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Joint Interim Hearing on the Attorney Discipline Function of the State Bar of California

Assembly Committee on Judiciary

Senate Committee on Judiciary

JOINT INTERIM HEARING ON THE ATTORNEY DISCIPLINE FUNCTION OF THE STATE BAR OF CALIFORNIA

Hearing of September 30, 1985
Town and Country Hotel
Windsor Room
San Diego, California

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Hearing Transcript and Material Prepared by Lettie Young

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Subcommittee on the Administration of Justice

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Date: October 25, 1985

To: Chairman and Members of the Assembly Judiciary Committee
Chairman and Members of the Senate Judiciary Committee
Interested Parties

From: Assembly Member Lloyd G. Connelly

Subject: Report on the Joint Interim Hearing on Attorney Discipline

This report serves as a follow-up to the September 30 joint interim hearing on the attorney discipline function of the State Bar of California. The purpose of the hearing was to investigate the current discipline system and discuss ideas to improve or restructure it. Testimony was presented by State Bar representatives, the Senate Task Force on the State Bar Discipline System, and private individuals who have filed complaints against lawyers for professional misconduct.

As a result of the testimony, the following items were identified to be monitored or implemented:

1. Refine for consideration the Senate Task Force's proposal to remove the attorney discipline function from the State Bar and instead place that function in a new, separate and independent board which would exist as a branch of the California Supreme Court and which would have the duty of processing complaints and recommending discipline.

2. Require attorneys to purchase professional liability insurance against errors and omissions, as proposed in AB 2087 (W. Brown), which is currently assigned to the Assembly Finance and Insurance Committee.

3. Require attorneys to be bonded in order to reimburse clients for losses of monies held in client trust fund accounts.

4. Allow the State Bar prosecutor to seek discipline by the California Supreme Court against an attorney based on the initial charges of professional misconduct when those charges and the discipline sought were subsequently reduced by the State Bar Court Review Department.

5. Prohibit the waiver of a complaint to be filed with the State Bar against an attorney when the attorney and his or her client reach a settlement in the client's malpractice action against the attorney.

6. Require spot audits of client trust fund accounts.

7. Require all complaints filed with the State Bar to be processed initially within 60 days of filing.

8. Require the cost of attorney discipline to be assessed against the disciplined attorney, as proposed in AB 1260 (La Follette), which is currently assigned to the Assembly Judiciary Subcommittee.

9. Establish a procedure for legislators and other officials to learn the status of individual complaints filed with the State Bar.

10. Make it a violation of the State Bar's Rules of Professional Conduct when an attorney deliberately and without proper legal cause increases a client's litigation costs.

11. Require courts to notify the State Bar when sanctions are entered against an attorney for abuse of process or inflation of fees.

12. Require judgments against an attorney based on professional malpractice to be recorded with the State Bar and made available as a public record.

13. Increase the number of public members on the State Bar Board of Governors in order to achieve a greater balance between attorney members and public members.

14. Require the State Bar to be more responsive to individuals who have filed complaints against their lawyer and who have inquiries regarding their case.

During the Interim Recess, the Assembly Judiciary Subcommittee will monitor the progress made on the foregoing proposals, and in January, 1986, after the Legislature reconvenes, the Subcommittee will hold a hearing to receive a status report.

JOINT INTERIM HEARING ON
THE ATTORNEY DISCIPLINE FUNCTION OF THE STATE BAR
ASSEMBLY SUBCOMMITTEE ON ADMINISTRATION OF JUSTICE
ASSEMBLY JUDICIARY COMMITTEE
SENATE JUDICIARY COMMITTEE
Town and Country Hotel
San Diego, California
September 30, 1985

CHAIRPERSON LLOYD G. CONNELLY: This is a joint hearing of the Assembly Judiciary Committee and the Senate Judiciary Committee. My name is Lloyd Connelly, and I chair a subcommittee of the Assembly Judiciary Committee, which deals with State Bar issues.

I want to introduce my colleagues. We'll undoubtedly have other members here, but I am going to start with those located on the far right: Assembly Member Wayne Grisham, Assembly Member Richard Robinson, Assembly Member Pat Johnston, Senator Bill Lockyer, who chairs the Senate Judiciary Committee, Assembly Member Chuck Calderon, and, on my immediate left, Senator Robert Presley. We will probably have other members arriving during the course of the day, and probably, not unlike legislative hearings, some of them will get up and wander away and then come back again. However, you have here a pretty good cross section of the two committees that deal with this subject in the Legislature.

Because we probably will grumble a lot at the State Bar this morning in the course of the hearing, I want to at the outset thank them for accommodating us and allowing us to come here and hopefully steal some of their good ideas.

We are going to go through the agenda. The hearing this morning, of course, is on discipline. We have 18 or so people identified to testify. We've rather arbitrarily set a maximum time limit of ten minutes or so per individual. We're not going to be tyrannical about that, but I am going to make a real effort to move the hearing along.

What we're really interested in is suggestions of changes, if any, that ought to be made. The product that we would like to see come out of this hearing is potential legislation or a decision not to legislate certain things on ideas that have been discussed. Therefore, your testimony should be focused to that end.

I should indicate to you that we've received complaints from almost everybody. Some of the folks from the State Bar have grumbled because the list of witnesses is biased against the State Bar. Some of the folks from the consumer groups or the victims' group, as it were, have grumbled at us because it is biased in favor of the State Bar. This means that there is probably a pretty good balance. After we go through the list of

18 or so people, if we have time left, we'll try and go back and pick up those folks who want to testify who didn't have an opportunity earlier.

Mr. Critchfield, why don't we start with you and the State Bar? If you can, sir, you can bring your witnesses forward as a group.

Because this hearing is being transcribed and will be circulated to members of the Legislature, along with the written testimony and committee recommendations, we ask you to identify yourself when you start so we can get that right in the record.

MR. BURKE M. CRITCHFIELD: Mr. Connelly and members of the committee, good morning to you. My name is Burke Critchfield. I have served as the president of the State Bar for this past year, and yesterday Mr. Heilbron, to my left, was sworn in as the new president, so this will be my last appearance as the president of the State Bar.

I'm going to introduce the speakers, but I want to make a few comments before we move on. The witnesses before you today represent the State Bar and have been requested by your joint committee to testify. Their comments will be addressed to those 14 questions which appear on the committee agenda this morning. At your request, we have prepared written answers to those questions. That material has been provided to you and is before you at this time. In an effort to coordinate the testimony in a clear and orderly fashion, each one of the speakers will answer the questions that have been presented and will try to limit our total testimony to the 50 minutes allocated, since on your agenda you show five speakers.

I will introduce to you, starting from my left, the speakers, and then we will commence with the presentation.

First is Stuart Forsyth, who is the director of the Office of the State Bar Court. Next to him is Orville Armstrong, a member of the Board of Governors and who for this past year has served as the chairman of the Discipline Committee. Next to me is David Heilbron, the incoming president. To my immediate right is Joe Gray, who is a member of the Board of Governors and who will serve this coming year as chairman of the Discipline Committee. Next to Joe is Susan Mahony-St. Clair, who is the director of the Office of Trial Counsel.

Now, since Mr. Heilbron will be responsible for making reports and accounting to you and the attorneys of this state for these matters this coming year, I am going to ask that he be allowed to speak as well.

The first witness to speak on behalf of the State Bar will be Orville Armstrong. Mr. Armstrong.

MR. ORVILLE A. ARMSTRONG: Thank you, Mr. Critchfield. My name is Orville Armstrong. I am the chair of the Admissions and Discipline Committee of the State Bar. This is my last act

as chair of that committee, as Burke told you, because my term is over and Joe Gray takes over in my place.

It is a great pleasure to be here because it gives me the opportunity to tell you about the highlights of what I call "the new State Bar disciplinary system." It gives me the opportunity to compare the new system with the old system, and it gives me the opportunity to tell you about the radical changes which the Bar has made and is making in the disciplinary system so that we can protect the public and punish those lawyers who need punishing. This new system is going to be effective on January 1, 1986, that is, if we get the money necessary to implement the system.

The old system has been criticized for being too slow, too lenient, and too secretive. I believe it was yesterday's Los Angeles Times that said, "The system is being attacked because it has a snail's pace for investigations, and it's being attacked for lenient sanctions." Those comments are directed to the old disciplinary system; those comments are not directed to what is now the new disciplinary system. Yet, this morning's Tribune says: "The State Bar has been the focus of criticism in recent months for slow and lenient disciplinary procedures that have allowed some attorneys to continue practicing even after being convicted of serious crimes. Others have been able to cheat clients for years and avoid disbarment." Those comments are comments about the old disciplinary system; they are not comments about the disciplinary system which is in effect and which will be effective on January 1.

Some time ago, The San Francisco Examiner ran a series of articles about the Bar, discussed some 70 cases out of the tens of thousands of cases handled by the Bar, and criticized the Bar for the handling of those 70 cases. Those articles dealt with exceptional cases handled under the old disciplinary system. But those articles did not discuss how those cases would be handled under the new disciplinary system that we are installing. Later on, I will take one of the grossest examples of those 70 cases and give you the facts and tell you how that case would be handled under the present system and under the radical changes which we have made.

I believe Senator Presley's committee is also studying the disciplinary system. I think he may be studying the old system. I hope his committee is studying the new system. If you have not had information about the new system, the Bar would be most happy to meet with you, Senator, and furnish you all of the information that you need.

In evaluating the disciplinary system, you must evaluate, I submit to you, the new system, not the old system. The State Bar has evaluated the old system, and we found some serious defects in the old system. We have taken strong steps and quick action to cure those defects.

Let me explain to you what this new system is. Under the old system, we have a backlog of over 2,500 complaints. A backlogged complaint is one which has been around for six months or more without a decision being made to dismiss it for lack of reasonable cause or to initiate formal proceedings against the lawyer who has been charged with some misconduct. At the last Board meeting, we adopted a new system to deal with the investigation of complaints and to deal with this backlog. We adopted the recommendations of the Coyle Expediting Committee to create a new Office of Investigation to clear up this backlog. There will be a new division of investigation headed by a chief investigator. There will be new procedures in effect, and we believe that this plan, this new system, will cure the backlog very quickly. This plan will be implemented as soon as practicable. "As soon as practicable" means as soon as we have the money; that is, as soon as we get some dues money or authorization to charge our members dues so that we can implement this system. This new investigative system will be more efficient. It will operate more quickly, and we are confident that it will clear up the backlogged cases in two years.

The new system also provides for speedier disposition of the formal proceedings; that is, those formal proceedings which will require a formal hearing for the purposes of imposing discipline.

The Coyle Committee's recommendations regarding venue, installation of a master calendar, elimination of investigation referees and elimination of the consequent delays that those procedures had built into the system, changes with respect to hearing officers, and changes in the notice to show cause procedures are all part of this new system. The result is that matters are now going to hearing quicker, and they are being disposed of sooner than ever before.

Under the new system, we are able, we believe, to investigate and prosecute complaints at an average cost of about $1000 per complaint which has been filed.

This new system includes other radical changes which have been adopted to protect the public. The Calderon bill...

SENATOR BILL LOCKYER: Can you tell us what the cost per complaint was under the old system?

MR. STUART A. FORSYTH: The cost under the old system was slightly less than it is now. I don't happen to have those figures with us, Senator. We can provide them to you if you like.

CHAIRPERSON CONNELLY: Mr. Calderon.

ASSEMBLY MEMBER CHARLES CALDERON: What portion of the overall State Bar budget is actually allocated for discipline?

MR. ARMSTRONG: For the entire disciplinary system including the overhead that goes with it, the office space and the allocations...

ASSEMBLY MEMBER CALDERON: In other words, I want to know how much money is being spent to discipline lawyers when appropriate.

MR. ARMSTRONG: That's approximately 50 percent to 58 percent, I believe.

ASSEMBLY MEMBER CALDERON: Of the total budget?

MR. ARMSTRONG: Of the total budget, of the unrestricted funds. In other words, not counting, for example, the trust fund.

ASSEMBLY MEMBER CALDERON: So you're saying that 58 percent of the State Bar's budget goes for attorney discipline?

MR. ARMSTRONG: That's right.

Let me continue with my description of the new system. The new system includes other radical changes which have been adopted to protect the public. As I was saying, the Calderon bill, AB 1275, which is effective January 1, 1986, provides for interim suspension of attorneys upon conviction of felonies. It provides for summary disbarment of attorneys for conviction of certain felonies, such as that involving theft of a client's funds. It also has provisions placing lawyers on inactive status for certain conduct while disciplinary proceedings are pending. The new system has a new rule relating to confidentiality which changes the prior rule so that the public will know more about the system.

What I'd like to do at this time is to illustrate these changes and the effect of these changes by using an actual case which was handled under the old system and comparing the result of the new system with the old system.

There was a lawyer by the name of Bambic who embezzled money from clients. Upon the first time he embezzled some money from a client, a complaint was filed with the Bar. Formal proceedings were instituted against Mr. Bambic. These proceedings were confidential pursuant to the Bar rules which were then in effect. Thus, the public did not know that Mr. Bambic had been charged with embezzling client funds, and clients still continued to go to him. There was no way they could find that out. Mr. Bambic continued to practice law while these charges were pending against him, and he continued to practice fraud upon his clients. He continued to embezzle money, and, I think, ultimately, he embezzled from something like 12 clients. Because of various delays which were then in the

system, it took a long time for the Bar to complete the disciplinary proceedings against Mr. Bambic. That's a case about which the Bar is not proud, and it's a case which is what we call a "bad case." It illustrates some of the more serious problems which were existing under the old system; that is, existing with the system the way it was before we made significant changes in the last several years.

These defects in the prosecution of that lawyer and the protection to the public do not exist in the present system, the new system we're installing. For example, the procedures recommended by the Kroeker Committee, the Kroeker Report, and recommended by the Coyle Committee will provide for speedier investigation of this serious type of charge. The procedures recommended by the Coyle Committee and adopted by the Board provide for the speedy issuance of notices to show cause, for the elimination of delay in the trial of the matter and, in effect, we're going to bring this type of lawyer ...

CHAIRPERSON CONNELLY: Specifically, how is that going to occur? I mean, the Kroeker Commission reported in March of '84. We're now in late '85. Is that right? What's the March of '84 report that had ...

MR. ARMSTRONG: The March '84 report is the Coyle Report. The Coyle Report was an overall investigation.

CHAIRPERSON CONNELLY: I see, and then the Kroeker Report is the fall of '85.

MR. ARMSTRONG: The Kroeker Report was the report we adopted at the last Board meeting which provides for the new Office of Investigation and which we're going to implement as soon as ...

CHAIRPERSON CONNELLY: Specifically, it is my understanding that, just reviewing the written documents, there have been all kinds of study committees and reports, starting with Justice Clark's, which recommend a timely administrative handling of the process. Now we have another report. I'm not sure procedurally what's inherently different that's going to assure that we don't have a Mr. Bambic practicing for three years and embezzling funds after the first complaint has been filed.

MR. ARMSTRONG: Let me break it off into two things. The 1984 report presented recommendations to the Board which related to the overall system: how do we get a case from the beginning to the end and through the system as quickly as possible? Judge Coyle made certain recommendations; the Board adopted those recommendations. What we did is set forth in the books specifically, the answer to your question. Essentially,

the Coyle Report related to the prosecution of formal charges. How could we get that time shortened? We eliminated the investigation referee which had five months of delay into the system, so that shortened the prosecution time. We had a master calendar which meant that cases would go to trial when they were set to go to trial, hopefully eliminated continuances, moved things along.

The Kroeker Report attacked a different part of the problem. The Kroeker Report attacked or was directed to the investigation phase of the problem. When the complaint first comes in, it has to be investigated. That's where our backlog is, investigating complaints. Kroeker has recommended an Office of Investigations with a chief investigator, with some new and novel procedural changes and techniques to be used in connection with that new department. We have adopted that, and we are in the process of implementing that report. We are confident that that's going to be a speedier, quicker way of investigating complaints, and we're confident that at the end of a two-year period, according to our projections, we will have the backlog under control. There will be no backlog.

CHAIRPERSON CONNELLY: Is there a maximum time frame for investigation now? In other words, this report says, "all serious investigations," investigations which raise basic questions of attorney honesty, nothing about negligent situations or failure to return phone calls, but basic issues of trust. They will be investigated at least initially, and the determination be made, within 90 days or 120 days, or something of that nature. Essentially, what you're telling me, as I hear it, is that you're administratively streamlining your organization. What I did in preparation for the hearing was go back through articles and reports where you've been administratively streamlining operations for the last four or five years in one way or another.

ASSEMBLY MEMBER RICHARD ROBINSON: Mr. Chairman, I was going to get into that, but I was going to let him finish.

CHAIRPERSON CONNELLY: Well, but I don't know that that assurance is enough. I want to take you at your word, and I know you're being candid about it, but I'm not sure, given that pattern, that it means something is really going to happen.

MR. JOE S. GRAY: Mr. Connelly, if I might on that -- for the record, my name is Joe Gray and as Mr. Critchfield stated, I am the person who is charged with the fortunate or unfortunate chance to take over admission and discipline after Mr. Armstrong next year, and I feel somewhat like the woodsman who is thrown into a nest of alligators and told to drain the swamp.

Obviously, the Kroeker Report did set up a requirement and a system whereby there would be a priority complaint or priority investigation category. The next step is the establishing of protocols to determine the standards for priority investigation and to determine time limits for reporting of these investigations and for getting them out and making certain that they are done within an appropriate amount of time for the particular offense, being weighed with the possibility of harm to the public if there is continued carrying on of this activity. This is on our agenda for the next committee meeting, and we anticipate these protocols will be in effect within no more than 60 days, hopefully within 30 days of today.

Again, we do have a problem of resources with our investigators at present being charged with about 130, I believe, complaints, whereas in many administrative agencies the average number of complaints per investigator is around 35.

In connection with that, which is to some extent a short-term problem as well as a long-term problem because of the existing backlog, we feel that we can work at eliminating this backlog.

We can institute the new investigatory system without going through the chaos of stopping or halting the existing ongoing programs by calling on a resource that's available only to the State Bar and nowhere else, and, that is, on the large number of volunteers that we can obtain who are experienced in legal ethics, lawyer discipline, and with the procedure of the State Bar.

ASSEMBLY MEMBER ROBINSON: Mr. Chairman, as one of the alligators at some point, I want to set the ...

CHAIRPERSON CONNELLY: Let me finish my question, and then we'll let one of the alligators talk. I'm not sure what the answer to my question was. Are there 90 days or 120 days, I'm going way back here ...

MS. SUSAN MAHONY-ST. CLAIR: Maybe I can help with it. Right now, clearly the Kroeker Report plans to set up a set of priorities with the highest priority cases being handled within 30 days. In the last year, the Office of Trial Counsel -- excuse me, I didn't identify myself. My name is Susan Mahony-St. Clair -- has set up what we call our task force. For those respondents who come to our attention, who we know are ongoing harms to the public, they get special attention. We pull together a team of investigators and attorneys, and they are devoted only to that respondent. We have had great success in dealing with that. An investigation in the past, that may take six months handled in the normal course of events, has been able to be completed in five to seven working days. That puts us in position of being able to present the respondent with the facts of our

investigation and tell the respondent that either we are going to go forward within the next 15 days to file formal charges or they have an opportunity to resign.

CHAIRPERSON CONNELLY: Just so I understand it, the first time link then is the 30-day time link?

MS. MAHONY-ST. CLAIR: The Kroeker Report, I believe, sets out priorities based upon a certain percentage of cases, and those would be done within 30 days.

CHAIRPERSON CONNELLY: This is the protocol that Mr. Gray was talking about that you're going to adopt in the next 30 or 60 days. Regardless of what else the committee does or does not do, could I ask you to forward to the members of the two committees that protocol when it's done?

MR. GRAY: Yes.

CHAIRPERSON CONNELLY: Mr. Robinson had an alligator question.

ASSEMBLY MEMBER ROBINSON: No, no. It was his opening comment, and I don't blame him. I think if I were he, I would consider myself in a hostile venue too.

First of all, I would like to correct, for the record, as the chairman of three different conference committees on Bar dues, all of which were hung up until the very waning hours before the most recent experience, from my standpoint and Mr. Harris' standpoint too -- he's the chairman of the Assembly Judiciary Committee -- questions about discipline. I notice in the chronology of events on the disciplinary process that's been distributed to the members of the committee and I'm sure to the public that there are quite a few deletions. I'm sure they were inadvertent.

I want to compliment the two presidents of the State Bar who are in front of us because I've seen more action out of them than their four predecessors. The Examiner series did not start this problem, contrary to the speeches and the rhetoric that were heard in front of the Conference of Delegates yesterday. I've had both private and public discussions over discipline for five years. It was only at the behest of Senator Beverly and Senator Petris one year that there was even a Bar dues bill because, at five minutes to midnight on the constitutional deadline, the Legislature was reluctant to enact a Bar dues increase again because there was no discipline. That was some two years before the Examiner series. The Examiner series is not the be all and end all to the problem. The problem has been ongoing. I've only been in the Legislature 11 years and it probably predated me. There have been continual, every year, representations to the

Legislature: "We're going to clean our act up; we're going to clean our act up." Again, I want to compliment Mr. Critchfield because I believe that he has at least substantively come to the Legislature and tried to start approaching a solution rather than just more talk and more studies. What I didn't notice in my meetings with Mr. Williams and Mr. Murray or any other meetings with the conference committees of the Legislature was criticism of the Bar for its failure to discipline its own.

Another comment made yesterday during the discussion of this and the Legislature's role or lack thereof, or lack of leadership, involved the use of the phrase "technical." "Due to some technicality, the bar dues bill didn't get through this year." Well, the technicality as a rule was adopted by the people, whether you agree with it or not. Probably most of the Democrats on this committee did not agree with the rule, but it was adopted by the sovereign, the people of the state. It's subject to litigation, and it's no more technical than the exclusionary rule is to those of you who practice criminal law or the statute of limitations to those who practice criminal or civil law. It's a rule that's used for tactical purposes. Rightfully or wrongfully whether you agree on the results, it is not technical in any shape or form. It's a very substantive law as the Legislature governs itself.

With those comments, Mr. Chairman -- I was here and heard all of the debate yesterday -- I wanted, to the extent that we can, to get the record clear. It's unfortunate that the agenda did not cover the members of the executive branch of government and the senior judicial branch of government to address the Conference. There was no one who was put on the agenda to address it from the legislative standpoint, the second branch of government, and maybe to explain to the Conference how irrelevant the Bar really has been.

I want to compliment the two gentlemen sitting in front of us, both the incoming president and the outgoing president, because I think they have been more responsive than the previous presidents I have served with. Somebody ought to explain to the Conference of Delegates the relevancy of the Bar to the legislative process, which is the lawmaking process of the state.

CHAIRPERSON CONNELLY: Mr. Robinson is, of course, uncontrollable; that's why we all love him. He's a delight in the Assembly because he raises issues that many of the rest of us are embarrassed to raise.

The Bar dues issue will be specifically focused on by the committee at 3 o'clock because, obviously, there's a problem in that regard.

ASSEMBLY MEMBER ROBINSON: It was tied in with discipline though yesterday in comments, and it was tied in ...

CHAIRPERSON CONNELLY: There is clearly an interrelationship, particularly given the comments that were made.

(To Mr. Heilbron) I was going to urge you, as you respond to him, to focus and get back onto the disciplinary issue.

MR. DAVID M. HEILBRON: May I make a few remarks? It was my speech, I believe, that Mr. Robinson was referring to, and if the matter in respect to what's technical or not is something that we ought to leave until this afternoon, that's more than fine with me.

With respect to the proposition that The Examiner was not the beginning of this problem, I certainly agree to that, and I think it's well to remind ourselves that, in fact, in 1983, well before The Examiner articles were a gleam in anybody's eye, the Coyle Committee was established. Furthermore, the procedures that were called for by that first Coyle Report that Mr. Armstrong referred to were put into effect in '84, well before The Examiner articles, and further, the bill which ended up being Mr. Calderon's bill and is now law, was a bill which was presented by the Bar prior to the time that the articles were...

ASSEMBLY MEMBER ROBINSON: No, but what I was going to say, your speech yesterday -- excuse me, I'm going to interrupt you; legislators do that as judges do, so I'm sure you're familiar with it.

MR. HEILBRON: Yes sir.

ASSEMBLY MEMBER ROBINSON: Your speech yesterday suggested that the Legislature all of a sudden got involved in discipline because, surreptitiously or directly, the Examiner story was delivered to us, each one of our offices and that was all that we were really looking at. That was what my comments were relating to. This Legislature, as long as I've been in it, has been very interested and involved in the disciplinary issues as they have been on some of the Bar examiners procedures.

MR. HEILBRON: I certainly don't mean to suggest, Mr. Robinson, that your interest in this matter is new, and I'm sure that you've had it as long as you say it has...

ASSEMBLY MEMBER ROBINSON: I think your comments yesterday did. I was trying to correct the record.

MR. HEILBRON: If they came across to you that way, I regret it. I would like to say this, though...

ASSEMBLY MEMBER ROBINSON: We've been abused by The Examiner as much as any member of the Bar or the Bar's Board of Governors.

MR. HEILBRON: I'll bet there are lots of us in that category. I would like to say a few further remarks in respect to the future though because the question has been raised as to what we mean when we speak, given that others, apparently, have spoken before. I said yesterday before perhaps a thousand people that we are committed to solving this problem; that the procedures are in place to solve it, or soon will be; that presumably we are going to have the money to solve it and it will be done. That is not an idle promise. It's a commitment. I mean it, we mean it, and we're on the line on it. Furthermore, we are very clear about the consequences if we do not do it.

Now, the bill that was before you and which did not become law, had attached to it conditions, and the conditions said that we were to clear up that backlog and that we were to clear up 80 percent of the cases in inventory as of March 31, by 12/31/87. We can read, and we understand what that means and we understand that, in the event that those things have not happened by 12/31/87, you will be most unhappy and you will take action based upon your unhappiness. So, we're not talking idly here. It's a commitment. It will be done.

Since we're not yet on the dues bill subject, I won't explain the obvious proposition that, in order to do it, we need money. Everybody knows that. We'll talk about that, I take it, this afternoon. Thank you.

CHAIRPERSON CONNELLY: Mr. Armstrong, did you want to continue?

MR. ARMSTRONG: Yes, I have a few more comments to carry through, and I might follow up on what was said, Senator, that I think you're...

ASSEMBLY MEMBER ROBINSON: I'm an assemblyman. I don't want to be a senator. I've turned down two opportunities. (laughter)

SENATOR ROBERT PRESLEY: Mr. Chairman, that's the first assemblyman I've ever heard say he didn't want to be a senator. (laughter).

MR. ARMSTRONG: What you say, we understand, and we know what the history in the disciplinary system is. What I am saying to you, and the point I am trying to make, is that I think you must now judge us by what it is that we're doing, what we have been doing in the recent past, what we have been doing in 1983, 1984, 1985, and what we propose to continue to do under our new president and under the new chair of A and D.

What I'm doing is trying to illustrate to you that, in the last couple of years, we have recognized the serious defects and that we are taking specific, direct action to cure those defects. I'm using the Bambic case to illustrate to you how that situation, which existed, cannot exist now, not because we're promising to do something, but because we have already done something which is incorporated into the law. For example, one of the big criticisms about the Bambic case was that our procedures were secret and confidential and no one knew that this lawyer was under investigation by the Bar for embezzling money. We have now adopted a rule of procedure which says that when formal proceedings are initiated, they become public. Therefore, that problem which was created by the Bambic case...

ASSEMBLY MEMBER ROBINSON: That's upon the issuance of an OSC, isn't that true? I'm just trying to look at it, and I'm playing devil's advocate, if you will.

MR. ANDERSON: Sure.

ASSEMBLY MEMBER ROBINSON: That you could then delay the issuance of an OSC. You see, I'm aware of the problems. You're dealing with an awful lot of volunteers. You're dealing with a lot of members of the Bar who are looking at the same point on a disciplinary case of depriving an individual of his ability to make a living. I've heard that argument over the 11 years. That's what you're really talking about. You see, I disagree and dispute that. The professions, the three of them -- accounting, medical, and legal -- are held in a higher esteem by the public, and you're not depriving that individual of the ability to make a living if his character is somehow besmirched. They'll just have to go make a living another way, other than as an officer of the court. I agree that, even with all the money that you do expend on discipline, you still depend heavily on volunteers, where a lot of, if you will, the "old boy syndrome" operates. I can just see some delay in the issuance of the OSC without the timetable that Mr. Connelly was suggesting being put in place.

MR. ANDERSON: It gives me an opportunity again to tell you that that's the old system, that we have a new system, now...

ASSEMBLY MEMBER ROBINSON: But what about the issuance of an OSC?

MR. HEILBRON: We're going public on the issuance of the OSC, but that part of the delay which was in the old system of getting to the issuance of an OSC was caused by the fact that an investigation referee reviewed the complaints and then decided whether or not to issue an order to show cause. That took something like three to four to five months in the system. The

Coyle Report studied that system and recommended that we do away with the investigation referees and that we eliminate that four to five months out of the system and get the notices to show cause issued sooner. We adopted that recommendation. The investigation referees are gone. That part of what you might refer to as the "old boy network" is out.

ASSEMBLY MEMBER ROBINSON: No, I'm not trying to characterize it in the negative, but I have a lot of friends who are lawyers, believe it or not, and when I screamed at them... This isn't my first little swat at this problem. They have told me that some of the requests like fixed timetables, three months mandatory suspension, even the definition of moral turpitude -- I have had good friends who are lawyers argue: "No, that's not moral turpitude. That's an outrageous example. You're talking about somebody's ability to make a living." That's what constantly been told to me over 11 years by lawyers, not necessarily Bar activists, but some are just lawyers who happen to sit as volunteers on the disciplinary committees within the county bars.

MR. ANDERSON: There is a different mood, I think. You recognize there is a different mood with respect to lawyer discipline. The Board of Governors and the State Bar recognize there is a different mood. For example, you were talking about the time to issue the notice to show cause and that there is some delay, that the lawyer can be practicing, and that it's not public information during that period of time. The Calderon bill, however, contains a provision which says that we can put a lawyer on inactive status while proceedings are pending to prevent a lawyer from continuing to practice where he's going to cause great harm to the public. Even during the period of time while we're investigating and getting ready to prosecute, we can still adopt that procedure which is new in this bill and which goes into effect on January 1, 1986, and I think that we can take care of that problem.

Another thing that you allude to is the fact that lawyers are convicted of felonies and we struggle with moral turpitude, and so forth and so on. What we're going to do now is place lawyers on suspension if they have been convicted of a felony. What we're going to do is, for certain felonies, they are going to be summarily disbarred, such as stealing from the client's funds or embezzling the client's funds. Those were not in effect during the time we were prosecuting Bambic. Those were defects in the system which the Board has recognized, which the Bar has recognized, for which we have gone out of our way to adopt new rules.

ASSEMBLY MEMBER ROBINSON: I'm going to try to stay away from Bambic. I'm going to try to stay away from the outrageous

cases. That's constantly used by proponents and opponents as in tort or medical malpractice, depending on which side. I don't think you have good government and make good policy if you concentrate on the outrageous case. I think that's an exception, not the standard. My criticism goes more to the standard, whether it's conversion of a client's money or the commission of felonies, or a lot of other things that I consider should be disciplinary, such as running up fees by the issuance of all kinds of paper, whether it's discovery or what have you. It is malpractice, but it ought to be disciplined, hopefully by the Bar. Then, at least, it doesn't happen again. Those are the things to deal with...I know The Examiner's story, and I happened to agree with both the incoming president and the outgoing president that those cases are outrageous, they are different, and they are the exception and not the rule as far as discipline. I think the policy ought to be made on the basis of the rule and the average complaint.

MR. ARMSTRONG: Right. We are doing that. All the rules I'm giving you apply to the average cases. As to the other things that you just mentioned, rules, conducts, sanctions and so forth, Joe Gray has that on his agenda, and he's going to talk to you about that.

My last comment is that the Bambic case also illustrates one other proposition, which we are not changing and which I think lawyers are entitled to receive credit for. In that case, the Client Security Fund paid out something like $250,000 to Mr. Bambic's clients, and that Client Security Fund is a fund which was initiated by the Bar, and which is financed with assessments upon members of the Bar. Thank you.

CHAIRPERSON CONNELLY: Thank you.

MR. GRAY: Mr. Connelly, if I might just finish up a little bit. I'd like to address one specific point which you brought up that I feel we all have to be very sensitive about, and that is, over the years, it is correct that each time we would come before the Legislature, there would be in process some study and the study would be forthcoming: "Just give us a dues bill, we'll have to study it, and everything will be taken care of next time."

ASSEMBLY MEMBER ROBINSON: Thank you, sir.

MR. GRAY: Let me say that we feel that...

CHAIRPERSON CONNELLY: To show you how bright we were, we always approved the dues bill. (laughter)

MR. GRAY: The time for studies, we feel, is over. We have received the Coyle Report. The study was adopted. It is accepted, and it is now being implemented. We received the Kroeker Report. It was accepted, it was adopted, and it is now in the process of being implemented. We no longer feel that we can say, "Well, we're looking at it to see what we ought to do." We've been told what we ought to do. We agreed to do it, and now it's the basically ministerial or managerial act of putting it in place. We feel that we have the people in the State Bar and the commitment to put these reforms and changes into place and make them work.

