144 is the Bar's first regular dues authorization since 1996; unhappy with numerous activities of the Bar, former Governor Pete Wilson vetoed the Bar's dues bill in 1997, causing the Bar—including its attorney discipline system—to essentially shut down in June 1998. In December 1998, the California Supreme Court issued a special order requiring all California lawyers to pay \$173 to resurrect the discipline system, but those funds are restricted to discipline-related activities and a special master is supervising their expenditure to ensure that they are spent only on discipline (see below). [16:1 CRLR 190-94]

Although SB 144 once again authorizes the Bar to charge its members licensing fees, it restricts licensing fees to \$395 annually (as compared to \$478 in 1996 and \$458 in 1997) and requires the Bar to further discount its fees for attorneys earning less than \$40,000 per year (see LEGISLATION). Further, it contains a number of restrictions and conditions to address past problems at the Bar. First, SB 144 forbids the Bar to use mandatory licensing fees on two expenditures that have proven controversial—its Conference of Delegates (which gives a voice to local bar associations) and its subject-matter “sections” (see LITIGATION). The bill authorizes the Bar to collect voluntary donations for the Conference and the sections, but essentially requires those two entities to become self-supporting.

SB 144 also addresses the issue of Bar lobbying on subjects unrelated to its regulatory functions—a controversial issue being addressed in *Brosterhous v. State Bar of California* (see LITIGATION). First, the bill allows lawyers who do not want their compulsory licensing fees to fund Bar lobbying and other activities that are unrelated to the “regulation of the legal profession or improving the quality of legal services,” as established in *Keller v. State Bar*, 496 U.S. 1 (1992), to deduct \$5 from their annual dues bill; previously, this deduction—as calculated by the Bar and at issue in *Brosterhous*—hovered between \$1-3. SB 144 also establishes a formula that restricts the amount of *Keller*-violative lobbying in which the Bar may engage; the bill precludes the Bar from spending a sum on non-*Keller* lobbying which exceeds the product of the number of members paying their annual dues who did not elect the optional deduction multiplied by \$5. Thus, the bill caps non-*Keller* lobbying expenses.

SB 144 also requires the Bar to engage in competitive bidding before entering into any contract for goods, services, or both in an amount greater than \$50,000. This prohibition stemmed from an especially embarrassing incident which was a key factor leading to former Governor Wilson's 1997 veto

of the Bar's dues bill—the Bar contracted with an outside lobbyist (who was formerly a Bar employee) at \$900,000 for two years, and included an illegal provision authorizing a \$75,000 bonus if the lobbyist was successful in securing a two-year dues bill for the Bar. [16:1 CRLR 191]

The bill also addresses the Bar's controversial Minimum Continuing Legal Education (MCLE) program. For the past two years, the MCLE program has been paralyzed by a First District Court of Appeal decision ruling that arbitrary exceptions to the MCLE requirement violate the equal protection rights of all other lawyers required to complete MCLE; however, the program was recently reinstated by the California Supreme Court in *Warden v. State Bar of California* (see LITIGATION). SB 144 reduces the MCLE requirement from 36 hours every three years to 25 hours every three years, makes express legislative findings that it is in the public interest to

continue the MCLE requirement for attorneys licensed to practice law, deletes the exception to the MCLE requirement for retired judges and makes express legislative findings underlying the remaining exceptions to the requirement, and requires the Bar to provide

and encourage the development of no-cost and low-cost programs and materials for satisfying the MCLE requirement (with special emphasis upon the use of Internet capabilities and computer technology in the development and provision of these programs).

Finally, SB 144 requires the Bar to undergo external and independent financial and performance audits. The bill requires the Bar to contract with a nationally recognized independent public accounting firm to conduct an audit of the State Bar's financial statements for each fiscal year beginning after December 31, 1998. It also requires the Bar to contract

with the Bureau of State Audits (BSA) to conduct a performance audit of its operations from July 1, 2000, through December 31, 2000, inclusive; commencing January 1, 2002 through December 2002, the Bar must contract with BSA every two

years to conduct a performance audit of its operations for that fiscal year. All of these audits must be submitted to the Board of Governors, the Chief Justice of the Supreme Court, and Judiciary Committees of the Senate and Assembly.

Some Bar critics were disappointed that the legislation did not go further. Critics felt the Wilson veto and its aftermath presented an opportunity to dismantle the “unified” structure of the California Bar—the unusual combination of regulatory agency (with state police powers to control entry into a profession, set standards for the practice of that profession, and enforce those standards by excising violators from the profession through the disciplinary process—all for the

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purpose of public protection) and trade association (which functions to promote the profession rather than protect the public) within the same entity (see LITIGATION). Others, including former State Bar Discipline Monitor Robert C. Fellmeth, hoped that the legislature would take the opportunity to restructure the Board of Governors from an attorney-dominated, attorney-elected body into an appointed body with a public member majority (as many other California occupational licensing agencies are composed), and subject the Board to the Bagley-Keene Open Meeting Act (from which the Board is currently exempt). [16:1 CRLR 192]

With the passage of the dues bill comes the daunting job of hiring new personnel to staff the Bar's programs funded by the bill; the fiscal crisis presented by the 1997 Wilson veto forced the Bar to lay off 470 of its 700 employees in June 1998. [16:1 CRLR 191] The Bar must also hire a new executive director; former Executive Director Steve Nissen left in March 1999 after only 16 months on the job, and Acting Executive Director Jeffrey Gersick has repeatedly told the Bar he is not a candidate for the position. [16:2 CRLR 168] At its May 1 meeting, the Board of Governors decided to delay contracting with an executive search firm to conduct a nationwide search until its dues bill passed; at its October 30 meeting in Costa Mesa, the Board voted to allocate an amount "not to exceed \$50,000" for the retention of an executive search firm to find a new executive director.

In a related matter, at its September meeting the Board of Governors voted to permit attorneys who voluntarily paid their Bar dues during 1998 and/or 1999 to apply all or part of those fees to their 2000 membership fees or to request a refund, as appropriate. Over 30,000 attorneys voluntarily paid all or part of their dues at the request of the Bar, contributing over \$9.8 million to the Bar in its time of need.

