ing for a flurry of similar trials which have already cost utilities millions of dollars. As *Zuidema* ended, several other cases involving EMF exposure are still pending in California. In San Diego County, a class action has been filed against SDG&E by residents whose homes near the San Onofre nuclear power plant abut a power line, and in Fresno at least twelve teachers and children at an elementary school have been diagnosed with cancer. The cancer victims all have been identified as having spent considerable time in two classroom areas close to power lines owned by PG&E.

RECENT MEETINGS

On April 22, the PUC held the first of three hearings on the challenges and opportunities facing the electric service industry in the near future. The hearing featured a dialogue involving the chief executive officers of the four major electric power companies in California and stems from the February report issued by the PUC's Strategic Planning Division entitled *California's Electric Services Industry: Perspectives on the Past, Strategies for the Future.* The second hearing will be held on May 25, and the third on June 24.

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
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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. 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 non-lawyer 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.

In February, Governor Wilson appointed Wendy H. Borcherdt of Los Angeles to serve as a public member on the Board of Governors. Borcherdt replaces public member Kathryn Thompson, who resigned from the Board in 1992. Borcherdt is a longtime Republican who is president of Borcherdt and Associates, a public policy consulting and lobbying firm. Also in February, Senate President pro Tem David Roberti appointed Roberta L. Weintraub of Los Angeles as a public member to replace Richard Annotico, whose third term on the Board expired last fall. Weintraub has served on the Los Angeles Unified School District Board since 1979, and has twice served as its president.

MAJOR PROJECTS

Bar to Create California Legal Corps. At its January 23 meeting, the Board of Governors approved a proposal to create a task force to develop plans for the formation of a new "California Legal Corps," a program designed to increase access to justice and the legal system for low-income Californians and enhance attorney participation in legal services programs. First proposed by State Bar President Harvey Saferstein, the Legal Corps will be a vehicle for law students, recent law school graduates, and other attorneys to help low-income people obtain legal assistance, and hopefully make up for a rapidly declining level of funding for California legal services programs. The Bar, which distributes accrued interest on attorneys' client trust funds to legal services programs for the poor through its Interest on Lawyers' Trust Accounts (IOLTA) program, will be distributing about 33% less money in 1993–94 than it did in 1992–93, due to declining interest rates.

The proposed Legal Corps will have two components: a large group of volunteers who will work with legal services programs on preventive law and community education, and a one-year fellowship program for first-year lawyers which would include a small stipend and law school loan repayment assistance. The Bar also hopes to incorporate an institutionalized disaster response plan into the Legal Corps effort.

The Legal Corps may receive partial funding through a mechanism to be established in SB 536 (Petris) (*see* LEGISLATION). The bill would require the Bar to establish and manage the Corps, and specify that the program must sponsor preventive law projects, alternative dispute resolution efforts, legal support for victims of disasters, and other activities designed to help improve access to justice for all Californians. SB 536 would also allow courts to distribute unclaimed funds from class action judgments, plus interest, "in any manner the court determines is consistent with the objectives and purposes of the underlying class action"—including the California Legal Corps. Although Governor Wilson vetoed a similar bill in 1991 *[11:4 CRLR 212]*, that measure would have allowed distribution of unclaimed class action funds directly through the IOLTA program.

Bar President Saferstein was charged with appointing members to the task force, who will include attorneys, members of the business community, and representatives of legal services programs. At this writing, no appointments have been announced.

Bar Creates Commission on the Future of the Legal Profession and the State Bar. At its January meeting, the Board of Governors established a new commission to study the future of the legal profession and the role of the State Bar—as currently structured—in regulating it. This action follows Governor Wilson's September 1992 veto of AB 687 (W. 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; 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 Department of Consumer Affairs. *[13:1 CRLR 140–41; 12:4 CRLR 233]*

The commission will consist of nine members appointed by the Governor and legislature, and as many as sixteen members appointed by the State Bar President. The commission is to submit interim reports to the Board of Governors every six months, and a final report by the end of 1994. As part of its purview, the commission will incorporate a yearlong review of the Bar's discipline system, which is already under way.

