STATE BAR OF CALIFORNIA

President: John M. Seitman
Executive Officer: Herbert Rosenthal
(415) 561-8200
(213) 580-5000
Toll-Free Complaint Number:
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 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.

MAJOR PROJECTS:

Legislative Analyst Reviews New State Bar Court. The attorney discipline system of the State Bar Court has undergone dramatic structural changes over the past five years. The evolution began in the mid-1980s, when public dissatisfaction with the Bar's discipline system hit its peak. The system was so inadequate and produced so few disciplinary actions that Senator Robert Presley called for the removal of the enforcement function from the Bar and its lawyer-dominated Board of Governors. Unable to secure enough votes to divest the Bar of its discipline role entirely, Presley instead sought the creation of an independent "monitor" to conduct a long-term, in-depth investigation of the Bar's process and make reform recommendations to the legislature and the public.

In 1986, the legislature passed SB 1543 (Presley) (Chapter 1114) which, among other things, enacted Business and Professions Code section 6086.9 to create just such a position. In January 1987, then-Attorney General John Van de Kamp appointed Professor Robert C. Fellmeth, Director of the Center for Public Interest Law, to the post. Fellmeth held the position for almost five years (until the statute sunsetted on December 31, 1991), during which time he issued ten voluminous reports on the status of the Bar's discipline system and its progress in implementing various suggested reforms. (See CRLR Vol. 11, No. 4 (Fall 1991) pp. 1 and 210–11 for extensive background information.)

During Fellmeth's tenure, he and Senator Presley drafted and secured the enactment of SB 1498 (Presley) (Chapter 1159, Statutes of 1988), the centerpiece of the significant structural changes made to the Bar's discipline system. Among other things, SB 1498 professionalized the adjudicative decisionmaking function of the State Bar, by wiping out the Bar's old system—which used hundreds of volunteer practicing attorneys as "hearing referees" to preside over evidentiary discipline hearings of their colleagues and competitors, and then subjected all hearing referee decisions to review by an eighteen-member Review Department, again dominated by practicing attorneys (twelve attorney members and six public members). Instead, SB 1498 created a six-judge Hearing Department and a three-judge Review Department. All nine judges are full-time professional judges appointed by the California Supreme Court; one of the Review Department judges is a non-lawyer. (See CRLR Vol. 8, No. 4 (Fall 1988) pp. 123–24 for background information on SB 1498.)

SB 1498 also directed the Legislative Analyst's Office (LAO) to review the workload of the new State Bar Court, based upon quarterly statistical reports submitted by the State Bar. In a report released in mid-December, LAO first described the attorney discipline system of the State Bar, and then focused on three areas of the State Bar Court's operation—workload, productivity, and cost-effectiveness. LAO concluded that the State Bar Court has generally done an effective job of managing and processing its workload following the transition to the new attorney discipline system created by SB 1498, and made the following specific findings and recommendations.

Regarding workload, LAO noted that the number of cases filed with the State Bar Court by the Office of Trials (the Bar's prosecutorial arm) has steadily increased over the past four years, culminating in a record high of 368 cases filed during the third quarter of 1991. This dramatic increase is due to the efforts of the Bar's Office of Investigations and Office of Trials to decrease a long-standing backlog of consumer complaints, and to a longer-term trend of increases in the number of disciplinary complaints lodged by consumers against California attorneys. LAO also noted that the total number of dispositions in discipline and related matters increased significantly with the advent of the revised State Bar Court system in 1989: "[T]he total number of attorneys removed from the system (either through disbarment or through resignation with disciplinary charges pending) in [1989 and 1990] was substantially higher than in prior years."

LAO then examined the workload and productivity of specific staff categories, including the following:

-The Review Department. Here, LAO noted that the three-judge Review Department appears to be able to handle its workload comfortably; in fact, "if the general trend (of decreasing numbers of matters pending) were to continue, there could soon be insufficient workload to fully occupy three full-time judges." LAO suggests that the number of staff attorneys assigned to the Review Department be reduced.