I look at this as a numbers problem and a quality problem. The numbers problem is one that has been given a great deal of attention in that we do have this backlog and we do have the problem that each month it seems that more complaints come in than go out. That is being addressed and will be addressed. At least it will be corrected, and, as to the guidelines that are set out in the bill which was not passed, my goal is to have it taken care of with quality in a much shorter period of time.

The problem that Assemblyman Robinson brought up is one of quality, and that is something that concerns us deeply, because we are not happy with the image that the lawyers or the Board of Governors is here as an "old boy network"in order to protect the lawyers. We intend to make certain that the discipline that is given fits the offense. The Board Committee on Admissions and Discipline has prepared, and we have now received a draft of, a set of uniform guidelines or standards for discipline to be applied in connection with various offenses.

One of the problems which we have is that, in existing law, we are mandated to consider all mitigating factors and all aggravating factors, and we must, to a large extent, look at each particular case that comes before us, on a one-on-one basis. There has been a tendency under those circumstances to allow the situation where it seems that a lawyer gets one free shot without getting disbarred because of the cases which have said that we have to consider the absence of previous discipline as a mitigating factor. It is our goal, and this is something that I anticipate will be no more than 60 days and, hopefully, within 30 days that we will have, at least at the committee level, and hopefully to the Board, a set of uniform guidelines to provide to the Review Department which will establish that when an attorney steals from a client, that we recommend the punishment of disbarment and it doesn't matter if it's the first time, or if the attorney is broke or having problems at home. We hope that we will be able to establish those standards and that those standards will be adequate.

CHAIRPERSON CONNELLY: It seems to me as I read the cases -- I just skimmed a few of them -- but there's a whole series of cases where the state Supreme Court says, "We would

like to disbar, or we would like to do more, but we defer to the State Bar." As a matter of fact, it's so often that you actually see that over and over again, "defer to the State Bar." However, when you look to the earlier record, you find out that the State Bar Court, the initial reviewing body and the prosecutor for the Bar, recommended disbarment. That happens at the State Bar Court. Then it goes through the automatic review process. It's reduced from a disbarment to a two-year suspension.

When the State Bar prosecutor takes the case forward to the state Supreme Court, he is prevented from arguing their initial position or prevented from arguing the position of the hearing panel that heard it and indeed is forced to argue the recommendation of the Review Department. The only two positions before the Supreme Court at that point are the weakened recommendation of the State Bar Court Review Department, the interim body, plus the attorney, in many instances arguing that even that recommendation is extreme. The fact that the prosecutor in the State Bar Court initially recommended disbarment is lost. That leads me to the question, and I've read both of the Kroeker and the Coyle reports, and they are all recommendations. There's no action on this as a result of the reports themselves. I'm unsure if there is anything that changes that. It seems to me that that's an inherent defect in the process.

MR. HEILBRON: May I say a word about that? I don't like that, either. It is, however, a way in which most agencies work, I believe. For example, the National Labor Relations Board works in the same way. Once the board comes out with the decision, the prosecutor's action becomes irrelevant, and, on appeal, the action to be defended is the action of the board, not of the prosecutor. That's really the wrong word for it in terms of the NLRB, but not what the person who brought the case had in mind to begin with. It's kind of a difficult problem, that once the agency has acted in a given way, to have the agency on appeal when its decision is then attacked, in effect, not defended but bypassed by the person who had previously wanted the agency to do something else. Nevertheless, I agree with you, I don't like it.

CHAIRPERSON CONNELLY: The practical effect, then, is that the State Bar becomes an advocate to weaken the penalty as recommended by your investigatory officers and the order to show cause initially.

MR. HEILBRON: I understand. I agree, and I don't like it. Let me talk a little bit more generally about it. There's a mind set to have in mind, and that's what Joe referred to when he talked about our dealing with uniformity of penalties and degree of penalty. The mind set of this Board is that penalties ought to fit the crime and they ought to be stern. No question about

that. If that policy is implemented, and I assure it will be, that will mean that coming out of the court will be decisions imposing upon lawyers penalties which fit and are stern, and that's going to be done.

MR. GRAY: Mr. Connelly, I'd agree with that. There are two problems. One problem is the perceived leniency of the Review Department of the State Bar Court system, and that is the point that I feel should be addressed immediately and is being addressed by the setting of policy by our Board of Governors determining that the sentences should be appropriate. Once that is done, I really feel that the issue of whether the prosecutor's office is able to take a contrary position, appeal or not, will not be of significance, because of the fact that we will have in effect a system that makes the discipline fit the offense.

CHAIRPERSON CONNELLY: Assume for a second that your answer didn't satisfy me in that regard and that, although I have respect and confidence in the Board of Governors in this, for some reason I'm just not persuaded that change is going to occur at the review level. Why can't there just immediately be a process whereby the recommendation of the prosecutor, the order to show cause, and the record of the trial court, as it were, in this instance, the State Bar Court, be that which is moved forward and the Review Department's be a recommendation only? At least that gives the state Supreme Court an instance of a disbarment recommendation. We lose track of the disbarments. These are people by and large who do unbelievable kinds of things, just unbelievable! At that point, give the court the discretion to choose between the two recommendations.

MR. FORSYTH: In essence, what you're asking for is to some extent already the case. The recommendation made by the State Bar Court Review Department, with regard to suspension or disbarment, is precisely that, a recommendation to the California Supreme Court. Now, it's true that the trial counsel, who is the State Bar's prosecutor, who appeared before the State Bar Court, does not have a right to appeal that decision to the California Supreme Court. That is true, however, of every other administrative agency that deals with professional licensing in the State of California. None of them have the right to go over the head of, in essence, their administrative agency and seek tougher discipline.

What's going on between the State Bar Court...

CHAIRPERSON CONNELLY: In some respects that's misleading because if you get to the administrative hearing level, and the administrative hearing officer upholds them, for example, with the Contractors State License Board, then they move into the judicial side, and then they fight like the dickens for that. At the trial court level...

MR. FORSYTH: They can't move into the judicial setting. Only the person who holds the license can move the proceeding into the judicial setting.

CHAIRPERSON CONNELLY: I understand that. What you said is inaccurate. I've handled those cases. The prosecutor for the Contractors State License Board goes into the court, and he argues that administrative officer's decision with enthusiasm and vigor. If you appeal it, he argues it at the appeals stage, if you go to the state Supreme Court, he argues it there...

MR. FORSYTH: The State Bar does also, through its Office of General Counsel.

CHAIRPERSON CONNELLY: Is that correct? You argue the Review Department's decision.

MR. HEILBRON: May I try to get to the heart of this? Which is not to say that Stuart is not. I think he's told you about the law.

I like what you're saying. We'll take a good hard look at it. If we can do it properly, we will.

CHAIRPERSON CONNELLY: Senator Lockyer had a question then we'll go on. Mr. Gray, I don't know if you were finished.

MR. GRAY: I was finished.

SENATOR LOCKYER: I guess that which I'm still searching for is some way to -- perhaps it's a degree of simplicity that is impossible, but when I hear recommendations such as, "Let's have the Bar be restricted to admissions and discipline only," that's one comment that we're hearing from colleagues with some regularity -- or when I hear the suggestion that it be even narrower than that, that the discipline function be transferred to some new, independent state agency, which I guess would be analogous to the Contractors State License Board, such a wonderful model -- or when I hear suggestions that maybe the Bar should just be an arm of the court... Anyhow, they are different proposals for reform that speak to the commonly agreed problems of discipline and management that seem easy to understand and get a grip on. I don't have the same kind of understanding of the proposals that you have labeled the "new discipline system." Am I wrong in just hearing them as a kind of series of small discrete changes that maybe add up to something of some consequence, or can you somehow explain those in a way that would be confidence inducing?

MR. HEILBRON: Confidence inducing? In whom? (laughter)

SENATOR LOCKYER: I've often, you know, been happy that our own particular profession doesn't get scrutinized with the same vigor that yours or others that come before us do, but I guess that a different forum does that equally unfairly to us. Can you somehow summarize all these proposals so I can say to a constituent, "Yes, it's going to be different a year from now because of..."

MR. HEILBRON: Let me give that a try as a generalist here. Let's take it in three bites. One, investigation process; two, the post-investigation process; three, the degree of penalty.

As to investigation, that is the subject of the Kroeker Report. The procedures are about to be implemented, assuming that we have the money to implement them. The Kroeker Report is, as you know, one as to which we had the help of a very knowledgeable person from the L.A. Police Department. He has drawn a whole lot of boxes which I don't think it appropriate to describe to the committee at this time, but the point of it is that there will be an independent, separate investigation department with particular tasks assigned to particular groups of people from the day a complaint comes in and all with the object of assuring that, by God, as of 12/31/87, and sooner if we can do it, the backlog that concerns you will no longer be and never will be. That's the investigation process.

With respect to the period post-investigation and until the Review Department acts, that was the subject of the first Coyle Report in large measure. Among other things, it provided for a master calendar system, which has been implemented. It provided for the right in trial counsel to issue notices to show cause, rather than having to go through a referee. There are lists of about 15 or 16 different procedural changes that are set forth on pages 28 to 29 of your materials and which describe what has been done with the object in mind of ensuring that the process post-notice to show cause and until the end is dealt with expeditiously.

Third, with respect to the degree of discipline, Joe has spoken to you about a committee that is working on that problem. I said yesterday to the Conference of Delegates that we expect the work product of that committee within six months. Joe gave you a shorter number today. Its charge is to ensure what I said before, and that is, that penalties are stern and fit the crime and are uniform where they ought to be, and that will be done. I hope that's confidence inducing. If it's not confidence inducing, just watch us.

MR. GRAY: I'd like to add one thing. This process, the committee that I chair, and this board would like to assure you that we are not committed or with our feet in concrete to do things only our way. I don't want anyone to think that we are

closed to suggestion. We are quite eager to hear suggestions from the public, interested persons, whoever. If someone has a suggestion which they feel can make our process work better, we are not going to arbitrarily refuse them, which brings me to one of the questions in the table of contents, and that is: "To what extent do we meet the American Bar standards and should we accept the offer to have our system evaluated by the American Bar Association?"

First of all, the standards are well met and have been. They are basically standards based upon procedures, and our procedures, under either configuration, do meet those standards.

Second, we felt that we deferred the question or refused the offer of the American Bar to come out and review us because, at the time, we were undertaking our own review. It has been done and now it's being implemented. We looked at their review as usually based upon an analysis of procedures and not volume related which is a large part of our problem. We have no present intention to ask the American Bar to come out and review us. If you think it's that important, if it is perceived that we are trying to avoid this review, then we would change our mind and say, "Yes, come on in and look because we have nothing to hide." What we want to do is get on with implementing our program.

ASSEMBLY MEMBER ROBINSON: Mr. Chairman, a question of Mr. Gray. One of the other panelists, I think it was Mr. Armstrong, deferred to you on a question of sanctions. In my mind, an attorney who files excessive paper, notices of default when answers have been actually filed with the court, or other types of fee running-up procedures is just as much guilty of stealing a client's money as the attorney who converts a client's trust funds for his or her own personal use. I was hoping you would address whether the Bar is going to take any kind of notice of attorneys who are sanctioned by the courts for those procedures. I realize the Civil Code has provisions where opposing counsel can ask for sanctions of the court. Once an attorney's sanctioned or fined or what have you for that type of procedure, is the Bar going to take judicial notice of that act and is that going to be a factor for the discipline of that individual?

MR. GRAY: I'd like to first say we do not have the ability to have a monitoring system so that we can get notice of every act of sanctions that may be imposed in the trial court system. There are just too many of them...

ASSEMBLY MEMBER ROBINSON: But you would agree with me that an attorney who is filing papers for the mere purpose or the sole purpose of running up his or her fees is stealing a client's money as much as an individual who converts the client's money?

MR. GRAY: Absolutely, and the American Bar Association has just completed a review of its model code. Our committee is now in the process, as Mr. Heilbron alluded to yesterday, of taking a look at reviewing our code of professional conduct. One of the things being studied is the extent to which legislation may be necessary to change the Rules of Professional Conduct in the State Bar Act in order to allow us to more specifically address this, which we do see as a problem.

ASSEMBLY MEMBER ROBINSON: Would that also include a requirement on the court to notice you, the Bar, with a copy of the sanctions? They're always in writing anyway, and they have to make the findings a fact, I would assume, before they impose the sanctions so it is a written record.

MR. GRAY: I think we'd be very happy to have a provision so that we would get such notice. Again, once we start getting to the point where we want to tell someone else what to do, such as the courts, we don't have control over it, but we would certainly be happy to have a source of receiving this information. As of now, we do have an individual who is a volunteer and very great person, Gert Hirschberg, who reads every single advance sheet that's issued in the courts and advises us of whether, upon a review of that advance sheet, there's an indication that attorney discipline is needed. We're very grateful for that because that also is something that we could be criticized for, if in a published report there's something that an attorney does that's wrong and we don't know about it. We do have that mechanism.

MR. HEILBRON: If this sort of brooding on the present question of who ought to be doing the discipline job is something that you would like us to address, I would like to address it.

CHAIRPERSON CONNELLY: I would like you to address it, but I want to make sure that we go through your pattern of witnesses. I'm not sure that we're doing that so I think that ought to be addressed very last, and that would provide a good transition into the task force.

MR. HEILBRON: That was my thought too.

MR. FORSYTH: I was going to make some remarks with regards to the steps in the process, but I'm not sure the committee needs that at this time. The material is laid out in the written response of the State Bar, and I will be subject to the will of the committee.

CHAIRPERSON CONNELLY: The one question that I had was the one we got into already, on the steps and the process.

MR. FORSYTH: I see.

SENATOR LOCKYER: I would have some interest. If it's something that can be done with brevity, I'd like to have the steps reviewed. Could you do that since we got the books and materials only today.

MR. FORSYTH: I would be pleased to, and if I may and the record can hear me, I really need to use the flip chart -- if that's all right with you, I'll stand up.

CHAIRPERSON CONNELLY: Just shout. A lot of people shout at us; we're used to it.

MR. FORSYTH: Briefly, the terminology that the State Bar uses in terms of its structural organization and chronology -- our prosecutor's office is the Office of Trial Counsel. The Office of Trial Counsel is the prosecutorial agency within the State Bar. It is entirely a staff office, and it is functionally broken down into investigation teams and trial teams. They both receive and investigate the complaints when they come in, and they try the cases, prosecute the cases, if you will, before the State Bar Court.

The other totally independent entity within the State Bar is the State Bar Court. It's composed entirely of volunteers: public members and lawyers. None of them are on the staff and it is organized into three departments: the Hearing Department, which conducts the hearings; the Review Department, which is a statewide body that reviews all of the recommendations that are made out of the hearing department; and the Probation Department, which monitors the terms and conditions of probations as they are complied with or not complied with by the attorneys after the court enters an order. The State Bar Court is supported by a staff office of the State Bar Court, which performs two fundamental functions, the clerk's office and the counsel's office. We provide independent counsel and advice to the referees of the State Bar Court. This is staff; these are volunteers.

Now, in terms of how something flows through the system, the steps in the lawyer discipline process -- if you remember that left hand box of the Office of Trial Counsel, the complaints come to the State Bar from many ways. They are received, acknowledged, and screened, just on their face to determine what is the contents of the complaint. A few of the complaints are closed out on their face, upon that initial screening, because they do not indicate in any way it's the kind of complaint that could be the subject of attorney discipline even upon investigation. Most of the complaints are sent forward for investigation, to find out what the facts really mean. Some are sent for mediation. It is a matter which in essence doesn't rise

to attorney discipline, but it's the kind of thing that the State Bar feels it can do something about. For example, a client may complain that he's having difficulty getting a file returned from an attorney. The State Bar will intercede in that and try to get that file back for that client. Some of them are referred. They are referred primarily to the mandatory fee arbitration program because they're fundamentally disputes over the amount of fees to be paid for legal services rendered.

The ones we really care about and are concerned about go through a full investigation process and are then evaluated. The results of the investigation are analyzed. Again, a number of things may happen as a result of that process. Some of the matters may be closed. It turns out that there is no misconduct involved. The ones that we'll get to in a minute are the ones that get forwarded to formal charges. Some of them may result in what we call "an admonition," which is fundamentally a freezing of the complaint. Discipline is not imposed. It is not a serious or intentional kind of misconduct. It is perhaps a technical misconduct, if I may say, and it is frozen for a two-year period. If the lawyer comes through the process again, that prior complaint is unfrozen and both of them proceed forward at the same time.

Some of the matters right at this stage may result in stipulations with the lawyers as to the misconduct involved and as to the discipline that should be imposed. Most of them go forward through the preparation of formal charges stage. After formal charges have been prepared, the respondent is given an opportunity to have a conference with the prosecutor before the actual filing of those formal charges. After this stage, if the respondent, in essence, has facts which upon further investigation check out, in a very rare case, the matter may be closed. Most go forward to formal charges. Again, a few may result in an admonition, and even more right then and there, result in a stipulation as to the facts and as to the discipline to be imposed. Where formal charges are issued, the prosecutor's job has finished in terms of the investigation stage. The cases are filed in the State Bar Court.

Within the State Bar Court, the process begins with the filing, and shortly after the filing, 90 to 160 days after the discovery period, the State Bar Court conducts a mandatory settlement conference program. The result of that may well be a stipulation or, if there's no stipulation, the process goes forward to a hearing which is a formal trial on the merits before the referees of the State Bar Court, which now is being conducted on the master calendar basis. The hearing panel is under a duty to file its decision within a 30-day time period.

Every one of those decisions is reviewed by the State Bar Court Review Department. There are two mechanisms for that. The Review Department reviews the decisions on its own motion and may call up matters where it is concerned as to what has

happened, and either the respondent lawyer or the State Bar Office of Trial Counsel may appeal, in essence, the hearing panel decision to the Review Department in which case it is set for oral argument and decision. The Review Department files its decision, and that then is effectuated, whatever that is, be it reprisal, be it recommendation for suspension, or recommendation for disbarment, both of which would be filed with the California Supreme Court.

As I mentioned earlier, upon that filing, the attorney, not the State Bar, has a limited time in which to petition to the California Supreme Court to change that decision if it wishes to do so, and then the Supreme Court itself issues its decision. In the normal process where it is implementing the State Bar Court Review Department decision, and there is no petition on the part of the attorney, that decision is implemented fairly quickly by the California Supreme Court, within a three month period. If there is a petition by the attorney, it then becomes a litigated case. It goes through the briefing and oral argument process in front of the California Supreme Court.

Lastly, I'd just like to give you a feel, if I may, for the kinds of complaints that go through this process because you're not dealing with a lot of wheat, you're dealing with a lot of chaff. Roughly speaking, the Bar, and these are general figures that give you an order of magnitude, receives approximately 8,000 complaints each year about attorneys. About 400 of those come out of the process very early in that screening stage that do not and could not involve attorney discipline. About 500 of those come off through the referral mechanism to mandatory fee arbitration programs. About 2,500 come off in terms of mediation. They are not matters, anything below this line, which could be attorney discipline. They are matters about which the Bar is concerned, but they are matters in which the most the Bar can do is attempt to mediate the dispute and get, in essence, a non-disciplinary assistance to the client.

SENATOR LOCKYER: Pardon me, are those kinds of disputes similar to the fee issues, or what's appropriate for mediation?

MR. FORSYTH: "I can't get a hold of my lawyer. He hasn't returned my phone calls." "I've changed lawyers and my old lawyer won't give me my file. Would you please help me get that file?" "Would you please help me get my lawyer in contact with me?"

SENATOR LOCKYER: When you describe the mediation as the process that's appropriate for those, what is that, just someone getting on the phone and saying, "Hey, Charlie, could you deliver the file?"

MR. FORSYTH: That is correct.

SENATOR LOCKYER: It's very informal?

MR. FORSYTH: Yes, I do not mean it in a technical mediation sense. It is a very informal word we're using to describe a very informal process.

The bulk, 3,400, go through a full investigation on the part of the State Bar professional staff investigators, but that 3,400 ultimately are closed following the investigation for one of two reasons: either because upon investigation of the facts there is no violation shown, or, while there may be a violation, there are insufficient facts to prove the case. A witness won't testify or there may be facts there but they're just not enough to bring forward a case and a successful prosecution with regard to them.

Here is the wheat in the process, if you will. A thousand formal charges issued out of the 8,000 complaints and about 200 are split off even after the investigation process through the admonition process that I mentioned to you before in terms of Trial Counsel's own actions and the conferences with the prosecutors.

This is the nature of the matters which come to the State Bar and the way statistically in which the State Bar deals with those matters trying to get to this formal charge that is then run through the State Bar Court.

SENATOR LOCKYER: Have you ever tried to estimate how many complaints there are that never come to your attention?

MR. FORSYTH: I wish we could.

SENATOR LOCKYER: No one's tried to. They do that with unreported crimes, for example, where there are estimates of how many unreported rapes there might be or something of that sort. You have not tried?

I might mention that I've had the opportunity recently to tour the State Bar headquarters. At least from the sense of things that you develop just by looking at it, rather than the normal abstractions we get lost in, I was quite impressed by what seemed to be the strong organization, sense of purpose, and careful use of monies. I'll be back now and look a little more closely, but, anyhow, first impressions were positive.

One of the changes, I guess, that recently was made is the separating of investigations?

MR. HEILBRON: That is about to be done.

SENATOR LOCKYER: What will be the result of that change?

MR. HEILBRON: The Kroeker analysis was that, if you had an independent, or separate, I suppose is a better word, investigative department, it would simply function better because among other things, responsibility with respect to it would be focused. One person would be in charge of ensuring that investigation proceeds properly, quickly and achieves the right results. Each person down the line in the boxes I referred to a few moments ago has himself or herself similar responsibility with respect to a task force which is his or hers to coordinate and lead. Various procedures which have apparently been workable and have worked extremely well in the Los Angeles Police Department and apparently others are to be used by each of those groups of boxes with the ultimate purpose of ensuring that when those complaints come in, they're dealt with in the way that Stuart described they should be but very quickly. Someone's on it all the time. If it doesn't happen, that someone is on the line, and you deal with it right then.

SENATOR LOCKYER: Your feeling is that that's not just moving the furniture around, that there's some functional difference between the old and this new form of process?

MR. HEILBRON: I don't like moving furniture.

SENATOR LOCKYER: One of the recent news reports suggested that, as the incoming president, you had asked for some explanation of the backlog and upon hearing of some of the examples of lack of expedition, that report was suppressed. Have you...

MR. HEILBRON: A report suppressed?

SENATOR LOCKYER: Yes.

MR. HEILBRON: I kid you not. I don't know what you're talking about.

SENATOR LOCKYER: Okay.

MR. GRAY: Senator, I'm aware of the article in the media and...

MR. HEILBRON: They said that about me?

MR. GRAY: It didn't say much about you. It did talk about an allegation of suppression, and as far as I can tell, it is fabrication or fictitious.

SENATOR LOCKYER: Was there an investigation or request for a report other than the ones we've all heard about and read and talked about? Was there something else?

MR. HEILBRON: All I know about is Coyle and Kroeker, and I really don't know what the article is that you're referring to although I have a certain curiosity as of right now.

CHAIRPERSON CONNELLY: The article was an article in The Examiner which ran Sunday morning that said there was a report prepared at your request quantifying the average delay time from the time the complaint was filed to the time the formal charges were brought, that report demonstrated that the average delay time or the average time was 488 days, and that report had not been distributed. That's the thrust of the article. I saw it myself for the first time this morning.

MR. HEILBRON: I look forward to looking at the article and to responding to it.

CHAIRPERSON CONNELLY: We're to take it that the other representatives from the Bar here, by their silence, are concurring that they all had no knowledge of this, that there is no such report, and that it hasn't been suppressed?

MS. MAHONY-ST. CLAIR: I also saw the article. No one has requested from me any such report. In fact, the statistics that we're using are the statistics in the 1984 report. In fact, as what I consider a principle of good management, we try on a regular basis to analyze the results that we have, and I understand that supposedly there's a copy of this report floating around. The only thing that I can imagine that this relates to is that I did ask for a report from my staff, to give me the time from which we had orders to a notice to show cause and it's filed. Those reports were quite favorable, from 30 to 60 days. I then asked that they go back and get the time from when the complaint was received and that average time. I've been pretty busy the last month, as you can probably well imagine. I remember seeing something briefly where one part of the staff had calculated days on business days and the other ones had calculated on calendar days. I sent that back because that can be confusing and misleading. I think that about covers what kinds of reports are around. Certainly, nothing has been suppressed from anyone. What we've been accused of mostly is probably giving harmful information about ourselves.

MR. CRITCHFIELD: Mr. Connelly, I know that we're moving on in the time,and I want to bring our presentation to a conclusion. I just wanted to make a few final comments and then turn it over to Mr. Heilbron to wrap it up.

CHAIRPERSON CONNELLY: Before you do that, I have just two minor questions, and then I guess you folks are going to wrap it up rather quickly on this issue of the independent

disciplinary agency, which is very much a question. There are two specific recommendations that came out of Senator Presley's task force that I found intriguing. I'd like you to respond to them. This is absent the issue of an independent commission. One is to require some type of bonding on the client trust funds in excess of the amount which is insured or guaranteed by the Bar through the Client Security Fund process. I found that as an intriguing thought simply because it seemed to me so many of the egregious cases involved attorneys who ran off with the settlement of a major personal injury case or a real estate transaction. Has that been considered? Do you have some thoughts on that?

MR. HEILBRON: That's a very interesting proposition. Frankly, I have not heard it, I have not thought about it. There are various ways of dealing with the problem. One is to make the Client Security Fund larger, and that we have thought about and, in fact, we've talked to you about. Another has to do with mandatory malpractice insurance, which is being studied and, of course, is the subject of Mr. Brown's bill. The third is the proposal that you just put, and I'd like to think about it.

CHAIRPERSON CONNELLY: One of the problems that those of us in the Assembly have in particular is that we are here for two-year time increments and then we leave at the will of the people. The problem which that presents is that, unless these things come to a head fairly quickly, we don't have an opportunity to do them. So, for example, when you indicated earlier you're going to come out with a protocol in 30 or 60 days, that's fine. We'll put a suspense note on it. When you indicated earlier to study that change where the prosecutor can move the case forward, or the mandatory errors and omissions insurance, or in the area of bonding, all three of which seemed to me to be substantive changes, what kind of time line do you foresee before the Legislature were to benefit from your counsel? You understand that all of us, of course, run off and do our own things.

MR. HEILBRON: My life is shorter than yours, Mr. Connelly. I'm only around for a year, and I have every interest in having as much as what we've been talking about done well before I go off into the hereafter. With respect to everything that we have talked about today, it's my hope and expectation that it will have been done within the year with the exception of the clearing up entirely of the backlog of the cases in inventory which are referred to in the bill that wasn't passed and which has attached to it, a 12/31/87 time limit. We have that well in mind, and it is my hope and expectation that by the end of this year we will be well on the way. One thing I did do, which perhaps the article did not speak to, is to ask that there be

goals and timetables established, and Mr. Armstrong and Mr. Gray have been working on that, and we will work with reference to them as the year goes on.

CHAIRPERSON CONNELLY: There's one additional point I want to make to be included in these specific items, and this also came out of Senator Presley's work. Senator, I apologize that I'm stealing some of your work product. That study brought forth something that I didn't know, and that is, in the context of legal malpractice cases, I guess there's a standard procedure whereby as a condition of settlement, part of the agreement is that a complaint not be filed with the State Bar and not be followed through. I think, just on its surface, that's reprehensible and bad public policy. It seems to me that that area, along with the other three -- and I'm talking for myself now and not the full committee of the Assembly, let alone the Senate -- that is, the bonding requirements, the E and O insurance which I had on my list, and the structural changes of the prosecutor, in addition to the settlement waiver, that those four areas are so clean and straightforward that they ought to be addressed in timely fashion. Those of us who are interested in them can make a determination on proceeding with legislation in the context of this next calendar year. I counsel you so that you know where my head's at.

MR. GRAY: I'd like to say that this is the first that I've heard of any practice of any such waiver in settlement. I would consider that grounds for discipline, and I would request an immediate notice to show cause on a matter like that and expect a push for disbarment.

CHAIRPERSON CONNELLY: Unless there are other questions with Mr. Critchfield and Mr. Heilbron's comments on the independent commission, we'll start with Senator Presley and...

SENATOR PRESLEY: Mr. Chairman, let me ask, if I might, one question about the trust funds. I understand the Bar has audit authority now over those trust funds, and I wanted to confirm that. Second, do you do any auditing of those funds?

MS. MAHONY-ST. CLAIR: Senator Presley, we have what is called the probable cause trust account audit where, based upon information that comes to us that we can prove to a referee constitutes probable cause, we can go in and audit an attorney's trust account to see if there are any other violations to assist us in prosecuting our case, and yes, we do do them. There are some difficulties with them because the attorneys must have the records. If they don't have the records and cannot produce them, that's a difficult task. Some states have what is called spot audits, that every attorney's trust account is monitored on a

random bases. They are called random audits, and California does not have that.

SENATOR PRESLEY: But you have to have probable cause?

MS. MAHONY-ST. CLAIR: Right now we have to have probable cause.

MR. CRITCHFIELD: It sounds like a search warrant?

MS. MAHONY-ST. CLAIR: Sort of.

MR. CRITCHFIELD: Mr. Connelly, I know that time is moving on, and I just wanted to make a few comments. I want to thank Mr. Robinson for the comment that I was sensitive to the problems facing the Bar. It's been a long, hard year for me, and I'm looking forward tomorrow to going back to private practice. To the people you see before you today, I will not be here next time there's another hearing.

ASSEMBLY MEMBER ROBINSON: Those comments were very sincerely meant because I think this situation is very unfortunate. I feel some empathy for you because you have worked so hard and I'm not necessarily condemning your predecessors, but they were a lot of talk and no action. I do believe that you were the first one to be different in my experience. It's unfortunate that the end of the session this year resulted in the personal slap at you. It's not intended that way, and I can feel for your frustration.

MR. CRITCHFIELD: Thank you, Mr. Robinson.

SENATOR LOCKYER: Since he is a constituent, I'd like to associate myself with the comments of Mr. Robinson. (laughter)

MR. CRITCHFIELD: Thank you. I want to say that I've never worked with a more dedicated group than the Board of Governors, as well as the staff of the State Bar. When I invited Senator Lockyer to come to the State Bar office, I knew that he would develop the feeling that I had over the past three years and particularly in my year as president. I've never worked with a more dedicated group of employees than the State Bar, and they are all sincere and sensitive to these problems.

I can assure you that the attorneys in this state feel the same way. They feel that the discipline matter should be handled by the State Bar and it's best equipped and qualified to do it.

We want to do it, and we want to do it right. We're here to assure you that we're going to do that, just given the opportunity. We appreciate the opportunity to be here. At this time, I'd like to call upon Mr. Heilbron to wrap it up.

MR. HEILBRON: Thank you very much. Just one invitation before I start -- Senator Lockyer apparently enjoyed his visit. We certainly enjoyed having him. We'd like everybody else to come if they would like to come.

The final question here, I guess, is the question of who ought to be doing this although it's rather surprising to me that that's the question.

SENATOR LOCKYER: I wonder if you, to help keep that in context, at least for me, when we talk about who ought to be doing this -- obviously, we're mainly focusing on the discipline activities. However, I guess there is a potential for the various functions of the Bar to be either kept in one place or scattered into a variety of places. I wonder if it is possible to sketch the different functions and responsibilities of the Bar in order to give some thought to what other things might not be done if we were to limit the Bar. I've heard discussions about some of the activities that are, I guess, essentially voluntary, what those mean in terms of person hours. I'm sorry that I didn't give you a chance to prepare in any way for responding to that kind of functional analysis, but I assume it's one that someone could...

MR. HEILBRON: Sure, actually, we had thought that that was going to be on the table later this afternoon, but whenever the court likes...

SENATOR LOCKYER: I don't mean to get especially into the dues issues, but rather just "Here are the six things we do" and...

CHAIRPERSON CONNELLY: It's hard to arbitrarily divide that, of course, but I would think, in the context of your response on the question of the independent commission, you could touch on the Senator's functional question. To the degree it relates to dues, I would like to hold it until this afternoon more as a matter of the timing of the hearing.

Now that we've given you impossible parameters... (laughter)

MR. HEILBRON: Let me give it a crack here. The Bar does just an enormous number of different things that go well beyond discipline and admissions, although many are in varying ways related to it. There are a huge number of sections and committees, some of which are substantive, directed to learning about the substantive law and proposing recommendations to reform it, informing the members of the various sections as to matters that are relevant to their specialities.

A large part of what the Bar does has to do with ethics, which obviously has a relationship to discipline. The Bar is in

charge of proposing to the Supreme Court the rules of ethical conduct for lawyers. It is in the process, in fact, of rewriting those rules. The Bar prepares a compendium on ethics which has in it a collection of cases and authorities with respect to a whole host of ethical problems. The Bar has an ethics hot line which is used by many, many lawyers. I've forgotten the thousands each year who use it, of which the purpose is to ensure that lawyers who are interested, and that's most, in acting ethically have a source to go to to find out if they are in doubt as to what a particular rule is.

The Bar runs a very active, voluntary legal services program. It helps local bars across the state establish those programs. They provide pro bono legal services to the poor, a lot of them. Perhaps 8,500 lawyers contributed free time through them in this last year? Perhaps 275,000 hours were donated in that way.

The Bar has supervisorial powers over LRS's, legal referral services, which provide a great deal of service often to middle income people. The first half-hour consultation in which most legal problems, or at least many of them, are solved, turned out to be solved for free because that first half-hour consultation is, as a general proposition, not charged for.