On March 30, Bar President Harvey Saferstein appointed Los Angeles attorney Patricia Phillips to chair the commission. Phillips is a former member of the Board of Governors and was the first woman president of the Los Angeles County Bar Association. At this writing, no other appointments to the Commission have been announced.

Task Force to Study Sexual Orientation Discrimination in the Legal Profession. Also in January, the Board of Governors established a task force to study sexual orientation discrimination in the legal system and the legal profession. The sixteen-member task force will examine the prevalence of bias against gay, lesbian, and bisexual litigants in the legal system, and the participation of gay, lesbian, and bisexual lawyers in the profession. The Board allocated $9,000 to fund the study; pursuant to the *Keller* decision, the money will come from not from mandatory attorney licensing fees but from funds contributed by California lawyers who choose to pay the so-called "*Hudson* deduction" (*see* LITIGATION). At this writing, no appointments to the task force have been announced.

Bar Establishes Lawyer Advertising Task Force. In response to pressure by the legislature and the public, Bar President Harvey Saferstein recently created the Lawyer Advertising Task Force. Headed by Board member Lawrence Crispo, the task force will examine whether existing lawyer advertising regulations sufficiently protect consumers and, if not, whether greater restrictions would be constitutional. The issue pits concerns that lawyer advertisements mislead consumers against concerns that limits on attorney advertising violate free speech rights. In its 1977 decision in *Bates v. State Bar of Arizona*, the U.S. Supreme Court recognized lawyer advertising as commercial speech which is deserving of protection, and struck down an Arizona ban on such advertising. While false and misleading advertising may be barred, the Court held that attorney advertising of routine legal services must be permitted. Since that decision, there has been a tremendous increase in attorney advertising. Critics contend that much attorney advertising—particularly in the personal injury area—misleads consumers and even encourages them to abuse the legal system by filing frivolous lawsuits for the purpose of obtaining "nuisance settlements."

In spite of the Bar's move, Assemblymember Paul Horcher has reintroduced his bill to enact a comprehensive plan regulating false and misleading lawyer advertising; a similar Horcher bill was rejected in committee last year. *[12:4 CRLR 237]* The bill would prohibit any guarantee of the outcome of a lawsuit, suggestions of immediate cash settlements, and unlabeled testimonials or dramatizations. According to Horcher, the bill would expand current State Bar rules on lawyer advertising and incorporate advertising rules similar to sweeping controls on lawyers advertising that have been implemented in Florida (*see* LEGISLATION).

At two public hearings held by the task force in January, most of the speakers noted that the Bar's rules already prohibit false and misleading advertising, and argued that stricter regulation of attorney advertising would likely run afoul of the first amendment. In early March, the task force drafted six amendments to Rule of Professional Conduct 1-400 which have been released for a public comment period ending on July 16. The amendments would prohibit attorneys from advertising "no fee" contingency arrangements unless the ad also specifies whether clients are liable for the attorneys' expenses in handling a case; advertisements which list a trade or fictitious name without including the name of the lawyer behind the ad; dramatizations, unless they include a disclaimer stating "this is a dramatization"; advertising that does not contain the name and State Bar number of the attorney responsible for it; and mailers (except for professional announcements) that do not bear the word "advertisement" or "newsletter" on every page.

New Bar Publication Approved. After delaying a decision at its January meeting, the Board of Governors voted in April to approve the publication and distribution of *State Bar Bulletin*, a new monthly tabloid newspaper, to its members starting in January 1994. This publication will replace the Bar's current twelve-page *State Bar Report* insert in the Daily Journal Corporation's *California Lawyer*. Although past in-house publishing attempts have failed, proponents of the new publication cited a need for an independent publication so as to insulate Bar public relations and communications from other, sometimes "anti-Bar" articles which have appeared in *California Lawyer*. *[13:1 CRLR 141]*

Four members of the Board of Governors dissented from the vote, citing the cost of the publication and a projected $2 million deficit in the Bar's budget during 1994. The Bar currently uses $136,000 of its members' dues under its contract with the Daily Journal Corporation, and would be required to spend at least $146,000 per year to publish its own newspaper. Bar Senior Communications Executive Christy Carpenter assured Board members that she expects to break even on the publication because it will include advertising. She foresees the need to add only one part-time writer and one advertising salesperson to the Bar's current communications staff.