-The Hearing Department. A steadily increasing number of disciplinary cases filed by the Office of Trials has resulted in "a growing backlog in the number of matters pending before the Hearing Department." Since the second quarter of 1990, the six-judge Hearing Department has been supplemented with 12 or 13 *pro tempore* judges to assist it in handling its large caseload. LAO found that the use of *pro tem* judges is not as cost-effective as using full-time hearing judges. This and other considerations prompted LAO to suggest that the Bar consider adding an additional full-time judge to the Hearing Department instead of using *pro tem* judges. The new judge position could be funded either by eliminating one of the eight attorney positions serving the hearing judges, or one of the four attorney positions serving the review judges.

On a related front, the Board of Governors' Committee on Admissions and Discipline reviewed the Bar's Office of Trials at its November meeting; the Committee noted that the Office is still plagued by a backlog of fully-investigated cases flowing from the Bar's Office of Investigations, and that Chief Trial Counsel Bob Heflin has requested the addition of more attorneys to ease the burden. The Committee also formally referred the September 1991 Final Report of the State Bar Discipline Monitor to Bar discipline staff for review and implementation of the Monitor's final recommendations. In particular, the Committee directed staff to analyze the Monitor's recommendation that the Chief Trial Counsel (and the Office of Trials) be structurally independent of the Board of Governors, with the Chief Trial Counsel appointed by either the Governor or the Attorney General. (See CRLR Vol. 11, No. 4 (Fall 1991) pp. 1 and 210–11 for a list of the Monitor's final recommendations.)

MCLE Program Broke. In late December, the Bar announced that the $800,000 allocated for the start-up of its new minimum continuing legal education (MCLE) program—which does not even commence until February 1—has been exhausted by the creation of its administrative office. The Bar originally thought it would finance the excess administrative costs of the program by charging MCLE providers a per-attorney, per-hour fee, but that plan was dashed last spring when two influential legislators condemned the plan as a violation of an agreement they negotiated with Bar lobbyists during legislative consideration of the bill permitting the Board to require MCLE. (See CRLR Vol. 11, No. 3 (Summer 1991) pp. 199–200 and Vol. 11, No. 2 (Spring 1991) pp. 180–81 for background information.) At that time, Senators Bill Lockyer and Ed Davis directed the Bar to proceed without the provider fee, document the administrative costs of the program during its first year, and report to the legislature on the program's fiscal status during 1992. Whether the Bar is permitted to charge a provider fee or whether it may finance the MCLE program through an overall increase in Bar dues is sure to spark controversy in the legislature during 1992 (*see infra*).

1993–94 Bar Dues Bill. The addition of a new State Bar Court hearing judge, the bailout of the MCLE program, and other budget changes and additions desired by the Bar cannot be made without the legislature's approval. Traditionally, the Bar does not fare well in the legislature, in spite of the fact that it maintains a well-resourced lobbying corps in Sacramento. Influential legislators opposed to controversial Bar programs and activities usually greet the biennial Bar dues bill as an opportunity to heap criticism on Bar staff and Board members. In 1988, when the Bar sought to almost double Bar dues to finance the extensive discipline reform efforts in SB 1498 (Presley), the legislature grudgingly complied—convinced by the independent State Bar Discipline Monitor (an entity of its own creation) that the funds were necessary and would be directed toward a restructured system rather than the old regime. Since then, however, the Bar's relations with the legislature have somewhat deteriorated, as typified by the spring 1991 MCLE debacle. Although the Bar's proposed dues increase for 1993–94 (approximately $20 per attorney per year at this writing) appears modest enough, and although it will be carried by respected Assembly Judiciary Chair Phil Isenberg, the Bar should not necessarily expect smooth sailing in the legislature.

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

-Trust Account Recordkeeping. At their November meetings, two Board committees (Admissions and Discipline, and Education and Competence) voted to release a revised version of amendments to Rule of Professional Conduct 4-100(C), regarding client trust account recordkeeping standards. As originally published, the rule would have required attorneys to retain for a five-year period all records related to client trust accounts, including billings to clients, agreements entered into with clients, bank statements, records of payments on behalf of clients to others (*e.g.*, investigators, process servers), and all documents relating to the attorney's acquisition of an ownership, possessory, security, or other pecuniary interest adverse to a client. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 212; Vol. 11, No. 3 (Summer 1991) p. 199; and Vol. 11, No. 2 (Spring 1991) p. 180 for background information.)