The Bar has an alcohol abuse committee whose purpose is to ensure that people who have trouble with alcohol or other substances are able to cope with those problems. That obviously has an impact on discipline. It also has an impact on the well-being of people and of lawyers.

The Bar administers admissions. The Bar administers the Commission on Judicial Nominee Evaluations. The Bar administers the interest on Lawyer Trust Accounts Fund, interest on lawyers trust accounts, which this year will provide some $10 million to legal services programs across the state.

In general and this perhaps is getting ahead of the story, were this agency to die, it would be a disaster for the people of this state.

I would like to get to this ultimate question, here, as to who ought to be doing this discipline job. There are a lot of reasons why we ought to be doing it. Reason one, is that, as I understand it, nobody else can do it under the Constitution of the State of California. This is a constitutional agency. It is empowered, we take it, by the Constitution to do a variety of things and one of them is discipline.

ASSEMBLY MEMBER ROBINSON: By the Constitution or the State Bar Act?

MR. HEILBRON: I believe that the Constitution, itself, although it does not...

ASSEMBLY MEMBER ROBINSON: Is it self-operating? Is the constitutional provision self-operating?

I don't want to put you in a bind regarding any future litigation you might be contemplating.

MR. HEILBRON: Perhaps this is not the forum in which to address the constitutional question, but I can assure you there is a constitutional problem here.

CHAIRPERSON CONNELLY: Assume for a second that the Legislature was willing to put the constitutional changes before the people, the statutory changes and everything else, I think...

MR. HEILBRON: I want to get to that; I'm just starting out as I wind up. You have a separation of powers problem too, but let's pass that by. You've got some practical problems were you to ask anybody else to do it. In the first place, we're geared up to do it, and nobody else is. We're geared up to fix it, and nobody else is. If you think you've got a backlog now, if you took this process and transferred it, just like that, to somebody else not geared up to do it, much less fix it, boy, you would have a problem that would make this thing look like a molehill.

Start up costs -- God knows what they would be for some other agency. Operating costs -- you've got the ones that are before you from us. They don't take into account the fact that there are 500 volunteers who serve on the State Bar Court and who are not paid anything, but who would obviously have to be paid were they operating under some agency's aegis.

Just generally and still sticking with the practicalities of it, why in the world would anybody want to do this? Look around. Just look around at other agencies in this state who do have their discipline run through the Department of Consumer Affairs. I believe that I detected earlier some skepticism among various members of this committee in respect to how marvelously those agencies have conducted themselves. If you look at us and you compare us to them, you do not see anything so attractive in what they do to cause you to want to change, even as we are right now, us and put us over there. The statistics are set forth in the document that is before you, but in no way would you solve any problem by sticking us over there.

More generally, we ought to do it. We ought to do it for a variety of reasons. Reason one is that lawyers represent the people against the state, among others, all the time. They represent people against the state in all kinds of forums and with respect to all sorts of things. It's unreasonable to expect that a lawyer can do that freely in an adversarial system if that lawyer has to be afraid that his adversary, the state, can punish him if the adversary doesn't like what the lawyer is doing. That's not a pie-in-the-sky argument. The fact of the matter is

that in every single state in this Union, to my understanding, lawyer discipline is under ultimately, the aegis of the judiciary and not the executive.

ASSEMBLY MEMBER ROBINSON: Excuse me, but wouldn't that same conflict, if it was under the judiciary apply? Assuming, for example, that was going to be administered at the trial court level, it seems to me that I would be inhibited if I were a lawyer, and thank God I'm not, and...

MR. HEILBRON: I wish you were. (laughter)

ASSEMBLY MEMBER ROBINSON: Then I'd be a little bit suspicious about what is going to happen to me. (laugher) They had the same problems, though. If you're under the judge or under the trial court, and a lot of the state systems are that, aren't you going to be somewhat tempted before you paper that judge and then if that judge happens to be the one that sits on the disciplinary panel for that local trial court? Don't you have the same "separation of powers" problem with the judicial discipline?

MR. HEILBRON: No, no, I perhaps was not as clear as I ought to have been. I'm talking about a program which is administered under the Supreme Court of the state and which is ultimately...

ASSEMBLY MEMBER ROBINSON: A lot of those other states do have at the trial level, trial judges that administer discipline.

MR. HEILBRON: Well, my understanding is that's the rare case. If you want to get into all of the gory details...

ASSEMBLY MEMBER ROBINSON: Some states have elected Supreme Courts, like Texas, where Yarborough's got the same name as a U.S. senator.

You can't compare apples to oranges. The California system is unique and so rather...

MR. HEILBRON: I think it's a mistake to think it's unique, sir, but if I may just conclude, I will. I kind of get the feeling you'd like me to do that.

CHAIRPERSON CONNELLY: Whenever I lean over the table as if I'm going to grab you...

MR. HEILBRON: I got the body language message. (laughter).

I believe, finally, that the Bar must discipline itself. It's our professional obligation to do it. We've got an obligation to the people to do it. It reflects badly on us if we do not do it and we can do it. We should do it, better and more efficiently than anybody else. If for no other reason than that, nobody else can possibly and, by definition, have the professional commitment to doing it that we do have. I told you before: It's going to be done, it will be done, there's no doubt about it.

Before concluding finally, and I promise I will, Mr. Connelly, I'd like to take up this "old boys' club" point. People bandy that about, "old boys'" and "old boys' club." "These folks, they don't care about what's going on so long as they protect their own." I said yesterday that there was no evidence to support that charge and there was nothing to it, and I believe that from the bottom of my heart. The good lawyers in this state, and that is the vast majority -- and there's no doubt about that either -- want the bad lawyers curbed or out. You cannot run into a lawyer in this state without having him deliver to you that message, and the reason is that the bad lawyers hurt people and they hurt the profession and the good lawyers don't want them in. The notion that this is a closed system designed to protect its own is ultimately just, to pick a neutral word, misinformed.

CHAIRPERSON CONNELLY: Mr. Calderon.

ASSEMBLY MEMBER CALDERON: Just a few comments -- I think that your concluding remarks lead into my comments appropriately. That is to say, the other side of the argument is that it's easy to trash on lawyers like it is easy to trash on politicians in terms of the press. I happen to be both. I also happen to believe that it's a privilege to practice law in California as well as that it's a privilege to serve in the California Legislature.

I think that I heard something in your closing remarks that would support what I'm going to say. I would hope that we deal with the problem because there are a lot of good lawyers whose reputations, as a whole, are being hurt by the practice of a few. I hope that we deal with the problem forthrightly, but I also hope that we don't turn this into some kind of witch hunt on lawyers by succumbing to pressures in the press as well as some pressure from the Legislature. I think that what we are interested in, in terms of the Legislature, is that the problem is dealt with efficiently and effectively, and I don't think we're interested in anything else. I agree with your comments that there are good lawyers and that, at least institutionally, the "old boy syndrome" does not exist. I happened to carry the State Bar's bill as a practicing lawyer, and I even thought it should have gone a little bit further, but at least it was

important to make that statement. So, the other side, I think, to this whole issue is that we deal with the problem dispassionately, objectively, and effectively.

MR. HEILBRON: I very much appreciate your remarks. I've never been a fan of Salem.

CHAIRPERSON CONNELLY: Thank you very much. Can we have at least one person from the State Bar as a spokesperson who will stay with us throughout the day? I don't know who that is. I'll let you assign the short straw.

MR. HEILBRON: I don't think you can lose any of us.

CHAIRPERSON CONNELLY: Thank you very much.

Next, we have Senator Presley. Senator, you're certainly welcome to stay there or move.

He's going to give us an update and then introduce, as well, some of the people on the task force regarding the State Bar.

SENATOR PRESLEY: Mr. Chairman, maybe we could have the members of the Task Force who are in the audience come on up and, with your permission, I would like to take one of them out of order as she has a time problem and allow her to make her statement before I make mine. She is Professor Deborah L. Rhode, a law professor at Stanford. She's a member of this Task Force on discipline, and last year she was a visiting professor at Harvard. She has been researching this disciplinary problem for a number of years, and I think she'll be a very valuable addition to our testimony this morning.

PROFESSOR DEBORAH L. RHODE: Thank you very much, sir, for allowing me to step in out of my allotted time. Let me pass out some copies of a prepared statement.

I'm a professor of law at Stanford, a graduate of Yale, and, for the last six years, my primary area of research and teaching has been on the regulation of the legal profession. I've also had some direct involvement with the disciplinary system, acting as counsel to attorneys accused of misconduct.

I'd like to focus a little bit on the research and in particular take an opportunity to respond to some of the comments that the Bar has made on that subject. While I will not relate all the findings of hundreds of pages of deathly prose on the subject, I would call your attention to a list of publications that provide support for some of the judgments and conclusions which I'd like to review briefly this morning.

Most of my research has touched on issues of professional discipline and regulatory autonomy, both questions of competence, discipline, admission, moral character, and lay

competition, unauthorized practice. The consistent conclusion of all of this scholarship is that the structure and enforcement of the Bar and of professional sanctions and regulations generally ought not to rest with the Bar itself. No matter how well-intentioned, and I have no doubt of the sincerity and the commitment of those members of the Board of Governors and the California lawyers you've just heard, I think no vocational group is well situated to pass judgment on matters that directly implicate its own economic interests, social status, and self-image. Nothing in the history of the American Bar generally, nor of the California Bar in particular, reveals it to be an exception.

I think an independent regulatory body with a broader cross section of representation would be less susceptible both to the fact and the appearance of partiality. I think, despite the reform package that has been proposed and set forth to you this morning as the panacea for the Bar's disciplinary problems, that no significant improvement in governance procedures is going to be possible without fundamental changes in the structure of Bar regulation and removal of its autonomy over the system as a whole.

The deficiencies of the Bar disciplinary system have been exhaustively documented elsewhere, and I don't need, I think, to rehearse them at length here. Let me just summarize a few of the most pressing problems and why I don't think either they are unique to California and the California system or susceptible to the kinds of incremental reform strategies that the Bar is proposing to deal with them.

First of all, there are problems of jurisdiction. The oversight of Bar disciplinary agencies has been both too broad and too narrow. It extends frequently to matters having very limited relevance to professional practice -- misdemeanor marijuana offenses, for example, or civil disobedience connections -- and fails utterly to respond to most client grievances. Mere incompetence or negligence are not even deemed matters for disciplinary oversight. Its agencies have lacked the resources to complete timely investigation and processing of grievances in California. A large percentage of cases are closed without any investigation at all, about 60 percent. That's true in every other jurisdiction which has Bar control over the regulatory processes as well, and even in that 40 percent of the cases that do receive some form of investigation, it tends to be very cursory, frequently just a letter response by the attorney is enough to get the action dismissed.

That three and a half years are taken to process complaints, which again is not atypical of other systems, and the fact that in 1984, only 11 attorneys were disbarred in the year in which clients filed almost 9,000 complaints, I think, are an appalling record and cast significant doubt on the Bar's commitment to really make substantial changes in its disciplinary processes.

My own sample of cases involving serious disciplinary problems reveals that a tiny fraction of lawyers who are disciplined come from the elite part of the profession. The Bar as a whole is disinclined to pursue any of those with professional stature in the community.

Recall also that statistics on response to client grievances are only responses to those articulated client grievances. For the vast branch of American consumers, they may have no idea at all whether they have been well served by the attorneys. They lack the information and the incentives to proceed in filing complaints, and indeed every major academic study of clients who have experienced significant problems with their attorney, reveals that they do not even, the vast majority of them, on the order of 90 percent, even make a complaint to a bar disciplinary agency. Their perception is that nothing much will happen as a result of that, and that perception is, on the whole, entirely justified.

ASSEMBLY MEMBER CALDERON: I take it you are advocating the establishment of some independent agency to handle lawyer disciplinary matters.

PROFESSOR RHODE: Yes, I am.

ASSEMBLY MEMBER CALDERON: Currently, the Board of Governors is made up of non-lawyers.

PROFESSOR RHODE: Right, the Board of Governors does have lay representation.

ASSEMBLY MEMBER CALDERON: All right, and the Board of Governors has general oversight responsibility for the State Bar subject to those jurisdictions exclusively reserved to the Supreme Court. Now, I believe the membership is made up almost evenly of non-public members as well as lawyer members...

MR. PHILIP M. SHAFER: Sixteen attorneys, six non-lawyers.

ASSEMBLY MEMBER CALDERON: All right, so they're six non-lawyers and 16 attorneys, but it's not all exclusively lawyers.

PROFESSOR RHODE: No, it's two-thirds lawyers.

ASSEMBLY MEMBER CALDERON: I guess what I'm trying to get at is that, if we set up an independent agency, I assume there will be some lawyers and some non-lawyers.

PROFESSOR RHODE: Right.

ASSEMBLY MEMBER CALDERON: We sort of have that now. Maybe we could change the numbers a little bit. How can we eliminate some of the problems that you are suggesting by setting up an independent agency, especially those related to the more political considerations? You indicated those lawyers that have stature in the legal community tend not to be the subject of disciplinary proceedings. How will that change in an independent agency? In other words, how will you take the politics, if you will, out of any agency that you set up?

PROFESSOR RHODE: I think those are important questions to address, but I guess I'd like to begin by noting that I don't think that changing the complexion of the disciplinary agency is just tinkering with the numbers. It would make an enormous difference to have it controlled by non-lawyers, to have two-thirds of the board not members of the profession, as opposed to the current situation which is one-third. You're effectively altering the balance of power, and I think most of the experience with appointing lay representation to committees is that you don't begin to make serious changes as long as they are a...

ASSEMBLY MEMBER ROBINSON: On that point, when Senator Presley, Senator Lockyer, and I were on one of the boards and bureaus within Consumer Services, we did in fact have a majority of what we referred to euphemistically as "public members," and, again, I don't want to automatically criticize your suggestion. What we found, and I'll attempt to characterize it, is that on quite a few of them the profession ended up dominating lay members who had no idea of exactly what profession they were governing. I use "profession" very broadly because in some cases you're talking about everything from a medical sub-specialty like optometry or you're talking about landscape gardeners -- they call themselves landscape architects. In any case, it tended to cut the consumer out because these lay members came in. How can this be prevented in any independent structure that you certify?

PROFESSOR RHODE: I think that's a real concern. Obviously, the success of any independent agency is going to be directly attributable to who its membership is. Just to have a lay member in and of itself, if it's somebody who is relatively uninformed, unpersuasive, no outside sources of information, and no outside constituency to which that lay member is accountable, it's probably not going to make much of a difference. What you will notice in terms of looking at who the lay members of these sorts of governance boards are -- they tend to be people who are not likely to challenge the profession. That's in part because oftentimes the profession controls who the lay appointments are. You will notice that it is not members of Ralph Nader or consumer groups generally that have representation on disciplinary agencies or boards when you're picking a few lay members. What I would like to see in terms of that...

ASSEMBLY MEMBER CALDERON: Would you want a Ralph Nader person to sit in evaluation of your competency as a lawyer?

PROFESSOR RHODE: I would like to see representation from organized consumer groups on the board governance body. I would also like to see representation from professional groups that compete with lawyers on the Bar disciplinary body. I would like to see academics who have some special expertise and knowledge of regulatory processes, not just legal academics but other people who know something about regulatory structure.

I think that we could sit down and come up with a list that's likely to provide a much broader cross section of an informed and, I think, committed group to cope with problems of professional competence if we were starting fresh and if we were not limiting ourselves either to membership in the profession or to the kinds of individuals that have historically been hand-picked to provide the "lay person's point of view" on these boards. It's important to give them an outside constituency and source of information to which they're accountable and to which they can have recourse in order to maintain some measure of influence on the Board.

ASSEMBLY MEMBER CALDERON: So you see a new agency, in terms of its benefit with respect to being effective in lawyer disciplinary matters, the key component being those who are appointed with perhaps two-thirds of those being lay persons, competitors of lawyers, and people from other walks of life?

PROFESSOR RHODE: That's correct. It would be realtors, accountants, people who have some concern, for example, about areas of unauthorized practice and so forth, most people who had some source of independent professional experience.

SENATOR LOCKYER: It seems to me that, as I review the history of independent regulatory bodies, federal and state, that more often than not they wind up being dominated by the industry they're meant to regulate. Do you have some reason to think that this would be any different?

PROFESSOR RHODE: You're isolating the single part of the administrative process that's most problematic, that is, capture of the regulatory body by the regulatory group.

SENATOR LOCKYER: You don't disagree with the general observation?

PROFESSOR RHODE: Not with the general description in the slightest, but I think it is also the case that your own experience and most of the academic research in the area indicates that there are degrees and degrees of capture.

Certainly some administrative agencies function better than others. What I think California now has a chance to do, if it takes the opportunity to start afresh, is to try to design an agency which is as well insulated from capture as is possible. One reason why I think there's an opportunity to prevent at least some of the worst forms of abuses here is because of the constitutional issue that was raised earlier. I think it was raised in a way that misdescribes the problems, so I'd like to take just one minute, if I could, of your time to address that question. It was asserted somewhat earlier that there would be constitutional difficulties in removing disciplinary jurisdiction from the Bar. That's simply not true. There would be constitutional difficulties in removing it from the courts, but the courts could establish under their aegis an independent commission, and that would prevent the kind of control by the state which was raised as the parade of horribles.

SENATOR LOCKYER: I think that's what he meant. I think he was referring to the "state" meaning the state Legislature's or the governor's controlling the process, not the courts'.

PROFESSOR RHODE: Right, and what I wish to emphasize is that's not what I'm advocating and many of the administrative agencies that have been susceptible to capture have also been susceptible to political pressures in part because they aren't under an independent judicial oversight structure. I think it would be possible if one de-politicized the appointments to some extent by putting the jurisdiction ultimately in the hands of the court.

ASSEMBLY MEMBER ROBINSON: But, Doctor, as to the example that I gave when we put all these public members on the 49 boards and bureaus in the state, you suggested public members historically, and Nader was one example you used. In California, where this is again under the executive, the gentleman who was in control of the appointments of the governor himself was Mr. Richard Spohn, a former counsel to Nader and a very close friend of Nader. Still with all of that diligence to the consumer movement, if you will, the members that were appointed with the support and the assistance of Mr. Spohn ended up getting co-opted by the professions they were meant to govern. In optometry, there's a current Auditor General report that alleges, and no one's disputed it to my mind and satisfaction, that the industry or the profession actually had co-opted the board, which was operating as a lobbying arm of the trade association. Even with that diligence, our past experience...

SENATOR LOCKYER: Perhaps you can give us an example of where you noticed an independent regulatory body that seems to be the model sort that you suggested would be desirable to regulate the Bar. Can you tell us what...

PROFESSOR RHODE: Yes, I will. First to respond to your point, I think that's a fair one, but also remember that the laymen who have been appointed under California's prior system have also been a minority. One tendency that has frequently been observed in watching how those members function on the bodies, once they learn they're not going to really have much control, is that they cease to attempt to use the influence and the sources of other information that they might have. It's just not worth putting their time and effort into a structure that they can't change in any meaningful way. That's why it's not just a question of who you appoint. You can appoint a real zealot, but, if that zealot is going be the lone voice in the wilderness and not part of a majority on the board, there tends to be somewhat less zealotry.

SENATOR LOCKYER: We've done that.

ASSEMBLY MEMBER ROBINSON: Some of us do that all the time. Hugo Black did it on the U.S. Supreme Court for a long time before there was a Warren majority. I do think that those public members could be a sounding board for the public and could force, either through convincing their colleagues on the board or convincing the media, to the extent that they're convinceable, or the public that can bring pressure to bear. That's the way the system works. We tend to grease the squeaky wheels, and the squeaky wheels should be the public members on the board.

SENATOR PRESLEY: Just to respond to this quickly -- I think that any organization or any administrative regulatory group depends primarily on who you appoint to it and the governor and the Legislature, as with the State Bar Board of Governors, make these appointments and if they make good, dedicated appointments to begin with and if they are motivated and if they have the resources, then I think you're going to see some results.

SENATOR LOCKYER: I'm still waiting to hear an example of somebody who does it right.

CHAIRPERSON CONNELLY: I was going to gently prod Ms. Rhode, one, to answer Senator Lockyer's question on other state examples and other boards and commissions and, second, to wrap up so we can move on to the other folks in the Task Force.

PROFESSOR RHODE: Right, thank you for the time and the indulgence. I wish I had and could put before you a list of one, single example which I thought was going to be the model. One of the things that the Task Force, of which I am a member, is now recommending is that a significant amount of study be invested in looking to see what sorts of models tend to work better under

what circumstances. New Jersey, for example, where the state court has taken an active role in setting up an independent appointment process, has a commission that has functioned, I think, more successfully than some. Certainly a body, and we can just even look within the profession to see areas where broad representation, for example, on the American Law Institute has had some impact on the kinds of recommendations that emerge. I would like, because I don't have the opportunity now to set forth in the kind of detail that I think would satisfy you, to suggest different alternatives and to give members of the committee an opportunity to study them. If I could just summarize two important points, the fact that there may not be a perfect paradigm to copy shouldn't, I think, dissuade us from making every effort to move in the direction of such a regulatory agency. There are better and worse, and while we may not reach the millennium, we can certainly try to make more progress than we have in the past. I also think that the kind of issues about which we're talking...

ASSEMBLY MEMBER CALDERON: It goes both ways. It could work. It cuts both ways. In other words, even though we don't have the perfect paradigm, we ought not to be dissuaded if we seem to have a system that might work better. We ought to consider a new system, but also keep in mind that it won't necessarily produce better results although we're hopeful that it might. It could produce worse results.

PROFESSOR RHODE: One advantage, I think, in this kind of a commission would be to build in some kind of self-monitoring process so that there would be an opportunity for on-going evaluation as to whether it was indeed having the effect for which it was established.

Just a second point, since I have to some extent a patient and captive but discriminating audience, I think it's important to note that the same sorts of problems that have characterized the Bar disciplinary process in California are not unique to just the disciplinary structure. There are problems in its admissions processes, problems in its unauthorized practice lay competition, enforcement processes, and a whole range of other issues where the profession has been able to exert the dominant influence over matters that affect its own position in the governmental structure. Hopefully, by trying to make progress in this one area, we may be able to address some attention to some of those other areas as well. This could be an opportunity to raise broader questions about professional autonomy in governance. I urge this group to do everything possible to make those opportunities real possibilities.

SENATOR LOCKYER: I would only suggest that, and I guess we may hear some more people urging the same potential course of

action, but I think our perhaps unique task is to try to predict the practical result of some of these theories. I am among those who have often heard what is substantive is little more than slogans suggesting that something be devised that is independent of politics, and we have found from our own experience that's virtually an impossibility, or something be devised that's independent; yet, I don't know what that means in most circumstances. That's why I ask for an example in the real world of something that approaches the theoretical ideal you urge. I would hope that those of you who have volunteered to participate in these discussions will continue to help us search for those models. I will only ask this in a somewhat rhetorical way, and it is to suggest that I hope that your theories about independence would extend to the academic departments, the academic senate in hiring and firing, and other things that go on in universities. I'm sure you would want an equal amount of independence regulating your own profession.

The thought I have that I would like to spend some time discussing with people, when it's appropriate, is that it may be that the best discipliner for lawyers and many other people is the potential for malpractice actions, that that really is the most serious threat, much more so than posed by some distant board of a half a dozen people or whatever number it is, that some folks in Sacramento may yank a license or whatever. The constant possibility of a lawsuit and all of the attendant psychic and economic turmoil maybe are the real discipline, and I'm thinking that perhaps we need to review those rules to see whether that could be a more effective device.

CHAIRPERSON CONNELLY: Ms. Rhode, thank you very much. Not unlike a court, we get the last word here so I'm not going to let you respond because I want to move on.

PROFESSOR RHODE: Thank you, and I'd be happy to be of whatever further assistance to the committee I could.

SENATOR ROBERT PRESLEY: Mr. Chairman, on that last point with Senator Lockyer, he'll see further end to the recommendations where we're asking that the auditor general and the attorney general look into and have input into suggestions as to how this should be put together. It may be a partial response to the question that you raised.

Mr. Chairman and members, I am encouraged, I think, by what I've heard this morning from the representatives of the Bar, the outgoing president, and the new president. Of course, I hasten to add in saying that I've been encouraged by past Bar presidents -- that we were going to get at this backlog and do something -- and have been disappointed. I think they mean what they say, and I hope they're capable of bringing it about because I am, as I say, encouraged by what I hear this morning.

Last spring, I put together this task force which has representatives here today, primarily because of the disciplinary problems that had come to me as a legislator from constituents who are having problems. One person, for example, lost $25,000 in this process. He finally did get, I think, all of his money back, at least part of it, but the person who was responsible, as far as I know, is still practicing law. This and a number of other complaints like that got us looking into it. We asked these experts in the field who have been put together to study the issue, and they have been doing that very diligently. I want to right now thank them for their time. They have been very generous with their time and travel to study this and put these recommendations together.

As far as I'm concerned personally, I'm just trying to improve the disciplinary system. I don't care about the Bar dues. I know they have to have the dues. I'm not for holding up the Bar dues. I know that, if you're going to do anything, if you're going to be an effective disciplinary system, whatever it is, you've got to have the money to do it. I wanted to make that clear.

The primary recommendation that you'll hear from Professor Bundy, who will testify next, is that we set up a regulatory agency under the California Supreme Court to get at this problem of discipline better. I think that whether it stays where it is or whether it's under the Supreme Court ultimately, these recommendations are going to be worthwhile.

Other areas that we're involved in and making recommendations on include the client trust funds that we've talked about earlier; written agreements between attorney and client and that the client's bills should be itemized like you get in most cases -- you itemize what the service is or was; the Client Security Fund; the mandatory malpractice insurance fund; waiving the client's right to report errant lawyers' conduct to the State Bar; the Board of Governors' membership to include more public members -- we got into that earlier; a review of the arbitration and mediation process and re-examination of the types of attorney acts covered by this Board; the rules and the punishments that are imposed; more effort by the Bar to initiate complaints against lawyers who are guilty of malpractice or criminal acts rather than waiting for complaints to be filed by the clients; and better public access to the process. All these, if we work as a group and try to move in the right direction, I think will be helpful. I would just urge the Bar to not in the least diminish their efforts that they seem to have underway to improve all of this.

Mr. Chairman, I want to point out to you, in the interest of time, I have condensed down four pages of tremendous information that I would like to have heard, and we don't have time, but, if you don't mind, I'd like to have it made a part of the record.

CHAIRPERSON CONNELLY: I wanted to say that -- sometimes members say these things to be hokey to other members, but this is not the case -- Senator Presley's leadership on this issue has identified responsible options for the Legislature and in the whole packet of information that I received of about 300 pages, the four pages of recommendations from the Task Force -- for the members that didn't receive it, it's these four pages titled "Reform Recommendations" from the Task Force -- were very specific. I thought they were very helpful and really serve as kind of an agenda of all of the issues that have been raised this morning. Regardless of what the Legislature does or does not do on the independent agency issue -- there's division among those of us who are here, there are some of us who are undecided and so forth -- these other recommendations, in particular, some of them seem to be immediate and helpful, so I just wanted to thank you for that work.

SENATOR PRESLEY: I'll certainly accept that, but I really wanted the thanks to go to the group that's sitting before you who have done all the work.

CHAIRPERSON CONNELLY: With that, we'll go to Mr. Bundy.

PROFESSOR STEPHEN M. BUNDY: Thank you. Just as a start, I think, on behalf of the Task Force, I'd like to say that we are grateful to Senator Presley for having given us an opportunity to have input. It's unusual for a legislator to take that kind of step, to call together people who have an interest in an issue. Senator Presley and his staff have devoted very considerable time to helping us.

My name is Stephen Bundy. I teach at Boalt Hall, the law school of the University of California at Berkeley, and I'm a member of the Task Force. I'd like to say that my testimony here today is on behalf of the Task Force as their appointed representative so I speak as an agent, if you will, although I agree with what I'm going to tell you.

You've heard a little bit about the Task Force. We consist of lawyers from private government, and public interest practices; academic lawyers specializing in issues of professional discipline; and concerned lay persons. A number of us have personal experience as either prosecutor or defense counsel in disciplinary proceedings. Two members are former employees of the State Bar, and two members presently sit on its Board of Governors.

The essential point that we agreed we would present to you today is the reform that a majority of the Task Force believe is the single most important initiative available to you in the way of reform; that is, to take statutory responsibility for attorney discipline away from the State Bar and invest it instead in an independent regulatory agency under the jurisdiction of the

California Supreme Court. A majority of the Task Force, a very substantial majority of the Task Force, believe that the time to take that step is now. A significant minority is not yet prepared to endorse legislation to that end, but everyone on the Task Force, all the members, agree that the time to study the proposal and to give it serious attention is now.

Let me just explain a little bit about...

ASSEMBLY MEMBER ROBINSON: Excuse me, Professor, would that be accomplished by constitutional amendment or by statutory amendment?

PROFESSOR BUNDY: I was just going to break away from my prepared testimony. In view of the discussion on that subject, we haven't worked it out, but my own understanding of the way the constitutional structure works in this state is that that could be accomplished by legislation. The present structure, Article V, of the State Bar Act, which is a piece of legislation passed by the Legislature, empowers the State Bar to act in disciplinary matters as an arm of the Supreme Court. In essence, what happens is that the State Bar is empowered by the Legislature to handle proceedings, to bring charges all as under the aegis of the Supreme Court which has final constitutional authority. We wouldn't be changing the locus of final constitutional authority. It would remain with the Supreme Court, but we'd be talking about a reform of the statutory provisions that now permit the State Bar to act as prosecutor and judge in the first instance. We'd be talking about placing it in some other agency.

ASSEMBLY MEMBER ROBINSON: Most of the agencies that are created that function directly under the Supreme Court, or as a part or adjunct of the Supreme Court, the Judicial Council, what have you, are contained within the Constitution. The Supreme Court is co-equal to the Legislature. If we are going to change the emphasis rather than put it in the State Bar and put it instead with the Supreme Court, I would suggest to you that our Judicial Qualifications Commission, the Judicial Council, all of that, is in the Constitution.

PROFESSOR BUNDY: Yes, and so is attorney discipline.

ASSEMBLY MEMBER ROBINSON: If we're going to create another department under the Supreme Court, I want to hear legal advice on it.

PROFESSOR BUNDY: When the time comes for drafting, it seems to me that this would be given much more serious study, but the essential structure of the State Bar is that there is no constitutional authority for discipline in the State Bar. It's clear, and the Supreme Court has said it again and again: it has

ultimate and exclusive jurisdiction over attorney discipline. I think there are good reasons...

ASSEMBLY MEMBER ROBINSON: No, I'm giving the hypothetical of drafting. The question of whether it's a constitutional amendment or statute is very fundamental: are we going to create a statute that says the Chief Justice shall appoint so many members to this independent commission, or are we going to say the court is going to elect in conference, with the majority of the court acting thereon, to a point? When you start talking about that, you're talking about fundamental constitutional policy.

PROFESSOR BUNDY: Let me say this, that the Supreme Court has held constitutional an arrangement which allows the State Bar to act as it does now as the prosecutor and judge in disciplinary matters despite the fact that the State Supreme Court has no role in appointing the members of the State Bar Board of Governors. In other words, the Legislature is allowed to specify any reasonable measure to assist the Supreme Court in performing its attorney discipline function. You know that the way the statute works is that because of the constitutional concerns, the State Bar's recommendation on discipline matters...

ASSEMBLY MEMBER ROBINSON: I want to know about the recommendation.

PROFESSOR BUNDY: Our recommendation would be essentially that the State Legislature should draft legislation that would fill the slot, if you will, subordinate to the Supreme Court that the State Bar now fills.

ASSEMBLY MEMBER ROBINSON: Who would be the appointing authority, for example,...

PROFESSOR BUNDY: It seems to me that there would be no objection to having the Legislature be the appointing authority so long as the ultimate proposal is only advisory, as it seems to me it must be constitutionally. It seems to me that you could also provide that the State Supreme Court would be the appointing authority, and that would also be proper, although it seems to me that you would want to draft the legislation in consultation with the Supreme Court.

ASSEMBLY MEMBER ROBINSON: I was assuming it was going to be the Court. There's a whole passel of problems that come with the Legislature's making the appointments.

PROFESSOR BUNDY: I understand. I'm just saying I don't think anything is ruled out, given that the Supreme Court has authority to...

ASSEMBLY MEMBER ROBINSON: Especially since the governor has to sign any statutory scheme.

PROFESSOR BUNDY: The basic point is that, given that they have approved the constitutionality of a structure like the one that we now have, where the State Bar has this authority, it seems to me there are a wide variety of permissible mechanisms for the Legislature so long as they are basically reasonable and so long as the Supreme Court retains the ultimate power to make the final cut.

If I can just briefly outline the reasons, and I'd like to do this in the context of a response, if I might, to Mr. Heilbron's comments at the end of the State Bar's testimony -- it seems to me there are two real reasons why it makes sense to make this change and these, I think, are the reasons that have persuaded the Task Force majority that the time to make the changes is now.