Bar Increases Applicant Fees. At its January meeting, the Board of Governors approved applicant fee increases which became effective on March 1. Specifically, the Board 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.

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

• ***Gifts to Attorneys From Clients.*** In response to widespread publicity concerning a southern California attorney who allegedly prepared wills for elderly clients which made him the recipient of millions of dollars in cash, stock, and real estate, the Board of Governors commenced a rulemaking proceeding in February to amend Rule of Professional Conduct 4-400. The revised rule would prohibit State Bar members from (1) inducing a client to make a gift, including a testamentary gift, to the member or the member's parent, child, sibling, or spouse, except where the client is related to the member, and (2) preparing an instrument giving any gift from a client to the member or the member's parent, child, sibling, or spouse, except where the client is related to the member.

The Bar received public comments on the proposal until April 26; at this writing, Bar staff are reviewing the comments, and adoption of the rule has been placed on the Board of Governors' June agenda. The new rule must be approved by the California Supreme Court before it becomes effective.

MCLE Written Materials Requirement. At its April meeting, the Committee on Admissions and Competence voted to release for public comment a proposed amendment to section 7.1.4 of the rules of the Bar's Minimum Continuing Legal Education (MCLE) program. The rule currently requires that substantive written materials be distributed to all participants in an approved MCLE course that is more than one hour in length. The proposed amendment would distinguish self-study from participatory activities and require participants in a self-study activity to have the use of substantive written materials while viewing or listening to videotapes or audiotapes and reasonable access to the written materials thereafter, but does not require participants to retain a personal copy of the materials. At this writing, the public comment period is scheduled to close on July 16.

• ***Practical Training of Law Students.*** At its October 1992 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. The Bar submitted the new rule in December 1992; at this writing, the court has not yet approved the rule.

• ***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]* Although the Bar has submitted this rule to the California Supreme Court, the court has not issued its decision at this writing.

• ***Use of the Term "Certified Specialist."*** On March 11, the public comment period closed on the Bar's proposal to adopt a new version of Rule of Professional Conduct 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. *[13:1 CRLR 142]* Bar staff is currently reviewing the comments received; at this writing, this proposal has not been scheduled on the Board of Governors' agenda.

• ***Discrimination in Management of a Law Practice.*** At its March meeting, the Board of Governors adopted 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]* At this writing, the rule has not yet been approved by the California Supreme Court.

• ***Suspension of Attorneys Who Fail to Comply with Child Support Orders.*** On January 14, the California Supreme Court approved Rule of Court 962, which will enable the Bar to comply with AB 1394 (Speier) (Chapter 50, Statutes of 1992). The new law, which became effective in November 1992, 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 authorizes 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.

• ***Copies of Documents for Clients.*** At its June meeting, the Board of Governors is scheduled to vote whether to adopt 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. *[13:1 CRLR 142]*

LEGISLATION

SB 645 (Presley), as amended May 12, would make changes to a number of aspects of the Bar's discipline system. Among other things, it would increase the membership of the Hearing Department of the State Bar Court from six to seven judges. The bill would also revise the membership of the Bar's Complainants' Grievance Panel, which monitors complaints and disciplinary proceedings against attorneys, to require four public members and three attorney members.

This bill would revise the duties of the Panel, impose additional responsibilities on the Panel with respect to the audit and review of complaints, and provide for funding for the panel, as specified.

SB 645 would authorize the State Bar to establish an alternative dispute resolution discipline mediation program to resolve consumer complaints against attorneys that do not warrant the institution of formal investigation or prosecution.