A comprehensive and stringent recordkeeping rule is deemed essential to the success of the Bar discipline system's Campaign to Reduce Attorney Financial Thefts (CRAFTS), which attempts to detect and eradicate commingling, misappropriation, and other misuse of client funds by attorneys. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 180 for background information on CRAFTS.) Attorney theft in California caused the Bar's Client Security Fund (CSF) to pay out $1.4 million in 1988, $2.2 million in 1989, and $2.4 million in 1990 to victimized clients; the CSF is funded exclusively by attorney Bar dues, such that the vast majority of honest attorneys (and their clients) are paying for the misdeeds of the minority of dishonest lawyers.

However, during the comment period on the originally proposed version, the Bar received several comments in opposition to the rule. Several commenters, including the Bar Association of San Francisco, the Los Angeles County Bar Association, and the State Bar's own Committee on Professional Responsibility and Conduct (COPRAC), argued that the proposed rule was "overbroad" and "unduly burdensome"; COPRAC even contended that the standards should not be discipline standards but rather an "aspirational list to provide guidance." The revised version focuses only on trust account financial records, and is therefore narrower in scope than the originally proposed amendments. Under the revised version, attorneys are required to maintain, for a five-year period, records identifying all client trust accounts maintained; a receipts journal listing all receipts for all clients; a disbursements journal listing all disbursements identifying the recipient; a client subsidiary ledger containing a separate account for each client from whom funds, securities, or property have been received in trust; all cancelled checks, bank statements and notices, and checkbook registers; and other related items. The Bar indicates that the revised standards are "less strident" than the standards in effect in a number of other jurisdictions, including Minnesota and New Jersey. The comment period on

the revised version is scheduled to close on March 12.

-Attorney Confidentiality. At its November and December meetings, the Board's Committee on Education and Competence discussed the comments received during the public comment period on the Bar's proposed revisions to Rule of Professional Conduct 3-100(C), regarding attorney confidentiality. As originally published, the amended rule would have repeated section 6068(e) of the Business and Professions Code that it is a lawyer's duty "to maintain inviolate the confidence, and, at every peril to himself or herself, to preserve the secrets of a client," but would have added exceptions to the rule, including revealing a confidence upon "the lawful order of a tribunal," in order to prevent the commission of a crime, or to defend oneself in a dispute with a client. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 199 and Vol. 11, No. 2 (Spring 1991) p. 182 for background information.)

After much discussion at its November meeting, the Committee decided not to go forward with the rule because, as written, it would undermine the attorney-client privilege. At its December meeting, the Committee ordered staff to redraft the rule to exclude the exceptions permitting an attorney to reveal a client confidence upon the lawful order of a tribunal or to establish a claim or defense in a dispute with the client. The Committee also ordered staff to delete provisions prohibiting an attorney from using a client confidence to the disadvantage of the client or a third person. The Committee will continue to examine the redrafted rule and underlying policy issues at future meetings.

-Attorney-Client Sex. Following a Supreme Court-ordered public comment period ending on December 2, the Bar is currently evaluating comments received on proposed Rule of Professional Conduct 3-120, which (with some exceptions) prohibits attorneys from (1) requiring or demanding sexual relations with a client incident to or as a condition of any professional representation; (2) employing coercion, intimidation, or undue influence in entering into sexual relations with a client; or (3) accepting or continuing representation of a client with whom the member has sexual relations if such sexual relations cause the member to perform legal services incompetently. The Court ordered the Bar to seek comments on section (E) of the proposal, which provides that a lawyer who has had sex with his/her client is presumed to have violated the rule, and shifts to the attorney the burden of proving that the relationship did not impair his/her ability to provide sound legal counsel. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 212; Vol. 11, No. 3 (Summer 1991) pp. 198–99; and Vol. 11, No. 2 (Spring 1991) p. 182 for background information.)

-Use of the Term "Certified Specialist." At its November meeting, the Committee on Education and Competence voted to release for public comment the proposed repeal of Rule of Professional Conduct 1-400(D)(6), which currently prohibits attorneys from advertising as a "certified specialist" unless actually certified by the Bar's Board of Legal Specialization. The Bar has not enforced this rule since the U.S. Supreme Court invalidated a similar rule of the Illinois bar in its 1990 decision in *Peel v. Attorney Registration and Disciplinary Commission of Illinois.* (See CRLR Vol. 11, No. 2 (Spring 1991) p. 184; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 215–16; and Vol. 9, No. 4 (Fall 1989) p. 138 for background information.) The comment period on the repeal of the section was scheduled to close on February 8.

