ever, PUC Executive Director Neal Shulman noted that the state would have to pay Ohanian anyway, and that creation of the new position takes advantage of the special experience Ohanian gained as a PUC Commissioner.

LEGISLATION

AB 4 (Areias). Existing law, with specified exceptions, directs the PUC to require any call identification service offered by a telephone corporation, or by any other person or corporation that makes use of the facilities of a telephone corporation, to allow the caller, at no charge, to withhold, on an individual basis, the display of the caller's telephone number from the telephone instrument of the individual receiving the call. As introduced December 7, this bill would permit the withholding of the display of the caller's telephone number to be done on a per call basis, or a per line basis, at the customer's option and would prohibit a telephone call identification service from displaying a caller's telephone number without the affirmative written consent of the caller. *[A. U&C]*

FUTURE MEETINGS

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

STATE BAR OF CALIFORNIA

President: Harvey I. Saferstein
Executive Officer:
Herbert Rosenthal
(415) 561-8200 and
(213) 580-5000
TDD for Hearing- and Speech-Impaired:
(415) 561-8231 and
(213) 580-5566
Toll-Free Complaint Hotline:
1-800-843-9053

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. Today, the State Bar has over 128,000 members, which equals approximately 17% of the nation's population of lawyers.

The State Bar Act, Business and Professions Code section 6000 *et seq.*, designates a Board of Governors to run the State Bar. The Board President is elected by the Board of Governors at its June meeting and serves a one-year term beginning in September. Only governors who have served on the Board for three years are eligible to run for President.

The Board consists of 23 members—seventeen licensed attorneys and six nonlawyer public members. Of the attorneys, sixteen of them—including the President—are elected to the Board by lawyers in nine geographic districts. A representative of the California Young Lawyers Association (CYLA), appointed by that organization's Board of Directors, also sits on the Board. The six public members are variously selected by the Governor, Assembly Speaker, and Senate Rules Committee, and confirmed by the state Senate. 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). The terms are staggered to provide for the selection of five attorneys and two public members each year.

The State Bar includes twenty standing committees; fourteen special committees, addressing specific issues; sixteen sections covering fourteen substantive areas of law; Bar service programs; and the Conference of Delegates, which gives a representative voice to 291 local, ethnic, and specialty bar associations statewide.

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, which are codified at section 6076 of the Business and Professions Code, 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.

Governor Wilson recently appointed William R. Hayes of San Diego to serve as a public member on the Board of Governors. Hayes replaces public member Bruce Nestande of Costa Mesa, who resigned from the Board in mid-1992. There are presently two vacancies among the six public member slots. Governor Wilson has one additional public member to appoint, and Senate President pro Tem David Roberti is responsible for filling the other vacancy.

MAJOR PROJECTS

Bar to Focus on Litigation Reform During 1993. Board of Governors President Harvey Saferstein recently announced that one of the Bar's top priorities during 1993 is litigation reform. Citing the heavy burden on California courts, Saferstein listed various proposals and programs to avoid litigation.

• ***ADR Legislation.*** The Bar's Courts and Legislation Committee is working with representatives from the Los Angeles County Bar Association, the Judicial Council, the California Judges Association, and the California Trial Lawyers Association in drafting new legislation to encourage alternative dispute resolution (ADR). The Bar's previous legislative effort on this issue was rejected by the legislature in May 1992, partly due to poor lobbying and collaboration with other "players" on the issue by the Bar. *[12:2&3 CRLR 266–67]*

The Bar also intends to implement ADR in its own discipline system to reduce caseloads and workloads. The Board's Committee on Discipline and Client Assistance is working with Bar Chief Trial Counsel Robert Heflin on formulating a proposal to introduce ADR into the Bar's discipline system.

• ***Model Stipulation Program.*** The Courts and Legislation Committee is preparing model stipulations which the Bar will make available both to lawyers and clients. According to Saferstein, the Model Stipulation Program "would publish stipulations litigants could use to consent to voluntary settlement conferences, arbitration, mediation, limitations on discovery, bifurcation of issues, and other time-saving techniques."

• ***Early Settlement Program.*** Saferstein would also like to set up "a permanent, statewide network of volunteer lawyers to help the courts settle civil cases filed in our state courts." As proposed by Saferstein, the Early Settlement Program would bring together lawyers and litigants early in the litigation process, ensuring that all settlement possibilities are explored. According to Saferstein, "if every one of our active 110,000 lawyers across the state were to dedicate one, two, or three days a year to help courts settle cases, we could cut down the backlog to a manageable size."