Existing law, with certain exceptions, makes privileged any confidential communication between a lawyer and a client. This bill would create an exception to the lawyer-client privilege if the lawyer reasonably believes that disclosure of any confidential communication relating to representation of a client is necessary to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm (*see* MAJOR PROJECTS). *[S. Floor]*

AB 1544 (W. Brown), as amended April 27, would require that consumer complaints about the conduct of an attorney must be made in writing and signed by the complainant on a form of the State Bar. The form shall state that any person who makes a complaint, knowing it to be false and malicious, is guilty of a misdemeanor. The bill would also provide that disputes over the enforcement of liens by health care providers shall not be grounds for disciplinary action; the State Bar has no jurisdiction to prosecute an attorney for a disciplinary matter unless the complaint is received within one year of the complainant's actual knowledge or discovery of the alleged violation, with specified exceptions; the State Bar has two years after receipt of a complaint or after discovery by the Bar of an alleged violation to file a notice to show cause; before disciplinary charges are filed, a settlement conference before a judge of the State Bar Court shall be held upon request of either party; and an attorney complained against shall receive any exculpatory evidence obtained by the Bar, as specified. *[A. Floor]*

AB 2300 (Morrow). Under existing law, superior courts with ten or more judges must submit civil matters where the amount in controversy, in the opinion of the court, will not exceed $50,000, to arbitration. Other superior courts may provide for submittal of these cases to arbitration by local court rule where the amount in controversy, in the opinion of the court, will not exceed $50,000. Under existing law, in superior courts with fewer than ten judges and which have not adopted such a local rule, matters are required to be submitted to this arbitration if the plaintiff files an election therefor and agrees that the arbitration award shall not exceed $50,000. As amended April 12, this bill would increase the above $50,000 maximums to $100,000. *[A. W&M]*

SB 401 (Lockyer), as amended May 19, would require all courts in Los Angeles County, and authorize other courts, to implement a prescribed program of mediation of specified civil matters, where the amount in controversy does not exceed $50,000. In courts providing judicial arbitration, the bill would authorize an alternative referral for mediation under the bill. The bill would require the Judicial Council to adopt prescribed rules for mediation and to submit a report to the legislature on alternative dispute resolution programs by January 1, 1996. The above provisions of the bill would be repealed without further action of the legislature on January 1, 1997.

The bill would also revise existing law specifying what aspects of mediation are excluded from evidence and would also exclude these matters from discovery.

Under existing provisions of the Trial Court Delay Reduction Act, delay reduction rules are required to preclude referral to arbitration before the elapse of 210 days following the filing of the complaint, excluding a specified stipulated continuance not exceeding 30 days. This bill would authorize making a referral to arbitration or mediation at any status conference, and would include referrals to mediation other than referrals pursuant to the provisions added by this bill within the above 210-day rule, as specified. *[S. Jud]*

AB 2302 (Morrow), as amended May 4, would require mandatory mediation, as specified, in certain civil actions upon the filing of a request for mediation by a party against whom a complaint or cross-complaint has been filed, within thirty days of the latter filing. *[A. Jud]*

SB 373 (Lockyer). Existing law establishes annual membership fees for members of the State Bar of California for the year 1993, but does not establish membership fees for later years. As introduced February 19, this bill would establish annual membership fees for the years 1994 and 1995 in the same amounts as those for the year 1993 and would extend the repealer in the provision to January 1, 1996.

Existing law, until January 1, 1994, requires the Board of Governors of the State Bar to increase the annual membership fees by an additional fee of $110 to be used exclusively for discipline augmentation. This bill would continue that requirement for the years 1994 and 1995 and would also extend the repealer in the provision to January 1, 1996. *[A. Jud]*

SB 536 (Petris), as introduced March 1, would require courts to determine the total amount payable to all class members in a class action, set a reporting date for notifying the court of actual amounts received by class members, and require the court to amend the judgment to direct the defendant to pay any unpaid residue, plus interest, in any manner the court determines is consistent with the objectives and purposes of the underlying cause of action, including payment to the State Bar for the use of the California Legal Corps created by the bill. The bill would specify the purposes of the California Legal Corps (*see* MAJOR PROJECTS). *[S. Floor]*