-Reinstatement to Practice Law. The comment period on the Bar's proposal to amend Rule 662 of its Transitional Rules of Procedure closed on December 18. The Committee on Admissions and Discipline proposes to shorten the time for filing a first petition for reinstatement to the practice of law to not less than three years following disbarment, upon a showing a good cause. The amendments also provide that adjudication of reinstatement petitions would be transferred from the Committee to the Hearing Department of the State Bar Court, as recommended by former State Bar Discipline Monitor Robert C. Fellmeth. At this writing, staff is reviewing the comments received.

-"Gender Bias" Rule. The Education and Competence Committee is still grappling with the language of a rule to prohibit discrimination in legal advocacy. The rule started out as a proposal by the Bar's Committee on Women in the Law to outlaw biased conduct by attorneys and judges based upon gender, but was gradually expanded to prohibit attorneys from manifesting, "by words or conduct, bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation, or socio-economic status, against parties, witnesses, counsel, or others," unless those factors are issues in the proceeding. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 199 and Vol. 11, No. 1 (Winter 1991) p. 150 for background information.) The Committee hopes to review a new draft of the proposed rule at its March meeting.

Bar Challenged to Expand Fee Disclosure Standards. During the fall, the Washington Legal Foundation petitioned the State Bar to amend the Rules of Professional of Conduct to require attorneys to provide clients with full disclosure of potential fees, a "Statement of Client's Rights and Lawyer's Responsibilities" which must be signed by both parties before any legal work may begin, and an individual assessment of the adverse consequences of litigation (including the possibility of counterclaims and attorney fee payment to the opposition).

The Foundation, a conservative think tank based in the District of Columbia, asserts that its proposal is intended to halt the "litigation explosion" by forcing attorneys to educate clients about the pitfalls of and alternatives to litigation. However, the Foundation is also opposed to the Bar's mandatory program of collecting interest accrued on client trust fund accounts to fund legal services for the poor, and is apparently trying to stir up the same sentiments in prospective clients by requiring attorneys to disclose "the uses to which any retainer paid to the lawyer will be put, such as . . . possible deposits into a constitutionally suspect pooled account to generate interest for use by activist legal groups." The California Supreme Court has upheld the validity of the Bar's legal services program.

Nonetheless, the Foundation recommends that attorneys be required to make some useful disclosures to prospective clients, and to offer clients the option of paying a "reasonable hourly rate" instead of a contingency fee and/or permit the client to negotiate the size of a contingency fee. Further, the Foundation's proposal includes a three-day "cooling-off" period during which the client may rescind the fee agreement, and a requirement that attorneys file contingency fee agreements and a "closing statement of costs" with the court, enabling the court to reduce any excessive awards.

At this writing, the Bar has taken no action on the petition.

Bar to Step Up Efforts Against Uncertified Lawyer Referral Services. The Bar continues to express concern about uncertified lawyer referral services (LRSs) which prey upon low-income and non-English-speaking consumers. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 181 and Vol. 11, No. 1 (Winter 1991) pp. 149–50 for background information.) On November 25, it sponsored an open meeting with fed-

eral, state, and local law enforcement representatives to review actions taken in the past year against uncertified LRSs and to map out future steps. The Bar noted that in February 1991, it issued warning letters to 14 uncertified LRSs and that the Los Angeles District Attorney's Office subsequently brought charges against three, only one of which has consented to a stipulated final judgment.

At the November 25 meeting, representatives of the Mexican American Bar Association of Los Angeles and the Bar's own Lawyer Referral Services Standing Committee criticized these actions as insufficient and insignificant in light of the extent of the problem. These advocates noted that the Bar is authorized to enforce the law requires LRSs to be certified (Business and Professions Code section 6155), and argued that the Bar has abdicated that responsibility. The Bar promised to step up its efforts in this area.