The first is very simple; it's simply a matter of conflict of interest. The State Bar is a professional organization of practicing lawyers, and it has as its principle function the promotion and protection of practicing lawyers' interests. Now you can say, as Mr. Heilbron did, that the Bar has an interest in disciplining itself, and that is certainly true, but so does any competitor in a marketplace have an interest, a prudential interest, in acting decently. The question is whether that prudential interest in acting correctly and maintaining the image of the profession as a competitor, if you will, where the profession is an economic entity, overcomes the built-in reluctance of any industry to regulate itself. It seems to me that you can simply say that if you wouldn't accept a state Board of Forestry that had nothing but members from the timber industry. You wouldn't accept a Public Utilities Commission that had nothing but representatives from the utilities industry or that had a majority of those representatives, or two-thirds majority of those representatives. There's just no convincing reason it seems to me why we should accept a disciplinary body for a profession like lawyers, which has the majority, a two-thirds majority as it turns out, of members who are from the profession. It's just that basic, and if we were starting over, we'd never do it that way.

ASSEMBLY MEMBER CALDERON: Excuse me, Mr. Chairman. The concept of having non-interested parties sitting in regulation of the profession's interests seems to me to be relatively new in the last ten or fifteen years. Up to that point, we seem to have been content to allow professions to regulate themselves. So I'm not sure I subscribe entirely to the basic theory that we would never tolerate a situation where you're going to have professionals regulating themselves, or one particular interest regulating itself.

I don't know that we can necessarily say that on regulatory committees or bodies that regulate a particular profession, we ought to replace the members with all nonprofessionals. Yet, if you follow your theory, you seem to be suggesting that would be better than what we currently have.

PROFESSOR BUNDY: I'm aligning myself, if you will, with Professor Rhode's earlier remarks. I don't think that you want to shut the profession out of involvement in this sort of issue. Obviously, they have a powerful interest;they have expertise; it's wholly legitimate that they should participate. The question is: do you place what is, in practical effect, the ultimate disciplinary authorities -- since they make the prosecution decisions, they try the cases and the result in a very real sense binds the Supreme Court in most instances -- are you going to leave that in an agency that also functions as a promotional organization for the profession and which is dominated by the profession, both numerically and practically? Now, you point out that the idea of regulating the professions independently has only grown up recently. It seems to me that that's because it's only recently that we realized and started to think about the fact that lawyers are providing a service to consumers and that most consumers are not really in a position to judge what they're getting, as Professor Rhode was saying. They're not really in a position to seek redress effectively when they've been wronged. That's the argument for regulating the profession as if it were providing any other consumer service. It seems to me, in a very large number of instances, many, many routine transactions, it's perfectly proper to conceive of regulating the profession that way.

ASSEMBLY MEMBER CALDERON: But why is it that, as a state, in terms of lawyer ethics, we expect lawyers to be able to represent clients irrespective of their own personal interests, yet we cannot trust them to represent other lawyers irrespective of their own personal interests? It seems to me to be an inconsistency in that kind of logic.

PROFESSOR BUNDY: It seems to me that when a lawyer's personal interests are involved, in fact, under the ethical rules, the lawyer must disqualify him or herself. That's in fact the basic rule. If your personal interests are involved, absent the consent of the client, you must disqualify yourself.

ASSEMBLY MEMBER CALDERON: How about personal philosophies, which also relate to personal interests in this context? I think because you're talking about image -- we've heard that raised in terms of a personal interest in the Bar -- I think image is involved. I don't want to get into this too much deeper, but obviously, lawyers have a professional responsibility

not to prejudge a client and to provide that client with the best possible representation within the limits of their skills, irrespective of what their own personal belief is or what their own philosophy happens to be. Why aren't they capable, then, when sitting now in judgment of or having some connection with members of their own profession? Why are they incapable all of a sudden of being able to assert that same kind of professionalism?

PROFESSOR BUNDY: I think it's much more than just a matter of belief or philosophy. We're talking about real impact. It is certainly true that the bad lawyers, if you will, are a minority and perhaps a small minority of the profession, but when the disciplinary decision is made, it impacts on many other lawyers who may not see themselves as bad lawyers, and indeed are not bad lawyers, but who look ahead to the possibility of what they perceive to be potentially unjust or unfair discipline against them, based upon the application of stricter standards to people who are bad. Lawyers know that unjust claims often succeed. They know that better than anybody because they often bring them. So what you're talking about is a situation where a lot of perfectly decent lawyers have a very strong interest in not having the standards expanded, even to cover all the bad lawyers because of the fear which is, I think, in part justified, that that will mean that a few good lawyers will be disciplined in situations where they don't deserve to be. It seems to me that, in order to have a vigorous regulatory scheme, inevitably, there are going to be good lawyers who are going to get pinched and what that means is that there is a very substantial constituency in the State Bar that is not that enthusiastic about the idea.

ASSEMBLY MEMBER CALDERON: Yes, but that constituency is not a voting constituency. That constituency is a captured constituency, if you will, in terms of whether or not the choice is there for lawyers to decide whether or not they want to be a member of the State Bar or not.

PROFESSOR BUNDY: It's not an issue of whether they want to be a member of the State Bar. It an issue of, then, what the tone and temper of the organization is.

Let me move ahead because I think I can finish my testimony. It seems to me that the acid test here is what the Bar has done. You can say, "Well, they ought to be able to divorce themselves from their own interests; they ought to be able to make the most effective possible case against their co-professionals." Then you have to ask yourselves, "Have they done it, historically?" Historically, they have not. This situation is really no different. We have a new disciplinary system. This is part of a sequence of events that goes back many years, as Mr. Robinson was saying. There are periodic proposals

for change, and yet here we are, years later, after lots of criticism and lots of promises of reform and improvement, and the disciplinary system today is badly organized, underfunded, backlogged, and chronically lenient. That's despite the fact that the Bar hasn't gotten involved at all in what's really getting most small clients, which is the sort of routine neglect and incompetence that destroys peoples' lives.

In the private litigation practice, or a public prosecutor's office, and I think this goes to Mr. Calderon's point, we clearly look and say, "They just haven't done the job." It seems to me that the inevitable answer is that they just aren't ultimately interested in doing the job. Those are the two reasons, this conflict of interest and this history of poor performance, that have persuaded us of the need for reform.

Now, if I can just finish up. I know you want to conclude. You obviously want to think about this hard; the Task Force wants, to the maximum extent possible, to help you think about it. We would like to see you have a further hearing before the end of the year on this issue, both committees, if you will. We'd like to see the Auditor General and the Attorney General involved to think about the best way to do this...

ASSEMBLY MEMBER ROBINSON: On that point, Mr. Chairman, because I was waiting for him to get to the attorney general recommendation. I don't mean by this comment to relate to the current attorney general or the immediate past attorney general. I would like to know how many criminal prosecutions that have been brought by the attorney general, or by any of the district attorneys who operate under his aegis, against attorneys for conversion of a client's money. Those are grand theft, but I think it goes to Mr. Calderon's independence issue. I do not see, and in my experience I don't remember too many, cases where the DA or the attorney general has brought felony charges. They have left it to the Bar, and where one of my individual constituents who isn't fortunate enough to be a member of the Bar, goes off and rips off his next door neighbor's car for a couple of thousand dollars, and oftentimes these cases are considerably more than that, they get charged with a felony and they go to the "big house." But, the lawyers who are stealing the money through conversion of trust funds or through more creative techniques, such as billing and whatnot, are not getting prosecuted. I'm very suspicious too of your recommendation to have the AG involved, because as for the staff in the AG's Office, if it goes all the way back to Stanley Mosk, when he was AG, I don't know of any cases where they've brought the felony charges. They don't bring the felony charges against their brothers or sisters.

PROFESSOR BUNDY: I can't speak for the attorney general.

ASSEMBLY MEMBER ROBINSON: No, I know, but before we have another hearing, I would like to know how aggressive law enforcement has been before I put them in a position to review something. I want to see where they've been in existing Penal Code provisions. Conversion of money is stealing. It's grand theft; it's a felony.

PROFESSOR BUNDY: One sentence, Assemblyman Connelly, which is that you should look very closely at regulatory models that will avoid the problem of capture. It seems to me, though, that as you do that, you have to face the fact that you've got an agency that's in the throes of capture and has been for been for many, many, many years. As you look to the future and the costs of the changeover, you have to realize that you're in it for the long term and that the history of this system indicates it hasn't worked very well.

CHAIRPERSON CONNELLY: Thank you, Mr. Bundy.
Let me tell you what we're going to do. We're going to stop for lunch right now. We'll resume with Mr. Schafer when we return.

LUNCH BREAK

CHAIRPERSON CONNELLY: We concluded with Mr. Bundy, as one of the representatives of the Task Force, who gave an overview, with Senator Presley's assistance. We're going to move to Mr. Schafer, who I understand is another member of the Task Force and advocates a minority position, I guess, with the Task Force.

MR. PHILIP M. SCHAFER: Thank you sir, and thank you to Senator Presley for allowing me to join that group.
So that you'll understand my perspective, a little bit about myself...I'm an attorney from Del Norte County. After seeing Gerry Spence the other day, I no longer call myself "a country lawyer" because he's so overwhelming, but I'm, as I say, a former district attorney. I've been a member of the Board for three years, and I'm just completing my term.
I am very much a critic of the disciplinary system. I would describe myself as a constructive critic. I came to the Board angry about what I consider to be a lax and inefficient system, and that's been my agenda. I appointed the Coyle Commission.

CHAIRPERSON CONNELLY: Excuse me, let me interrupt you for just a second. We have another member of the Legislature here, Assembly Member Dave Elder, so if we can acknowledge him. Thank you.

MR. SCHAFER: I appointed the Coyle Committee. It was not a stacked committee. It consisted of a federal judge as its chair, experts on management, critics of the system, non-lawyers, and members of district attorneys' offices. Virtually all of the recommendations of that committee were adopted by the Board. The catalyst for that action was not newspaper articles. It was not even legislative criticism, but unanimous Board concern to try to improve the process and the results. AB 1260, authored by Assemblywoman La Follette, is the work product of a committee that I chaired three years ago.

I worked hard to speed up, to improve, and to open up the system, and I believe we've gone a long way. This is not by way of self-aggrandizement but rather an effort to show you that there are people in the trenches working to support the system. We've never appeared before you before. I've never lobbied you; I'm not somebody who's come to Sacramento making promises. I've had the unanimous support of the Board when we make constructive recommendations.

Much of what I have to say has been said already so I'll skip over things, but, if I have one premise to offer you, it has to do with the underpinnings for the suggestions that we ought to have a separate, a distinct, independent whatever you want to call it, something different. The underpinnings are that, whether you call it by the polite name of a "conflict of interest" or whether you call it by the name of a "brotherhood," those underpinnings are wrong. We are not a brotherhood. We are not a kind of a Cosa Nostra that's devoted to trying to cover up and protect our brethren. We are ashamed of and embarrassed by bad lawyers. There are times when legislative misconduct is exposed. You are equally ashamed; you are equally embarrassed.

ASSEMBLY MEMBER CALDERON: When? (laughter)

MR. SCHAFER: You have an advantage over us in that the political process may well remove that bad apple for you before it contaminates the rest of you. You're just as concerned as we are about the fallout upon you when bad, dishonest, unethical people are in your midst.

The overwhelming comments that I receive from lawyers within my district -- and I mean by a 95 percent ratio -- they are interested in the discipline system. They are worried about lawyers who are contaminating them. This is the major concern of Joe and Josephine Lawyer. Never once have I had one approach me in some way seeking leniency for one of the brethren. They want, as you and I do, a quicker, harsher system. The only disagreement that any of us has in this room is how to accomplish that goal. Whether it be some people who I see will be testifying later who believe they've been victimized by lawyers or whether it be legislators or members of the Board, we all have the same goal.

The "we" that I speak of when I talk about the Board are not just lawyers. We have six public members. If you question whether we are a brotherhood, I would suggest that perhaps you ask, and you speak privately or publicly to, Howard Way, a man whose opinions I know you respect. Ask him if he thinks the present Board -- and that's all that really matters, the present Board -- I'm not going to apologize for history. It is negative on our track record. What is the present Board going to do? I think that you will get an affirmative answer from him that this is a group that is committed to doing a good job.

You had asked originally for what could be done, for some specific recommendations so I'll skip over some things and get directly to that. Number one, I think you could exercise your legislative oversight to see that the goals are done. We're charged with the task of doing it, but you surely have the responsibility to see that we do it well. Some of the proposals in the fee bill really were directed towards that. I would encourage you to exercise that.

Number two, please help us to get the financial resources to do the job.

Number three, expand the Client Security Fund. Right now, it covers only outright theft. I personally have in mind a self-funding, malpractice insurance program on the Oregon model. The bad attorneys are bare. The good attorneys are spending a lot of money for malpractice coverage, and, whether their motivation be self-protection or protection of their clients, they have coverage. The poor attorneys do not. It's of little value to a client to have his attorney disbarred, when that's the ultimate result, if the net result is he's out of pocket a lot of money because of a poor attorney.

I would urge you to adopt AB 1260. That, again, is the La Follette bill dealing with costs. I don't pretend that it is a major fundraiser or anything else, but it does place at least part of the onus of the costs on those who are responsible for it. I see that Noel Keyes and Assemblywoman La Follette will be testifying with respect to that later on. That is something that was developed three years ago out of the Board. Now, I don't know the exact genesis of the idea. I know that when I walked onto that Board and I said, "I'm interested in discipline," they said, "Here's a problem. Take a look at it." Wherever the idea comes from, if it's a good idea, the Board is more than anxious to act upon it.

The last suggestion I would make, and I haven't seen this raised by anyone else, is that right now the Board of Governors delegates its function of making the disciplinary recommendations to the independent Review Department of the State Bar Court. Going back into the mid '70's, we had a system in which basically the Board was directly involved with discipline and actually heard and passed judgment. I would suggest that

thought be given to returning partially to the older system where there's some direct Board involvement, perhaps substituting for the existing Review Department. If done that way, accountability would be much clearer. The commitment which President Heilbron has made to you would be evidenced by the votes, and that's what I think is a real concern to people: what comes out of the pipeline? Even if we were only slow and achieved an acceptable result, the process would probably be satisfactory. But, regardless of how fast we go, if the final result is not acceptable to you, to lawyers, and to the public, the process is worthless. I believe that type of change would take legislative action.

Sometimes implied and sometimes expressed is the suggestion that staff is not up to the job. Public lawyers are frequently thought of as those who can't make it in the private sector. Good public defenders, members of the Attorney General's Office, members of DA staffs all suffer from that unspoken innuendo. My personal experience is that the Office of Trial Counsel is staffed by good, hardworking, capable people. Like any other staff or law firm, there are variations in quality, but by and large, that is an excellent staff. Given the opportunity to do the job, I believe we will do it well for you.

To respond to a couple of things that I heard this morning, one, with respect to more non-lawyers, I have no basic objection to that proposition, but our experience has been that the non-lawyers have been more sympathetic and more lenient on the lawyers than the lawyers themselves. Now, I don't have any empirical evidence to support that, but that's what I've been told numerous times.

Ms. Rhode's remarks -- I've been through her analysis -- her definition of some of the problems, I think, are most accurate. There is not a single problem that she has stated that cannot be solved within the existing system. Her basic premise is the brotherhood, the conflict of interest. That's a basic premise which I disagree with.

She does make one statement that I think is very inaccurate, and I wish she were here because I would like to correct it in her presence. One thing she says is that an unduly large percentage of cases are closed without any investigation, 60 percent in 1984. The 60 percent figure is what I want to deal with because that is inaccurate. Mr. Forsyth, while not putting it in percentages, has given you approximate numbers there today. Those are accurate. That statement is true only if you want to say that 60 percent are not given high profile felony treatment and they are not carried entirely through the process. Every single complaint is investigated. The investigation may be very cursory. It may be a review saying: "This doesn't do the job." This is no way because you don't like the suit your lawyers wears. It's not a disciplinary matter." Some of them reach that level of absurdity, and obviously get no more investigation.

The question was raised earlier about written agreements. Now, that may be a good idea; it may not be. The Board thought it was an excellent idea. Under a committee chaired by Mr. Heilbron last year, a proposal came forth and was ultimately acted upon -- I believe it was about two months ago -- requiring lawyers to give written communication to their clients with respect to how the fee is to be calculated, what's to be expected, and an estimate of what it is to be. Some of the argument on the Board was that it didn't go far enough or too far or whatever, but again, this is an example of genuine consumer concern from the Board itself. Maybe it's not everything you're looking for, but there is a real desire.

CHAIRPERSON CONNELLY What happened to that?

MR. SCHAFER: It passed.

CHAIRPERSON CONNELLY: Is there a requirement now of fee disclosure in writing?

MR. SCHAFER: What the Board did was to create a Rule of Court requiring a written fee communication. Susan has just told me that the process requires 90 days for comment and then it comes back to us for a formal implementation.

CHAIRPERSON CONNELLY: I don't want to divert too much of the committee's time on this issue, but does that extend to appeal rights as well? There are a number of situations where disclosure is required, and fees is one of the most important. Second, it seems to me to be appeal rights.

MR. SCHAFER: It's broadly enough phrased so that I would think it would. It doesn't use the word "appeal"; it says, "You shall communicate the fee arrangement."

CHAIRPERSON CONNELLY: I was thinking specifically of appeal rights, absent any fee consideration, just whether or not there was a right to appeal.

MR. SCHAFER: Are you talking about from the fee, itself?

CHAIRPERSON CONNELLY: No, I'm talking about when you lose at the administrative hearing level and you have a right to appeal, in effect, through a writ to a superior court.

MR. SCHAFER: I did not understand your question.

CHAIRPERSON CONNELLY: I'm sorry. The problem is that I didn't phrase it crisply. Why don't we move forward now and maybe pick up on that later? Maybe you can advise us.

MR. SCHAFER: I apologize for my ignorance.

CHAIRPERSON CONNELLY: No, that's all right. I have a question too -- this is something I should have asked the Bar representatives earlier and actually we discussed it just briefly at lunch -- but could you refresh my recollection on the membership of the Review Department? We've been chatting about the membership of the Board of Governors, but in terms of review of the disciplinary measures imposed, it truly is a review board.

MR. SCHAFER: I am not a numbers person. My understanding is that there are 15 people on the review board, two of whom are lay people appointed by the governor, and I can be corrected on that at anytime.

CHAIRPERSON CONNELLY: Is there someone here who can -- this gentleman is nodding. And there's two appointed by the governor and those are non-attorneys, and 13 attorneys appointed by the Board of Governors?

MR. FORSYTH: The Review Department of the State Bar Court is composed of 15 individuals. Mr. Schafer is correct, two are appointed by the governor of the state. The Board of Governors appoints the remainder; it has appointed one additional public member. It has flexibility to appoint up to three public members.

CHAIRPERSON CONNELLY: Thank you. Additional questions for Mr. Schafer?

MR. SCHAFER: I just want to make one last point if I could, again, on the brotherhood theme. Mr. Heilbron did an excellent job of listing what we do, and the list is much longer and includes the publication of what we describe as consumer publications in many areas. Some of them deal with consumer rights. Now, here's one of them that says, "What can I do if my lawyer's bills seem too high?" Here is another one entitled "What can I do if I have a problem with my lawyer?" These are informative. We attempt to give them wide distribution, and I submit to you no brotherhood would publish such pamphlets as these if their goal were to protect the lawyers who were the problems.

I thank you very much for the opportunity to speak to you.

CHAIRPERSON CONNELLY: Thank you, Mr. Schafer. Questions? Mr. Martin.

MR. PHILIP MARTIN: Mr. Chairman, members of the panel, my name is Philip Martin. I'm also honored to be a member of

Senator Presley's Task Force. I think that perhaps what I would hope to bring to the Task Force is practical experience in that I've been a lawyer for 15 years, the last five of which have been spent entirely concerned with lawyer law; that is to say, discipline and malpractice and other matters concerning the State Bar. For three years, I was the disciplinary prosecutor for the State Bar. As far as I know, at that time I was the only prosecutor, top to bottom, who had a very substantial amount, 10 years, of experience in civil and criminal litigation before I became a Bar prosecutor. I worked under both the old management and the new management. For the last two years, my private practice has consisted of prosecuting and defending attorney malpractice cases primarily for victims, prosecution of such cases, and Client Security Fund matters and representing attorneys in State Bar disciplinary and admission proceedings. This includes the recent Saleeby case in the California Supreme Court, which established due process rights for client security fund applicants as against the State Bar's contention that only the dishonest lawyer had any rights.

I just want to say for a moment that the Saleeby case is interesting, not for what the court said, but for what the State Bar didn't do while the case was pending. The petition in Saleeby was filed in February of 1984 and made a very, very cogent argument in a whole lot of areas, the basic premise of which is that the applicant had no rights at all, no right to a hearing, no right to know what was going on, and no right to present evidence in support of his application whereas the dishonest lawyer who had really no interest in the proceedings because it wasn't his pocketbook, was given the right to appear, defend with counsel, present evidence, and review. Notwithstanding the fact that the petition was filed, the State Bar did nothing to even question whether its procedures were correct. In June of 1984, the state Supreme Court issued an alternative writ of mandamus, a very, very strong hint to anyone with any legal experience. It says either you can change your procedures and do it right or else you can come in and show cause why not. Still, the State Bar did nothing. In December of 1984, the matter was orally argued. Every single member of the Supreme Court -- there could be no doubt from appearance at oral argument that they considered this a very valid petition and that they were going to do something about it. The only question was how far they were going to go. Still, the State Bar did practically nothing. They finally did form a committee, but no rules were ever changed, and the State Bar never once in the entire litigation acknowledged that there was anything wrong with their procedure. I think this establishes the flavor of the kind of bureaucracy that unfortunately the State Bar has become. It establishes and shows what kind of stuck-in-the-mud type bureaucracy that is operating.

ASSEMBLY MEMBER CALDERON: What's so unique about stonewalling? It's not a new procedure.

MR. MARTIN: There's nothing unique about it at all if you're simply a private litigant, but, if you're a public institution that claims to represent the public and is presenting the Client Security Fund as one of your great things that you're doing for the public, then I think you have a responsibility to do something more than take a stonewall litigation posture.

ASSEMBLY MEMBER CALDERON: I'm not suggesting that it's right, but I am suggesting that it's not new. I suppose I want to get to a more fundamental question in terms of your involvement. Obviously, you're unhappy and probably, in many instances, with justification, or good reason to be unhappy, with the way the disciplinary procedure as handled by the State Bar has proceeded through the years. Are you advocating now, consistent with some of the other speakers before you, the establishment of an entirely new agency to administer disciplinary procedures?

MR. MARTIN: Yes, I am. I support everything that Deborah Rhode said and Steve Bundy said, and I came to this conclusion long after I left the State Bar. While I was with the Bar, I had my little petty gripes like anybody else, but I thought that what was needed was the strengthening of the procedure, a little more vigorous leadership by the managers, and things like that. It wasn't until I left the State Bar and got the perspective of both having been there and having defended disciplinary cases on the outside, and over a long process, watching what happened after I left, because I kept close contact with friends and acquaintances within the State Bar, not at the high management level that you're heard from, but right at the line levels, the people who are actually prosecuting and investigating these cases. In every instance, what I found was that the morale level, which was low when I left, has plummeted to ever and ever greater depths. Right now, here we finally have a man who has been a prosecutor for 11 or 12 years, one of the finest prosecutors in the State Bar system, has finally unburdened himself to the press because he was so upset at what was going on and so upset at the way the management that is presently at the State Bar runs the office.

ASSEMBLY MEMBER CALDERON: So your recommendations and your involvement, as part of this Task Force, don't stem only from your experience in representing lawyers who've been charged by the State Bar but also your experience in terms of having worked on the other side and having kept contact with some of your acquaintances and other people on the other side?

MR. MARTIN: That's right. Basically, I have simply felt for a long time that the system needed some changes, but it wasn't until this spring that I thought there was any possibility of seeing any change. That's when I got in touch with the Legislature and became a member of the Task Force.

ASSEMBLY MEMBER ROBINSON: Mr. Chairman.

CHAIRPERSON CONNELLY: Yes, Mr. Robinson.

ASSEMBLY MEMBER ROBINSON: Since the witness advocates the reforms that were suggested by Senator Presley and the earlier witnesses, I would appreciate it, in order to expedite our agenda, if he could just go to some of our open questions, such as capture and what not, expound upon those proposals or answer some of the legal and constitutional questions.

MR. MARTIN: There is something that I'd like to say about that that I don't think the point has been made before. I'd like to talk about why not leave this with the State Bar and why we need somebody independent. What's the effect of having the trade association connected with the disciplinary association? I have a little chart here that I drew up. I have just created a little structure here of the chain of command at the State Bar and...

The Board of Governors is obviously at the top of the disciplinary chain of command. Members of the Board of Governors, while they probably have a lot of experience practicing law, very few of them have any experience in the disciplinary system or any expertise in legal ethics when they arrive although they're all prominent lawyers, and they're very good lawyers. I think they're committed people, but they do not have the experience in the disciplinary system. Even Mr. Schafer, the only Board member I have heard of who actually went on the Board to do something about discipline, did not really have any expertise until he got on the Board. They have brought no experience in disciplinary matters. The chief executive of the State Bar has no experience, as far as I know, very little or no experience practicing law or prosecuting disciplinary cases. These folks are excellent Bar Association executives. They are not prosecutors. The next below the chief executive is the senior executive for Program. She also has little or no experience practicing law or prosecuting disciplinary cases.

Next is the director of the Office of Trial Counsel. She also has really no experience practicing law and little or no experience prosecuting disciplinary cases. Then there is a small number of supervisors here who do have experience prosecuting disciplinary cases although they don't have much experience outside the Bar. Finally, there are the line attorneys most of whom also have very little experience either practicing law or in disciplinary cases.

SENATOR LOCKYER: I suppose the obvious inquiry is, if you were to create, as has been suggested by some, an independent body principally of public members, those people are going to have no experience in the law or disciplining.

MR. MARTIN: I think that's exactly correct, and the point of this chart is not to criticize any individual but to point out that this is not the structure that one would set up if one had a mission of disciplining lawyers. This is an excellent structure for a trade association, but to discipline lawyers the only people who would lack this kind of expertise would be the people at the very top, a member of the commission who would represent the public interest. They would not hire a top prosecutor who didn't have litigation experience or experience, and even if they did, he wouldn't hire the next two or three levels below of people who also did not have this kind of experience. I've never seen a prosecutor's office that could operate in this fashion.

ASSEMBLY MEMBER CALDERON: But there are -- I don't want to mention any names -- but certainly there are elected prosecutors, DA's who probably have little or no experience in the prosecutorial function. What you may be pointing out, more than anything else, is just an idiosyncrasy of the democratic process.

MR. MARTIN: Here again, if you have a district attorney, he's been elected on a platform to prosecute criminals. None of these people has been elected on a platform to prosecute lawyers, and, unless you have the motivation to do that because that is your mission, I don't think it's going to happen. I simply bring this up because I can't imagine that an office whose sole function, like the independent office that the Task Force is advocating, would have its three or four top levels of management know very little about what they're doing.

ASSEMBLY MEMBER CALDERON: What do you think about a board that knows absolutely nothing about what it's doing?

MR. MARTIN: I think that the independent commission that's been discussed here and is hopefully going to be the outcome of this procedure, I think that...

ASSEMBLY MEMBER ROBINSON: I'm still trying to get someone to describe what it is, and that's one of the other discussions we had to try to get back to the reality. Independence, like beauty, is in the eye of the beholder. I wish somebody, especially one of the members of Senator Presley's Task Force, would describe to me exactly what they believe this commission to be, how it's structured, who does the appointing, and how it's funded.

MR. MARTIN: I think that the Task Force has not reached any final conclusion. The Task Force has gotten so far as to say that this idea deserves very serious evaluation and study. A majority of the Task Force feels that it should be implemented, but what the Task Force has done is develop a series of what appear to be practical recommendations of who should be looking at this in the next few months, who should be looking at the problems and looking at the various ways in which...

ASSEMBLY MEMBER ROBINSON: Right before lunch you had one of the people who wanted to recommend the attorney general to examine the disciplinary system. As I pointed out, and I've yet to hear a witness contradict it, you show me one case where an attorney who has converted a client's funds has been prosecuted by a district attorney or an AG. All of the district attorneys operate under the power and constitutional authority of the AG so I tell you that they're just as guilty, and I allege that they're just as guilty as the Bar is. I want to see some meat on the bones. The concept of independence I can agree with, but I want some meat on the bones. I want to know what you're talking about.

SENATOR PRESLEY: Assemblyman Robinson, I think the reason you don't have the meat on the bones is that we've been meeting since the spring, through the summer. We intended to continue to meet in the fall. It just needs some more refining before we get there.

ASSEMBLY MEMBER ROBINSON: Independence will be viewed by you and me maybe together or differently, if it's a commission appointed by the Supreme Court or by the chief justice thereof or if it's a commission appointed by the Legislature as one other witness testified. There are different connotations to independence.

SENATOR PRESLEY: What I'm telling you though is that this is all going to come together, and when we are back in session in January, if there is going to be legislation there will be more meat on the bone. It will be more specific.

SENATOR LOCKYER: I want to find out if the head bone is connected to the back bone.

CHAIRPERSON CONNELLY: Mr. Martin, does that conclude your testimony, sir?

MR. MARTIN: Well, I think I'll just stop.

CHAIRPERSON CONNELLY: I don't want to cut you off because if you have additional things to add that you think will

be helpful to us, please do. You're the only witness we'll have who worked on a daily basis with the complaint process who doesn't come from the State Bar directly.

MR. SCHAFER: Might I have 30 seconds to comment on Saleeby because I think it illustrates an important problem?

CHAIRPERSON CONNELLY: Just let me make sure that Mr. Martin's finished. Okay, Mr. Schafer, why don't you do that?

MR. SCHAFER: Mr. Martin is to be congratulated for his victory in the Saleeby case, and it is an example of good lawyering. It is an example of how the system is criticized and how changes are made, but the essential victory, if you will, there was to say that the State Bar had established too informal a process in connection with paying off claims. Yet, the goal was to be less lawyerly, to get an informal process, to make it simpler. We were told, "No, you have to enact more procedures, you have to add another layer of procedures in order to get this money out to the client." Now, I don't necessarily disagree, but that's the conundrum we're faced with constantly. There was a real effort there to make this a fund for which there was ready accessibility.

ASSEMBLY MEMBER ROBINSON: Mr. Schafer, that begs the question. You had the crooked lawyer represented. It begs the question. I think that you're exacerbating the problem. Why was he represented? He has no vested interest. Maybe he wants to protect his reputation, but that's already shot.

CHAIRPERSON CONNELLY: We're not going to re-try Saleeby. I think the issue has been developed here. If we got on this course, we could do an hour on it alone.

MR. MARTIN: I have a couple of other things concerning the independent office.

CHAIRPERSON CONNELLY: I'll do that in a couple of minutes, and then I'd like to see Mr. Macken, who is the last member of the Task Force who wants to testify. Thank you.

MR. MARTIN: In the recommendation that I see, and I'm speaking now for myself, this would not prevent the State Bar from continuing to use volunteers because what we are talking about is an independent prosecutor's office. The State Bar Court, which does the intermediary judicial functions, can still remain within the State Bar in terms of establishing the clerk's office and assembling a pool of volunteers to hear these cases and so forth. Those volunteers will still be allowed to participate in the system. If you did have a series of

professional full-time referees, there are also advantages to that. I do not think it would be very expensive because if you had people doing this full-time, you will not need very many of them.

I think also an independent office would provide motivation because its function would be solely that of disciplining errant lawyers. The motivation to do that would be in the mission itself, whereas the State Bar has a whole lot of different missions and different fish to fry, as Mr. Heilbron described to you this morning, and an independent organization could concentrate its efforts, its energies, and its motivation in the area of discipline. The cost need not be any greater than the cost now and could still be borne by the profession.

Finally, I don't think that an organization of this type would likely become a victim of capture and become a trade organization. The reason is that lawyers are very well-equipped to establish trade organizations, and the State Bar presumably would continue as a trade organization. There would continue to be several organizations of attorneys who have common interests. This office whose sole function would be discipline -- I don't see any point why anybody would even try to capture it, especially since all of the State Bar's witnesses and the prominent lawyers who run the State Bar have said that there is no brotherhood and the State Bar, the organized Bar, has the same interest in prosecuting lawyers as everyone else. An independent agency has no reason to think it would be a victim of capture. Thank you.

CHAIRPERSON CONNELLY: Thank you. Additional questions for Mr. Martin? Mr. Macken, if you would, sir.

MR. TERRY MACKEN: Thank you. Listening to the born-again Christians from the Bar this morning, you can't believe that there are any problems with what the Bar does. It isn't that the Bar doesn't have the power to do what's right; it's that they choose not to do what's right. I think that's probably why we're here today.

The California Bar system needs improving but not restructuring because restructuring would leave it in the hands of the judges and attorneys, and that's an evil in the current system. It has to be removed from the hands of the biased and given to the impartial. Perhaps a famous American said it best. One of the signers of the United States Constitution, and our fourth president, James Madison, said: "No man is allowed to be a judge in his own case because his interest would certainly bias his judgment and not improperly corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time."

To give an example of what President Madison had in mind, we wanted to file a request for disbarment against an

attorney who had clearly violated the State Bar's code of ethics about trying to deceive the courts and lying to the courts repeatedly. The first comment we heard from attorneys we discussed it with was: "You're wasting your time. The Bar won't do anything to an attorney." We didn't hear this once but every time from each attorney we discussed it with. They all said, "It won't do any good." Because his violations were so outlandish, so well-documented, and it cost us so much money, we filed a complaint anyway and we documented it. With the first correspondence we had from the Bar, they mentioned our voluminous letter with enclosures. They requested additional information, which we promptly supplied and even volunteered to supply anything additional which they requested. They didn't ask for any more. Then, the Bar started the old whitewash. They told us: "It's no violation to be a jerk. It's not a violation to say you're an expert in your field when you know nothing about it." Is that incredible from a disciplinary group? "Ignorance of the law is an excuse," they said. I wonder if that works as well for lawyers when they're stopped for speeding as it does when defending themselves with the State Bar. The Bar said to me that it takes a higher degree of proof to convict an attorney than is required in typical civil lawsuits. Whatever happened to equal justice for all? Isn't that what our country was founded on? Our Constitution says that no state shall deny to any person within its jurisdiction...