SB 312 (Petris). Existing law provides for the formation of professional law corporations and their regulation by the State Bar. As amended May 3, this bill would allow a professional law corporation to be incorporated as a nonprofit public benefit corporation if (1) the corporation complies with the provisions of the Nonprofit Public Benefit Corporation Law, and additional specified requirements, or (2) the corporation is a qualified legal services project or a qualified support center, as specified. The bill would, until January 1, 1996, exempt those corporations from a requirement of obtaining errors and omissions liability insurance if the board of directors has made all reasonable efforts to obtain available insurance. The bill would also exempt qualified legal service projects and support centers from certain filing requirements. *[S. Floor*

SB 1053 (Watson). Existing law authorizes the legislative body of any public or municipal corporation or district to contract with and employ any persons for the furnishing of special services and advice in various matters, including legal matters. As introduced March 5, this bill would require, in specified circumstances, the disclosure of the names of private law firms so employed by local public agencies and the amounts of money paid to those firms in each fiscal year by publication in newspapers of general circulation. *[S. Floor]*

AB 1272 (Connolly). Existing law requires the Board of Governors to establish a system for the arbitration of disputes concerning fees and costs charged by attorneys, which is administered by the State Bar. Existing law, except as to an action filed in small claims court, requires an attorney to forward a written notice, as specified, to a client at the time of service of summons in an action against the client for recovery of fees or costs. As amended May 17, this bill would eliminate the exception for actions filed in small claims court. This bill would provide for a proce-

dure to enforce an unpaid arbitration award that has become final by requiring the State Bar to place the attorney on involuntary inactive status until the award is paid, and would impose on that attorney administrative penalties and costs, or both.

Existing law provides for binding arbitration upon agreement of the parties in the case of a dispute over attorneys' fees. In the absence of an agreement, either party is entitled to a trial after arbitration in a court of appropriate jurisdiction. This bill would permit a municipal or justice court to conduct a trial pursuant to an action for declaratory relief, after a nonbinding arbitration where the amount in controversy is $25,000 or less, or to confirm, correct, or vacate a fee arbitration award where the arbitration award is $25,000 or less. This bill would permit a small claims court to confirm, correct, or vacate a fee arbitration award not exceeding $5,000 or to conduct a hearing de novo after nonbinding arbitration of a fee dispute involving no more than $5,000. *[A. Floor]*

AB 600 (Speier), as amended May 6, would provide that in any action against a person for conduct for which the person is convicted of the crime of intentionally blocking the entrance or exit of a health care facility, place of worship, or school, the court may in its discretion and in addition to other costs, award reasonable attorneys' fees to a prevailing plaintiff. *[A. Floor]*

AB 602 (Speier). Under existing law, a party to a civil action may not be awarded his/her attorneys' fees unless authorized by statute or by a contract of the parties. As amended May 3, this bill would authorize recovery of attorneys' fees by a prevailing plaintiff in an action to recover prescribed hospital, medical, or disability benefits for a catastrophic or life-threatening illness or condition. The bill would make unenforceable any contractual waiver of the right to attorneys' fees under the bill. *[A. Floor]*

AB 1287 (Moore), as amended May 4, would, until January 1, 1997, enact a comprehensive scheme for the regulation and registration of "self-help legal services providers" (also known as "legal technicians" or "independent paralegals") under the jurisdiction of the Department of Consumer Affairs. The bill would establish a registration and renewal fee and create a Self-Help Legal Services Provider Registration Fund. *[A. Jud]*

AB 21 (Umberg). Under existing law, the relationship of guardian and ward and conservator and conservatee is a fiduciary relationship. As amended May 6, this bill would specify that, except as otherwise specifically provided, this relationship is governed by the law of trusts.