Bar Struggling to Rebuild Attorney Discipline System

On June 22 and September 24, Special Master Elwood Lui filed reports documenting the progress of the State Bar in rebuilding the attorney discipline system it was forced to dismantle after former Governor Wilson's October 1997 veto of the Bar's dues bill (see above). The effort is being funded with a \$173 special assessment ordered by the California Supreme Court in December 1998, and is being overseen by Special Master Lui, a retired court of appeal justice. In his initial February 1999 report, Justice Lui reported that the Bar's discipline system faces an unprecedented backlog of over 7,000 open complaints and reports against attorneys from consumers and courts. To deal with the backlog, the Bar has instituted new prioritization policies, default rules, and early settlement conference policies, and has been slowly rehiring discipline system staff—including prosecutors, investigators, and support staff. [16:2 CRLR 168-70; 16:1 CRLR 190-94]

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When the Bar's discipline system reopened in January 1999 with the help of the special assessment, Justice Lui authorized the hiring of 215 employees (or 65% of the Bar's prior discipline workforce). As the year wore on, Justice Lui authorized more positions—up to 351 by September 13. The Bar has filled 291 of those positions; many of the 60 vacancies are in support staff positions, and the Bar is hiring temporary employees to fill those positions until permanent employees can be hired.

◆ *Office of the Chief Trial Counsel.* The massive accumulation of cases—which now consists not only of old complaints and cases that came in and were abated during the shutdown but also new complaints filed since January—has been divided into (1) "inquiries"—written complaints about the conduct of an attorney that are initially reviewed by the intake unit of the Office of the Chief Trial Counsel (OCTC), (2) investigations—matters that have survived intake and are currently being investigated by OCTC's investigative staff, and (3) trial counsel matters—completed investigations that are being reviewed or prosecuted by OCTC attorneys before the State Bar Court. With the benefit of added staff since the February report, OCTC has substantially reduced the number of inquiries in intake from 4,050 on March 1 to 1,697 on September 1. The reduction in the number of investigations and trial counsel matters has been less dramatic. Investigations decreased from 2,800 on March 1 to 2,664 on September 1. Trial counsel matters decreased from 1,450 on March 1 to 1,142 on September 1. Overall, as of September 1, the Bar has 1,751 cases in its "backlog" alone—the "backlog" consists of non-complex matters pending in OCTC for more than six months and complex matters pending in OCTC for more than one year. However, that figure does not include newly-arriving matters. Further, the Bar concedes that its "backlog" figure may be artificially low because its toll-free complaint hotline is only open half-time, and is receiving only about one-half the number of complaints and inquiries it historically received prior to the shutdown.

According to Justice Lui, matters "appear to be languishing" once they reach investigations and the trial counsel unit. To deal with this problem, the Bar's Los Angeles and San Francisco offices are handling their caseloads in two different ways to determine whether either method results in more expedited case processing. In San Francisco, all open investigations and trial counsel matters are immediately assigned to an investigator or prosecutor; this process appears to ensure that egregious cases receive immediate attention, but results in very high open caseloads for San Francisco investigators and attorneys. In Los Angeles, both investigators and prosecutors maintain a set caseload of cases, and only receive new cases when they have disposed of one of their existing cases. By September, the number of cases handled under the different systems was too few to permit

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any generalizations about the efficacy of one model vs. the other; the only consensus reached, according to Justice Lui, is that there are too few investigators and attorneys to handle the overwhelming number of cases.

◆ **State Bar Court.** In his September 24 report, Justice Lui reported that as of August 31, the State Bar Court had filled 27 of its 37 authorized positions. The Hearing Department still has 37 cases in abatement, while the Review Department has cleared out all previously-abated cases. As of August 31, 354 open cases remain in the Hearing Department and 37 open cases are in the Review Department. According to Justice Lui, the SBC is able to move its old cases out because the number of new incoming cases has slowed considerably "due to the difficulties OCTC is experiencing in moving matters through the various stages of investigation and evaluation." However, the number of new matters moving into the SBC is gradually increasing, with 69 new matters filed in August (up from 39 new cases filed in June and 43 new cases filed in July).

◆ **Other Bar Units.** The discipline assessment also permitted restaffing in other areas of the Bar related to discipline. The Bar's Office of the General Counsel (which handles disciplinary matters once they reach the California Supreme Court) and Bar offices related to professional competence (including the Bar's ethics hotline), membership records, and fee arbitrations are gradually being restaffed.

In addition to authorizing more discipline staff positions, Justice Lui found that "it is apparent that the State Bar is in dire need of updated computer technology, including both hardware and software," and authorized the Bar to purchase \$2.4 million worth of updated computer equipment and technology, two-thirds of which were financed by the discipline assessment. At this writing, the Bar anticipates that it will complete the majority of its technology acquisition and implementation by December.

At the end of his September report, Justice Lui noted that he would continue to monitor the Bar's use of the special discipline assessment through the end of 1999, and that his fourth report would probably be his final report. In that report, Justice Lui will make "recommendations concerning the structure and operations of the State Bar Disciplinary System."

Bar Creates MCLE Task Force, Reinstates Program

Even before the California Supreme Court resurrected the Bar's MCLE program with its 5-2 decision in *Warden v. State Bar of California* (see LITIGATION), the Bar acknowledged its membership's widespread dissatisfaction with the program. A June 1999 survey of its membership revealed that

67% of California attorneys disagree that continuing education should be mandatory; 63% believe that 36 hours of CLE every three years is too burdensome; and well over three-quarters of those responding disagreed with the controversial exceptions to the requirement for retired judges, full-time law professors, and state and federal lawyers and elected officials. Over 60% responded that if CE were not mandatory, they would take at least 36 hours every three years anyway.

On June 24, then-Bar President Raymond C. Marshall created a special task force to examine the Bar's MCLE program, hold public hearings to gather comments from its membership and the public, and make recommendations to reform the program. The task force is chaired by David Heilbron, a law partner of Marshall's and a former State Bar president, and consists of twelve members. Marshall charged Heilbron's task force with reviewing the program in its entirety and returning with a report to the Board of Governors within one year.