ASSEMBLY MEMBER CALDERON: Excuse me, it's greater. The burden is "clear and convincing," I think, which is a higher burden than in the regular civil suit, which is "it's more likely that you are than you're not". Then, again, you're also dealing with the right to practice some occupation, which I know has already been discussed to some degree by Mr. Robinson. Constitutionally, before the State can step in and affect that right, whether you're a lawyer or anybody else, you've got to show a compelling interest on the part of the State. The fact that there's a differing burden I don't think -- I understand the thrust of what you're saying, but I just wanted to point that out.

MR. MACKEN: Okay, I appreciate that.

SENATOR LOCKYER: Which was it that you didn't think should be valid, whether it be clear or convincing?

MR. MACKEN: The State Bar said that it takes a higher degree of proof, to quote them, to convict an attorney than it does in a typical civil case.

SENATOR LOCKYER: Did you think it shouldn't be clear proof? Was that what you found objectionable, or not that it shouldn't be convincing proof?

MR. MACKEN: I go for both of those. I just don't believe it should take a higher degree of proof for an attorney than it would for others.

SENATOR LOCKYER: I'm told that other license actions by licensing boards generally have a similar standard, that is, clear and convincing, to discipline whatever it might be, some other profession.

MR. MACKEN: I believe that the State Bar must be restricted to trade association activities because, by its refusal to follow the law that it is sworn to uphold, it's lost the right to discipline attorneys for anything more serious than the failure to pay Bar dues. You might be interested in what the attorney who caused all this thought about the Bar. I was told that he said to a friend that the Bar charges were only a nuisance. He considered the Bar that inept.

Decent attorneys would probably be glad to see discipline taken away from the Bar because it's giving them a bad name. It's the fringe operators, the borderline ethical and not so ethical, who have a vested interest in the State Bar's retaining the discipline because they know the Bar will protect them unless, of course, they don't pay their Bar dues because that's where the Bar really gets tough. Five times as many attorneys are suspended for not paying their Bar dues as are for crimes against the public.

I think the California State Bar has amply demonstrated the wisdom of President Madison. In other words, if I can't have my friends and relatives on the jury if I'm on trial, then why do attorneys get to have other attorneys on theirs? There can be only one true and logical answer: to protect their own. The State Bar won't even let you know what the accused attorney said in his defense so you don't know if it's just a snow job and a pack of lies like he filed with the court, or did he have some merit? Each year...

ASSEMBLY MEMBER ROBINSON: Mr. Chairman.

CHAIRPERSON CONNELLY: Mr. Robinson.

ASSEMBLY MEMBER ROBINSON: I guess as one of the layman on this committee, I'm having some difficulty understanding this allegation that a lawyer lied to a judge, as an officer of the court. That's perjury, right?

MR. MACKEN: He did it in his memos of points and authorities.

ASSEMBLY MEMBER ROBINSON: Did you go to the district attorney to try to get perjury charges?

MR. MACKEN: I was too naive, frankly. I didn't realize what the process was at the time.

ASSEMBLY MEMBER ROBINSON: The only recourse that you saw was through the Bar. You did not seek either criminal or civil sanctions, be it malpractice? Was he your lawyer at the time? Would you just briefly, very, very briefly, tell us exactly what the instant case is so I can understand it?

MR. MACKEN: My name is Terry Macken, I'm a Vice President of Prudential Mortgage Bankers and Investment Corporation. We deal in loans. There are a lot of scams in the business, but in 15 years, we've only been sued once. That lawsuit was instigated by this attorney who lied repeatedly at the municipal, superior, and appellate court levels. Now, one judge, a brand new judge, mentioned shysterism in open court when referring to this attorney's actions, but none of the other judges did anything.

ASSEMBLY MEMBER ROBINSON: Was he representing himself or was he representing...

MR. MACKEN: The attorney was representing a client.

ASSEMBLY MEMBER ROBINSON: A client.

MR. MACKEN: In a lawsuit against us.

ASSEMBLY MEMBER ROBINSON: The client was the one that sued you then?

MR. MACKEN: Yes.

ASSEMBLY MEMBER ROBINSON: The lawyer was representing the client?

MR. MACKEN: He represented a client. We later had the lawsuit dismissed and got a judgment against his client. That caused the unhappiness because it cost us so much money.

ASSEMBLY MEMBER ROBINSON: Were the papers filed with the court verified by the client? Most of those in civil action -- the client is going to sign the papers as well.

MR. MACKEN: With one exception, these are lies that the attorney created on his own.

ASSEMBLY MEMBER ROBINSON: They weren't in a verified complaint filed by the client?

MR. MACKEN: They were in a verified complaint filed by the client initially, but the rest of the time the attorney was filing them under penalty of perjury and other ways that they do it himself.

ASSEMBLY MEMBER CALDERON: Excuse me, Mr. Macken. Explain to me, other than your experience as a participant on this Task Force, was this lawsuit against your company the first and only experience that you have had with the disciplinary process as administered by the State Bar?

MR. MACKEN: Yes it is.

Each year, when the State Bar elects a new president, he gives a press conference pledging to uphold the law, to say he's concerned about the Bar's image, and to say he's concerned about the large number of complaints against attorneys. If he were really sincere, and I charge today that Dale Hanst from Santa Barbara and Burke Critchfield from Livermore weren't, he'd do more than just hold press conferences. Hanst from Santa Barbara and Critchfield from Livermore had personal knowledge of this case and the Bar's comments and allowed the cover up to proceed.

Just what are the Bar's leadership concerns? In an article in the latest issue of California Lawyer, the Bar's own magazine, Burke Critchfield, the outgoing president, says: "Bar associations can be a big help in enhancing the public image. We must reform the legal system and soon, or the Legislature or initiative process will do it for us." He talks about PR and if the Bar doesn't do something, the Legislature will, but not once does he say reforms are needed to right wrongs. No, just that the California Bar needs better PR.

What hope do we have for the future if discipline is left to the California Bar? The September '85 issue of the California Lawyer, the Bar's own magazine, says of the new president: "He places the image problem at the top of his team's list of priorities."

Madison was right. We need an independent agency.

ASSEMBLY MEMBER CALDERON: Were you a named party in this suit?

MR. MACKEN: Yes, I was.

ASSEMBLY MEMBER CALDERON: What was the final judgment?

MR. MACKEN: We had the lawsuit thrown out. We got a judgment against the attorney's client.

ASSEMBLY MEMBER CALDERON: Thank you.

MR. MACKEN: In the State Bar's own pamphlet, which was mentioned earlier, "What can I do if I have a problem with my lawyer?," they refer to an attorney's deceiving the court as a serious problem. They call it serious, but they refuse to do anything about it.

When you start to think about it, the State Bar is much better suited to be treated as just another trade association. Trade associations do PR for their product and their members. Trade associations hold educational seminars for their members, and trade associations only discipline members who don't pay their dues. That in a nutshell is the California State Bar. Let's not make them out to be something that they aren't.

The State of California and the people have to stop mollycoddling attorneys who steal from their clients, who try to deceive the courts, who lie repeatedly to the courts. Other agencies in California, other than the State Bar apparently, charge their licensees with knowledge, knowledge of the facts when they tell someone something. In real estate, for instance, you are charged with knowledge of facts you weren't even aware of, if it's something a reasonable person would have known or should have investigated. They call it the Easton case. Is the practice of law so different? Are attorneys to be allowed to continue lying to the courts repeatedly, and especially in their memos of points and authorities? The Bar seems to think so. That's why discipline for attorneys can no longer be left in their hands. It must be transferred from the hands of the uncaring to an impartial state agency that is interested in following the law, not condoning violations of it.

Since the United States was founded on equal justice for all, and the State Bar insists on acting like a dictator in some banana republic by requiring a higher degree of proof to convict attorneys than the rest of the population, the Bar is also violating my civil rights and the civil rights of all Californians who choose not to be attorneys.

The State Bar's disciplinary system is a joke. It's fit only to discipline members who don't pay their dues, like the Elks, Shriners, and Lions clubs do. How else do you explain the fact that five times as many are suspended for nonpayment of Bar dues, as are for crimes against their clients and the general public? Sins against the public, and they are many, must be handled by an independent agency, just as in other professions. Lawyers are no different. Independent agencies discipline others, and they can discipline attorneys, or is that what the Bar is afraid of? The Bar had its chance and president after president said to the public, "Up yours." It's time for a change, and the time is now.

But removing the Bar's disciplinary procedure isn't enough. We must also have changes in the law to prevent the judges in our courts from protecting the guilty, the attorneys. My apologies, I shouldn't have said "our courts" for they are

not. When an attorney has been sued, they are no longer "our courts," the peoples' courts; they are the attorneys' courts. The people, the ordinary non-lawyer citizens, might as well be fighting with one hand behind their backs, because judges, remembering their training as attorneys, scorn the public and close ranks to protect the accused if he's an attorney. For instance, if we don't change the law to permit suits for violations of the law that governs our acts under the B and P Code, judges can continue to do as one in Contra Costa County did, throw out that part of a suit because the public, the law-abiding citizens in California have "no private right of action under the State Bar Act." People in other professions can be sued for violating the law that governs their profession. Why are lawyers exempt? Because they wrote the law? It may be true, but it sure as heck isn't right.

Things are so bad in Contra Costa courts that a malicious prosecution case against an attorney, and it was well-documented with lies that he had told to the local municipal, superior, and appellate court judges, was thrown out by one of the judges whom he lied to earlier, Judge David Dolgin, who said, "There was no favorable termination since the dismissal occurred after Mr. Whatever's withdrawal from the case." In other words, it doesn't matter how many lies an attorney files with a court. As long as he withdraws from the case before it's dismissed, the courts will protect the attorney -- the "old boys' system" at its very best. I know it sounds incredible that a judge would say that, but I have copies here of Judge Dolgin's decision.

When we the public are asked to serve as jurors, attorneys and judges spend a lot of time talking to us about fairness and impartiality, asking us questions like "Do you think you can be fair? Do you think you can cast aside any previous ideas and decide this case solely on the evidence presented here?" Why don't these same standards apply when attorneys are on trial? The answer? The answer is because the jurors are attorneys. As a potential juror, the prosecutor will dismiss you if you're in the same line of work as the accused because they presume prejudice. Why doesn't this happen when attorneys are accused? Because an attorney is the prosecutor? It's a well-known fact in California that...

ASSEMBLY MEMBER CALDERON: Are you suggesting we should not have attorneys as prosecutors?

MR. MACKEN: I'm suggesting we should not have attorneys as prosecutors when we're talking about attorney discipline.

ASSEMBLY MEMBER CALDERON: Who would you want to prosecute?

MR. MACKEN: Lay people.

ASSEMBLY MEMBER CALDERON: You mean actually conduct the hearing or trial?

MR. MACKEN: Right, and I'll tell you why. I believe, and if you talk to attorneys, I think there would be -- I don't know if you are...

ASSEMBLY MEMBER CALDERON: Yes, I am an attorney.

MR. MACKEN: There's quite a concept that it's okay for an attorney to lie to the courts because it's just part of a vigorous litigation process. I don't believe the public condones that, and I don't believe in any other profession that you're allowed to just lie willy-nilly and call it aggressiveness. In other professions, you are taken to task for that, and I see no reason to exempt attorneys from that.

ASSEMBLY MEMBER CALDERON: All right, assuming we were to allow a lay person to serve as prosecutor, would you have an objection to a lawyer defending the accused?

MR. MACKEN: Certainly not. That's proper.

And what about judges? As even attorneys will tell you, it's the "old boys' school" at work, or to put it another way, would you really expect someone to throw stones at a person who works where they used to and is among the group that is their largest source for contributions? If you do, I understand the Brooklyn Bridge is for sale again. The only other answer that makes sense, if you care about your largest constituency, the public, is to remove attorneys and judges from the jury and the bench when we're talking about attorney discipline.

ASSEMBLY MEMBER ROBINSON: Sir, most of those judges are placed on the bench by a vote of the public.

MR. MACKEN: I know they are.

ASSEMBLY MEMBER ROBINSON: I mean that you can't have it both ways. The trial judges stand for election. You can't sit there and say that they're operating somehow to the disadvantage of the public. If the public believes that, they will remove them, and they have removed them on quite a few occasions.

I just have to caution you that I think you're getting far -- and I would be characterized even by your opponents and members of the Bar as a reformist -- so far afield that it's losing credibility with me. If people are perjuring themselves, there's a district attorney who has the option of filing perjury charges. The AG has the same concurrent power. The judges are

elected as we are, those of us who are members of this committee, by the public. The public has the option, every two years in the case of us in the Assembly and four years in the case of the ones in the Senate, and six years in the case of the trial judges, to remove those individuals. I think you insult the public if you generalize that the judges are in cahoots with the members of the Bar. I don't know if you are aware of that.

MR. MACKEN: I'm aware of that, but I also know that it's the attorneys who tell you about the "old boys' system." When you talk to an attorney about filing a complaint against another one with the Bar, they say...

ASSEMBLY MEMBER ROBINSON: I'm just telling you and I happen to be one of the reformists. Those members of the committee who have been around.

CHAIRPERSON CONNELLY: Mr. Macken, let me suggest, both as a matter of time and Mr. Robinson's question, maybe we could get you to wrap up now.

MR. MACKEN: Certainly, I'm on the last two paragraphs.

CHAIRPERSON CONNELLY: Fine, thank you.

MR. MACKEN: I can see you're anxious to have it. I'll try not to bore you, but I guess I'm a member of the class known as the "screwees." I was not fortunate enough to win. The Bar made me one of the screwees.

But, with your legislative...

ASSEMBLY MEMBER ROBINSON: I wouldn't want to make that generalization about investment bankers because so many scams have gone down in San Diego and Orange County involving the investment banking community and therefore try to draw you in. That's what I'm trying to tell you. You cannot make generalizations and expect to convince me, as an elected representative of Central Orange County.

MR. MACKEN: I agree 100 percent with that, but what I'm saying is, the reason it has to be taken away is because of the closeness of having one group discipline their members. That clearly doesn't work. With your legislative background, you have the power and ability to do some good, and I hope you don't waste this opportunity to help the people. I don't think there can be any doubt about how your constituents would want you to vote on this. I thank you for your time.

CHAIRPERSON CONNELLY: Thank you, sir.

Additional questions? (audience applause for Mr. Macken.)

ASSEMBLY MEMBER ROBINSON: This is not a popularity contest.

CHAIRPERSON CONNELLY: Thank you, Mr. Robinson, I'll handle this. This is a legislative hearing. This is legislative hearing. If you cannot restrain yourselves in the future, we'll have the room cleared just so that we can hear testimony because we want to have a deliberative process, so if you'd help me in that regard, I'd appreciate it. Thank you.

Now, have we heard from all of the people from the Task Force who wanted to testify? Yes, sir.

MR. PETER JENSEN: Mr. Chairman and members of the committee, Peter Jensen. When Senator Presley invited his Task Force members to come forward, I assumed that included all of the members and not just those who were going to testify, and I come forward simply to show the breadth of the membership of that task force, having represented the Bar for several years and walked the halls, making representations to you about the disciplinary system. I have remained close to this issue, and I think I can maintain that the Bar is moving in a direction that gives credibility to the comments and the arguments I made to you. I'll remain close to it to ensure that my credibility is not lessened because they do not fulfill the promises that they have made.

While I do not endorse all of the recommendations of the Task Force, particularly that of the creation of an independent agency, I do think that the Task Force is developing some constructive, specific recommendations, some of which you've heard today which Senator Presley articulated earlier and I think that they will continue to collectively...

CHAIRPERSON CONNELLY: Mr. Jensen, that's fine. (To Mr. Annotico) I understand that you're a member of the Task Force as well. We've had the agenda Task Force people so I'm going to limit non-agenda people to about 30 seconds.

MR. RICHARD ANNOTICO: I'm Richard Annotico. I'm a public member.

CHAIRPERSON CONNELLY: Mr. Annotico, I just want to indicate to you that all the people, who have agreed to, have testified and we have four, five or six people left to go. What I'd like to do is give you about 30 seconds because I gave Mr. Jensen that time.

ASSEMBLY MEMBER ROBINSON: He's a public member of the Board of Governors.

CHAIRPERSON CONNELLY: Be that as it may, there are people from the public who we did not allow to testify as well. I'm willing to pick people up at the end, but I'm concerned that we'll start moving late on our agenda. You can tell by my viciousness that I will anticipate brevity, extreme brevity.

MR. ANNOTICO: I understand. I came to the conclusion that perhaps a separate agency might be the way to go after a lot of soul searching, but, if we consider that agency, there are two matters that are of critical import. One has already been mentioned, the fact that at least half of those members on that commission should be public members. I think number two is the fact that any licensee members of that board should be appointed licensee members, rather than members who are elected by other licensees. The State Bar happens to be only one of 33 state regulatory agencies where its Board of Governor or Board of Director members are elected by other licensees, and therefore, it's sometimes a little confusing to those Board of Governor members where their constituency is, whether it's the public or whether it's the profession.

The last comment I wanted to make is that I think that, in the disciplinary process, the key stumbling block is the fact that the disciplinary process for a lawyer has what amounts to death penalty due process. We know that, on the administrative licensing level, there is an administrative level of due process. We know that above that there is a civil level of due process. Above that is a criminal level of due process, and above that is a death penalty due process. We have in the State Bar disciplinary system a death penalty due process, which therefore, makes the process much more slow, much more lenient, and much more costly than it need be. If we were to be able to incorporate the Administrative Procedures Act instead of this gargantuan gordian knot that is now in place, that is sort of like a snake pit or a white rat maze, we could simplify the system immeasurably and utilize those dollars to a better end and for better benefit for the profession and for the public.

CHAIRPERSON CONNELLY: Thank you, Mr. Annotico.

ASSEMBLY MEMBER ROBINSON: Of the last witness, I just wanted to know, are you the Senate Rules Committee appointee?

MR. ANNOTICO: Yes.

MR. MARTIN: Mr. Chairman, may I very, very briefly comment in this time on just a couple of points that the panel has brought up that haven't been discussed at all by the Task Force yet?

CHAIRPERSON CONNELLY: Okay, very briefly. You're bending me.

MR. MARTIN: First, the backlog. I want the panel to be aware that we have heard from a number of different sources, although it has not been mentioned to you today, that the State Bar about three weeks ago imposed a deadline on the members of the Office of Trial Counsel to close all of the 1983 complaints by a certain date this month. In response, as I understand it, complaints that should be investigated are being closed. I suggest that that may not be good faith compliance with what the Legislature had in mind.

Second, Senator Lockyer mentioned malpractice insurance and that he is interested in that area. I can tell you, Senator, as a lawyer who prosecutes malpractice cases against other lawyers, that there is nothing sadder than the very common situation of someone having an absolutely airtight malpractice case in which his lawyer has cost him a cause of action in the six figures and the lawyer has no money and no insurance to do anything. Neither I nor any of my colleagues who do this work will take on such a case because we can't get paid.

And finally...

SENATOR LOCKYER: You've handled legal malpractice.

MR. MARTIN: That's what I do, yes.

SENATOR LOCKYER: Could you estimate from your own experience what proportion of the clients who seek your help in effect have no damages remedy, because of the lack of insurance or assets?

MR. MARTIN: Probably about the same percentage as the number of lawyers in the state who are not insured, which I've always thought to be around 40 percent, but there're no statistics, although I did see something floating around here that said it was 20 percent. I'm sure it's a lot more than that.

SENATOR LOCKYER: That are uninsured?

MR. MARTIN: That are uninsured, and it's getting higher all the time, because the insurance carriers are dropping out of the field. I think Phil Schafer's idea of getting into something like the Oregon system is very, very meritorious and probably extremely necessary to protect the public. Not only that, but if lawyers are contributing to it, they will have a motivation they do not have at present for getting rid of the bad apple.

ASSEMBLY MEMBER ROBINSON: How many defendants have you had in your experience who requested a waiver as to a complaint for misconduct settlement?

MR. MARTIN: That was the third thing I was going to talk about. That has happened to me on a number of occasions and when I questioned this with members of the Office of Trial Counsel, they said: "You know, this happens all the time. We have to close a case because they settled the case civilly and now the complainant no longer wishes to assist us." I wrote the State Bar a year and a half ago about this very problem. The very first time it came up in my practice, I wrote a letter to the State Bar, and I followed that letter up two or three times with other letters saying there ought to be a rule change so that even asking for such a clause is clearly unethical. There has been no written response. There's been no response, and there's been no action.

ASSEMBLY MEMBER ROBINSON: I would hope that takes place by January, or I'll save that for the dues discussion.

CHAIRPERSON CONNELLY: Are there additional questions of the Task Force, committee members? Thank you very much, not only for your help but your patience with me today as I drive you forward so we can hear from as many people as possible. Thank you.

Ms. La Follette? I saw her here earlier. She is an Assembly member, and this is in regard to Assembly Bill 1260 and Noel Keyes.

ASSEMBLY MEMBER MARIAN W. LA FOLLETTE: Thank you very much, Mr. Chairman. Actually, it seems very appropriate that, when you're having a discussion of the State Bar's disciplinary system, you must also include a discussion of who pays the cost. Since I haven't been here all day, I don't know exactly if this part of this subject has been discussed at all, but my...

CHAIRPERSON CONNELLY: We touched on virtually everything to some extent.

ASSEMBLY MEMBER ROBINSON: I was talking to Mr. Connelly at lunch about your proposal. I'd like to broaden it a little bit.

ASSEMBLY MEMBER LA FOLLETTE: All right, that's fine, and that's the reason I'm here. At least we can have an initial hearing on AB 1260 so that you can refine it as you feel appropriate and maybe we can move it along.

Very simply, in its form right now, AB 1260 would require members disciplined by the State Bar to pay the costs of the disciplinary procedures. As you know, all these costs are now currently borne by the Bar, and, fortunately, many of the members of the Bar have never been subject to discipline themselves. In reviewing and preparing for this meeting today, I

understand that just this last year, over 8,000 cases have been opened concerning investigations and complaints of attorney misconduct. Although I know you were attempting to meet some of this in your bill, Mr. Lockyer, your bill still penalizes all attorneys, the professionals as well as those who are non-professional, because they all pay for the discipline procedure and costs of the other attorneys who are being disciplined.

ASSEMBLY MEMBER ROBINSON: Mr. Chairman?

CHAIRPERSON CONNELLY: Mr. Robinson.

ASSEMBLY MEMBER ROBINSON: Mrs. La Follette, would you object at the appropriate time, which would be after we reconvene, to amending your proposal so it would work both ways? In other words, an individual lawyer who was prosecuted and found innocent would be able to recoup his or her fees so that it's reciprocal. Second, the other question is: would you include the other professions, medical and accounting, in the same thing? I think you have a good concept. I just think all three professions ought to be treated equally.

ASSEMBLY MEMBER LA FOLLETTE: Professor Keyes, who is the one who originally came to me with this proposal, would like to respond to that.

PROFESSOR NOEL KEYES: Yes, there would be an objection. There are standards of the American Bar Association. Standard 6.13 of the Joint Committee on Professional Discipline disapproves of that. Let me quote from an article that I wrote in the Federal Beverly Hills Bar Journal: "That practice would cast doubt upon every adjudication by the agency that charges have been established. A respondent might conclude that the finding was promoted by a desire to collect the costs of the proceedings and avoid having to pay them. In order to assure the findings of the agency are fair in fact, and are perceived to be fair, the standard does not authorize collection of costs by respondents exonerated of charges against them." That's the standard of the American Bar.

ASSEMBLY MEMBER ROBINSON: Professor, the difference between you and me is that I'm not bound by what the American Bar Association says or doesn't say. It seems to me that, as a matter of equity, Mrs. La Follette has a very good idea. I would imagine that there are very few cases which actually get through the morass and get prosecuted where there's not either some stipulation achieved or some discipline. It just seems to me to be even handed, which we do in a lot of the tort law in California, in which the fees and costs ought to be awarded both

ways. I agree with Mrs. La Follette's underlying principle that the good, honest members of the Bar shouldn't have to fund these constant increases just for the discipline.

ASSEMBLY MEMBER LA FOLLETTE: I'm certainly willing to hear from the other members as to their feelings about that matter, Mr. Robinson. I'd like to hear some time from you as to how you think that might affect the passage and movement of this bill.

ASSEMBLY MEMBER ROBINSON: I'll say that as a member of this Judiciary Committee -- I think that's where your bill is currently assigned.

ASSEMBLY MEMBER LA FOLLETTE: Right, it is.

ASSEMBLY MEMBER ROBINSON: I don't know what Senator Lockyer will think of it in the Senate.

SENATOR LOCKYER: We look at bills after they pass the Assembly.

CHAIRPERSON CONNELLY: Having heard this bill two or three months ago, whenever it's been, and having given it some thought since then, it makes sense to me that it be two ways, at least in the instance where the prosecution is brought without merit. There's some discretionary determination by someone that it's an improper prosecution and, in that sense -- and there's some parallel civil law -- the attorney who's been falsely charged without merit ought to have recovery. That's a somewhat different place on the continuum that I think would respond to the professor's concern.

The second is that I agree with Assemblyman Robinson and yourself that we ought to collect the costs of the disciplinary action against attorneys who are found to be wrong, but I think that applies to a specific category of behavior. I'm less, and maybe this is improper -- I don't know; I haven't thought it through entirely -- I'm less concerned about disciplinary action that occurs in the instance of negligent conduct as opposed to some kind of intentional conduct. In the area of intentional conduct, it seems to be clear that the attorney who is disciplined ought to pay the cost of that.

I just mention those two concepts to you because I'm not sure they are at odds with what you're saying. They may be slightly different in emphasis. It may well be that a sentence or two developed between now and January resolves that and allows the bill to move forward quickly. It's maybe not all of what you'd like, Professor, but 95 percent of it.

PROFESSOR KEYES: I think you may have something, but I do think you need more criteria. If we had more time to have a hearing on that one point, I think I could give you more reason for the ABA opinion.

ASSEMBLY MEMBER LA FOLLETTE: I think that maybe we could work with your staff to get the criteria put together, at least in language, so that when you hear it in January you'd have something to go on.

CHAIRPERSON CONNELLY: What's happened, of course, is from the time that the Assembly Judiciary Subcommittee originally heard this bill, there has been the whole dues issue and the whole disciplinary issue which came to hearing in one of its every two-year cycles so we are kind of reeducated on the importance of this. Quite candidly, the first time I heard it, I didn't realize the rippling impact or the significance of it.

ASSEMBLY MEMBER LA FOLLETTE: No, or the major significance. Actually, there are some questions of fairness, here too. Should the 76,000 lawyers...

ASSEMBLY MEMBER ROBINSON: I think it's 82,000.

ASSEMBLY MEMBER LA FOLLETTE: No, I'm talking about the 76,000 who have not been charged with unethical action. Should they be the ones to have to pay for those other almost 8,000?

Back on the issue you raised, Mr. Robinson, this, of course, is an adversarial process, and in every case somebody loses. Naturally, there are going to be disgruntled clients, and I'm not trying to protect the lawyers some of whom really obviously do act unethically and dishonestly, but I think there should be some way to discourage people from ...

ASSEMBLY MEMBER ROBINSON: Right, and that's the main thrust of your bill, which I really compliment you for, that it will reduce an over litigious group anyway from exacerbating the process or using dilatory tactics because they'll end up paying for it. I think that's the major impact of your bill. There won't be so much money that's generated as much as there will be lawyers who will cop a plea, sign a stipulation, and take their medicine in order to reduce the ultimate cost. It has a tremendous psychological value to the system which will help reduce the backlog, that in of itself.

ASSEMBLY MEMBER LA FOLLETTE: I would think so too. Another argument that has been raised against requiring these disciplined attorneys to pay for their costs is that they have been motivated to be dishonest because they haven't had money in the first place so this should excuse them, but if we're going to

use lack of money as a reason for robbing or whatever, we can start letting people out of our jails and we don't have to worry about expanding our prisons. I don't think that is a very sound argument when it comes to attorneys, especially, since there is such a special relationship between a client and attorney. The client places his faith in that attorney and he expects that attorney to do the very best for him in all ways and, certainly, honesty is one of them. If this could help to deter some of the dishonest attorneys so that eventually we could eliminate them from our State Bar and from California in the profession, then I think attorneys would no longer be low at the bottom of the totem pole, like elected officials, in the public's esteem. I really would appreciate your helping with this bill and helping us to move it along. I know that Professor Keyes would like to give you some testimony.

PROFESSOR KEYES: Thank you very much. I made a little graph from the State Bar information about how the dues are going toward discipline and it's going up geometrically. One figure came down, and I'll be glad to give this to anyone who wishes to have it, 9.7 million -- more than half the dues. So you have this one percent of the Bar which is costing half the dues of the percentage who are ethical attorneys and are not being disciplined.

I might point out that the recoupment of the costs is the rule today in 70 percent of the states. It comes as a shocking thing that it isn't true in California. It not only makes the attorneys respect the system more, but, by going into their pocketbooks to a certain extent, the public will benefit.

Thank goodness, in a way, you didn't pass the dues bill because I don't think you considered this when you were entering into it. Now, this is not to say that no dues increase is required if you pass this bill, but it certainly should make an effective dent in the amount of dues increases that come to you every year.

The bill follows the majority of states which make it a precondition of reinstatement that these fees be paid. You're not doing much if you pass this bill and then permit the lawyer to be reinstated and somehow, some day, if ever, pay the costs. It is a precondition that should be in there, and that is part of the bill.

The discipline is important -- and I haven't heard this mentioned this morning, although I missed the first hour -- discipline is separate from recoupment of cost. Please don't allow people to confuse the two; namely, "Well, since he is paying costs, he therefore should have something less on his suspension or something." There is no relation. They're completely separate, and they should be separate even at the level of the Supreme Court. The Supreme Court should not be able to weigh the two. Costs are costs. Discipline is discipline.

Now, we have had cases, and I can cite many, in which a disbarred attorney was disbarred after five flagrant violations on identical grounds for which he was finally disbarred, but he paid no costs. We paid for all of those costs.

I have been hearing this morning that you are considering a bill to separate out the enforcement of the discipline process into an independent agency. Nobody knows how that's going to come out. I say this bill, irrespective of how it comes out -- in other words, whether it is an independent agency, whether it continues with the Bar -- the taxation of costs should be accomplished by legislation. And, of course, there is no other way to accomplish it.

The Bar, and I don't say this is to the credit of the Bar, refuses to endorse this, which is kind of shocking to me. They did this even after they had submitted it to the Supreme Court of California, which isn't up for re-election until next year. They did this even after the Supreme Court turned down a proposal that is very similar to AB 1260.

We have no other choice but to say that you people have to offer this solution.

ASSEMBLY MEMBER LA FOLLETTE: Thank you very much.

CHAIRPERSON CONNELLY: Thank you. Could I impose, I don't know so much on Ms. La Follette, but yourself, Mr. Keyes, both of you to work with Lettie Young and the staff of the subcommittee to get the sentence or two encompassing Richard Robinson's thoughts and my thoughts in a brief conversation with Senator Lockyer in terms of a slight modification of the bill that I think will resolve our concerns?

ASSEMBLY MEMBER LA FOLLETTE: I have a young man in my office in Sacramento who is a law student now, and he is very gung ho on joining an ethical profession. We will have him work on this.

ASSEMBLY MEMBER ROBINSON: One of the keys, of course, and I think maybe the reason the court turned it down initially is that you are going to have to separate by intent language the professional standards of the member of the Bar or the medical profession or what have you from the general public. We don't have a precedent in California for charging criminal defendants for the course of their prosecution. That is a different can of worms. In my mind, my support for the bill is predicated on the Bar being held to a higher standard because it is a profession. They're officers of the court, and the same is true for the medical profession and what not. There's going to have to be language drafted that makes that clear. I think otherwise, you're going to have overwhelming opposition.

ASSEMBLY MEMBER LA FOLLETTE: I think so, too. Actually though, I'd like to ask you by even including the medical profession, don't you think that is...

ASSEMBLY MEMBER ROBINSON: I'm willing to discuss that in the Judiciary Committee, I guess. It seems to me that the medical profession ought to be included, and the accounting profession. I think that those two professions are held in higher repute on their own pedestals from the view of the public. They should be behaving in accordance with the professional standards. They joined willingly, educated themselves at a great cost to become members of the profession, and the standards are...

ASSEMBLY MEMBER LA FOLLETTE: I agree with what you are saying.

ASSEMBLY MEMBER ROBINSON: In your bill...

ASSEMBLY MEMBER LA FOLLETTE: But I'm not sure about having both of them in one bill.

ASSEMBLY MEMBER ROBINSON: I am not trying to kill your bill with that option.

CHAIRPERSON CONNELLY: Mr. Robinson can get the support of the CMA. I am sure on that. Thank you.

ASSEMBLY MEMBER ROBINSON: Their discipline is not much better than the Bar's. That's one of the reasons that I almost categorically reject putting the state bureaucracy in charge of discipline because you can just look at the medical profession.