Under existing law, there is no express prohibition against an attorney who serves as a guardian, conservator, or trustee from acting as an attorney for the estate or trust or which prohibits collecting additional legal fees therefor. Under existing law, an attorney who is the personal representative of a decedent's estate may not act as attorney for the estate without approval of the court. This bill would permit an attorney, certain of his/her relations, or his/her law firm to provide compensated legal services to an estate or trust for which the attorney serves as guardian, conservator, personal representative, or trustee only if authorized in advance by the court or, in the case of a trustee, by giving notice to specified persons who may object to the dual compensation. These provisions would not apply, however, where the guardian, conservator, or trustee is related by blood or marriage to, or is a cohabitant with, the ward, conservatee, or settlor.

Under existing law, nothing precludes a person who is instrumental in the drafting of an instrument making a donative transfer for another from receiving a gift thereunder. With certain exceptions, this bill would invalidate a transfer to the person who drafted or transcribed such an instrument, or who caused the instrument to be drafted or transcribed, and persons having certain business and other relationships thereto (*see* MAJOR PROJECTS). The bill would define these persons as "disqualified persons." The bill would provide exceptions for transfers to persons related by blood or marriage to, or who cohabit with, the transferor or where the instrument is reviewed by an attorney not related to, or associated with, the proposed transferee, or where the transfer is approved by a court. The bill would specify forms for attorney certification, for purposes of the above, which would certify that the transfer was not the product of fraud, menace, duress, or undue influence. *[S. Jud]*

AB 108 (Richter). Existing law authorizes trial courts to order a party, the party's attorney, or both, to pay any reasonable expenses, including attorneys' fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. As amended May 6, this bill would revise this provision to require trial courts to impose upon a party, the party's attorney, or both, an appropriate sanction, which shall include an order to pay reasonable expenses, for actions or tactics that are frivolous. The bill would also provide, except as specified, that the signature of an attorney or party on any pleading, motion, and any other paper filed or served in a civil action, constitutes a certificate that he/she has read the paper, has made a reasonable inquiry into the allegations, and presents it in good faith and not for an improper purpose. The bill would require any pleading, motion, or other paper that is not signed to be stricken unless it is promptly signed after the omission is called to the attention of the pleader or moving party. The bill would require an appropriate sanction to be imposed by the court if a paper is signed in violation of these requirements. *[A. Jud]*

AB 208 (Horcher), as introduced January 25, would enact a comprehensive regulatory scheme to, among other things, provide that no advertisement made by an attorney or law firm shall contain any false, misleading, or deceptive statement or omission (*see* MAJOR PROJECTS). This bill would also provide that, with respect to that prohibition, no complaint or cause of action shall be maintained against an advertising medium or advertising agency with respect to the content of an advertisement or communication. *[A. Jud]*

AB 335 (Ferguson). Existing law authorizes the State Bar to establish and administer a mandatory continuing legal education program. Existing law also exempts from this program retired judges, officers and elected officials of the State of California, full-time law professors, and full-time employees of the State of California. As introduced February 9, this bill would delete the exemptions for officers and elected officials of the State of California and full-time employees of the State of California. *[A. Floor]*

AB 498 (Goldsmith). Existing law provides that a party to a cause of action may move for summary judgment if it is contended that the action has no merit or that there is no defense to the action or proceeding. The motion must be supported by affidavits, declarations, and other documents, including a separate statement setting forth plainly and concisely all material facts which the moving party contends are undisputed. Existing law imposes similar requirements on the party opposing the motion. Existing law provides that once the plaintiff or cross-complainant has met his/her burden of showing that there is no defense to a cause of action, or once the defendant or cross-defendant has met his/her burden of showing that a cause of action has no merit, the burden shifts to the opposing party to show that a triable issue of one or more material facts exist as to that cause of action. As amended May 4, this bill would,

instead, provide that the burden shifts to the opposing party to show that a triable issue of one or more material facts exist as to that cause of action or a defense thereto. The bill would prohibit the opposing party from relying on the mere allegations or denials of the pleadings to show that a triable issue of material fact exists, and would require the opposing party to set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto. *[S. Jud]*