In August, the Supreme Court upheld the validity of the exceptions to the MCLE requirement in *Warden*; in September, Governor Davis signed SB 144, which made some changes to the controversial program. As noted (see LEGISLATION), SB 144 decreases attorneys' MCLE burden by lowering the required number of hours to 25 every three years, repeals an existing requirement that lawyers take a four-hour law practice management course every three years, repeals the exemption from the requirement for retired judges, and sets forth legislative findings underlying the remaining exemptions.

Following the *Warden* decision and the passage of SB 144, the Board of Governors at its September 16 meeting approved a revised set of MCLE requirements and deadlines for compliance. The new requirements include at least four hours of legal ethics, one hour of prevention, detection, and treatment of substance abuse and emotional distress, and one hour of bias elimination in the courts and the legal system every three years. Up to one-half of the required hours in any three-year compliance period may be satisfied by self-study.

Supreme Court Approves Regulation to Implement SB 2086 (Keeley)

Effective July 1, the California Supreme Court has approved Rule of Court 983.4 to implement SB 2086 (Keeley), which became effective on January 1, 1999. The legislature enacted SB 2086 in response to the Supreme Court's ruling in *Birbrower, Montalbano, Condon & Frank v. Superior Court (ESQ Business Services Inc., Real Party in Interest)*, 17 Cal. 4th 119 (Jan. 5, 1998; as modified Feb. 25, 1998), in which the court held that out-of-state attorneys not licensed to prac-

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tice law in California may not enforce a fee agreement for representing a California client in a California arbitration proceeding. Until January 1, 2001, SB 2086 amends section 1282.4 of the Code of Civil Procedure to permit out-of-state attorneys who meet specified requirements to represent a party in an arbitration proceeding in California, or to render legal services in California in connection with an arbitration proceeding in another state. [16:1 CRLR 196-98] Rule 983.4, which originally became effective on January 1 on an emergency basis, creates the Bar's Out-of-State Attorney Arbitration Counsel program, as required by SB 2086. The rule incorporates by reference the requirements of section 1282.4 (which requires an out-of-state attorney seeking to represent a client in a California arbitration proceeding to serve a certificate containing specified information on the Bar, the arbitrator, and all parties and counsel in the arbitration whose addresses are known to the attorney) and imposes a \$50 filing fee on out-of-state counsel. Under Rule 983.4, an attorney who files a certificate containing false information is subject to discipline by the Bar.

ABA, State Bar Wrestle with "Multidisciplinary Practice" Issue

During the summer of 1999, both the American Bar Association (ABA) and the State Bar struggled with the "multidisciplinary practice" (MDP) concept, under which lawyers could share fees and establish business partnerships with nonlawyers. Although the concept is popular in Europe and has already taken hold within the "Big 5" accountancy firms in the United States, it violates the ABA's Model Rules of Professional Conduct and the State Bar's Rules of Professional Conduct, and is troubling to many lawyers.

On June 8, the ABA's Commission on Multidisciplinary Practice—which has only been in existence since August 1998—released a recommendation regarding MDPs to the ABA's House of Delegates for consideration at its August 1999 meeting. The Commission recommended that the ABA amend its model rules to "permit lawyers, subject to carefully defined standards, to deliver services to clients through a new practice vehicle, a multidisciplinary practice." The Commission defined a MDP as "a partnership, professional corporation, or other association or entity that includes lawyers and nonlawyers and has as one, but not all, of its purposes the delivery of legal services to a client(s) other than the MDP itself or that holds itself out to the public as providing nonlegal, as well as

legal, services. It includes an arrangement by which a law firm joins with one or more other professional firms to provide services, and there is a direct or indirect sharing of profits as part of the arrangement." Under the recommendation, lawyers in MDPs would remain subject to all rules of professional

conduct, except that they would be permitted to form a MDP and share legal fees with a nonlawyer in a MDP for the purposes of the delivery of legal services. Further, the MDP would be subject to certain certification and audit procedures designed to protect the interests of clients and the public while main-

taining the core values of the legal profession—"specifically, professional independence of judgment, the protection of confidential client information, and loyalty to the client through the avoidance of conflict of interest." The ABA Commission stressed that its recommendation does not permit a nonlawyer to deliver legal services.

Specifically, the Commission's recommendation contemplates the amendment of ABA Model Rule of Professional Conduct 5.4, which prohibits a lawyer from sharing legal fees with a nonlawyer or forming a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law. The ABA's adoption of the recommendation (which, absent action by the State Bar to amend California's Rules of Professional Conduct, is not binding on California) would create an exception to Model Rule 5.4 in the case of MDPs that conform to nine specified safeguards.

In its memorandum, the Commission noted that "the ABA President has called this the most important issue facing the legal profession today. Today, lawyers are practicing in increasing numbers in professional services firms in the United States, while claiming that they are not delivering legal services, and abroad such firms are holding themselves out as delivering legal services. The legal profession must address these issues now to ensure that the public interest is served." Part of the exigency perceived by the Commission is due to the fact that the "Big 5" accounting firms are hiring estab-

lished lawyers and law school graduates in droves; according to Commission Chair Sherwin P. Simmons of Florida, financial services firms—particularly the "Big 5"—are now the largest employers of new law school graduates. The large accounting firms are able to market "one-stop shopping" to clients with multiple business needs. Technically, the attorney "consultants" employed by these non-law firms are not

permitted to "practice law," but the definition of that term is elusive in the MDP context.

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The ABA Commission issued its recommendation after hearing 60 hours of testimony from 56 witnesses from around the world, including U.S. and foreign lawyers, consumer advocates, representatives of four of the five largest accounting firms in the world, law professors, chairs of ABA sections and standing committees, officers of foreign and domestic bar associations, ethics counsel of foreign and domestic bar associations, small business clients, the American Corporate Counsel Association, and in-house counsel of international corporations. After considering this input, the Commission concluded that "there is an interest by clients in the option to select and use lawyers who deliver legal services as part of a multidisciplinary practice....The Commission has concluded that it is possible to satisfy the interests of clients and lawyers by providing the option of a MDP without compromising the core values of the legal profession that are essential for the protection of clients and the proper maintenance of the client-lawyer relationship."