CHAIRPERSON CONNELLY: Ms. Walling. Helene Walling. I skipped over Mr. Weber because Ms. Walling has an airplane to catch. We will get right back and pick you up, sir.

MS. HELENE WALLING: Hello. I am Helene Walling. I am here to testify about my recent experience with the current system. I do have the impression that it is the "good old boys' club," where attorneys, whether they are good or bad, tend to protect each other.

My experience started in the spring of 1983, when the house belonging to my ex-husband and myself was damaged in a mud slide. My ex-husband engaged an attorney, without my consent and with whom I did not sign a contract. The attorney filed suit in my name. When he recognized his mistake, we met to discuss whether I wanted to retain him. During the meeting with him and my then-divorce lawyer, I was advised to get an SBA loan and to use the money to pay for attorneys' fees and costs. I pointed

out to him that that was illegal, that it stated very clearly in the guidelines that you can't do that. But they tried to convince me that there were ways around it. For that and other reasons, I decided that I didn't want the lawyer to represent me.

I attempted to get my own mud slide lawyer, and the attorney I saw wrote a letter to the first mud slide lawyer, pointing out that we had no contract and asked him for a response as to how we could work this out. There wasn't any response. I was unable to hire this second lawyer because it would only "confuse the issue." To make a long story short, I was advised by three other attorneys to just cooperate and try to negotiate something at the end of the settlement with the insurance company on the house. As the result of this advice, I didn't confront the landslide lawyer that was hired by my husband. Negotiations were essentially unsuccessful, and what I thought I had agreed to was not the same as the attorney thought.

I called the State Bar in San Francisco to file a complaint for his unethical behavior and to ask for forms. I was told there were no forms and was referred to an attorney in San Francisco who told me to send all the information I had and he would take the case and he would charge me. I later found out that the person to whom I was referred represents attorneys in malpractice and ethics cases and had nothing to do with the Bar. No one at the Bar could figure out how all this happened.

I also went to fee arbitration for the $25,000 in question, which was half of the $50,000 awarded to the mud slide lawyer. That was the disaster. I brought an advocate, Dr. Joan Edelstein, rather than an attorney, because of costs. I checked with the panel chair's office and was told there was no problem if I brought Dr. Edelstein. When we got there, the chair of the panel was stymied by the situation and stated that he was not familiar enough with the rules of procedures to determine whether it was all right that I have Dr. Edelstein as my advocate. He had to contact the chair of the fee arbitration board. He was unable to get a hold of the chair of the arbitration board and consulted with the other side.

They agreed that it was all right that Dr. Edelstein could come but she couldn't speak for me in any way because she wasn't an attorney. Dr. Edelstein and I were not allowed to speak with each other in the room, though the attorneys could do so. To consult her, we had to physically leave the room while the proceedings continued without us. In general, the attorneys were afforded every courtesy and privilege, and I got none. They completed the opening statement, and I was not allowed to ask any questions to clarify what was said. I was told that I could question witnesses afterwards. I was never allowed to introduce my own witness or question the witness for the other side. I was never allowed to interrupt with questions; yet, I was interrupted by panel members and the other side incessantly. In fact, I was never allowed to complete my opening statement, and I was interrupted all the time.

My statement about specific...

CHAIRPERSON CONNELLY: Now, this was before the State Bar Court, the first stage of the hearing process, is that right?

MS. WALLING: It is the county bar association.

CHAIRPERSON CONNELLY: This is the county bar association, and this was on the fee arbitration part?

MS. WALLING: That's right, about the dispute. My statements about specific unethical behavior, e.g., the SBA loan, were ignored. The fact that the attorney had included me by mistake and ignored any attempts to clear up the problem -- this was never even questioned. I was blamed for following the advice given to me by three attorneys and I should have known better than allow that to happen.

I was told by the panel chair that, because I did not confront this unresponsive attorney, the panel saw it as the same old story: "Your lips are saying 'no, no," but your heart is saying "yes, yes.'" I mean, the panel chairman actually said that to me. I was appalled at such behavior, but it was in keeping with the condescending and intimidating tone of voice. For example, all attorneys referred to each other as Mr. This or Mr. That, but I was "Helene."

The attorney whom I was taking to fee arbitration was seen as an innocent victim of divorce proceedings and was not held accountable for any of his actions which contributed to this situation. In the middle of the proceedings, the panel decided they didn't want to hear any more. They made up their minds, no witnesses, no questions, and that was the end. I immediately wrote a letter of complaint to the chair of the Board, which I am submitting to you, about the behavior in the arbitration, and I waited for the decision. The written decision was not completed until almost two weeks beyond the required time but was predated to the day of the hearing. I filed a motion to vacate and reopen on the basis of both timeliness of the award and misconduct of the arbitrators. The mud slide attorney protested the motion to vacate and asked that it be rescinded. When the chair of the arbitration board refused to rescind the motion to vacate, the attorney filed to stop me in the California superior court. In the appeal to the court, the attorney stated the arbitration was not appealable, and this is not true as I understand it.

I have since gotten very competent advice that I will not be able to win my case in fee arbitration and have gone ahead and paid the $25,000. I have also found out that the mud slide attorney is working with my ex-husband to get me to sell my share of the property for $10,000. We have an $80,000 offer on the house. My divorce attorney has told me that the mud slide lawyer is angry with me -- I guess it is because I am standing up for

myself -- and plans to testify against me in the court on my ex-husband's behalf.

Finally, I did straighten things out with the Bar, got the forms, and filed the complaint. I understand that it will be months before the complaint is investigated. Frankly, I don't give it much hope.

It is my belief that there is a conflict of interest. Attorneys protect each other. They don't go after their own. Attorneys who were supposedly representing my best interests advised me not to upset or disturb another attorney. Their mistake cost me $25,000, and they will cost me another $30,000 -- everything I own.

I have no other assets, and at my age I'm probably not going to get a real good start at getting that kind of money again. I received far better advice from consumer advocates regarding my rights and how to work within the system, as well as what resources were available to me. There are many fine lay persons who are able to understand the situations involving attorneys well enough to establish a separate disciplinary process. Given what has been exposed about the current system, I can see no other legitimate way to handle attorney discipline than to take it out of the hands of attorneys.

CHAIRPERSON CONNELLY: Thank you. I just have one question. When did you file the complaint with the State Bar?

MS. WALLING: In August.

CHAIRPERSON CONNELLY: In August. Okay. Thank you. I have a question as a follow-up on your case to the State Bar representative and I don't know if you would like to stay here for that. Who's here for the State Bar that I could ask a question of? It is not to the specifics of your case, but your -- so, don't all come up at once.

This lady's testimony brings to my mind a constituent complaint that I had. As a matter of fact, I've had two or three, where the constituent would contact me and relate a story that was similar to this lady's story in terms of a problem and that a complaint had been filed with the State Bar, in this instance, one that's been filed fairly recently. I want to find out what's happening about the complaint. I have a letter from the constituent that says: "I filed a complaint against Mr. Attorney on such and such a date with the State Bar. I haven't heard anything in nine months. Can you find out what's going on?" I send a letter under my stationery to the State Bar saying, "I've been contacted by my constituent and I want to find out what's happening with regard to the complaint." I, for example, would like to track this lady's complaint. Then, I get a form letter back from the State Bar that says, "I'm sorry. We cannot reveal whether or not a complaint has been filed against

an attorney," which, of course, is crazy because you sent them a letter that has been signed by the complainant and has the name of the attorney and so forth. Then I can give no status report to my constituent as to what's happening with his complaint.

I'm just wondering, and it doesn't go directly to the facts of your case, and you are raising a broader issue, but I would like to follow this lady's case -- and get the State Bar product. I realize that if it is handled in the same way that other constituents have problems in that regard, I will never be able to find out.

ASSEMBLY MEMBER ROBINSON: You ought to get Ms. Young to draft a subpoena for you. I have a drawer full of them. Send it over to them, and you will get your answer.

CHAIRPERSON CONNELLY: There's got to be a way to deal with that. Is there a way the complainant, the person who files a complaint, can sign a waiver and then I can get a status report on the complaint? You can see what the issue is.

The most recent one I had involved my constituent, a lady named Mrs. Long. That just happens to be the most recent one, but there are some others that I have had that are in that category.

Thank you very much for coming, Mr. Weber.

MR. THOMAS B. WEBER: Mr. Chairman, members of the committee, what few are up there, ladies and gentlemen, it's a pleasure to be here.

In the interest of time and what I have learned over the preceding six hours, I'm going to deviate from my prepared statement and talk about issues that I deem exceedingly important which would not get to the floor if I did not.

ASSEMBLY MEMBER ROBINSON: Mr. Weber, would you identify yourself for the record and what you do?

MR. WEBER: My name is Thomas Weber. I'm president of The Telophase Society. I started this company about 15 years ago, and during that time I have been in almost continuous litigation. I have used 35 different attorneys, as many as six at one time. During that 15-year span, attorneys' fees have been in excess of $800,000, or well over $50,000 a year.

In fact, when six Bar members sat here, it reminded me that at one time I had six Bar members, six good attorneys on retainer, and during the two-hour period they sat here my costs would have been in excess of $2,000. I am looking at this as a small businessman, and I have had very similar response where attorneys have gotten together and what has come out of that has been essentially worthless. From my standpoint here, we had the six potentates of the Bar Association sitting up here today, and

what they discussed was to me irrelevant and immaterial and of almost no help. They spent considerable time talking about the Bambic case. I know nothing about the Bambic case. I think Assemblyman Robinson said that it constituted less than five percent of the typical type of cases. It is an egregious error of absconding with funds.

Nothing was said about the mainstream complaints, nothing about the average complaints. That is, the running up of fees by attorneys. They do this in collusion with each other, and they do this through their frivolous actions, through their extension and needless expansion of cases. That's what it's all about for the small business. To my knowledge, that has almost not been addressed here. It is a very devious and clandestine way, and whether you can get to it, I don't know, but it is not just a few of them. It's many of them, many, many of them and that is how their progress is made and that is what is affecting the public today.

The Bar alluded to the new system. They are now ready to start the new system, and they can do it almost immediately. I noticed in the data passed out by the Assembly today that they first started this disciplinary system in 1928 and here they are going to do everything in one year that they haven't been able to do in 55 years. If you believe that, you believe in the tooth fairy. That's just not possible. It's physically impossible. They're banking on the Coyle Committee and the Kroeker Committee. I don't know what that is, but it's not known to most of you people since you asked questions about it and wanted further clarification. They then presented an organizational chart that they were going to carry through and have functional and operating almost immediately, certainly within a matter of months. The chances of their doing that with such a complex file is as remote as my winning the California lottery.

Now, they talk about the backlog of cases here. Some people in the Bar said, I think it was, 2,500. The Assembly here says 5,400. I've seen over 6,000 listed. Don't we even know how many backlogged cases we have? It's inconceivable to me that you people have sat here for weeks and months and years and have not addressed the key problem as it relates to business and the individuals in the State of California.

The Bar addresses itself to the volunteer attorney, the army of volunteer attorneys who will do the job, and they say that there are several thousand of them. How much time will they give? Probably a very small amount. We're talking about an army of attorneys roaming the streets of California in excess of 87,000. They constitute an army. Here in San Diego County alone there are five or six law schools that are grinding out lawyers so fast that they can't even be counted, and probably most of those law schools have never even been heard of outside of Southern California, Yet, they continue to perpetuate this system. As long as you get a plethora of attorneys, an excess of

these people, they have to find ways of existing, and they are going to exist on their own. There's an old adage of the small town where there was a single attorney. He almost starved to death. Another attorney moved in, and in six months both of them had more practice than they could handle. Attorneys perpetuate attorneys.

Senator Presley and his Task Force, I think, are to be commended. Their profound statement that no professional group is qualified to pass on its own people is certainly true.

SENATOR LOCKYER: Would you suggest that the Senator, who is one of our outstanding members, who chairs the Ethics Committee that passes on the ethics of the members of the Legislature -- well, I guess I don't need to push that. Go ahead.

MR. WEBER: All right. I'm going to come to my solution shortly because it would be redundant for me to talk about how the structure, committees of laymen have back-up attorneys with no voting powers and so forth. I think you've heard that. As you told me out in the hall, you wished today that you could hear just one thing that you hadn't heard before. I'm hoping that I can give that to you.

The acid test, as they indicated, was also: what is to be done? Obviously, it has to be done by the lay committees. How it will be structured, I think that Senator Presley and his group haven't formulated that yet. They complain that there is a lot of State Bar bureaucracy, but it seems, Senator, that you may have some bureaucracy there. As I understand it, you and your group have been meeting for six months, but as yet you don't have any meat on the bones. Maybe you'll get that on there by 1995. I would hope much more rapidly than that.

CHAIRPERSON CONNELLY: Mr. Weber, I want to indicate to you that Senator Presley's Task Force, aside from this independent commission, where there have been discussions about how specific it is, has made a number of very specific, and I believe very helpful, suggestions in this area. I have not grumbled at any of the witnesses for what they've said because I'm trying to keep an open mind, but in that area, sir, given the fact you haven't read the recommendations and are not aware of the work product, I advise you that you're on extraordinarily thin ice.

MR. WEBER: As I said in my earlier statement, from what I have heard at this point, Senator Presley is to be commended for that.

What I am recommending, obviously, is lay committees and I think the possible way to handle that is the way that it has been handled in the medical community. We now have preventative

medicine. How are we going to prevent litigation? We do it by preventative laws. The only way to do that is to get the consumer interested. In the past decade, the patient has gotten extremely interested because his life depended on it, his health depended on it, and he learned not to depend on the physician. But he did find out about the hospital. He found out about the omissions and what should have been done in many of his medical problems and from that he took control of his health. I am sure that the same thing can be done by lay committee people who have to be stimulated and who have to be made interested in this, and they can do it by seeing that, from a monetary standpoint, they must get involved.

ASSEMBLY MEMBER ROBINSON: Mr. Weber, I'd just point out to you and some time we'll have another hearing on it, I am sympathetic and I understand from your point of view that the physician community is abysmal. In fact, if there is any example that is worse than the Bar discipline, it is the physician discipline in the state, and that's done by a state bureaucracy. I can give you names of individuals who have continued to butcher and maim while they are going through their arcane procedures of trying to discipline. Unfortunately, it takes a five-year tortuous process through the courts on malpractice before the tickets finally get lifted.

The courts I think -- lawyers don't look as hard as the other professions. I'm afraid we are not very good at it, period.

MR. WEBER: Yes, that is true. What I am saying though is that the layman can be taught to protect himself. The patient doesn't go to the physician anymore. He knows more about health. He knows more about nutrition than the average...

ASSEMBLY MEMBER ROBINSON: A reasonable person might be led to believe from your statement that the physicians are doing a better job of disciplining themselves than the attorneys.

MR. WEBER: Obviously, that is not so, but the health care of this community and the country has improved immeasurably because the layman has learned the business of health. My basic premise is that we have many, many people, many millions of people, we have 28 million retired people, many of them are very active and competent. We have got women who have taken a brief time out to raise a family who could spare time to serve on these committees, and I can see them as the backbone of the committee. I think they are the ones who will make this thing an operational point. I will be happy to answer any questions at this time.

CHAIRPERSON CONNELLY: Additional questions of Mr. Weber? Thank you very much, sir.

MR. WEBER: Thank you.

CHAIRPERSON CONNELLY: Mr. Disman. Am I pronouncing that correctly?

MR. LEONARD DISMAN: Mr. Bourke will speak first.

CHAIRPERSON CONNELLY: Mr. Bourke.

MR. KEN BOURKE: Thank you. My name is Ken Bourke.

CHAIRPERSON CONNELLY: You're going to have to address the committee.

MR. BOURKE: Thank you, Mr. Chairperson Lloyd Connelly, Senator Presley, Richard Robinson and those still present. I consider it an honor having been invited here, and I don't want to let you down. I address the issues which are supposed to be presented here. I have some constructive recommendations, both to attorneys, to the committee, and to the citizens. My principal complaint is with regards to this chart where we see...

ASSEMBLY MEMBER ROBINSON: Mr. Chairman.

CHAIRPERSON CONNELLY: Mr. Bourke, this is a legislative hearing and we're trying to learn because we're going to look at legislation in this area. We are exercising what little influence we have today to ask you to speak to us, let us see the charts at least initially, while you're speaking to them so we will understand and get from you what you have to say.

MR. BOURKE: Thank you. It was expressed here that there are about 8,000 complaints a year. Of this, approximately -- actually, it's about 9,000 according to the San Francisco Examiner article, and about 8,000 eventually either -- a lot of them get dismissed. Here we see 3,400 dismissed after an investigation, another three or four thousand disposed of here, and only 1,000 of them are formally charged, and only 200 are admonished.

I am in this class of dismissed. It says, "Dismissed after investigation." I have written complaints to the State Bar in '79 and '84. I've attached here exhibits of the letters which were sent to me from the State Bar, and I just got kicked out. I feel, and I know, that hundreds and hundreds of people have gotten the same kind of response and the basic problem here is we're not being heard. We are not being heard. I don't believe this is fair. The citizens of the State of California have a right to be heard, and these people were not heard, 3,400. Somebody sent them a letter saying, "The Bar doesn't have jurisdiction." They have legitimate complaints. I know I had a legitimate complaint, and I was not heard.

Several people here have expressed the idea that there should be citizens in the system, and I certainly adhere to that premise. There should be citizens involved in this process that can make a decision, not just professional people.

We have another chart here that says, "Little or no experience practicing law, don't prosecute," and so forth, people in the State Bar. They're making these decisions about who has a legitimate complaint, who's going to be heard, who's not going to be heard. I don't feel that's right in a democracy, to begin with. I think citizens should be involved in this process.

Now, I have a recommendation which calls for the formation of 2,000 citizen justice panels, each panel composed of five people, that's 10,000 citizens. This system would be administered by the Department of Consumer Affairs. Every time somebody filed a complaint, there would be a $1 fee for an insurance to guarantee their case would be heard, and this will fund the program.

Right now, I don't understand why attorneys can stand here and not argue for the fact that their dues are going to be raised, to raise $9 million to prosecute. We have 90,000 attorneys licensed by the Bar. That's $100 per practicing attorney. We have probably only 10 percent of the attorneys that are bad; 90 percent are good. We've got the whole burden of financing the existing administrative process on those good attorneys. I think their dues, instead of being $150 or $175, according to these proposals, should be like $45, and they shouldn't be penalized.

The other problem that I see with this system, besides the fact that it's not funded fairly, is that good attorneys really don't have parity in their profession. I'm a real estate broker, and, if I had a bad driving record, I can get my license revoked. If I'm convicted of a felony, I'm automatically dismissed. My license is canceled. There isn't any administrative hearing. It's in the Business and Professions Code. If you're convicted for something wrong, you lose your license.

Right now, we know that there are numerous attorneys who have been convicted of felonies, and they are practicing. There's no parity in the Business and Professions Code. I'm talking about equality, where these people would automatically lose their license. If they automatically lose their license, the disciplinary process and the cost of administration would go way down because you have typically, repeat, repeat, repeat offenders, and you have all these good attorneys footing the bill.

Furthermore, in a democracy I again feel it is very important that the public participate. I'd like to go back to the formation of citizen justice panels and the budget. If we had citizens on volunteer panels hearing these cases, there wouldn't be any cost. We're talking about volunteers hearing

cases. The situation could even generate income because, if the citizen justice panel found an attorney guilty of something wrongful, it could order restitution and it could order costs to be paid or contributions to the state treasury. It would generate money; it wouldn't cost money.

The other things that I'd just like to briefly touch on are that attorneys seem to have a fear, sometimes, of the State Bar. They get a letter from the State Bar and they don't want to be investigated. I can understand fear. We've also heard that the public tends to be more sympathetic to attorneys. I don't understand why attorneys wouldn't prefer a hearing with the citizen justice panel of five people, citizens chosen from a pool of 20,000 citizens, any five if they can select them. There's no cost or fee involved. They'll get a lot of publicity, which would be good if they were honest and bad if they were dishonest. These hearings wouldn't be conducted behind closed doors; they wouldn't be conducted in Sacramento; these hearings would be held in your local judicial district. You file a complaint under the Department of Consumer Affairs. They would farm it down to the chairman of a local committee. They would have a hearing. There would be no cost to the parties involved, and there would be publicity, which would be very bad for the bad apple, and he would be afraid.

News announcements, TV and radio coverage, would be permitted because I think bad people should be exposed. Good attorneys would want the bad attorneys exposed. That would economically destroy the bad attorneys.

I am opposed to increasing Bar fees for attorneys merely to feed a system which didn't work. Actually, the number of complaints against attorneys is astounding and astronomical, and this is not representative of anything. Professor Rhode said before that only a few articulate people write down their complaints. Of several hundred people who have come to VAUL group meetings, only a dozen wrote letters to the Bar. They all got the same kind of letter that I got back, "We're sorry," you know, "no jurisdiction, nothing wrong," but there never was an investigation. Nobody called me. I offered evidence. I offered to drive to Los Angeles to give my deposition, and nothing was taken. This, to me, is just shortchanging me as a member of the public.

Consequently, I've had to file my suit in superior court against several attorneys. There is a problem there; it's already been addressed. There is sort of a feeling when you appear in pro per in a court -- there's a little bit of intimidation. I'm over that, but I don't feel it's appropriate for me to be always having to take my case into the superior court to be heard. It's costly for me. The malpractice insurance carrier was contacted by the attorney; his fees go up. You end up fighting litigation, motions to strike, demurrers, depositions. It goes on and on and on in discovery.

CHAIRPERSON CONNELLY: Mr. Bourke, could I urge you to start moving to your conclusion?

MR. BOURKE: Sure.

CHAIRPERSON CONNELLY: Thank you, sir.

MR. BOURKE: In conclusion, I don't think the courtroom is a good... but the people are forced to go to the court and sue their attorney. This isn't good for the legal profession. When you get a letter here saying, "Your problem is civil in nature. You should see an attorney," this is not good for any attorney. I oppose this type of letter being sent in blank to eight to ten thousand people probably a year, that they should go see an attorney. It's a civil matter. It's bad for attorneys.

I advocate the creation of citizen justice panels, which are members of the community who serve at random, which the attorney has a right to voir dire or eliminate from those that would hear his case. He'd have a free choice. He wouldn't be under a lot of pressure because the hearings would be informal. They would be subject to review, but it would allow people who filed complaints to have a hearing to see if it is meritorious or not. It would stop this dissatisfaction with the Bar. It would stop the dissatisfaction of never being heard.

I think public participation is absolutely essential, and any further promotion of the existing State Bar, I think, is totally wrong and totally headed in the wrong direction. Everything I've heard here is that the State Bar is going to change. Fortunately, I know Lloyd Connelly and others here are a little bit not convinced that there is going to be any change. I'm convinced there's not going to be any change. I'm so convinced that I know the only way I can change is if I die and someone replaces me. I think that the State Bar has to die and the Bar cannot handle this load.

There's a little story in the Bible about a guy named Moses and he was trying to judge everybody. There was a guy named Jethro. He stood and he said: "I don't see how you can do this. There are a million people standing around from day and night." The resolution was to delegate it to all the people to choose among themselves, elders, people of good reputation to hear these cases. There was a distribution of the caseload to the citizens who elected among themselves people of integrity to hear the case.

CHAIRPERSON CONNELLY: Mr. Bourke, can we close you off?

MR. BOURKE: Yes. We follow an example that works. We distribute the workload to a thousand citizen justice panels. That's one panel for every 50 attorneys, approximately. Each one handles four cases a year on a voluntary basis, and it doesn't

cost anything. If it did cost something I'm recommending a dollar filing fee for every person. When they file the fee, it goes into a fund for the Department of Consumer Affairs, and it's administered impartially. Thank you very much.

CHAIRPERSON CONNELLY: Thank you, sir.

MR. DISMAN: Mr. Connelly, I have a feeling...

CHAIRPERSON CONNELLY: Mr. Disman, can I ask you, sir, to identify yourself for the record so we'll be sure to get you on the transcript?

MR. DISMAN: My name is Leonard Disman. I am the founder of The VAUL Group, five years ago.

CHAIRPERSON CONNELLY: That's all right. You don't have to stand up. I just wanted to make sure the recording gets your comments.

MR. DISMAN: ...and a very disillusioned American. I would like to ask a few questions to you, sir, respectfully. A month and a half ago, we of The VAUL Group, who are just ordinary people -- we're not lawyers, we're not politicians, we don't use very technical expressions, we just talk plain American language, no Latin talk, no double-talk.

Now, may I ask you, sir, what happened to the original committee that was supposed to hear us with an investigation? I repeat, not what you stated before, that this is some sort of a hearing, legislative hearing. We were given to believe that Sunny Mojonnier would be here, Elihu Harris would be here, Maxine Waters, and Wayne Grisham. I repeat -- oh, there's Mr. Grisham.

I repeat: what are we doing here at a State Bar celebration of some sort, or whatever you want to call it? We thought we were coming to be heard, and instead we're told that we are put way down at the bottom of the list and told that we have just about ten minutes.

Now then, what did happen to these people who were supposed to be here? Would you be good enough to answer me?

CHAIRPERSON CONNELLY: Sure, I'm going to answer that question, but then I would urge you, if you can, after I answer that question, to make those suggestions and criticisms that you have, because you have Assembly members and senators who are still present.

We invited all the members of the Judiciary Committee of both houses. We advised them of the hearings. Some are on vacation, out of the country. Some are in the Capitol at other hearings which are occurring today. Some members came, who are not members of the Judiciary Committee because they have interest

in this area. Mrs. La Follette is an example of that. Assembly Member Elder, who is in the back of the room, is an example of that. Mr. Calderon is an example of that. Whenever you have this type of legislative hearing, we're not sure of who is going to come. To be very honest with you, I was surprised at the number of members who came today and also the breadth in terms of their representation in the Legislature.

One additional point is that the transcript of this hearing is made available and distributed to every member of the Legislature. Moreover, it is my intention to prepare a summary of what represents my conclusions, at least, about what transpired here today and transmit that to the members of the two judiciary committees.

MR. DISMAN: Now, sir, I still haven't heard you say the word "investigation," therefore, we of The VAUL Group, -- Victims of Unethical Lawyers -- came here to speak and to be heard. Once again, we are looking forward to some sort of an investigation.

To give you an idea of how many people showed up because they thought this would be an investigation -- would the members that are here please stand up a minute? Stand up all of you. We came to be heard, sir. We didn't come here to hear all about these lengthy discussions about the California State Bar and the Legislature. We're just plain ordinary people who were cheated, lied to. I'm a victim of perjury, fraud, collusion. I considered suicide for what my lawyers did to me. They ruined my business, my reputation, and I'm going to keep fighting.

Now then, I would like to mention a few little things, and I'll be brief. I've been waiting for seven years to be heard. I, too, have been before the California State Bar for five years. I've made two special trips to the Bar in Los Angeles. They told me, "Just give us a brief report." I did that. I went home, 120 miles away in San Diego. Two months later I get a letter, "Gee, Mr. Disman, sorry, you didn't give us enough information," which I realized is part of the same standard runaround. First, they tell you to speak briefly, and then later they say, "We can't do anything for you."

I've been given to understand from the day I was born that you salute the flag and you say, "And justice for all". How the hell do these lawyers live with themselves when they go off and lie and cheat and then come home and look at their children and say: "Did you have a good day in school? Did you pledge allegiance?" This has become a joke. There is no justice for all anywhere in our country. I happen to know that for sure. I've had a pretty good idea of that since I've had publicity and the spotlight. I've had people write me from 16 states of the Union. We've now started a network across the whole United States, starting VAUL Group clubs, Victims Against Unethical Lawyers. This is not the end of our club; this is just the beginning.

So, at this point, I would like to be brief, I know, I've waited for seven years to be heard, but I have to talk fast. Now, I'll tell you I feel terribly, terribly frustrated. When World War II started, I naturally -- this is nothing of this legal rigmarole, but just get to listening to the other plain, ordinary person who spent his life working to earn his money and work his way up in the world, and loves his country. When the war started, I rode with the mounted patrol back East, and we paid for our own horses to guard the factories that did war work. Then when I went into the Navy, after a couple of years, I received a storekeeper's rating. I then came out and I received an award, and I think you have the record, sir. I was appointed as a national deputy officer of the Veterans Club of Washington, the veterans group in Washington, D.C., so no one can consider me some sort of a radical. I'm just as American who is very, very disillusioned.

Now, you might say, "Well, this guy is just sounding off." I'd like you to see what I tried to do to get justice in America's finest city. Here are 49 people, officers, representatives -- I can't think of them all right now -- city attorney, state attorney, one federal grand jury, and I got the same standard answer: "See this one; see that one." I go to the Justice Department, and they say, "See the state attorney." I go to the state attorney and he says, "See the city attorney or go to the district attorney." I was running around for about 12 months. This is what happened -- justice for all -- in our beautiful, wonderful country, and I mean that. We still live in the best country in the world, and don't forget it. But there's no justice. I came here to retire. I've been working since I was 15 years old.

CHAIRPERSON CONNELLY: Mr. Disman, let me get you back down to the microphone so we make sure we get it on the record, sir. Thank you very much.

MR. DISMAN: Would you like a copy of this? (Displays business cards)

CHAIRPERSON CONNELLY: No.

MR. DISMAN: There's 50 of them there.

CHAIRPERSON CONNELLY: We believe you.

MR. DISMAN: I will be through very shortly.

I am the victim of unethical lawyers, and something else has been added. There is a judge in this town, who renders outrageous decisions, and his name is Judge D. R. Woodworth and right here in San Diego, and the biggest shyster in town by the name of George Weingarten. If you can commit any kind of crime,

don't worry about it, just see George Woodworth -- I'm getting myself mixed up -- George Weingarten, just about the biggest shyster, the most dishonest lawyer that walked in shoe leather, and he is tied in with Judge Woodworth. You just have to see him, and everything will be all right.

I think I've just about said enough at this point to prove my point. Mr. Connelly, we once again would love to be heard. We, the people, we the people who pay your salaries, respectfully, of course, we the people who put you people in office, we wish to be heard and not buck-passed or whitewashed.

I've got a book full of standard answers. You know what they all say? "Dear Mr. Disman: Having investigated your complaint, we find that the aforementioned party -- they don't mention the name -- the aforementioned party you are complaining about, I'm sorry you did not give us enough information." I did everything but bring the crooked lawyer right in front of them. "Sorry, not enough information."

So at this point, I think I've had it, but I hope I made that point clear. There is no justice for all in our beautiful country, at this point. If not, you can check Delaware, Connecticut, Miami; I have a chain. The VAUL Group is starting to work across the whole country. We've had it.

CHAIRPERSON CONNELLY: Thank you, Mr. Disman.

MR. DISMAN: And you are welcome, sir.

CHAIRPERSON CONNELLY: Thank you, sir. There are two miscellaneous...

MR. DISMAN: There are members here that would like to be heard from my group. Would you extend them that courtesy?

CHAIRPERSON CONNELLY: No, I'm not going to let anyone else testify on disciplinary issues. I've had requests both from additional representatives from the State Bar...

UNIDENTIFIED VOICE: Sir, we did request in writing...

CHAIRPERSON CONNELLY: Yes, sir, let me finish this. We've had additional requests from the State Bar, additional requests from citizens. We have another item on the agenda that we are past, and I want to wrap this item up so that we can move on to that. I also want to give some direction to staff and also have the committee members have an opportunity to think out loud a little bit about how we're going to proceed.

There were two questions that were raised to the State Bar that were just factual questions that I'd like to get a response to at this time. One is whether or not their disclosure requirement extended to appeals, and the second is whether or not

there's a current process where you can get a status report on a pending constituent complaint. Now, I don't want the State Bar to come up and repeat everything that's been said in the last six hours. I'd just like to get answers to those two points if I can.

MR. ARMSTRONG: The question that you ask about, where you have written to the State Bar to inquire what is going on with the file -- I would like to answer that question.

As we have explained, the files are confidential while the complaint is being investigated. The Office of Trial Counsel tries to keep the complaining witnesses advised of the status of those complaints while the investigation is taking place. Sometimes, perhaps, we don't. Sometimes there is a mistake. Sometimes, with the volume we have, we just miss one. If a member of the Legislature writes to the State Bar, at least during the time I've been chair of the A and D Committee and, I think, for the last two years, that file is pulled and the letter is sent to the chair of the A and D Committee along with the file. My practice is to review that file, contact the complaining witness, discuss the matter with him, try to reassure him or to review with him the status of the matter, and keep him advised.

We cannot advise the legislator directly as to what is going on with that file because that is within the realm of confidentiality.

CHAIRPERSON CONNELLY: Do you advise the complainant in writing?

MR. ARMSTRONG: Well, I have not advised them in writing. I talk to them on the telephone. I listen to their complaints. I try to reassure them that we are processing the complaint and things are going forward. Now I must say that since I've been chair of A and D, I probably have not received more than four or five inquires from members of the Legislature asking what has happened to a file or why discipline has not...

CHAIRPERSON CONNELLY: How long have you chaired?

MR. ARMSTRONG: I've been the chair for a year.

CHAIRPERSON CONNELLY: Do you remember receiving an inquiry from me as one of those four or five?

MR. ARMSTRONG: No I don't. Perhaps Mr. Schafer, my predecessor ...

CHAIRPERSON CONNELLY: We'll pull a copy of the letter in the Long case, which is actually in the car, and I'm not going

to go get it, but I assure you that was not the response I received. It was a form letter, and it was typed on top. I don't mean to say I'm not interested in that individual constituent's problem, but what I'm saying is that if the legislator, after we get permission from the complainant to get a status report on the case, can't get the status on the case, it's a very corrosive kind of process when we send a response back to the constituent and say, "I can't figure out what's going on either."