LEGISLATION:

Bar Reform Initiative in Circulation. Yorba Linda political consultant Robert Kiley needs 384,974 signatures by May 18 to qualify an initiative for the November ballot which would, among other things, abolish the Board of Governors and replace it with an elected commissioner who is an inactive member of the Bar and require attorneys to be retested every four years. Kiley contends that the Board of Governors, consisting of seventeen attorneys and only six public members, is not capable of regulating the legal profession in the public interest; and that the Bar's new MCLE requirements are ineffective in ensuring an attorney's continuing competence. Bar President John Seitman calls the initiative a "nightmare." Most observers give the initiative little chance of success, but the measure should forewarn the Bar of public dissatisfaction with its regulation of the legal profession and encourage it to engage in more enforcement to protect the public.

AB 687 (Brown), as amended May 29, would provide that an attorney may not be disciplined by the Bar for accepting compensation for professional services in excess of specified fee limitations if the client consents to the fee arrangement, a court approves the fee arrangement, and the fee arrangement is not the product of fraud. The May 29 amendments do not require the attorney to disclose to his/her client or the court the application of a statutory fee limit. Hence, former State Bar Discipline Monitor Robert Fellmeth and the Discipline Committee of the State Bar oppose the bill, arguing that it would preclude the discipline of attorneys who knowingly charge unlawful fees.

The Board of Governors, sensitive to Speaker Brown's control over the Bar's budget, has refused to take a position before the legislature against the bill, notwithstanding a vote to oppose by its Discipline Committee. The Bar contends that the *Keller* decision precludes it from becoming involved in this type of legislative matter. (*See infra* LITIGATION for background information.) Critics of the Bar point out that the *Keller* decision, in fact, specifically allows Bar involvement in legislation affecting its own operations, particularly its discipline system. AB 687 is pending in the Senate Judiciary Committee.

AB 1689 (Filante), as amended May 20, would prohibit any public adjuster from portraying himself/herself, either in advertisement or through personal contact, as having the ability to provide legal service, counsel, or assistance unless he/she is an active member of the State Bar or the company the adjuster represents has one or more staff members that are active members of the State Bar. This two-year bill is pending in the Senate Committee on Insurance, Claims and Corporations.

SB 140 (Robbins), as amended March 18, would provide that the definition of an "athlete agent" shall not include a member of the Bar acting solely as legal counsel for any person. This two-year bill is pending in the Senate Business and Professions Committee.

SB 711 (Lockyer), as amended May 30, would provide, as a matter of public policy, that in actions based on personal injury or wrongful death, no confidentiality agreement, settlement agreement, stipulated agreement, or protective order shall be entered or enforceable, other than as to provisions requiring nondisclosure of the amount of money paid to settle the claim, unless a protective order is entered by the court after a noticed motion. This bill, which would also prohibit the sale or offer for sale by an attorney of information obtained through discovery, is pending in the Senate inactive file.

AB 1400 (Roybal-Allard) would provide that any act of sexual contact, as defined, by an attorney with his/her client constitutes a cause for suspension or disbarment, except as specified. This two-year bill is pending in the Assembly Judiciary Committee.

AB 168 (Eastin) would provide for a new class of legal practitioners called "legal technicians." The bill would create a system of regulation by the Department of Consumer Affairs by narrow specialty, *e.g.*, legal technician-consumer bankruptcy, legal technician-landlord/tenant, legal technician-immigration, including measures to discipline the new licensees, require legal technicians to notify consumers that they are not attorneys, prohibit misapplication of fees received from consumers, and establish a fund for the payment of consumers who have been damaged through licensee dishonesty. AB 168 is pending in the Assembly Committee on Consumer Protection, Governmental Efficiency and Economic Development.

LITIGATION:

At this writing, the challenge to the State Bar's implementation of the U.S. Supreme Court's 1990 ruling in ***Keller v. State Bar*** is still pending in arbitration. Almost 200 attorneys have contested the sufficiency of the Bar's $3 "*Hudson* deduction" refund of compelled dues, the pro rata amount of the Bar's $44 million budget which the Bar claims was spent on political or "nonchargeable" activities under the *Keller* decision. (See CRLR Vol. 11, No. 4 Fall 1991) pp. 38 and 213; Vol. 11, No. 3 (Summer 1991) pp. 38 and 201–02; and Vol. 11, No. 2 (Spring 1991) pp. 35 and 183 for extensive background information on the Bar's implementation of the *Keller* decision.) In its continuing review of Bar expenditures and their propriety under *Keller*, the Bar has decided that, during 1992, $4 should be refunded to attorneys who object to the expenditure of their compelled Bar dues on political or ideological activities.