While the MDP concept is appealing (and the notion that the accountancy profession is intruding into the traditional turf of law firms is frustrating to many in the legal profession), many lawyers are concerned about its impact on the "core values of the legal profession" that the ABA Commission purports to protect. For example, it is undisputed that lawyers are duty-bound to "keep inviolate" the confidences that clients share within the context of the attorney-client relationship; this duty may conflict with affirmative disclosure requirements imposed on other professionals with whom a lawyer may associate under the MDP concept, such as a mental health worker required to disclose suspected child abuse or an accountant performing a certified audit of a company's financial statements for the protection of investors. The potential erosion of the attorney-client privilege—which is intended to encourage client honesty and forthrightness with their legal counsel—is another area of concern. Under existing law, attorneys may not be required to testify in court against their clients; however, accountants and other professionals may be forced to disclose client information in court. Further, the MDP setting may itself operate as a waiver of the privilege, because the attorney will be required to share client information with nonlawyers. For the most part, the ABA Commission's nine safeguards attempt to preserve these "core values" by requiring nonlawyers who affiliate with lawyers in a MDP setting to conform their conduct to the lawyer's professional obligations—a concept that has already been

characterized as "unworkable" by the American Institute of Certified Public Accountants, the nation's largest trade association of CPAs.

For these and other reasons, in June 1999 the State Bar's Committee on Professional Responsibility and Conduct (COPRAC) recommended that the Board of Governors instruct its delegates to the 1999 ABA convention to suggest deferral of the MDP issue until the ABA further studies and solicits comments from outside the ABA on this important issue. After studying the ABA Commission's recommendation and supporting documents, COPRAC stated its belief that "the ABA is moving too quickly on this important issue

without adequate time for vetting and comment on the ABA's proposal. COPRAC itself does not believe it has had sufficient time to absorb and comment on the myriad issues and concerns raised by the ABA proposal....[I]t is not hyperbolic to wonder whether the ABA's proposal constitutes the beginning of the end of the legal profession as a special calling and a special role in the administration of justice. Perhaps the changes envisioned by the ABA are inevitable. They might also be desirable. We have simply not had adequate time to form a studied opinion of the issue." COPRAC also noted that the urgency with which the ABA is acting appears to stem "from the fact that the large accounting firms have already hired large numbers of attorneys who may be currently violating the ethical strictures against fee-splitting and forming partnerships with non-attorneys. We do not see that as a

good enough reason to short-circuit the nationwide deliberative process that the ABA should encourage and facilitate on this issue." At its July meeting, the Board of Governors approved COPRAC's recommendation.

At its August 10 meeting, the ABA's House of Delegates considered the MDP Commission's recommendation, but voted 304-98 to defer action until the issue has been further studied by state and local bar associations and the ABA itself. The ABA's resolution states that "the American Bar Association makes no change, addition or amendment to the Model Rules of Professional Conduct which permits a lawyer to offer legal services through a multidisciplinary practice unless and until additional study demonstrates that such changes will further the public interest without sacrificing or compromising lawyer independence and the legal profession's tradition of loyalty to clients." Both the ABA's MDP Commission and the Bar's COPRAC are expected to hold further hearings on the MDP issue in 2000.

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LEGISLATION

SB 144 (Schiff and Hertzberg), as amended July 13, is a Bar-sponsored bill authorizing the Bar to require members to pay annual licensing fees during 2000 (see MAJOR PROJECTS). In addition to its existing authority to require members to pay \$77 per year (which amount is earmarked for specific programs), SB 144 authorizes the State Bar to collect \$318 as membership dues, for a total 2000 dues bill of \$395. The bill also requires the Bar to adopt a regulation providing for a 25% fee reduction if a lawyer's annual income is less than \$40,000, and a 50% offset if annual income is less than \$25,000.

SB 144 also: (1) reduces the Bar's existing MCLE requirement from 36 hours every 36 months to 25 hours every 36 months, and requires the Bar to develop low-cost or no-cost options for fulfilling self-study requirements; (2) repeals the existing exemption from the MCLE requirement for retired judges (see LITIGATION); (3) makes the Conference of Delegates and the State Bar sections self-funding (no mandatory dues may be used to fund these Bar activities), but allows the Bar to collect voluntary fees on their behalf and to provide administrative support services at cost; (4) allows members to deduct \$5 from their dues if they do not want their dues used by the Bar to lobby on legislation outside the limits of *Keller v. State Bar*, and limits the Bar's use of mandatory dues on non-*Keller* lobbying and related activities to an amount specified by formula; (5) requires the Bar to contract with an independent firm to audit its financial statements for each fiscal year beginning after December 31, 1998; (6) requires the Bar to contract with the Bureau of State Audits (BSA) for a performance audit of its operations from July 1, 2000, to December 31, 2000, inclusive; every two years thereafter, the Bar must contract with BSA to conduct a performance audit of its operations for the respective fiscal year, commencing with January 1, 2002, through December 31, 2002, inclusive; and (7) prohibits the Bar from awarding any contract for goods, services, or both, for an aggregate amount in excess of \$50,000, unless through competitive bidding.

SB 144, which is double-joined to SB 143 (Burton) (see below) such that both must be signed or neither will take effect, was signed by the Governor on September 7 (Chapter 342, Statutes of 1999).

SB 143 (Burton), as amended June 24, is a controversial bill that changes the composition of the State Bar Court and the way its judges are appointed. Currently, the State Bar Court consists of a hearing panel of five judges who preside over evidentiary hearings, and a three-judge Review Department consisting of the Presiding Judge of the State Bar Court, one attorney judge, and one non-attorney judge. Each of the judges is appointed by the California Supreme Court upon the nomination of the court's Applicant Evaluation and Nomi-

nation Committee. Effective November 1, 2000, SB 143 eliminates the non-lawyer judge position on the Review Department and replaces that position with an attorney judge position. SB 143 also permits the Supreme Court to appoint only two of the five hearing judges, with the remaining three judges appointed by the Governor, Senate Rules Committee, and Assembly Speaker.

SB 143 also provides that an attorney's duty to cooperate with a State Bar disciplinary investigation shall not be construed to require an attorney to cooperate with a request that requires the attorney to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the attorney's practice. Finally, SB 143 requires the Bar to compile specified disciplinary statistics relating to who is prosecuted, and to issue a written report on or before June 30, 2001, to the Senate and Assembly Judiciary Committees; provides that procedures used in the disciplinary process shall ensure that resources of the State Bar are used fairly and equitably in the investigation and prosecution of complaints against all attorneys; and provides that disciplinary proceedings shall not be brought in disproportionate numbers against attorneys practicing as solo practitioners or in small law firms or partnerships, as compared to proceedings brought against attorneys practicing in large law firms.