MR. ARMSTRONG: Yes, well, that's within the privilege of confidentiality which can be waived by the State Bar in certain circumstances...

ASSEMBLY MEMBER ROBINSON: It might be waived in this bill.

CHAIRPERSON CONNELLY: In the context of all of the items that we're considering in this area, this is a one, compared to some which I believe are eights or nines. What's the confidentiality on the status of the processing of the complaint when the complainant agrees to waive it and has identified the name of the attorney against whom the complaint has been filed, with all due respect?

MR. ARMSTRONG: I recognize your point, and, in many cases, we do waive the confidentiality for that situation, but, as I say, we try to handle it through having the file reviewed by the chair of the A and D and then following up on it that way.

ASSEMBLY MEMBER ROBINSON: We have our options. You can have a subpoena, and you'll be right there with the file and everything.

CHAIRPERSON CONNELLY: Yes. The second question was on the appeals issue.

ASSEMBLY MEMBER ROBINSON: And that works even against the courts. I'm sure it'll work with the State Bar.

MR. ARMSTRONG: Could you state that one again?

CHAIRPERSON CONNELLY: Yes, the issue was whether or not under the new rules that require disclosure -- this was rules of the court -- of fees, whether or not there is also a requirement of disclosure in writing as to what, if any, appeal rights the client has at the conclusion of their action. I raise that because, in the context of background reading for this hearing, I encountered a number of cases where clients were frustrated because they had appeal rights, they asserted that they were not

notified of those appeal rights, the case was closed, and there was anger as a result of that.

MR. HEILBRON: I'm sorry, the concern is whether the written fee agreement relates to the right to appeal?

CHAIRPERSON CONNELLY: Forget the issue of fees. Fees is one issue of disclosure; the other issue of disclosure is appeal rights.

MR. MARTIN: I think what you're asking, and correct me if I'm wrong -- but I don't think these folks understand -- is appeal from a fee arbitration decision.

CHAIRPERSON CONNELLY: No, that's incorrect. I'm not talking about appeals necessarily from fee arbitration. I'm talking about appeals; that is, from virtually every legal action that concludes, there's a subsequent appeal remedy available and written disclosure to the client that that appeal right exists. I don't understand why this is so hard to understand.

MR. HEILBRON: Now I understand what you're asking. You wonder whether there is disclosure to the client of the right to appeal after, for example, a trial on the merits in superior court?

CHAIRPERSON CONNELLY: Trial on the merits in superior court, in an administrative hearing, in a District Court of Appeals case.

MR. HEILBRON: I guess the reason why we're having trouble with this is because I've never heard that this is a problem.

CHAIRPERSON CONNELLY: That's all right. That answers my question in that there is not a requirement for written disclosure of appeal rights. The issue, at least in theory, has not been raised.

MR. HEILBRON: No, I never heard anything about it.

CHAIRPERSON CONNELLY: I apologize for not phrasing it more crisply.

MR. HEILBRON: I'm sorry, I didn't catch the point.

CHAIRPERSON CONNELLY: This follows in part with the comments to Mr. Disman, and I'd like to make some comments of my own. This is somewhat dangerous because I chair a subcommittee only, the membership of which is not here, which is part of the

Assembly Judiciary Committee. It is only by coincidence that I am chairing this body, which is not Assembly only, but Senate as well, in makeup. But, as a result of that kind of coincidence of procedure within the body, I'm nevertheless here and chaired it -- the staff for my subcommittee staffed this hearing today -- which means you're stuck with me for doing follow-up for the conclusion of the hearing.

I chatted briefly with Assembly Member Robinson on the gut issue, the gut issue being whether or not there should be a new, separate, independent body. We both agree -- and Richard, if I'm misstating this, beat me up -- that we wanted to suggest to Senator Presley that he ought to move forward to flesh that out. That proposal was really presented in conceptual format, and the discussion was helpful in conceptual format, but it is, quite candidly, very difficult to evaluate whether or not the new body would, in fact, be independent and provide improvement.

I think it's fair to say that there's enough interest among the committee members that that ought to be fleshed out, at least so that it can be evaluated. Some of us, obviously, have more interest than others, but I wanted to urge that upon the Senator, personally. In the written summary of the hearing today, I am going to ask that that move forward if I can secure at least the signatures of the subcommittee members to move that forward.

There are other areas that I picked up during the course of the hearing that I intend to track, and maybe I should alert you to those. Some of those we discussed at the outset, and some are in the process already. These are not all inclusive, and it may well be that members who are still here or other members who were here and left will want to add to this, but these are items which appear to me to have merit.

One was the issue of mandatory errors and omissions insurance, which is, as I understand it, stuck in the Finance and Insurance Committee on the Assembly side. It's a bill by the speaker and I could be wrong, but it will be my recommendation to the committee that they indicate that that bill ought to move forward, if possible. Now, we understand that you're going to be providing some additional comments on it, but I just wanted to say that that's something which I intend to push.

MR. HEILBRON: I appreciate that. I think it is something that we ourselves intend to look at hard. I want to point out the difficulty with it...

CHAIRPERSON CONNELLY: I'm going to run a litany of about 12 items here, and I imagine about half of them are going to cause you umbrage, but at least you'll know where I'm coming from.

MR. HEILBRON: I'll bet they don't.

CHAIRPERSON CONNELLY: The second was the bonding for attorney-client trust funds. I don't know how that's to be achieved in terms of integrating with the State Bar Client Security Fund. I don't know if the Oregon concept is the right concept, but on a scale of one to 10, whereas the constituent tracer mechanism was a one, it seems to me this is a 10. I would indicate to you my personal interest in tracking your work product in that regard, and, if something doesn't come forward that is fruitful in a timely fashion -- the timely fashion in this instance is 1986 from my perspective, because my term expires at the end of '86 -- that would be something which I personally would be interested in in the form of legislation this next year. I want you to know that I'm serious about the client trust fund concept.

The third issue is this structural change which you indicated you would look at in terms of the prosecutorial process running forward to the state Supreme Court, I don't know how to achieve that, except I would like to and I'm going to ask that we continue to monitor that and suspense that, in terms of your recommendations as moving further along the continuum than we are now.

The fourth is -- and this is one that I'll just tell you that I'm sure the Legislature is going to do, but it seems to me the Bar ought to assume the leadership role -- we ought to make it against the law in the State of California to seek a waiver of either filing or processing a complaint against an attorney based upon a settlement in a malpractice action.

MR. HEILBRON: Intentional or negligent?

CHAIRPERSON CONNELLY: I think that's reprehensible to public policy. It seems to me it's intentional, intentional as opposed to negligent conduct, although there may be some arm-wrestling in the area of gross negligence, and I don't know where that line is cut.

Fourth is an area that Senator Presley mentioned, that I don't know quite how to deal with, but I want to indicate to you that I have an interest in it. It relates to the client trust fund issue and maybe should be part of the same package, either legislation or rule changes which are confirmed by the Legislature, that is, some audit mechanism. I understand that this relates in part to the funding question, but we should explore some audit mechanism short of probable cause that allows audits of the client trust funds. It may well be that that's part of the bonding process.

I just want to look at -- and I chatted with Senator Lockyer briefly on this issue and he wanted to look at -- the protocol that Mr. Gray said was coming in terms of timeliness for the processing of complaints, particularly the criteria to define serious complaints, and some time frame whereby the initial

investigation is concluded, absent some kind of extraordinary circumstances, and I think that's just a function of advising us so we know what that is. I guess a time frame for that is 60 days or so.

I'd just like, and this is a personal request, a copy of the fee disclosure item. I imagine you should make that available to all the members of the Judiciary Committee, both the Assembly and the Senate. That was new to me and is probably new to them as well.

The other item was on the La Follette bill, which is a recommendation that the Legislature move forward, and that the subcommittee in particular move forward, with cost recovery in accordance with the definitions and criteria that we discussed, to be worked out with staff in the intervening period of time.

The last item -- Mr. Robinson is right on this -- is something which is within our subpoena authority, but there ought to be some process whereby, with appropriate waivers from the complaining party, members of the Legislature and other appropriate folks when contacted by a complainant, can get a status report on their complaint.

Now, all of those items seem to me to be separate and apart from the issue of the independent disciplinary board. The independent board issue is one that is unto itself to be evaluated as it's fleshed out, but regardless of whether or not we do that, these other items, at least from my perspective seem to be practical things. This list isn't all inclusive, and it may well be that some of these turn out not to be feasible, but I must tell you, on first blush, given the background reading and the hearing today, at least from my perspective, they seem to make sense. I want to follow them through so they are not dropped in the context of the legislative process as frequently happens with these interim hearing subjects.

MR. HEILBRON: May I respond?

CHAIRPERSON CONNELLY: Yes sir.

ASSEMBLY MEMBER ROBINSON: I want to make some additions to it.

CHAIRPERSON CONNELLY: Okay, let's get Mr. Robinson's additions, if we can, and Senator Presley's as well.

ASSEMBLY MEMBER ROBINSON: They are the ones I discussed with Mr. Gray. I think that client trust funds have certainly been one of the problems generating some of the fourth estate's scrutiny. This whole process of sanctions -- if it takes a mandate from this Legislature to the court to notify the Bar, the Bar should be notified every time judge sanctions, whether it is a trial court or in an appellate court, are entered on abuse of process and running up fees. Particularly, the Bar should be

instructed to formulate a pattern of behavior that would force disciplinary action. It should be breach of the ethical responsibilities of members of the Bar to deliberately run up costs. That is stealing clients' money as much as is the abuse of the client trust fund. I would hope there is something constructive coming from the Bar.

I think the same should be true with malpractice actions. Those judgments should also be recorded with the Bar, and those proper notations should be made within that particular member's file.

SENATOR PRESLEY: I just wanted to assure you, Mr. Chairman, and others, that we certainly will continue meeting and working on this concept of the regulatory agency, which you've indicated is the guts of the issue here. The members of this Task Force are very dedicated, and they will continue to do that.

One of the other suggestions that they have is that, if possible, the two committees meet again before the first of the year and see where we all are at that time, after we receive the response of the Bar and others. By then you'll have this in a more firm condition and will know to what extent we need to go forward with legislation, if at all, in January.

That's what we'll be doing in the next few months.

CHAIRPERSON CONNELLY: Let me just pause on that point because I share generally your time concept. My thought is that, as to the items we've enumerated here, we would report back to the full committee, in terms of interest in those items and our orientation. Then we would have another hearing, quite candidly, probably not in December, just given the schedules, but possibly early in January when the Task Force will have completed its work in terms of fleshing out, putting the meat on the bones, so to speak, so we can evaluate that with a little more specificity. Second, as to these other issues, the Bar will be able to give us an update of where they are, and we will have done some work in the interim. Some of them will undoubtedly turn into legislation or legislative concepts. That gives a yardstick of performance and a time frame, if that's all right.

SENATOR PRESLEY: I have a couple of little, quick points, and one is the membership of the Board, now six laymen, I guess, and 16 lawyers. You may want to think about this, and see if you would be supportive of balancing that out a little better. I don't know what the numbers would be, but I think that's something that is well worth considering a little further.

The third, and final point, very quickly, which the last speakers brought up, the procedure just seems terribly burdensome and not responsive where someone reports or tries to report an errant lawyer. They get a form letter back which is not very satisfactory at all. That seems to be a real problem area.

CHAIRPERSON CONNELLY: Now we've generated some comments from Mr. Elder. We'll get them all out.

ASSEMBLY MEMBER DAVE ELDER: Mr. Chairman, just for my own self protection, I would indicate that I'm not an attorney, as I leave the room. I think ...

ASSEMBLY MEMBER ROBINSON: Neither Senator Presley nor I am, and we sit on the respective judiciary committees.

ASSEMBLY MEMBER ELDER: The other thing is, I think, we have only 13 members in the Assembly who are still attorneys, and maybe that kind of a ratio applies as far as what you were talking about, Senator. As far as the La Follette bill is concerned, I think the penalty structure ought to be incorporated in there, as opposed to simply the fees paid back for the cost of litigation.

I think that part of the problem may be the front end of this thing on how people become attorneys. I've been leaning toward the thought that internships, frankly, ought to either totally replace the bar exam or at least augment the bar exam so that people can actually get a little work in the field before they are unleashed, as it were, on the public. That's kind of where my mind is. I, frankly, am very pleased with a lot of the recommendations. I didn't hear anything that I couldn't support that Mr. Connelly suggested, except that I would do more.

MR. HEILBRON: With respect to mandatory malpractice insurance, as I advised you earlier, we are looking at it. We are also looking at what is an immediate, practical problem with respect to that, and that is the availability of insurance, period. As you know, it's a drying up market, not only with respect to attorneys' malpractice insurance but in respect to casualty insurance generally. The practical difficulty in respect to requiring malpractice insurance of all lawyers is that you cannot, in effect, delegate to insurance companies the right to determine who practices law in the State of California, or at least some people feel that's a problem.

ASSEMBLY MEMBER ROBINSON: Yes, but David, you could put together a reciprocal ... I think there is a mutual in Northern California.

MR. HEILBRON: And we are looking at that. By the way, it's not just Oregon, but D.C. has a mandatory program too which we're looking at.

ASSEMBLY MEMBER ROBINSON: I think when discussing mandatory insurance, we're giving you the statutory option which we gave physicians back in '75, during the medical malpractice

crisis, availability crisis, if you will, and that's the ability to put together reciprocal insurance for the members with an economic interest. That might go a long way on the discipline issue too.

MR. HEILBRON: There's a lot of appeal in the idea.

ASSEMBLY MEMBER ROBINSON: But given this latitude, you shouldn't be forced into having the private insurance carriers determine who is going to practice law.

MR. HEILBRON: It's obviously an attractive idea, both with respect to attorneys being protected and the clients being protected. With respect to bonding, we spoke about that this morning, and I mentioned a few other things that might be appropriate ways of dealing with the Client Security Fund. We will look at that.

With respect to the prosecutorial right to advance a position in the Supreme Court different from one that was rejected by the State Bar Court, we talked about that one this morning too.

With respect to no waiver, with respect to a matter that might be the subject of discipline and which is an intentional act, in the case of malpractice claim, I think Mr. Gray responded to that this morning. We were unaware of the problem, but the general feeling is agreement with your instinct on it.

The audit mechanism, I guess as you said just a few moments ago, really ties in to the bonding matter. We'll look at it.

Advising with respect to Mr. Gray's protocol is something we would like to do.

With respect to making available the written fee proposal that was affirmed by the Board just a few weeks ago, I am more than delighted to do that since I have been working on that for about two years.

With respect with the La Follette cost recovery item, as you know, the Bar did propose that concept to the Supreme Court a year ago. The Supreme Court did not like it, and it was consequently turned down by it. When the legislation came, in light of the action of the Supreme Court, whose arm we are, we decided not to take a position with respect to the legislation. However, we did endorse the concept at the same time we decided not to take a position with respect to the legislation, and that remains our position. We endorse the concept. I ought to add that I'm told it is not going to be a great money generator, but that's, in a way, beside the point.

With respect to the matter of the members of the Legislature getting status reports, we'll look at that.

ASSEMBLY MEMBER ROBINSON: Look at it in the context of the constitutional authority of the Legislature to issue subpoenas.

MR. HEILBRON: We will certainly have that in mind. We have heard what you said.

ASSEMBLY MEMBER ROBINSON: It's the broadest base subpoena you've ever come in contact with as a lawyer, I assure you.

MR. HEILBRON: With respect to the sanctions imposed idea, I understand that you are interested in having us, in effect, tied into the superior and muni courts for the most part.

ASSEMBLY MEMBER ROBINSON: No, requiring the courts to transmit to you where the court has found sanctions against an attorney. You will get a copy of that judgment.

MR. HEILBRON: "For intentionally running up fees" I think was your phrase.

ASSEMBLY MEMBER ROBINSON: One of the examples would be anything the court found to be an abuse of the process. Running up fees was the hypothetical. I am not suggesting that statutorily we would require you then take this up in disbarment or suspension, but we would craft an appropriate sanction, hopefully working together, where there is a pattern of behavior that indicates that this is going on. The citizen oftentimes does not know that his or her pocket is being picked. The Bar on its own motion would open disciplinary proceedings. As to what that criteria is, I would like to work with professionals who deal with it, but it seems to me that we are talking about malpractice judgments. I'm talking about final judgments and sanctions where the court has found in observing that particular attorney's behavior that he should be sanctioned and economically penalized. The Bar should be notified. You are in the best position to determine whether or not there is a pattern of behavior that's developing, and then on your own motion, without a citizen having to come to you, you would start disciplinary proceedings.

MR. HEILBRON: We'll look at that. My sense is that there are not a lot of cases of the kind that you're describing, but we will look at it. I would be surprised if there were a lot of cases ending in judgments ...

ASSEMBLY MEMBER ROBINSON: You mean malpractice judgments?

MR. HEILBRON: Yes, I understand that part, but I was addressing myself to the sanctions part. I would be surprised if there were a lot of these.

ASSEMBLY MEMBER ROBINSON: ...a lot in the advance sheets in the last year or so.

MR. HEILBRON: There have been some highly-publicized ones, including one involving a supervisor in San Francisco, as you know.

ASSEMBLY MEMBER ROBINSON: That was not the actual one. I'm trying to stay away from the press's tendency of picking up the red flags and waving them. I've seen $5,000 and $10,000 sanctions or some that were just ordered to pay the other side's cost totally. That's a sanction where the court has found that...where there's been a finding or a sanction.

MR. HEILBRON: Okay, we will look at it, as I said. With respect to the addition of public members, I guess that was legislation fixing the number that presently exists. My suspicion is that you're more familiar with how you came up with the number than I am. I don't know how you came up with it. We'll take a look at it.

SENATOR PRESLEY: My question was -- and it's too early probably for you to say -- but what your view would be in terms of that being more 50-50, or something like that?

MR. HEILBRON: I have not really thought about that. I can tell you that the public members on our Board for the most part have been tremendous additions, in my opinion, since I've been on the Board.

With respect to the procedures for notifying witnesses, we are looking at the whole process of responding to people as they come in. I think it's very important, in respect to some of the complaints, which are most that don't involve disciplinary matters, that there be a live human voice very early on contacting the client. The matter is a communication problem. What the client really needs very quickly is for somebody to get on that problem and speak to the client. So we're looking at that, and I agree with you.

Internships, I think, is a difficult matter.

CHAIRPERSON CONNELLY: That's really outside the scope. I didn't get the chance -- I don't know if Assemblymember Elder is still here -- but that's really outside the scope, it seems to me, of disciplinary issues.

MR. HEILBRON: I would like to add this caveat with respect to all of this. I'm sure you will all appreciate it, but the fact of the matter is, as you know, that we have a little problem with respect to the dues which may occupy our attention no matter how good our intention...

CHAIRPERSON CONNELLY: Why don't we formally conclude the disciplinary hearing? For those of you who want to receive a copy of what will be the report of this hearing, not the full transcript, although that's obtainable as well, but the report of the hearing, if you'll make sure that your names and addresses are left with us, we'll make sure that that gets to you. The time frame on that -- we're probably looking at a two or three-page letter which I will sign after conferring with the other members, that will encompass those things which I enumerated at the outset as well as those added by Mr. Robinson and Senator Presley, in particular. We'll get that out in that time frame, and you can see that. Then that will serve as a partial agenda as we move into January as well as the broader issue.

I don't want to mislead the Bar on this. My sense is that, although without exception, we're asking for comment on these areas, there is a willingness from many of us to introduce legislation in these areas in any event. So, although we are sharing ideas as we should, at least the ideas that were enumerated here, and these are the members who, as a practical matter, have given their physical presence and attention here today, it means that we will follow through in the next calendar year. I don't want to mislead you by leaving an impression that's inaccurate with regard to where we're coming from.

MR. HEILBRON: I have no such impression or misimpression, I don't believe. I want it to be very clear from our side too that these are not things that we have first seen here. We're grateful to Senator Presley for compiling many of these items in the memorandum he compiled. We're working on them. We're interested in them too. We don't want to see them pass away.

CHAIRPERSON CONNELLY: I'm going to formally close the disciplinary hearing. We're going to move into the State Bar dues issue and consider that at some length. For those of you who want to sign up, I will ask Rosemary to make sure the signup sheet is available.

You're welcome, of course, to stay for the Bar dues hearing. Those of you who would like to talk to me further, after the hearing I will be around so you can get me one-on-one and beat me up or chat with me, as you like, both members of the State Bar and the community. I don't know who from the State Bar wants to address this. I assume it's Mr. Heilbron.

I didn't want to, on that issue, have a finger pointing thing because I don't think that's productive. As it turns out, all of the members here supported the Bar dues. Whether that's right or wrong, we did, and we tried to get it passed so beating us up doesn't accomplish a lot, and our beating you up in terms of how it was handled doesn't accomplish a lot either. It's a function of where we are now, and we want to compare notes with you in terms of what you intend to do, whether you have thought about that in terms of procedure from this point forward ...

MR. HEILBRON: We have.

CHAIRPERSON CONNELLY: In evaluating and so forth and so on. We would like the benefit of your thoughts on that issue.

MR. HEILBRON: We are, to begin with, a cash business. You cannot do a cash business without cash. We are a cash business which budgets itself annually and depends upon the receipt of dues annually to go through the year. We're getting towards the end of the year. You don't meet again until January. Our understanding is that any bill passed in January which was not an urgency bill would not be effective until 1987 which sounds a little late to us for 1986 dues. With respect to an urgency bill, we are mindful of the problem that existed on Friday the 13th, when apparently, a two-thirds majority was unable to be obtained in the Assembly, with the consequence that we are, as I advised the Conference of Delegates yesterday, looking at all options.

We cannot let this agency just go under. Two of the options that we are looking at relate to the sending of the bill ourselves under such residuary powers as we have, and we're looking into that. Another option that we're looking into relates to the Supreme Court and its authority over us and, in particular, its authority in respect to the authorizing of sending out of bills. We are, as I say, looking at the whole thing, but we're a little concerned that the days are growing short this time of year and we have to move.

CHAIRPERSON CONNELLY: It may well be that there's not a lot more to be said today about it. I think what I would ask is that you keep us informed with regard to your legal opinions on residuary power, if any, and what you intend to do in terms of exercising that power or, in the alternative, any actions involving the Supreme Court so we know what's going on there. Those of us who are concerned about maintaining the dues at a bare minimum, maintaining the dues during 1986, want to be aware of that so that, if legislative action is taken or required, we are, in the most thoughtful and strongest position to be successful in that area.

Assemblyman Robinson, among others of us, has done some creative thinking in that regard in terms of how to do that. I don't want to mislead you. We haven't come up with any whiz bang solutions, but as opposed to the area of discipline, where we are going to continue to arm-wrestle, I would imagine, with some vigor during the spring, the overwhelming majority of the judiciary committees of both houses, I think, are going to want to work in total cooperation resolving at least the threshold issue of dues. That's just putting aside for a second the question of an increase, which obviously I voted for. The threshold issue is a more immediate problem, obviously.

ASSEMBLY MEMBER ROBINSON: Mr. Chairman, on that point, there's one thing I'd like to ask of the Bar, and it might as well be said in public. I have heard press reports that there are at least a few members who intend to try to, in some way, limit the First Amendment of the United States Constitution as it relates to the Bar. It seems to me that the Bar, just to be prudent -- you have, amongst your members, access to some distinguished constitutional lawyers. I would like written opinions available both to Mr. Connelly and myself and Mr. Harris, and I would assume Mr. Lockyer on the Senate side, and Senator Presley, the ramifications of such kinds of restrictions that you've seen reported in the press. I, just as a layman, don't believe that we can limit whether we, as the people's representatives, or even the people can limit your First Amendment rights. You have better research available to you than we have in our own Legislative Counsel's Office, and I suggest to you that it's going to be an issue. It's not going to be an issue that I support, but I would like to have the tools and wherewithal to have it publicly discussed so it's available to the media and everyone else so that we don't get tied up in single issue type politics. I can remember during my tenure certain criticism when the Bar supported the Equal Rights Amendment, for example. I'm not putting words in anybody's mouth, but I don't want to see those ugly single issues pop themselves up in the context of the dues bill. I would like to have the legal research done and available to ensure that we can convince our colleagues that that's not proper nor is it constitutional. We've all taken oaths, you gentlemen yesterday, to uphold the Constitution. Those of us in elective offices certainly have taken that. We'd like that work done immediately and to have the best work product because it's certainly going to be subject to scrutiny by individuals who would like to limit your First Amendment rights.

MR. HEILBRON: I appreciate both of your remarks. I understand that you're interested in having that work product very quickly, Assemblyman Robinson. I have to tell you that we're doing some other legal research in the immediate near term but we will be certainly ...

ASSEMBLY MEMBER ROBINSON: There's Harvard. There's Stanford. There are quite a few law schools which have quite distinguished constitutional law departments that could be turned loose on that. I'm sure they would respond more efficiently and rapidly to the president of the State Bar and the Bar Board of Governors. Haste makes waste. We want a good work product because it certainly will be subjected to intense scrutiny by those of our colleagues who would like to limit the function of our judicial discipline and admissions. I interpret that to be way too limited for the Bar, and that's the way I would phrase it. In the press reports I've seen, some of my colleagues would like to limit you only to discipline and only to admissions, and that should be viewed in the context of the United States Constitution and the First Amendment.

MR. HEILBRON: I understand. Thank you. I would like to add this, though, and thank you for your remarks, Assemblyman Connelly. You mentioned the dues bill of an amount that equaled last year's. I hope that nobody misunderstands -- I'm sure that no one does -- that that dues increase is absolutely necessary to put into effect the reforms that we've all talked about and that I take it all of us desire to have happen.

CHAIRPERSON CONNELLY: That's why I voted for the bill.

MR. HEILBRON: Thank you.

ASSEMBLY MEMBER ROBINSON: But it also may be necessary just for maintenance of effort, I mean, hopefully, we can get a two-thirds vote. That's what Mr. Connelly is referring to, in order to allow you to send your bills out in January just for maintenance of effort, to allow one year with no increase. I'm not arguing one way or the other on the increase. Whatever is necessary in order to keep the Bar functioning as a structural institution while the rest of the issues are resolved is what I believe Mr. Connelly is referring to.

CHAIRPERSON CONNELLY: That's correct.

ASSEMBLY MEMBER ROBINSON: That's what I was identifying.

MR. HEILBRON: Thank you.

CHAIRPERSON CONNELLY: Thank you very much. That portion of the hearing on the Bar dues is concluded. We are adjourned.

RECOMMENDATION ON SENATOR PRESLEY'S TASK FORCE ON BAR DISCIPLINE
following meeting in San Francisco Sept. 18, 1985

After very careful evaluation and consideration, the majority of The Task Force on Bar Discipline is firmly convinced that power over bar discipline should be vested in an independent regulatory agency under jurisdiction of the California Supreme Court.

The minority of the task force agrees that such a proposal deserves serious consideration.

In order to focus attention on this alternative to the present self-regulation by the bar, to help determine the facts and to provide the Legislature with research upon the issue, the task force recommends that:

1. The Legislature's judiciary committees hold another joint hearing by Dec. 15 to take testimony from all concerned groups on the question of setting up such an agency, the advantages and drawbacks, etc

2. That the Auditor General's Office be directed to examine the types and foremats of state regulatory agencies and recommend the type which would be best suited to imposing disciplinary standards upon the state's attorneys. By Dec. 15.

3. That the Attorney General's Office be requested to examine the disciplinary system, offenses and punishments now provided for attorneys and recommend revisions.

4. That opinions and proposals be solicited from the Bar, from consumer and citizen g roups and others interested in bar discipline reform, on the question of establishing an independent regulatory agency

This Task Force intends to continue to study the prospect and to propose legislation in the 1986 session toward this end, if after further study it seems the most feasible way of reforming the Bar disciplinary system.

REFORM RECOMMENDATIONS TO BE PURSUED REGARDLESS OF WHETHER OR NOT "INDEPENDENT AGENCY" PROPOSAL SUCCEEDS *

September 18, 1985, San Francisco

1. Requiring better control and oversight of client trust funds, possibly through requiring bonding or through random audits by the State Auditor General's Office or other auditing entity.

2. Instituting standard written agreements between attorneys and clients, available either on request or to be required, setting down what services the client will receive, what the client must provide, and establishing some basis for fees to be charged.

   Bills to clients should be itemized showing what the client received for what amounts.

3. Review of the client/attorney arbitration process to look into such problems as:

   (a) Lawyer/arbitrator should not be a personal friend or known to the attorney who is subject of the arbitration, a problem particularly in smaller cities

   (b) Requirement that both the attorney and the client know that arbitration decisions can be appealed to the courts; now, the attorney knows but the client may or may not be so informed in the process.

4. The Bar's trial counsel arguing cases before the Supreme Court should have the option of pursuing the recommendations by the Bar's appellate panel or raising other grounds or following their own approach in such appearances. Now they normally follow the panel's recommendations.

* List compiled by members of Presley's Task Force on Bar Discipline but still subject to prioritization and culling by the Task Force before before Sept. 30 session.

5. Effort should be made to reduce the time consumed and the delays permitted to attorneys defending themselves in the disciplinary process, through a revision of the process. Standard length now exceeds three years, longer in some cases.

6. Provide broader jurisdiction of the type of reimbursement for loses to clients that can come from the Client Security Fund. Now such payments are in effect limited to cases of attorney dishonesty, theft or misappropriation of funds.

7. A mandatory Malpractice Insurance Fund should be established to compensate victims of negligent attorneys who may or may not currently have adequate malpractice insurance coverage.

8. A rule must be established to prohibit the unethical practice of wronged clients having to waive their right to report errant layers to the State Bar Disciplining Board in exchange for a favorable settlement of a malpractice prosecution, or as part of the settlement agreement.

9. An independent commission should be formed, perhaps by the Legislature or by the Supreme Court, to solicit on a continuing basis, proposals for reform or improvements that would be aired before the Board of Governors and made known among the state's 95,000 attorneys on a regular basis.

10. Examination of the need to add to the number of public members on the Board of Governors to make the majority of the Board public members, or at least that a majority of the members of the Bar's disciplinary oversight panel be made up of members of the public or nonlawyers.

11. The oversight of bar disciplinary agencies is both too narrow and too broad. It extends to matters having limited relevance to professional practice (e.g. misdemeanor marijuana or civil disobedience convictions) and fails to encompass the most common client grievances: overcharging, incompetence, negligence. Jurisdiction to include more client grievances should be expanded.

12. Bar disciplinary agencies lack resources to complete adequate investigation and timely processing of grievances. An unduly large California Case loads are too heavy (up to 160 cases at a time in 1984) a percentage of cases are closed without any investigation (60% in 1984), and delays in getting cases before the State Supreme Court are too frequent (average time -- three and one-third years). This area should be studied with the goal of getting a more efficient system established.

13. Serious sanctions are too infrequently imposed even for flagrant misconduct such as perjury and misappropriation. Bar recommendations are too lenient and are too routinely accepted by the California Supreme Court. That only eight attorneys were disbarred in 1984, a year in which clients filed almost 9,000 complaints, is an appalling record. Sanctions against elite lawyers are disturbingly rare. Research involving a sample of 1982 cases imposing public sanctions (disbarment, suspensions, and censures) disclosed that none of the disciplined lawyers for whom Martindale Hubbell information was available came from firms of over seven attorneys. That record is at least partly attributable to the bar's disinclination to sanction discovery abuse and other forms of misconduct committed by

prominent law firms. This preferential treatment of prominent or established lawyers from prominent firms must be discouraged and/or abolished altogether.

14. Clients lack adequate sources of information about past and pending bar complaints and malpractice actions. In California, unlike seventeen other states, cases do not become public when the bar has sufficient evidence to proceed at a formal hearing. A system wherein a prospective use of legal services can call about a lawyers record should be established.

15. National studies reflect that only a small percentage of clients with grievances, or attorneys and judges with knowledge of misconduct, initiate bar complaints. Current regulatory processes do little to encourage such reporting or to tap other sources of information. Little effort is made to publicize procedures, assist clients in articulating grievances within bar jurisdiction, or create incentives for the filing of complaints. Nor is any attempt made independently to initiate investigation under circumstances suggesting evidence of misconduct (e.g. malpractice judgements, imposition of judicial sanctions.) A system where such reporting and investigatory processes are encouraged should be established.

16. The Bar disciplining agency should have the power to place an attorney on inactive status pending investigation of serious misconduct. Such a system should be studied for implementation as soon as possible.

Statement of Deborah L. Rhode
California Senate and Assembly
Joint Hearings on the
Lawyer Disciplinary Process
September 30, 1980

INTRODUCTION AND SUMMARY

I am a Professor of Law at Stanford Law School. (B.A. Yale, 1974; J.D., 1977.) For the last six years my prime area of research and teaching has been the regulation of the legal profession. I have also acted as counsel to attorneys accused of professional misconduct. Among my publications have been articles on legal ethics (Stanford Law Review, 1985); the unauthorized practice of law (Yale Law Journal, 1976; Stanford Law Review, 1981); moral character as a professional credential (Yale Law Journal, 1985), and the American Bar Assocation Model Rules of Professional Conduct (Texas Law Review, 1981). I have also published an edition of readings on the legal profession with Yale Law Professor Geoffrey Hazard, Reporter on the ABA Model Rules. A resume and full list of publications is attached.