AB 500 (Goldsmith). Existing law provides with respect to the settlement of civil actions that, if an offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment, the plaintiff shall not recover his/her costs and shall pay the defendant's costs from the time of the offer. A similar provision, at the discretion of the court, applies to offers by a plaintiff which are not accepted by the defendant. As amended May 17, this bill would add reasonable attorneys' fees from the time of offer to the costs recoverable under this provision, but these new provisions would not apply to personal injury actions in superior court. The bill would also authorize, in lieu of accepting a settlement offer, an offeree to request binding arbitration which would preclude the offeror from recovering attorneys' fees under the above provisions. *[A. Jud]*

AB 1757 (Caldera). Under existing law, with certain exceptions, evidence of anything said or of any admission made in the course of mediation is not admissible in evidence; disclosure of any such evidence may not be compelled in any civil action, and no document prepared for the purpose of, in the course of, or pursuant to, the mediation is admissible in evidence; and disclosure of such a document may not be compelled in any civil action, unless the document otherwise specifies, provided that a specified confidentiality agreement is executed prior to the mediation. Existing law provides that no arbitrator shall be competent to testify in any subsequent civil proceeding as to any statement, conduct, decision, or ruling related to the arbitration, except as to a statement or conduct that could give rise to civil or criminal contempt, constitute a crime, be the subject of specified investigations regarding attorneys and judges, or give rise to certain disqualification proceedings regarding judges. As amended April 20, this bill would include mediators in the latter provision, except with regard to the mediation of visitation and custody issues, as specified. *[S. Jud]*

SB 9 (Lockyer). Existing law 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, as specified, shall be subject to a special motion to strike, unless the court, after considering the pleadings and supporting and opposing affidavits, determines that there is a probability that the plaintiff will prevail on the claim. This provision also states that if the court determines that the plaintiff has established a probability that he/she would prevail, neither that determination nor the fact of that determination would be admissible in evidence at any later stage of the case nor would it affect the burden or degree of proof. It requires the recovery of attorneys' fees and costs by a prevailing defendant on a special motion to strike, and authorizes recovery of attorneys' fees and costs by a prevailing plaintiff if the court finds that the motion was frivolous or solely intended to cause unnecessary delay. These provisions do not apply to any action brought in the name of the people of the State of California by certain state and local prosecutors, and require all discovery proceedings to be stayed upon the filing of a notice of this special motion, except as specified.

As introduced December 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 was frivolous or solely intended to cause unnecessary delay. The bill would also repeal the entire provision on January 1, 1998, unless a later statute enacted before that date extends or repeals that date. *[S. Floor]*

AB 55 (Hauser), as amended May 6, would generally require that, before a common interest development association or the owner of a separate interest therein brings an action for declaratory relief or injunctive relief relating to the enforcement of the governing documents of the common interest development, the association or owner shall endeavor to submit the matter to alternative dispute resolution as provided in the bill. Under the bill, any party to such a dispute may request another party to submit to alternative dispute resolution by serving a prescribed Request for Resolution. The bill would make anything said in the course of alternative dispute resolution under the bill inadmissible in any civil action unless consented to by both parties, and would preclude compelling testimony or disclosure of any statement or admission made in the course of the alternative dispute resolution. With certain exceptions, the bill would require that a certificate certifying compliance with the above requirements be filed with a civil action arising out of such a dispute. Failure to file the certificate where required would render the plaintiff's complaint subject to a motion to strike or demurrer.