According to Senator Burton, his intent in revamping the appointing authorities of the judges on the State Bar Court is to bring a broader diversity of opinion to the State Bar Court and to make that court more closely resemble the structure of the Commission on Judicial Performance, which disciplines judges. As President pro Tem of the Senate and Chair of the Senate Rules Committee, Senator Burton will be able to appoint a judge effective November 1, 2000. The Bar took no position on SB 143 because it was double-joined to SB 144, its dues bill. Portions of SB 143 were opposed by former State Bar Discipline Monitor Robert C. Fellmeth, who drafted SB 1498 (Presley) (Chapter 1159, Statutes of 1988), the bill that created the State Bar Court in its current form. [8:4 CRLR 123-24] Fellmeth objected to SB 143's provisions that remove the lay member from the Review Department and permit State Bar Court judges to be appointed by the Governor and legislature. Fellmeth expressed concern about the possible politicization of the State Bar Court if politicians are permitted not only to appoint but also to reappoint its judges. Nonetheless, Governor Davis—who is authorized to make a major new appointment under this bill—signed SB 143 on July 28 (Chapter 221, Statutes of 1999).

SB 72 (Murray). Rule 3-300 of the Bar's Rule of Professional Conduct prohibits an attorney from entering into a business transaction with a client, or knowingly acquiring an ownership, possessory, security, or other pecuniary interest

SB 143 (Burton), as amended June 24, is a controversial bill that changes the composition of the State Bar Court and the way its judges are appointed.

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adverse to a client, unless each of the following requirements has been satisfied: (1) the transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed in writing to the client in a manner which should reasonably have been understood by the client; (2) the client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek the advice; and (3) the client consents in writing to the terms of the transaction.

SB 72 adds section 6175 *et seq.* to the Business and Professions Code, which requires a lawyer, when acting as a fiduciary, to provide detailed disclosures before the lawyer may sell financial products to any client who is an elder or dependent adult with whom the lawyer has or has had an attorney-client relationship within the past three years. The term "financial products" is defined to include long-term care insurance, life insurance, and annuities governed by the Insurance Code. The lawyer must ensure that the transaction or acquisition and its terms are fair and reasonable to the client, and must provide the client with a disclosure that satisfies all of the following conditions: (a) the disclosure must be in writing, clear and conspicuous, and on a separate document, appropriately entitled, in 12-point print with one inch of space on all borders; (b) the disclosure, in a manner that should be reasonably understandable to that client, must be signed by the client or the client's conservator, guardian, or agent under a valid durable power of attorney; (c) the disclosure must state that the lawyer will receive a commission and must set forth the amount of the commission and the actual percentage rate of the commission, if any (if the actual amount of the commission cannot be ascertained at the outset of the transaction, the disclosure must include the actual percentage rate of the commission or the alternate basis upon which the commission will be computed, including an example of how the commission would be calculated); (d) the disclosure must identify the source of the commission and the relationship between the source of the commission and the person receiving the commission; (e) the disclosure must be presented to the client at or prior to the time the recommendation of the financial product is made; (f) the disclosure must advise the client that he/she may obtain independent advice regarding the purchase of the financial product, and the client is given a reasonable opportunity to seek that advice; (g) the disclosure must contain a statement that the financial product may be returned to the issuing company within 30 days of receipt by the client for a refund as set forth in section 10127.10 of the Insurance Code; and (h) the disclosure must contain a statement that if the purchase of the financial product is for the purposes of Medi-Cal planning, the client has been advised of other appropriate alternatives, including spend-down strategies, and of the possibility of obtaining a fair hearing or obtaining a court order.

SB 72 also permits a client who has suffered damages as a result of a violation of these disclosure requirements to bring an action against the lawyer to recover actual and punitive damages and injunctive relief. In addition, a client may seek

an additional award up to \$10,000 where the trier of fact (1) finds that the client has suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct; (2) makes an affirmative finding that the lawyer knew or should have known that his/her conduct was directed at an elder or dependent adult; that the lawyer's conduct caused the client to suffer substantial loss of a home, employment, or source of income or requirement; or the client was substantially more vulnerable than other members of the public to the lawyer's conduct; and (3) finds that an additional award is appropriate. Violation of the provisions in this bill by a member of the State Bar is cause for discipline by the State Bar.

According to Senator Murray, SB 72 is designed to "protect elderly consumers from falling victim to financial scams by providing protection and notice to a potentially vulnerable class of clients." The author believes that seniors place enormous trust in their attorneys and are often in crisis and under pressure regarding financial matters; and that many seniors are conned into purchasing financial products from attorneys and losing their life savings. Senator Murray states that it is imperative that the state take appropriate steps to protect the aging population from the growing crime of financial abuse, and that the attorney-client relationship among lawyers and seniors must be held to the highest possible ethical standards. Governor Davis signed SB 72 on September 21 (Chapter 454, Statutes of 1999).

AB 925 (Hertzberg), as amended August 24, requires the state Department Justice to create a statewide registry for private conservators and guardians; all the information in the registry would be available to courts appointing conservators and guardians, but would otherwise remain confidential. The bill requires all persons who wish to serve as a conservator or guardian or who are currently serving as a conservator or guardian to register or re-register with the statewide registry; and also requires these conservators and guardians to file a signed declaration containing specified information.

Under current law, private professional conservators and guardians register with the superior court in each county, and must annually provide specified information to the court. According to Assemblymember Hertzberg, "a glaring flaw in the present system is that there is no communication between counties regarding the qualifications or credibility of those who are registered. Many conservators and guardians are registered in more than one county. If a conservator is registered in Los Angeles and Riverside counties and is removed for cause in Los Angeles County, Riverside County would never know. This lack of coordination prevents a court from accessing essential information when deciding whether to appoint a conservator or guardian. A statewide registry would enable courts to access detailed information from throughout the state about a conservator or guardian before they make an appointment." Governor Davis signed AB 925 on September 16 (Chapter 409, Statutes of 1999).