Unified Bar Study. Following Governor Wilson's September 30 veto of AB 687 (Brown), which would have required the Board of Governors and specified legislators to appoint a 21-member task force to study whether the "integrated" State Bar should be abolished, the Board of Governors discussed whether to undertake the study on its own. An earlier version of AB 687 would have abolished the State Bar and delegated the state's regulation of attorneys to a new Attorneys' Board of California within the Depart-

ment of Consumer Affairs. *[12:4 CRLR 233]* At this writing, the Board of Governors is scheduled to vote on the issue at its January meeting. In December, the Board agreed to appoint a task force to conduct a twelve- to eighteen-month evaluation of the Bar's discipline system, to which 75% of the Bar's budget is dedicated. The discipline study will either be rolled into the "unified Bar" study or proceed on its own, depending on the Board's January decision.

A recent poll of California lawyers indicates that most agree with Speaker Brown's AB 687 approach. The December issue of *California Lawyer* published the results of an unscientific survey asking Bar licensees about the future of the Bar. The poll results indicate that a vast majority of the 651 respondents are unhappy with the present structure of the Bar. To the question whether the State Bar should continue to exist in its current form, 89% answered no and 11% said yes. Fifty-seven percent of the respondents said that the legal profession should be regulated by a state agency similar to those which regulate other occupations; only 33% said the Bar should continue self-regulation, and 10% said they do not believe in regulation at all. Speaker Brown's approach to restructuring the Bar was favored by a majority of respondents. The idea of a "bifurcated bar in California with a mandatory bar regulating admissions and discipline and a voluntary bar for all other activities" was supported by 64% of respondents, with 36% opposed.

Bar President Harvey Saferstein downplayed the poll's credibility, saying, "I discount it heavily. In any poll like that, you basically get complainers. I get complaints like this all the time and I understand them." Saferstein further stated that, based on his own informal survey, "There just is no perfect system of Bar governance." On the other hand, Board of Governors member Peter Keane called the poll results a "clarion call" from the Bar's membership, suggesting that—at the very least—the survey calls for an honest, good faith study of the issue by the Bar.

Bar Communications Office Pressing for Own Publication, in Spite of Flat Budget. At its January meeting, the Board of Governors is scheduled to consider launching a new official Bar publication to "improve communication" with California lawyers. The Bar used to publish *California Lawyer*, but sold it in 1987 to the Daily Journal Corporation because the publication was losing $800,000 per year. Now, the Bar communicates with its members through a monthly twelve-page *California Lawyer* insert called "State Bar Report" and a four-page tabloid included on a monthly basis in the Los Angeles and San Francisco editions of the *Daily Journal*.

However, Bar Senior Executive for Communications and Public Education Christy Carpenter is dissatisfied with this arrangement. According to Carpenter, "[b]ecause of the bar's prior ownership [of *California Lawyer*] and the appearance of ["State Bar Report"] within the magazine, confusion exists in the minds of many members over who controls the editorial content of the magazine. The bar receives frequent complaints from members who object to articles which appear in the magazine over which the bar has no control. Moreover, *California Lawyer* often includes articles which have an anti-bar slant; this criticism may gain a certain unintended credibility by virtue of the fact that the State Bar has chosen *California Lawyer* as its vehicle for communicating with its members."

Thus, Carpenter seeks Board of Governors approval of her proposal to discontinue the Bar's contract with the Daily Journal Corporation and publish a 20-page monthly tabloid called *State Bar Bulletin*, which will include editorial copy as well as display and classified advertising. The current arrangement costs the Bar $137,000 per year; Carpenter estimates that her proposal will cost that plus an additional $12,730 per year.

At its November retreat meeting, the Bar's Committee on Communications and Bar Relations approved Carpenter's proposal; at this writing, the Administration and Finance Committee and the Board of Governors are scheduled to consider the matter at their January meetings.

The Bar's fiscal situation may impact its decision on Carpenter's proposal. At its November retreat and December meeting, the Bar took a hard look at its budget. During 1993, the Bar will spend $53.3 million, up only slightly from $52.7 million in 1992. The 1993 budget adds no new programs or additional staff positions. This leveling-off is due to the legislature's 1992 freeze of Bar licensing dues *[12:4 CRLR 233–34]*; at the retreat, Bar Governors decided informally not to seek a dues increase in 1993 either, but to look internally instead for savings and areas of possible revenue enhancement (*see infra*).