In ***Severson, Werson, Berke & Melchior v. Bolinger***, No. A048793 (Nov. 18, 1991), the First District Court of Appeal held that when a law firm quotes specific hourly rates for the services of named attorneys to a prospective client, it may not raise those rates without first notifying the client. Although the court noted that the events at issue in this case arose before the legislature's 1987 amendment to Business and Professions Code section 6148 (which requires written fee agreements with affirmative disclosure of hourly rates in most cases), "the policy behind the statute is not new. Attorneys have always had a professional responsibility to make sure clients understand their billing procedures and rates. This responsibility logically precludes any changes in agreed-upon rates without notification."

In ***Merenda v. Superior Court of Nevada County (Diamond, Real Party***

in Interest), No. C011100 (Oct. 1, 1991), a case of first impression, the Third District Court of Appeal reversed the trial court and held that attorneys sued for malpractice are liable for any punitive damages the client would have received had the attorney not acted negligently or incompetently. Citing cases from Arizona, Texas, and Kansas, the court ruled that if punitive damages are lost due to an attorney's malpractice, they should be recoverable as compensatory damages in a subsequent malpractice action.

In addition to seeking the punitive damages she would have recovered but for her attorney's incompetence, plaintiff Merenda also sought damages for emotional distress arising directly from the attorney malpractice; the trial court granted defendants' motion for summary adjudication on this issue, and the Third District affirmed in a one-paragraph conclusory statement. The Third District's holding on this issue contradicts the now- depublished ruling of the Fourth District Court of Appeal in *Tara Motors v. Superior Court of San Diego County*, 90 D.A.R. 14651 (Dec. 21, 1990). In March 1991, the California Supreme Court granted a petition for review in the *Tara Motors* case, but dismissed the case in July 1991 upon the motion of the accused law firm, and decertified the Fourth District's opinion. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 151 for background information on *Tara Motors*.)

In ***Pierce v. Lyman***, No. B051786 (Dec. 19, 1991), the Second District Court of Appeal ruled that attorneys for trustees of a testamentary trust may be liable to the beneficiaries of the trust even though there is no attorney-client relationship between them. Where attorneys for trustees actively participate with the trustees in a breach of trust, the attorneys may be liable to the beneficiaries for breach of fiduciary duty. The court noted that although the right to sue attorneys, agents, or employees of a fiduciary for participation in the fiduciary's breach has been circumscribed by the California Supreme Court in *Doctors' Co. v. Superior Court*, 49 Cal. 3d 39 (1989), the *Doctors* case recognizes several exceptions to the rule. "Most notably, where an attorney conspires with a client to violate a statutory duty peculiar to the client, the attorney may be liable for his or her participation in the violation of the duty if the attorney was acting in furtherance of his or her own financial gain." Accepting plaintiffs' allegations as true for purposes of defendant attorneys' demurrer, the court found that the second amended complaint "clearly state[s] a cause of action for participation in a breach of trust," and remanded the case to the lower court for trial.

In a similar case cited by the *Pierce* court, the California Supreme Court on October 17 denied a petition for review of the Second District Court of Appeal's ruling in ***Skarbrevik v. Cohen, England & Whitfield and Comis***, No. B039981 (June 25, 1991). There, the Second District ruled that, as a matter of law, there is no attorney-client relationship between counsel for a closely held corporation and a stockholder of that corporation, such that the attorney could be construed to owe a legal duty to the stockholder for malpractice purposes. On the claim of breach of fiduciary duty based upon the attorney's alleged conspiracy with the corporation's directors to defraud plaintiff, the Second District found insufficient evidence to support the "participation" requirement, and noted that the attorney did not act to further his own financial advantage. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 214 for background information.)

On October 3, the California Supreme Court denied a petition for review of the First District Court of Appeal's decision in ***In Re Complex Asbestos Litigation***, No. A047921 (July 19, 1991). In that case, the First District upheld the trial court's disqualification of a plaintiffs' law firm from nine asbestos cases because it hired a paralegal who had previously worked on asbestos litigation for a defense firm. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 214 and Vol. 10, No. 1 (Winter 1990) p. 155 for background information on this case.)

FUTURE MEETINGS:

April 30–May 2 in Los Angeles.
June 4–6 in San Francisco.