AB 329 (Scott). Insurers hire attorneys to defend their insureds, and are increasingly hiring auditing firms to review

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the bills submitted by counsel for defending their insureds, to ensure that counsel is billing pursuant to the agreement between the insurer and counsel. As amended July 7, AB 329 adds section 11580.02 to the Insurance Code, which permits liability insurers to review bills submitted for the defense of its insureds, but prohibits insurers from compensating the auditor/reviewer based on any of the following: (a) a percentage of the amount by which a bill is reduced for payment; (b) the number of claims or the cost of services for which the reviewer has denied authorization or payment; or (c) an agreement that no compensation will be due unless one or more bills are reduced for payment. Governor Davis signed AB 329 on October 9 (Chapter 883, Statutes of 1999).

AB 1676 (Assembly Judiciary Committee), as amended July 14, prohibits an appellate court from reversing or vacating a duly entered judgment upon an agreement or stipulation of the parties unless the court finds that there is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal, and that the reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement.

AB 1676 brings California appellate practice in line with that of the federal courts and the courts of almost every other state by prohibiting California state appellate courts from approving reversals of trial court judgments based on post-trial stipulations of the parties absent specific findings that the reversal would not adversely affect the interests of nonparties and the public. In so doing, AB 1676 overrules *Nearby v. Regents of the University of California*, 3 Cal. 4th 273 (1992), a controversial California Supreme Court decision that directed state appellate courts to engage in this practice due largely to considerations of judicial efficiency. The Governor signed AB 1676 on September 27 (Chapter 508, Statutes of 1999).

AB 1042 (Cedillo). Existing law requires law students attending unaccredited law schools pass the so-called "baby bar" examination after the first year, and precludes them from receiving credit for the first year or subsequent years of study until they have passed the examination. As amended April 14, AB 1042 would repeal the "baby bar" requirement and state legislative intent that this provision applies retroactively. [*S. Inactive File*]

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On August 17 in *Brosterhous v. State Bar of California*, Sacramento County Superior Court Judge Morrison C. England Jr. stunned Bar leaders and elated Bar critics by ruling that the Bar illegally spent its members' mandatory licensing fees on improper political and ideological activities almost a decade ago.

AB 1452 (Alquist), as introduced in February 1999, would require all unaccredited law schools that are subject to the jurisdiction of the Bureau for Private Postsecondary and Vocational Education to provide reasonable access to specified library resources, including a complete and current version of the published decisions of California courts (including advance sheets); a digest or encyclopedia of California law; a citator for California cases and statutes; the annotated California codes; and, if available, a standard text or treatise for each course or subject in the curriculum of the school. "Reasonable access" to these resources may be provided via online, Internet, and CD-ROM research services. This requirement would not apply to correspondence law schools. [*A. Jud; A. HiEd*]

LITIGATION

On August 17 in *Brosterhous v. State Bar of California*, No. 95AS03901, Sacramento County Superior Court Judge Morrison C. England Jr. stunned Bar leaders and elated Bar critics by ruling that the Bar illegally spent its members' mandatory licensing fees on improper political and ideological activities almost a decade ago.

Brosterhous arose from the U.S. Supreme Court's unanimous decision in *Keller v. State Bar*, 496 U.S. 1 (1992). In *Keller*, the Court struck down as violative of the first amendment the Bar's use of mandatory membership fees for ideological or political purposes unrelated to the "regulation of the legal profession or improving the quality of legal services." The Court also required the Bar to adopt adequate procedures, such as those outlined in *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986), to protect the interests of objectors by offering them a way to "opt out" of paying for *Keller*-violative activities. In response to *Keller*, the Bar adopted procedures under which it analyzes and categorizes its expenses as "chargeable" or "nonchargeable," and offers all Bar members an opportunity to decline to pay for the nonchargeable portion (the so-called "*Hudson* deduction"). In 1992, the *Brosterhous* plaintiffs challenged the Bar's 1991 calculation of its chargeable vs. nonchargeable expenses during 1989—whereas the Bar calculated its nonchargeable expenses at \$3 per lawyer, plaintiffs alleged that the Bar's calculations failed to include numerous nonchargeable activities and argued that their *Hudson* deduction for that year should have been \$87 per lawyer.

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Following seven years of pretrial skirmishing [16:2 CRLR 173], Judge England bifurcated the matter into two phases (liability and damages), and issued a 41-page ruling concluding Phase 1 on August 17. In his decision, Judge England found that the following 1989 Bar activities are not germane to the "regulation of the legal profession" restriction established in *Keller* and thus should not have been included in the calculation of chargeable expenses: (1) the Bar's Conference of Delegates; (2) all Washington, D.C. legislative lobbying by the Bar's Office of Governmental Affairs, and its legislative lobbying on many state bills in Sacramento; (3) liaison and support services provided to local, voluntary bar associations; (4) Volunteers in Parole, a social program that matches attorneys as mentors to young parolees; (5) legislative lobbying on 31 out of 40 bills related to the Bar's Legal Services Section (which promotes the provision of legal services to the poor); (6) several minority relations activities, including the Ethnic Minority Relations Committee's PALS mentoring program (devoted to mentoring minority law students), the Minority Attorneys Conference, and the Women in the Law Committee's survey on gender bias; (6) Bar communications activities to the extent they supported the above nonchargeable expenses; and (7) general and administrative overhead expenditures to the extent they supported the above nonchargeable expenses.

At this writing, Bar lawyers are considering a petition for writ of mandate to the Third District Court of Appeal before Phase 2 gets under way.

On a brighter note for the Bar, on September 2 the U.S. Ninth Circuit Court of Appeals upheld the district court's dismissal of *Morrow, et al. v. State Bar of California*, 188 F.3d 1174 (9th Cir. 1999), another challenge to the Bar's political activities. Assemblymember Bill Morrow, former state Senator Barry Keene, and former San Diego City Council member Bruce Henderson sued the Bar and its former lobbyist, Mel Assagai, for supporting 1997 California bills that would have raised the ceiling on pain and suffering damages in medical malpractice cases, prohibited civil compromises in domestic violence cases, defined a state claim for a hostile work environment, and permitted state law claims for discrimination on the basis of sexual orientation. Plaintiffs conceded these political activities were not funded from their mandatory Bar licensing fees (because they claimed their *Hudson* deduction), but sought to wholly enjoin the Bar from engaging in political activities not germane to its regulatory functions.