Bar Committee Approves Applicant Fee Increases. At its December meeting, the Bar's Committee on Admissions and Competence approved fee increases which—if adopted by the Board of Governors—will hit applicants for Bar admission starting on March 1. Specifically, the Committee approved a $5 increase (from $50 to $55) for a law student's registration with the Bar, a $15 increase (from $15 to $30) in the Bar's late filing fee for law student registration, a $50 increase (from $50 to $100) for registration as an attorney applicant, a $15 increase (from $285 to $300) in the fee for the first-year law students' examination, a $15 increase (from $250 to $265) in the fee for an application for determination of moral character, a $60 increase (from $65 to $125) in the fee for an application for extension of determination of moral character, a $15 increase (from $310 to $325) in the fee to take the California Bar Exam for general applicants, a $50 increase (from $425 to $475) in the fee to take the California Bar Exam for attorney applicants, and a $20 increase (from $20 to $40) in the fee for an admission certificate.

At this writing, these fee increases are scheduled to be considered by the Committee on Administration and Finance and the Board of Governors at their January meetings.

Bar Approves Fee Agreement Form Amendments to Comply with SB 1405 (Presley). At its December meeting, the Board of Governors approved amendments to the Bar's sample written fee agreement forms to comply with SB 1405 (Presley) (Chapter 1265, Statutes of 1992). *[12:4 CRLR 237]* SB 1405, which becomes effective on January 1, amended Business and Professions Code sections 6147 and 6148 to require attorneys to include in their written fee agreements a statement as to whether the attorney has legal malpractice insurance "applicable to the service to be rendered and the policy limits of that coverage" if less than $100,000 per occurrence and $300,000 per policy term. Attorneys are required by law to have a written fee agreement with a client if the cost of representation is expected to exceed $1,000 or if a case is taken on a contingency basis.

As required by SB 1405, the amendments to the form provide two check-off "Insurance Disclosure" paragraphs—one in which the attorney discloses that he/she does not have legal malpractice insurance applicable to the services to be rendered, and another in which the attorney discloses that he/she has insurance and additionally discloses the policy limits where they are less than $100,000/$300,000.

Bar Publishes Client Trust Accounting Handbook. The Bar recently published a *Handbook on Client Trust Accounting for California Attorneys* in an effort to explain the new recordkeeping requirements for client trust accounts which take effect on January 1. As re-

cently amended by the Bar, Rule of Professional Conduct 4-100(C) requires attorneys who accept retainers and establish client trust accounts to maintain a ledger for each client whose funds are being held, maintain a journal for each client trust account that identifies exactly how much money is in the account, maintain bank statments and cancelled checks to verify the entries in the journal and ledger, and conduct a monthly reconciliation of the ledger, the journal, the statements, and the cancelled checks. *[12:2&3 CRLR 268]* The handbook contains sample forms to assist attorneys in complying with the new standards.

State Bar Rulemaking. The following is a status update on proposed regulatory amendments considered by the State Bar in recent months:

• ***Practical Training of Law Students***. At its October meeting, the Board of Governors approved proposed regulations governing the practical training of law students. The purpose of these rules, under which law students may be certified to give legal advice to clients, negotiate on behalf of clients, appear at depositions and in court on behalf of clients, and appear on behalf of a government agency in the prosecution of criminal actions—all under the direct supervision of a supervising attorney, is to provide for the operation of a program of practical training for law students as a valuable complement to academic classes. These regulations will become effective on or after the date the California Supreme Court approves new Rule of Court 983.2.

• ***Deposit of Advance Fees in Trust Account***. In June 1992, the Board of Governors adopted amendments to Rules of Professional Conduct 3-700 and 4-100, to require that all advance fees paid by a client to a State Bar member be placed in the member's client trust account unless the member's written fee agreement expressly provides that the fee paid in advance is earned when paid or is a "true retainer" as that term is defined in Rule 3-700(D)(2). *[12:4 CRLR 235]* At this writing, these rule changes have not yet been approved by the California Supreme Court.

• ***Attorney Confidentiality***. In July 1992, the Board of Governors approved new Rule of Professional Conduct 3-100, regarding State Bar members' duty of confidentiality to clients. The rule specifies an attorney's duty "to maintain inviolate the confidence, and, at every peril to himself or herself, to preserve the secrets of a client." The rule provides permissive exceptions to a member's duty of confidentiality (1) where the client consents to disclosure, and (2) to the extent the member reasonably believes necessary to prevent the commission of a criminal act that the member believes is imminently likely to result in death or substantial injury. *[12:4 CRLR 235]* At this writing, this rule change has not yet been approved by the California Supreme Court.