This bill would also allow the court to stay a pending action in order to refer it to alternative dispute resolution. In any action for declaratory relief or injunctive relief related to enforcement of the governing documents of a common interest development, the bill would entitle the prevailing party to an award of attorneys' fees and costs, but 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 and costs. The bill would require common interest development associations to provide their members annually with copies of the provisions of the bill, and would require any Request for Resolution sent to an owner by the association to also include a copy of the provision of the bill. *[S. Jud]*

AB 58 (Peace), as amended April 12, would add a motion for dismissal, as specified, to the motions which may be made by a defendant prior to pleading; provide for a motion for judgment on the pleadings; revise the requirement for a statement of the nature and amount of damages; revise certain procedures for the dismissal of civil actions and the granting of default judgments; specify that additional orders are open on appeal; specify the effect of denial of summary adjudication or failure to seek summary adjudication; 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 revise 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 witnesses representing a party who is not a natural person is compelled by subpoena, and instances in which attorneys' fees are allowed as costs. *[A. Floor]*

■ LITIGATION

So-called "fee objectors"—lawyers challenging the sufficiency of the Bar's "*Hudson* deduction" licensing fee reduction—were dealt a one-two punch during the first half of 1993. First, on January 25, the Sacramento Superior Court sustained the Bar's demurrer in ***Brosterhous, et al. v. State Bar of California***, No. 527974, the Pacific Legal Foundation's (PLF) 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* and its use of an arbitration procedure to resolve disputes over the calculation. *[12:4 CRLR 237; 12:2&3 CRLR 28–29, 270; 11:4 CRLR 38, 213]* The superior court found that the legislature has delegated to the Bar the authority to govern its operations, that the Bar has adopted rules and regulations to comply with the *Keller* decision (including adoption of the "*Hudson* deduction" procedures and an arbitration process to resolve disputes), and that the rules adopted meet the requirements of *Keller*. The court held that the arbitration procedure adopted by the Bar meets due process requirements, the consent of Bar members to the Bar's arbitration process is not required, and that the "fee objectors" are not entitled to "judicial review of the specific costs of the Bar and whether they are proper under *Keller*." PLF has appealed to the Third District Court of Appeal, arguing that the Bar's determination of "chargeable" costs should be directly appealable to the courts and citing a string of cases in support of the proposition that "compulsory arbitration statutes that effectively close the courts to the litigants by compelling them to resort to arbitrators for a final and binding determination are void as against public policy and are unconstitutional."

The other shoe dropped on May 3, when arbitrator Reginald Alleyne rejected the request of 162 lawyers for additional reductions in their 1992 Bar dues. During that year, the Bar offered to refund $4 in fees; the "fee objectors"—again represented by PLF—sought a further reduction of $104.68. In his ruling, Alleyne upheld the Bar's standard in calculating "chargeable" and "non-chargeable" expenses for its members, and even found that certain programs which were challenged last year (primarily the work of the Bar's Ethnic Minority Relations Committee and its Committee on Women in the Law) are vital to the Bar's mission and should be charged to members once again beginning in calendar year 1994.

Following oral argument on January 6, the California Supreme Court issued its opinion in ***Rubin v. Green*** on April 5. In the case, the court reviewed a Fourth District Court of Appeal decision holding 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]*

In a 4–3 vote, the majority ruled that the "solicitation" acts at issue were communicative and, as such, fell within the "litigation privilege" of Civil Code section 47(b); that alleged solicitation is not an "unfair business practice" under Business and Professions Code section 17200; and that any alleged solicitation should be handled by the State Bar discipline system or through criminal prosecution—not by another round of litigation by private parties seeking to intimidate opponents away from access to the judicial system. The majority stated that the attempted lawsuit "not only undermines the established policy of allowing access to the courts, but that, given the availability of other remedies for the redress of attorney solicitation, this retaliatory suit is not maintainable."

In ***Reves v. Ernst & Young***, No. 97-886 (Mar. 3, 1993), the U.S. Supreme court held that accountants, lawyers, and other professionals must actually participate in the operation or management of an illegal enterprise in order to be liable under the federal Racketeer Influenced and Corrupt Organizations Act (RICO). The Court upheld the Eighth Circuit Court of Appeals' decision affirming the trial court's decision to grant summary judgment and dismiss a case brought against the accounting firm Ernst & Young for its role in a stock offering that was later the subject of a RICO suit by investors.

FUTURE MEETINGS

August 26–28 in San Francisco.

October 7–10 in San Diego (annual meeting).

December 2–4 in San Francisco (tentative).