The Ninth Circuit noted that the constitutionality of a "unified bar" (in which regulatory functions are commingled with non-regulatory activities) was upheld by a plurality of the U.S. Supreme Court in *Lathrop v. Donohue*, 367 U.S. 820 (1961), and reaffirmed by a unanimous Court in *Keller* (see above). Because plaintiffs are not compelled to fund the Bar's

extracurricular lobbying, because plaintiffs do not contend that mandatory bar membership restricts (directly or indirectly) their ability to express their own views or to disagree with the positions of the Bar, compels them to express any particular ideas or make any particular utterances, or compels them to associate in any way with the Bar's political activities, and because *Keller* reaffirmed *Lathrop* on the point that "required membership alone" does not violate a member's constitutional rights, the Ninth Circuit affirmed the district court's dismissal of the case.

On August 26 in *Warden v. State Bar of California*, 21 Cal. 4th 628 (1999), the California Supreme Court reversed a 1997 decision of the First District Court of Appeal and upheld the constitutionality of the State Bar's Minimum Continuing Legal Education (MCLE) program. Created in 1989 by SB 905 (Davis) (Chapter 1425, Statutes of 1989), the MCLE program is designed "to assure that, throughout their careers, California attorneys remain current regarding the law, the obligations and standards of the profession, and the management of their practices." Under Business and Professions Code section 6070 *et seq.*, Bar members

must complete 36 hours of CLE during each three-year compliance period, including four hours of legal ethics, four more of either ethics or law practice management, and one hour each in substance abuse detection and elimination of bias in the legal profession. Exempt from the MCLE requirement (either as set forth in section 6070 or in Rule 958, California Rules of Court) are retired judges, officers and elected officials of the State of California, full-time professors at accredited law schools, and full-time state and federal employees acting within the scope of their employment.

In 1993, attorney Lew Warden challenged the MCLE requirement after the Bar placed him on administrative inactive status for his refusal to comply. Warden alleged that the MCLE program violated his right to equal protection by exempting certain Bar members from its requirements. Although the superior court granted the Bar's motion for summary judgment, the First District reversed, finding that the statutes creating program are unconstitutional because there is no rational relationship between the goal of the legislation and the exemptions for state officers, elected officials, retired judges, and full-time law professors. All of these exempted members may actively represent clients, yet there is no mechanism to ensure that they are aware of current legal developments. [16:1 CRLR 197]

After granting the Bar's petition for review, the Supreme Court reversed on a 5-2 vote. The majority framed the issue as follows: "[T]he constitutional question is whether an MCLE program that generally requires attorneys licensed by the state to complete a specified number of continuing education courses violates the federal or state equal protection clause by exempting retired judges, state officers and elected officials, and full-

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time professors at accredited law schools from the reach of the continuing education requirement." Applying the deferential "rational relationship" test to rules that "have a presumption of constitutionality," the majority concluded that the First District erred because "we do not believe it fairly can be said that there is no 'reasonably conceivable state of facts that could provide a rational basis for the classification.'"

The majority found "at least two" plausible reasons that rationally support each of the exemptions in question. "First, it would not have been irrational to conclude that the attorneys in each of the exempted categories, as a general matter, are less likely than other attorneys to represent clients on a full-time basis, thus rendering the need for a continuing education requirement less vital, as a matter of consumer protection, for these classes than for other attorneys. Second, it would not have been irrational to conclude that, in view of their particular professional roles and experience, the attorneys in each of the exempt classes (again, as a general matter) are less likely than lawyers in general to need continuing education courses in order to be familiar with recent legal developments or to remain competent practitioners." The majority emphasized that it is appropriate to evaluate the classifications as a whole: "Although some individuals within each of these classes may be as much in need of MCLE courses as other attorneys, in view of the wide berth the state traditionally is given when a suspect classification or fundamental right is not at issue, the exemptions in question cannot properly be found to be irrational or arbitrary under the traditional, deferential, rational relationship standard."

Justices Kennard and Brown dissented in separate opinions. Justice Kennard noted that the Bar's MCLE requirements are located in court rules, and found the majority's use of the "inappropriately weak and deferential" rational relationship standard improper when considering a court rule as opposed to a statute ("we owe ourselves no particular deference"). Justice Brown argued that the majority improperly applied federal constitutional law and wholly ignored California constitutional standards "as if they did not exist." She further accused the majority of "hypothesiz[ing] the two purposes that it claims justify the exemptions," and argued that "statutory classifications [must] bear some substantial relationship to an actual, not 'constructive,' legislative purpose." Justice Brown agreed with Justice Kennard that "the hypothetical purpose of exempting part-time attorneys simply makes no sense in light of the more general purpose of consumer protection that underlies the MCLE program: An incompetent part-time attorney is just as dangerous to the consumer as an incompetent full-time attorney."

The Supreme Court denied Warden's petition for rehearing on October 20; Warden intends to file a petition for *cer-*

tiorari with the U.S. Supreme Court. As noted above, SB 144 has decreased California lawyers' MCLE obligation to 25 hours every three years, repealed the exemption for retired judges, and eliminated the four-hour law practice management course requirement (see LEGISLATION).

Pending in the U.S. District Court for the Northern California, *Mueller, et al. v. Committee of Bar Examiners of the State Bar of California*, No. C-97-03309, challenges the policies and procedures used by the Committee of Bar Examiners (CBE) to review requests by people with learning disabilities for reasonable accommodations on the Bar examination and the first-year students' examination ("baby bar").

The case was filed by Oakland-based Disability Rights Advocates on behalf of individual plaintiff Robert Mueller in September 1997; later that month, the complaint was amended to include class action allegations. By 1998, plaintiffs' second amended complaint had added several other individual plaintiffs, an organizational plaintiff (the International Dyslexia Association), and several new causes of action. Plain-

tiffs are individuals with learning disabilities who alleged they were denied reasonable accommodations on examinations administered by defendant CBE. The second amended complaint alleged that defendants discriminate against law school graduates with disabilities in violation of the Americans with Disabilities Act (ADA), the California Unruh

Civil Rights Act, the California Disabled Persons Act, and the California Unfair Business Practices Act. In addition, plaintiffs alleged violations of the due process and equal process clauses of the fourteenth amendment and seek relief pursuant to 42 U.S.C. § 1983.