• ***Use of the Term "Certified Specialist."*** The California Supreme Court recently approved the Bar's repeal of Rule of Professional Conduct 1-400(D)(6), which prohibited attorneys from advertising as a "certified specialist" unless actually certified by the Bar's Board of Legal Specialization. A similar Illinois rule was invalidated by the U.S. Supreme Court in *Peel v. Attorney Registration and Disciplinary Commission of Illinois. [12:1 CRLR 193]*

To replace the repealed rule, the Bar recently released for public comment a new version of Rule 1-400(D)(6), which would prohibit a California attorney from advertising as a "certified specialist" unless the attorney is certified by the Bar's Board of Legal Specialization or by another entity approved by the Bar to designate specialists. At this writing, the public comment period on this proposed rule closes on March 11.

• ***Discrimination in Management of a Law Practice***. In August 1992, the Bar released for public comment proposed Rule 2-400, which would provide that "in the management or operation of a law practice a [State Bar] member shall not unlawfully discriminate or knowingly permit unlawful discrimination on the basis of race, national origin, sex, sexual orientation, religion, age or disability in: (1) hiring, promoting, discharging or otherwise determining the conditions of employment of any person; or (2) accepting or terminating representation of any client." *[12:4 CRLR 235–36]* The public comment period on this proposed rule closed on December 14; at this writing, Bar staff is reviewing the comments received.

• ***Suspension of Attorneys Who Fail to Comply with Child Support Orders***. On September 19, the Board of Governors adopted Rule of Court 962, which will enable the Bar to comply with AB 1394 (Speier), signed by Governor Wilson on May 8 (Chapter 50, Statutes of 1992). The new law, which became effective on November 1, requires most occupational licensing agencies to suspend the license of a licensee (or deny the application of a licensure applicant) who has failed to pay court-ordered family or child support. Rule 962 would authorize the Bar to submit the names of members who appear on a list of individuals who have failed to comply with child support orders prepared by the Department of Social Services (DSS) to the California Supreme Court for possible suspension from practice or noncertification of applicants for admission, and to adopt further rules and regulations as necessary to implement AB 1394. At this writing, this rule—which was circulated for public comment ending on December 17—has not yet been approved by the California Supreme Court.

Starting November 1, DSS began to compile and circulate the list of "deadbeat" parents to numerous state occupational licensing agencies, including the State Bar. If the name of an attorney seeking license renewal or an applicant for admission appears on the list, the Bar must notify the individual and license him/her only on a 150-day temporary basis. If the matter is not resolved and the individual's name is purged from the list within 150 days, the Bar will forward the attorney's name to the California Supreme Court for possible suspension or noncertification.

• ***Copies of Documents for Clients***. In September 1992, the Board's Committee on Education and Competence released for public comment proposed new Rule of Professional Conduct 3-520, which would require attorneys to provide to a client, upon request, one copy of any significant document or correspondence received or prepared by the attorney relating to the employment or representation. The public comment period, which was scheduled to close on December 17, has been extended until March 22.

LEGISLATION

SB 9 (Lockyer). Code of Civil Procedure section 425.16 provides that a cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim. In making its determination, the court shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based. In any such action, a prevailing defendant on a special motion to strike shall be entitled to recover his/her attorneys' fees and costs; if the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court may award costs and reasonable attorneys' fees to a plaintiff prevailing on the motion. As introduced De-

cember 7, this bill would make recovery of attorneys' fees and costs by a prevailing plaintiff under this provision mandatory rather than permissive if the motion to strike is frivolous or solely intended to cause unnecessary delay. This bill would also repeal section 425.16 on January 1, 1998, unless a later statute enacted before that date extends or repeals that date. *[S. Jud]*

AB 9 (Mountjoy). Under existing law, neither an agreed or qualified medical evaluator who performs evaluations relating to workers' compensation, nor a physician who consults with an agreed or qualified medical evaluator, shall offer, deliver, receive, or accept any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for the referred evaluation or consultation. As introduced December 7, this bill would extend that prohibition to any other physician who performs or provides either medical-legal evaluations or treatment, any attorney or any other representative who represents any party to an action, and any alleged injured worker or claimant or any agent, employee, or operative of any of those persons.

The bill would also require attorneys, clients, and physicians to sign a statement under penalty of perjury in specified circumstances that they have not violated that provision; attorneys and employees would be required to state that they had not offered, delivered, received, or accepted any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for any referral, examination, or evaluation. Perjury in connection with those statements would be punishable by imprisonment in the state prison for 4, 5, or 6 years, or by a fine of $50,000, or by both.

Existing law provides that the privilege of any person, including an attorney, to appear in any proceeding as a representative of any party before the Workers' Compensation Appeals Board, or any of its referees, may, after a hearing, be removed, denied, or suspended by the Appeals Board for a violation of law or for other good cause. This bill would extend that disciplinary authority to the privilege of any physician to perform services for which compensation may be received under the workers' compensation law. It would provide that allegations of a collusive referral arrangement between an attorney and a physician in which an attorney agrees to refer clients to a physician who has referred the client to the attorney shall be promptly investigated by the Board, and proof of this arrangement shall constitute good cause for sanctions against the attorney and physician.

Existing law authorizes the award of attorneys' fees to a deponent in connection with a deposition where the employer or insurance carrier requests a deposition from an injured employee or a person claiming benefits as a dependent of an injured employee. This bill would provide that, in determining whether to award attorneys' fees, the judge shall take into account the nature of the case, the facts and circumstances surrounding the claim, and the compliance or lack of compliance by the employee, his/her attorney, and his/her physician with the Labor Code and regulations. The bill would provide that, in the event the deposition was reasonably required by the employer to investigate and discover any form of fraud or other abuse, no fee shall be awarded. It would also provide that, at the request of the employer, an order for the payment of attorneys' fees under this section shall be deferred until the conclusion of trial or any settlement, and that, if after trial it is determined that the claim of the employee was unmeritorious and that the employee's attorney knew, or through the exercise of reasonable diligence should have known that it was unmeritorious, no attorneys' fees shall be awarded under the deposition provision to the employee's attorney, and the employee's attorney shall reimburse the employer or insurer for all reasonable fees required to defend the claim. *[A. F&I]*

AB 55 (Hauser). Under existing law, the covenants and restrictions in the declaration of a common interest development are enforceable as equitable servitudes, and the prevailing party in any enforcement action is entitled to costs and attorneys' fees. As introduced December 17, this bill would require the court to consider the prevailing party's refusal to engage in alternative dispute resolution in making such an award of attorneys' fees. *[A. Jud]*

AB 58 (Peace). Existing law limits the amount of a default judgment to the amount demanded in the complaint; existing law also specifies the judgments or orders of a superior court from which an appeal may be taken, the circumstances in which an undertaking is required in order for the enforcement of a judgment or order to be stayed on appeal, the process by which the attendance of a witness is compelled by subpoena, and the compensation of specified expert witnesses who are deposed. As introduced December 22, this bill would specifically limit the amount of a default judgment to the amount demanded in the complaint or the amount specified in a statement of damages filed in a personal injury or wrongful death action in superior court, and would revise the circumstances in which an undertaking is required in order for the enforcement of a judgment or order to be stayed on appeal and the process by which the attendance of witnesses representing a party who is not a natural person is compelled by subpoena. *[A. Jud]*

Future Legislation. At its October meeting, the Bar's Committee on Discipline and Client Assistance voted to recommend that the Board of Governors place proposed amendments to Business and Professions Code sections 6007 and 6023 on the Bar's legislative program for 1993. These amendments would enable the Bar to enforce binding fee arbitration awards in which clients are awarded refunds for fees. The Bar would have the authority to place attorneys who do not comply with those awards on temporary inactive status. The amendments would also authorize the imposition of penalties and costs to fund the program.

LITIGATION

The State Bar has filed a demurrer in ***Brosterhous, et al. v. State Bar of California***, No. 527974 (Sacramento County Superior Court), the Pacific Legal Foundation's challenge to the Bar's calculation of its 1991 "non-chargeable" expenses pursuant to the U.S. Supreme Court's ruling in *Keller v. State Bar. [12:4 CRLR 237; 12:2&3 CRLR 28–29, 270; 11:4 CRLR 38, 213]* At this writing, a decision is not expected until early 1993.

The California Supreme Court is expected to hold oral argument on January 6 in ***Rubin v. Green***, in which the Fourth District Court of Appeal held that violations of Business and Professions Code section 6152 and 6153 (running and capping prohibitions) are "unfair acts" within the meaning of California's "Little FTC Act," Business and Professions Code section 17200, and therefore give rise to its remedies of injunction and restitution. The Fourth District's decision arguably permits a party to sue an opposing party's counsel for a myriad of actions traditionally thought to fall within the "litigation privilege" and/or subject to the State Bar's discipline system. *[12:2&3 CRLR 270–71]*

RECENT MEETINGS

At its October meeting, the Board of Governors—acting on a proposal made by the Sierra Club Legal Defense Fund—recommended that the Judicial Council en-

courage the use of recycled and unbleached paper for court documents. However, the Board opposed a recommendation requiring double-sided copies, finding that such a requirement would create significant problems for attorneys and courts.

FUTURE MEETINGS

June 11–12 in San Francisco.
July 16–17 in Los Angeles.
August 27–28 in San Francisco.