Essentially, plaintiffs alleged that (1) the CBE's written forms and guidelines required applicants to undergo expensive, invasive, burdensome, and unnecessary diagnostic testing, much of which was geared toward the evaluation of psychiatric problems rather than learning disabilities; (2) the CBE relied on a single consultant to develop policy and make determinations on individual petitions for accommodations, even though that consultant had "virtually no relevant experience in the field of learning disability and had publicly expressed bias against law graduates and law students with learning disabilities"; (3) the CBE routinely rejected the clinical judgments of the applicants' treating clinicians when ruling on individual accommodations requests; and (4) the CBE failed to develop a neutral and informed appellate process to review the determinations made by its consultant.

In defense, the Bar stated that it has "at all times used and applied procedures for the reasonable accommodation of learning disabilities on the Bar Exam....The Committee complied with its legal duty to provide reasonable accommodations to those named plaintiffs (and members of the putative

Justice Brown agreed with Justice Kennard that "the hypothetical purpose of exempting part-time attorneys simply makes no sense in light of the more general purpose of consumer protection that underlies the MCLE program: An incompetent part-time attorney is just as dangerous to the consumer as an incompetent full-time attorney."

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class) who presented documentation supporting a claimed disability within the meaning of the ADA. The Committee has provided significant reasonable testing accommodations, including substantial extra time, for many of the named plaintiffs in this case." The Bar also argues that a class action format is inappropriate, because plaintiffs' disability discrimination claims involve "numerous individualized determinations of law and fact."

During the pendency of the lawsuit, the Bar has instituted a number of significant changes in the way it handles requests for accommodation. During 1998, the CBE convened a "blue-ribbon panel of experts" to review its disability documentation guidelines and other policies and procedures related to processing requests for accommodations. The panel consists of five national experts in the field of learning disability. According to plaintiffs, the panel has "presented a completely revised set of written guidelines and application forms for the diagnostic testing and other criteria necessary to document a learning disability and need for accommodations. The panel also recommended standards for the minimum qualifications of the consultants which the Bar uses to review the merits of requests for accommodations based on learning disabilities."

In addition, at approximately the same time as the *Mueller* action was filed, the Bar circulated for comment new Rule XVII of its Rules Regulating Admission to Practice Law in California, entitled "Testing Accommodations to Take the First-Year Law Students' Examination and California Bar Examination." According to the Bar, new Rule XVII would "formalize and update [CBE's] policies and develop new ones to ensure that the process is clearly defined, expeditious, and fair." Under Rule XVII, an applicant seeking testing accommodations for a disability must file with the Bar a petition plus seven attached forms which include information regarding the disability and the requested accommodation(s) from the petitioner, the petitioner's treating health care professional(s), and the petitioner's law school regarding accommodations granted for taking examinations. The rule also specifies the Bar's process for reviewing the petition and notifying the petitioner of its status, and provides for appeal of an adverse determination and emergency petitions under certain circumstances. Finally, the rule notifies applicants that they must re-petition for accommodations on a subsequent exam if they do not pass the first exam. During a public comment period that ended on January 20, 1998, the Bar received no comments on its proposed rule. At this writing, the Board of Governors has not yet approved proposed Rule XVII.

While plaintiffs are apparently satisfied with these changes and claim that they were instituted by the Bar in direct response to their lawsuit, the Bar states that it "has submitted its policies and procedures regarding petitions for the accommodation of learning disabilities on the Bar Exam for review and comment by third party consultants and the public at large on numerous occasions well before the filing of this case." The Bar also contends that plaintiffs' claims for

declaratory and injunctive relief are moot due to its institution of these changes. However, the Bar's motion for partial summary judgment on that issue was largely denied in June. At this writing, the case is still pending. An October 14 hearing on plaintiffs' motion for class certification was taken off calendar, and the parties are reportedly in settlement negotiations focusing largely on the issue of plaintiffs' attorneys' fees.

Pending before the California Supreme Court are two Review Department decisions challenging summary disbarments under Business and Professions Code section 6102(c). That statute requires the summary disbarment of an attorney convicted of a felony that involves moral turpitude or where an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement. In June, the Supreme Court agreed to hear *In The Matter of Paguirigan*, No. S076968, concerning the summary disbarment of Cristeta A. Paguirigan after her conviction for forging two declarations in a civil matter, a crime of moral turpitude. On September 15, the court agreed to hear *In The Matter of Lesansky*, No. S079499, a Review Department decision summarily disbaring Pasadena attorney Stuart K. Lesansky following his no contest plea and conviction of an attempted lewd act upon a minor. Sexual crimes involving children constitute moral turpitude *per se*. The respondents' petitions for review argue that, as interpreted by the Bar in this case, section 6102(c) usurps the plenary authority of the California Supreme Court over attorney discipline because it does not permit a respondent to present or the court to consider evidence of mitigating factors. In the *Lesansky* case, attorney Lesansky met Jennifer Hersey over the Internet; Hersey stated she was 14 but looked 17. After several online chats of a sexual nature, Lesansky arranged to meet Hersey. They met in San Diego and again in Los Angeles. According to Lesansky, there was no physical or sexual contact at either meeting. However, Hersey was in reality a 20-year-old reporter working with Fox News on a story about sex on the Internet. Lesansky was arrested after the Los Angeles meeting, and pleaded no contest to one count of an attempted lewd act upon a child. He was sentenced to one year of probation and ordered to pay \$200 to a restitution fund and seek psychiatric counseling. Lesansky seeks to present evidence of the circumstances of his conviction and numerous character witnesses. At this writing, the court has yet to hear oral argument in either matter.

FUTURE MEETINGS

- December 3-4, 1999 in Los Angeles.
- February 4-5, 2000 in Los Angeles.
- March 31-April 2, 2000 in San Francisco.
- May 19-20, 2000 in Los Angeles.
- June 9-10, 2000 in San Francisco.
- August 25-26, 2000 in San Francisco.
- September 14-17, 2000 in San Diego (annual meeting).