Much of this research has involved issues of professional discipline and regulatory autonomy. A consistent conclusion of all of this scholarship is that the structure and enforcement of professional sanctions ought not to rest under the control of the organized bar. No matter how well intentioned, no vocational group is well situated to pass judgment on matters directly implicating its economic interests, social status, and self-image. Nothing in the history of the American bar in general or California bar in particular reveal them to be an exception. An independent regulatory body with broad based

representation would be less susceptible to both the fact and appearance of partiality. To effect significant improvements in bar regulatory processes will require fundamental changes in their structure.

THE PROBLEM

The deficiences of current bar disciplinary systems have been exhaustively documented elsewhere and need not be rehearsed at length here. A summary of the most pressing problems would include the following:

a) Jurisdiction.

The oversight of bar disciplinary agencies is both too narrow and too broad. It extends to matters having limited relevance to professional practice (e.g. misdemeanor marijuana or civil disobedience convictions) and fails to encompass the most common client grievances: overcharging, incompetence, negligence.

b) Resources

Bar disciplinary agencies lack resources to complete adequate investigation and timely processing of grievances. California case loads are too heavy (up to 160 cases at a time in 1984). An unduly large percentage of cases are closed without any investigation (60% in 1984); and delays in getting cases before the State Supreme Court are too frequent (average time: three and one-third years).

c) Sanctions

Serious sanctions are too infrequently imposed even for flagrant misconduct such as perjury and misappropriation. Bar recommendations are too lenient and are too routinely accepted by the California Supreme Court. That only eight attorneys were disbarred in 1984, a year in which clients filed almost 9,000 complaints, is an appalling record. Sanctions against elite lawyers are disturbingly rare. My own research involving a sample of 1982 cases imposing public sanctions (disbarment, suspensions, and censures) disclosed that none of the disciplined lawyers for whom Martindale Hubbell information was available came from firms of over seven attorneys. That record is at least partly attributable to the bar's disinclination to sanction discovery abuse and other forms of misconduct committed by prominent law firms.

d) Confidentiality

Clients lack adequate sources of information about malpractice actions and past and pending bar complaints.

e) Information

National studies reflect that only a small percentage of clients with grievances, or attorneys and judges with knowledge of misconduct, initiate bar complaints. Current regulatory processes do little to encourage such reporting or to tap other sources of information. Little effort is made to publicize procedures, assist clients in articulating grievances within bar jurisdiction, or create incentives for the filing of

complaints. Nor is any attempt made independently to initiate investigation under circumstances suggesting evidence of misconduct (e.g. malpractice judgements, imposition of judicial sanctions).

F. Inadequacy of Alternative Grievance Mechanisms

Current client security funds are grossly inadequate in amount and coverage and fee arbitration systems are too limited to provide adequate recourse.

RECOMMENDATION

A number of these problems suggest certain obvious responses: more resources, more publicity, stiffer sanctions, greater pursuit of outside sources of information, broader jurisdiction over professional misconduct, and narrower jurisdiction over matters less relevant to professional practice. Development and implementation of such changes should vest in an independent regulatory commission, accountable to the state Supreme Court. Membership on this commission should reflect a broad cross-section of interested groups. A minority of commissioners should be from within the profession (lawyers, judges, legal academics); a majority should represent client and consumer groups, competing professions, and scholars with skills relevant to professional governance. Such a commission should also institute continuing mechanisms for soliciting and evaluating recommendations for reforms.

TESTIMONY OF

STEPHEN M. BUNDY

My name is Stephen Bundy. I am an Acting Professor of Law at Boalt Hall, the law school of the University of California at Berkeley, and I am a member of the Task Force on the State Bar Disciplinary System. I am testifying today at the request of the members of the Task Force in order to present their views to you.

The Task Force was formed last spring, under the auspices of Senator Robert Presley, to consider possible reforms of the State Bar disciplinary system. Its members include lawyers from private, government and public interest practices, academic lawyers specializing in issues of professional discipline, and concerned laypersons. A number of Task Force members have substantial personal experience as complaining witness, prosecutor or defense counsel in State Bar disciplinary proceedings. Two members are former employees of the State Bar, and two others presently sit on the State Bar's Board of Governors.

The Task Force has met several times in recent months to consider possible reforms of the disciplinary system. At our last meeting, the membership agreed that we would present to

you today what we believe is the most important disciplinary reform initiative open to the Legislature. A majority of the Task Force has concluded that statutory responsibility for attorney discipline should be taken from the State Bar and vested instead in an independent regulatory agency under the jurisdiction of the California Supreme Court. A significant minority of the Task Force membership are not yet prepared to endorse such a proposal. But all members of the Task Force agree that the concept of an independent disciplinary agency merits early and serious consideration by the Legislature.

Two fundamental facts have persuaded the Task Force majority of the need to establish an independent disciplinary agency now:

First, the State Bar is a professional organization of practicing lawyers, and it has as its principal function the promotion and protection of their interests. It therefore has an institutional conflict of interest which disables it from performing the disciplinary function vigorously and effectively. To say that the State Bar has a conflict of interest is not to accuse anyone of unethical behavior or wrongdoing. The problem is not one of misconduct, but of human nature and institutional design. As citizens, we would never accept the idea of a Public Utilities Commission whose members were utility executives, a Board of Forestry whose members were loggers, or a Parole Board whose members were convicts, nor would we expect any agency so constituted to do its job well. There is no reason why we should accept a system in which a

lawyers' trade association acts as the prosecutor and judge of other lawyers.

Second, experience shows that the State Bar has been consistently unsuccessful in discharging its disciplinary responsibilities. Despite extensive criticism of the disciplinary process extending back nearly 20 years, and repeated promises of reform and improvement, the disciplinary system today remains badly organized, underfunded, backlogged and chronically lenient. The situation would be even worse if the Bar had not refused to become involved in the regulation of routine attorney neglect and incompetence -- perhaps the single greatest source of injury to clients. In a private litigation practice or a public prosecutor's office such a performance would properly be viewed as a badge of incompetence. There is no good reason to view it differently here. This history of failure has persuaded the Task Force majority that it would be foolish to delay fundamental reforms based upon promises of improved performance in the future.

The creation of an independent disciplinary agency, under the jurisdiction of the Supreme Court, is a major undertaking. That the Legislature has the power to accomplish such reform by statute cannot be doubted. But obviously the Legislature will wish to consider carefully the desirability of such an agency and how best it might be constituted. As a first stage in that process, we recommend that prior to December 15 of this year:

1. The Judiciary Committees of the Senate and Assembly should hold a further joint hearing to take testimony from all

concerned parties concerning the desirability and proper form of an independent disciplinary agency.

2. The Auditor General's Office should be directed to examine existing state agencies and to recommend which, if any, would be appropriate as a model for an independent disciplinary agency, having in mind the constitutional role of the Supreme Court in the disciplinary process. The Attorney General's Office should be asked to assist the Auditor General in its evaluation of alternatives.

3. Opinions and proposals on the subject of an independent disciplinary agency should be solicited from the State Bar, from consumer and civic groups and from others interested in disciplinary reform.

By limiting our testimony today to the establishment of an independent agency with jurisdiction over attorney discipline, the Task Force does not mean to suggest that other reforms are unnecessary. On the contrary, most of us believe that even if an independent regulatory framework is adopted, real improvement in the disciplinary process will nevertheless require more resources, tougher sanctions, and a further expansion of disciplinary jurisdiction. We expect to consider such changes in connection with our further study of discipline issues, and we encourage you to give favorable consideration to proposals for such changes. But we think that those further improvements should not delay action on the most basic reform: taking the power to regulate the legal profession out of the hands of the profession itself.

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August 26, 1985

Lettie Young, Counsel
Subcommittee on the Administration of Justice
1100 "J" Street, Fifth Floor
Sacramento, CA 95814

Re: Testimony at Joint Subcommittee Meeting Concerning State Bar Discipline - September 30, 1985

Dear Ms. Young:

Thank you for your letter of July 30, 1985. This letter is generally the presentation I would like to make at the September 30 hearing in San Diego.

My Qualifications

I am an honors graduate of Cornell Law School and have been a California attorney for 15 years, the last five of which have been spent entirely in the areas of attorney discipline and competence. For three years 1981-83 I was a disciplinary prosecutor for the State Bar. During that time to my knowledge I was the only prosecutor, top to bottom, who had substantial trial experience practicing civil and criminal law outside the bar, having had more than 10 years of such experience.

During the time I was there the San Francisco Office of Trial Counsel had about seven attorneys. During those three years I believe I obtained more discipline against more lawyers than any other three attorneys in the office combined. I never lost a contested case. I dismissed weak cases, and I was not afraid to recommend light discipline when appropriate. But I was considered a tough prosecutor.

My private practice in the last two years consists of prosecuting and defending attorney malpractice cases, and litigating State Bar matters, discipline, admissions, and Client Security Fund matters, including the recent Saleeby case in the California Supreme Court which established due process rights for Client Security Fund applicants, as against the State Bar's contention that only the dishonest lawyer had any rights. Many of

my civil cases also involve making a complaint to the State Bar, so that I am constantly dealing with the State Bar's disciplinary apparatus in all sorts of matters. I have never lost a case litigated against the State Bar since I went into private practice. This is not because I am such a great lawyer but I think largely it is because the Office of Trial Counsel and General Counsel lack basic competence in evaluation and litigation of cases. More about this later. I know lots and lots of horror stories, but I know that is not what this hearing is about. You want to know what the legislature can do about the lawyer discipline system.

There are two basic points I wish to make. First, the State Bar now arranges things so that the public interest drops out in the middle of the process! The possibility of severe discipline for severe offenses is often sabatoged before the decision is ever made. An independent Office of Disciplinary Counsel is probably necessary to correct this problem and protect the public from it in the future. Second, giving the State Bar more money and power is not going to solve the problems because the State Bar is not truly motivated or competent to vigorously prosecute errant lawyers on behalf of the public. An independent Office of Disciplinary Counsel which has no trade association function and no mission other than prosecution of disciplinary cases is necessary to remedy this problem. Such an office is functioning well in many other states.

The Disappearing Public Interest

What am I talking about when I say the public interest drops out?

First, let's look at a criminal prosecution for analogy. The defendant is prosecuted by the District Attorney, and convicted, and he appeals. On the prosecution side, the appeal is handled by the Attorney General's Office, headed by an independent elected official who is responsible to the public. The Court of Appeals, let's say, strikes some part of the conviction resulting in a

lower sentence. The Attorney General is then free to appeal that result to the California Supreme Court, based on his view of the public interest. If the California Supreme Court rules against his office in the case, he is still free to comment on the case to the public. The interest of the public in the vigorous prosecution of criminals is heard at every point in the process.

Now let's contrast the disciplinary system for lawyers. The case is prosecuted at the hearing (the trial, so to speak) by the Office of Trial Counsel. Let's say the hearing panel recommends disbarment. Then the case goes to the Review Department of the State Bar Court, still prosecuted by the Office of Trial Counsel. Let's say the attorney has some luck with the Review Department, as often happens, and it recommends only two years probation, instead of the disbarment. Now the attorney, feeling that even this is too heavy a discipline (or still contesting the facts of the case), petitions the California Supreme Court.

It is at this point that the public interest -- that is to say, the prosecution point of view, just drops completely out of the process. Within the State Bar, the case is taken over by a completely different law office within the Bar, the Office of General Counsel. Only the Office of General Counsel (and never the Office of Trial Counsel) handles the case at the Supreme Court level. But the Office of General Counsel sees its client not as the public, but as the State Bar. So it <u>always</u> supports the Review Department's disposition, no matter what it is! So when the case gets to the Supreme Court, one side is arguing for two years probation and the lawyer involved is arguing for something even less. What happened to <u>disbarment</u>? Who is presenting <u>that</u> point of view? No one! It has completely dropped out, even though the hearing panel recommended it, and the Office of Trial Counsel presumably recommended it to the hearing panel. But no one is presenting the arguments for disbarment to the Supreme Court! The public interest has just dropped out.

Is it any wonder that the Supreme Court in 90% of cases accepts the recommendation of the Bar, and in at least 9 of the remaining 10 reduces the discipline as requested by the lawyer. Over and over again, the Court says that the conduct would warrant

disbarment, but it is deferring to the recommendation of the State Bar. Why? Because disbarment has not been briefed, or argued, or presented to them. The court, probably quite rightly, is reluctant to take a position which is outside of the parameters being argued by the parties and which has not been briefed or argued.

This incredible procedure is no doubt responsible in great measure for the apparently light disciplines which have been meted out over and over again for serious offenses.

How long do you think the Attorney General could contend that he was representing the public interest if, whenever a criminal defendant appealed to the California Supreme Court, he discarded whatever position he had before and adopted the Court of Appeal's decision as correct? This would mean that if the defendant won at the Court of Appeal, the A.G. would never take the matter up. If the defendant won any points at the Court of Appeal level, all those points would be conceded by the A.G. from then on. And if the Court of Appeal reduced the punishment, the A.G. would always support the reduction instead of protesting it.

I suggest that any Attorney General who acted in this way would be thrown out of office in the fastest way possible by an indignant public. And yet that is exactly the procedure which has been and is today in use at the State Bar.

Curiously, there is no statute or rule of law which requires this posture by the State Bar. There is nothing in any law or rule which would prevent the Office of General Counsel or the Office of Trial Counsel to continue to press for disbarment before the California Supreme Court, or to ask for greater discipline than that recommended by the Review Department if they thought the public interest required it. But they don't.

In all the talk of reform and the programs for greater power and money and everything presented by the State Bar, you have, as far as I know, been told nothing about this whole matter of the disappearing public interest. Why? Because it illustrates with crystal clarity that a successful trade organization cannot be a successful prosecutor's office. It's like having the Chamber of Commerce in charge of consumer fraud.

The State Bar is not unaware of this whole matter. In 1982, the Office of Trial counsel prepared a comprehensive report on this issue, showing that California was the only state in which the disciplinary prosecutor did not present an independent point of view to the Supreme Court, but rather, simply adopted and parroted the views of the appellate disciplinary body. This report was sabotaged by the Office of General Counsel, watered down by the Chief Trial Counsel, and never got anywhere. The State Bar is incapable of thinking clearly in this area, thinking clearly about the public interest.

This is not necessarily a fault of the people within the Bar. They are public relations experts, able to present reforms and programs to solve every criticism. But they are unable to represent the public interest in discipline because their constituency is the profession, not the public. Their bosses are the profession, not the public. The very fact that they do not recognize the basic flaw in the system -- which any experienced outside prosecutor would spot in a minute and never put up with -- shows why an independent prosecutor's office is needed. As long as the State Bar handles discipline, what is going to prevent it from "disappearing" the public interest in the middle of the process?

The Need for an Indpeendent Office of Disciplinary Counsel

My second point is that giving the State Bar more power and money is not going to solve the problems, because the State Bar is not truly motivated or competent to vigorously prosecute errant lawyers on behalf of the public. The Board of Governors of the Bar is heavily weighted with lawyers, all of whom are elected by other lawyers in a political process which is something of a popularity contest. Lawyer discipline is not a big issue. Few of the governors, whether lawyer or public members, have real expertise in disciplinary matters. They are completely dependent on the bar staff.

But for a variety of historical and bureaucratic reasons, the staff appears not to be competent either. Consider the following:

-----Very few of the prosecutors have any substantial outside litigation experience, even though every discipline case involves another area of civil or criminal law and requires some knowledge of the way practicing lawyers operate.

-----In the last two years, since the so-called management change, the Office of Trial Counsel has undergone reorganizations at the rate of about one every two months. None of these has accomplished anything except to give the appearance of progress.

-----In the last two years, since the so-called management change, the Office of Trial Counsel has been headed by a charming and articulate person who has no experience outside the bar and has never litigated a disciplinary case, or any case for that matter.

-----In the last two years, since the so-called management change, morale in the Office of Trial Counsel, which was low when I left two years ago, has sunk to lower and lower depths. There is no one high in the office with the experience, reputation, and self-confidence to rally the staff and inspire them. There is no real leadership in the office, just control. Everyone is on a very short leash.

-----In the last two years, since the so-called management change, the backlog has gotten worse, despite grandiose announcements and plans to correct it. Legislation is not going to solve the backlog, at least not in the public interest. Everyone I have talked to about the 1987 deadline believes that it will be met -- by throwing complaints away, closing investigations and files, just dumping them until the legislature is satisfied, regardless of the merits of the complaints. Who is going to know? The whole process of investigation and evaluation is kept secret.

Since the legislature and the public can't really look over the Bar's shoulder at the way every complaint is handled, you ultimately have to set up a good system and then put people in charge of it who are qualified and competent, and who are motivated to discipline errant lawyers. The present State Bar management does not qualify. For example:

-----In the last two years, while the number of staff has greatly increased, the actual number of lawyers disciplined,

always low, has gotten even lower (not counting criminal convictions, which are handed to the bar on a platter).

-----When the Board appropriated $39,000 for employee morale, the bar used most of it to entertain its top executives at the Sonoma Mission Inn. No benefit trickled down to the line staff, and morale got worse instead of better.

-----Instead of hiring experienced prosecutors or other qualified persons to handle the backlog, the bar assigned lawyers from other offices within the bar, lawyers who had no discipline experience at all but who had been dealing with forms and committees and the like. They were completely unequipped for the task, and the management of the office was unequipped to train them.

-----The so-called backlog team was in the wrong place. Most of the team was in San Francisco, but most of the problem was in Los Angeles.

-----One of the backlog team was given nothing to do for six months but create a "profile" of an attorney who gets into trouble. A total waste of time, what could that possibly be used for, except public relations?

But it is not just what they <u>have</u> done which shows lack of motivation and competence, but also what they <u>haven't</u> done. The Bar's management hasn't taken elemental steps which could have gone a long way toward solving the problems by now. For example:

-----The Bar <u>could have</u> adopted detailed prosecutorial guidelines for each type of offense, including the kind of evidence required to prosecute, and then provided these guidelines to prospective complainants along with the complaint form. That would have eliminated hundreds of unprosecutable complaints at the source, and would have provided a ready referral source for other complaints which are rejected for prosecution. It would also have provided some accountability for what the office does.

-----The Bar <u>could have</u> hired lawyers with a minimum of 3-5 years civil or criminal trial experience so that cases could be evaluated with knowledge of the underlying area of law and the way law is practiced in the real world.

-----The Bar could have set up priorities to prosecute the worst offenders first, fast, and hardest. This has only been done on paper, lots of times, and never implemented.

-----The Bar could have taken an independent position before the Supreme Court on behalf of the public, instead of blindly and unthinkingly parroting the position of the appellate disciplinary board, whatever that might be. The Bar could have recognized that its client is the public (and not the Board of Governors or the Review Department) in disciplinary matters.

All of these basic and self-evident steps could have been taken at any time without any new legislation, or any more money. But none of them were.

All of this is illustrative of poor management. It is management which is concerned totally and completely with public relations and image, and very little with getting the job done. It is management with a seige mentality, afraid to let anyone in because the emperor will be seen as naked. It is management which does not know how to manage people, does not know how to manage a backlog, and does not know how to do the job assigned, except to keep making cosmetic changes and requesting more power and money.

Why is it that the legal profession is so terrified of losing self-regulation? I think it's just a turf fight. All the other professions are regulated by independent agencies, and there does not seem to be the lack of public confidence in that regulation that there is here.

The new plan by the Board of Governors, to set up a new office of investigations separate from Trial Counsel, isn't going to solve anything. The head of that office would be appointed by and reporting to the same top management which has made all these mistakes. Past history of that management has made it clear that the only acceptable candidate for the head investigator will be one who kowtows and follows the party line at every step and gives up any semblance of independence. It's just another bureaucratic move by the same management. They are trying, I suppose, but they are just not competent and motivated for this job.

Lettie Young, Counsel
August 26, 1985

My proposal is that an independent Office of Disciplinary Counsel be established by legislation. Its head would be appointed by the governor and approved in the legislature. It need not cost the taxpayers any more than the present system, because the legal profession can continue to pay for the discipline of its members as it does now. The State Bar can be maintained as a trade organization and to provide the judicial functions of the State Bar (maintaining a clerk's office and a pool of referees to hold disciplinary hearings).

In this manner the prosecutor's office will be independent of the organized bar, accountable to the public only, through the legislature and the Supreme Court.

What we have now is a prosecutor's office run by a large committee -- the Board of Governors. Does anyone know of a successful prosecutor's office which is run by a large outside committee?

I ask you to begin work now on legislation to create an independent prosecutor's office to gradually take over the function of discipline of lawyers, so that the profession will get rid of the bad apples who harm us all, and the public will be protected and informed, and be accounted to. Thank you.

Ms. Young, thank you for the opportunity to make this statement, and I hope the subcommittee will allow me to address them at the hearing. I would be pleased also to answer questions, or assist the process in any way possible.

Thank you for your consideration.

Yours very truly,

Philip Martin

PM/p

cc: Subcommittee members
Hon. Eluhu M. Harris, Chairman, Assembly Judiciary Committee
Hon. Bill Lockyer, Chairman, Senate Judiciary Committee
Hon. Robert Presley, State Senator
Bob Holmes, Aide to Senator Presley
Members of Senator Presley's Task Force on State Bar Discipline
Task Force Mailing List

TESTIMONY OF HELENE WALLING 9/30/85

I'm here to testify about my recent experience with the current system. I do have the impression that the way attorney discipline is handled and consumer rights ignored is reminiscent of the 'good old boys club' and that attorneys, good or bad, will tend to protect eachother.

My experience started in the spring of 1983 when the house belonging to my ex-husband and me was damaged in a mudslide. My ex-husband engaged an attorney, without my consent, and with whom I did not sign a contract. The attorney filed suit in my name. When he recognized his mistake, we met to discuss whether I wanted him to represent me.

During the meeting with him and my first divorce attorney, I was advised to get an SBA disaster loan and use the money to front attorney's costs and eventually for fees. When I pointed out that this wasn't legal, I was informed that there were ways to get around it. For that and other reasons I decided I definitely did not want that lawyer to represent me.

I attempted to get my own mudslide lawyer. The attorney I saw wrote a letter to the first mudslide lawyer, pointing out that we had no contract and asking for a response as to how this could be worked out. There was no response.

To make a long story short, I was advised by three attorneys (my first and second divorce attorneys as well as the mudslide lawyer I saw, to just cooperate as the lawyer was representing my ex husband and to try to negotiate a deal at the end. As a result of this advice, I did not confront the attorney. I was, however, unable to get my own attorney as the attorney I wished to represent me said that it would just confuse the issue.

Negotiations with the mudslide lawyer were essentially unsuccessful and what I thought we had agreed to was not the same as the attorney thought.

I called the State Bar in San Francisco to file a complaint for unethical behavior and to get whatever forms I needed to fill out. I was told there were no forms and referred to an attorney in SF who was on the ethics board. He told me to send him the information and, if he took the case, he'd charge me.

I later found out that the person to whom I was referred represents attorneys in malpractice and ethics cases and had nothing to do with the Bar. Later on, no one at the Bar could figure out how all this had happened.

I also went to fee arbitration for my half of the approximately $50,000 in fees and costs being charged by the mudslide lawyer. The fee arbitration turned out to be the worst disaster.

I brought an advocate, Dr. Joan Edelstein, rather than an attorney due to the costs involved. I did check this out with the Panel Chair's office prior to the arbitration and was told there would be no problem as the arbitration was informal.

When we arrived at the arbitration, the Panel Chair was stymied by the situation and stated he was not familiar enough with the Rules of Procedures to determine whether this was allowable and had to contact the Chair of the Fee Arbitration Board.

When he was unable to contact the Chair of the Board, he consulted with the other side. It was agreed, without my input, that Dr. Edelstein could come in but could not represent me or speak for me since she wasn't an attorney.

HELENE WALLING

Dr. Edelstein and I were not allowed to speak with eachother in the room - although the attorneys could do so as they pleased. To consult her, we had to physically leave the room while the proceedings continued without us. In general, the attorneys were afforded every courtesy and privilege and I got none.

The other side completed the opening statement after which I wasnot allowed to ask any questions to clarify what was said. I was told I could call witnesses and question witnesses later. I was never allowed to do either. In fact, I was never allowed to complete my opening statement, uninterrupted or otherwise.

My statements about specific unehtical behaviors - such as the suggestions about the SBA loan - were virtually ignored as was the fact the attorney had assumed me in error and that he had ignored any attempts to remedy the situation.

I was blamed for following the advice given me by three attorneys and apparently was supposed to know better onmy own. I was told by the Panel Chair that, because I did not confront this unresponsive attorney, the situation was seen as "the same old story - your lips were saying 'no-no' but your heart was saying 'yes-yes'". I was appalled at the use of such a sexual analogy but it was in keeping with the condescending and intimidating tones of voice used at that meeting. For example, all attorneys were referred to by last names while I was 'Helene.'

Finally, the attorney was seen as an innocent victim of divorce proceedings and wasnot held accountable for any of his actions which contributed to the sitaution. The complete details of the proceedings are also being submitted to you rather than taking the time to describe them in detail.

In the middle of the arbitration, the panel decided they didn't want to hear any more, they'd made up their minds - no witnesses, no questions, the end.

I immediately wrote a letter of complaint to the Chair of the Fee Arbitration Board of that county about the behavior at the arbtration and we waited for the decision. The written decision was not completed until almost two weeks after the required time but was pre-dated to the date of the hearing. I filed a motion to Vacate and Reopen on the basis of both timeliness of the award and misconduct of the arbitrators. The award was granted.

The mudslide attorney protested the award and asked that it be rescinded. When the Chair of the Arbitration Board refused to rescind the award, the attorney filed to stop me - and the board - in Superior Court. In the appeal to the court, the attorney stated the arbitration was NOT appealable. I am aware that this is not the case.

I've since received some very competent advice that I will not be able to win my case in fee arbitration and have gone ahead and paid the $25,000. I have also found out, however, that the mudslide attorney is working with my ex-husband to get me to sell him my share of the damaged home for $10,000 (which I was told by both of them was a fair price). We have just received an offer of $80,000 on the house. My divorce attorney has told me the mudslide lawyer is very angry wih me - I guess for asserting my rights and plans to testify against me in court on my ex-husband's behalf.

Finally, I did straighten things out with the Bar, got the forms, and filed the complaint. I understand it will be months before the complaint is investigated and, given what I've seen so far, I doubt

that anything at all will be done.

It is my belief that there is a conflict of interests in the current process. Attorneys protects eachother - they don't go after thei rown. Attorneys who were supposedly representing my best interests advised me NOT to upset or disturb another attorney. Their mistake cost me $25,000 and may well cost me another $30,000. I have no other assets and no other money and at my age I can't just look at starting over.

I received far better advice from consumer advocates regarding my rights and how to work the system, as well as what resources were available to me. There are many fine 'laypersons' who are able to understand the situations involving attorneys well enough to establish a separate disciplinary process. Given what has been exposed about the current system, I can see no other legitimate way to handle attorney discipline than to take it out of the hands of attorneys.

Post Office Box 66
Berkeley, CA 94701
July 19, 1985

Attorney

re: Arbitration between Helene Walling and

Dear Mr. Corlett:

On July 18, 1985, I participated in a fee arbitration in which I disputed fees and costs charged to me by Mr. . I was referred to fee arbitration by the Ethics Board in San Francisco when I called to inquire how to report Mr. for unethical conduct, as the issue of his charges was a part of my complaint. It was my understanding that the fee arbitration was set up in order to provide a fair and impartial hearing and to avoid the costs and time of going through the courts. I am now of the impression that the fee arbitration exists to protect attorneys, that an unsuspecting consumer may be readily deprived of his/her rights and benefits which are nonetheless granted to the attorneys, and that a woman who brings an attorney before a fee arbitration panel may expect to be discriminated against on the basis of sex.

The facts as I see them are these:

1) Prior to the arbitration, I carefully read the Rules of Procedure sent to me by the County Bar Association. I was aware that, at my own expense, I may be represented by an attorney. To avoid the costs, I chose to be represented by an advocate, which was not excluded in the Rules. One of my advocates was also to serve as a witness and I wanted to be sure there would be no problem having her in the hearing. I telephoned the office of Mr. , Panel Chairman, to be sure that this was possible. I was informed by Mr. 's office that there would be no problem having whomever I wished in the hearing as it was very informal and would not be conducted in a formal manner.

Dr. Joan Edelstein, a professor at San Jose State University, has been my advocate throughout this entire matter and, as such, has provided me with advice and counsel. Dr. Edelstein is the Chair of the Contract Administration Committee of the California Faculty Association at San Jose State University and, as such, is responsible for coordinating all faculty grievances on that campus. She also represents faculty who have grievances and assists in the preparation for and presentation at arbitration. She has had formal training in grievance and arbitration. In addition, Dr. Edelstein provides professional consultation to three law firms dealing with medical malpractice cases and is therefore experienced in, and comfortable with, communications with attorneys.

Professor Al Swanson is also at San Jose State University where, in conjunction with Dr. Edelstein, he handles grievances and arbitration. Professor Swanson has over twenty years experience in grievance and arbitration and as faculty and consumer advocate. He teaches Social Policy and does legal research regarding federal and state laws affecting a multitude of consumer groups (the disabled, children, women and minorities).

Both Professors Edelstein and Swanson assisted me in preparing for the fee arbitration and expected to act as my advocates during the fee arbitration. However, when this was presented to Mr. , he stated that he was not familiar enough with the Rules of the Procedures to determine whether this would be acceptable and stated that he would have to contact the chair of the Fee Arbitration Board (I assume that was you) to make that determination.

Upon his return, Mr. informed us that he was unable to reach the Chair of the Board. He had therefore consulted the other two panel members as well as "the other side." The resulting decision was that Dr. Edelstein would be allowed into the hearing. However, she would not be permitted to speak for me. As it was crucial for me to have Dr. Edelstein present, I had no choice but to agree to that condition.

Once in the hearing, Mr. reiterated that Dr. Edelstein would be allowed in the hearing. However, since she was not an attorney, she would not be able to speak for me. Further, Dr. Edelstein would be allowed to provide me with advice and counsel, but only if we stepped out of the room. Consequently, Mr. and his attorney were permitted to consult freely during the hearing, but in order for me to consult with Dr. Edelstein, I had to disrupt the hearing and leave the room. It is of note to me that when we did so, the hearing continued without my presence! These two factors obviously made it extremely uncomfortable and difficult for me to get assistance from Dr. Edelstein. It does seem to me that if the panel was concerned with a fair hearing, Dr. Edelstein would not have had to take a vow of silence in order to be present and she would have been able to assist me during the process.

Finally, I am aware that Dr. Edelstein represents faculty and frequently speaks for others in legal proceedings without being an attorney or representing herself as an attorney. I would therefore like to know what the legal basis was for this denial as it ultimately prevented me from adequately communicating my case. It was also evidence to me that the panel was more concerned about attorney privilege than ensuring that they obtain all the facts from both sides.

2) The opening statement. It was explained to me that both sides were entitled to an opening statement and what that statement would entail. Mr. , the attorney for Mr. , presented a complete opening statement without interruption. When, after his statement, I attempted to clarify some of the things he said, I was politely informed that that was not the appropriate time to ask questions. Mr. then assured me that I would have an opportunity to question Mr. and the witnesses later in the course of the hearing. I was never allowed the opportunity to either question the other side or to call my own witness.

Prior to my starting my opening statement, I consulted outside with Dr. Edelstein. When we returned, I was informed that the result of the discussion while we were gone was that my opening statement should also be my testimony, as I had not chosen to be represented by an attorney. Mr. and I were both sworn in at that point. I then started my opening statement. Unfortunately, the panel members interrupted me with questions non-stop and elected to go over all my evidence in the course of my presentation. I was never allowed to complete an opening statement, uninterrupted or otherwise. Again, this indicates to me that the panel was more concerned with attorney rights and privileges and not at all concerned with ensuring the same rights and privileges for the layperson.

3) Protection of the attorney. Throughout the entire proceeding, I was acutely aware of the willingness of Messrs. and to overlook any wrongdoing, errors, or miscommunication on the part of Mr. while emphasizing any errors on my part. When I told the panel about my first meeting with Mr. (after his acknowledgement that he had made a mistake in thinking he had my consent to represent me), I included testimony that Mr. suggested that I take out an SBA loan for damages to my home and use the money to pay attorney's fees and costs. When I told Mr. that the SBA rules specifically excluded such use of funds, he informed me that there were ways to get around it. Mr. did not dispute this testimony during the hearing. However, the panel asked no questions about this conversation and virtually ignored this questionable behavior, except to acknowledge that this created discomfort in me and resulted in my decision not to have Mr. represent me.

Additionally, after Mr. appropriately recognized that there was a major misunderstanding between Mr. and myself, the committee never questioned Mr. 's willingness to ignore repeated requests for negotiations over a year and a half and, instead, indicated that I was remiss in not forcing the issue. Mr. 's "mistake" in assuming me as a client was also ignored by the panel members.

Mr. was also seen as a victim in this process. It was pointed out to, and recognized by, the panel that my divorce agreement provided for negotiations for a lesser fee on my part with Mr. while still providing for Mr. to receive the full amount charged. I negotiated such an agreement with Mr. in writing. However, he reneged on that agreement (which is why I went to fee arbitration) and, in writing, stated that we had no such agreement. Both Messrs. and stated that they saw the problem as something to be "hassled out" between my ex-husband and me and that Mr. should not be caught in the middle. This, in spite of the fact that it was Mr. 's actions that created the problems in the first place.

The panel also came to the conclusion that since I had not forcibly stopped Mr. from representing my interests and that I had benefitted from Mr. 's actions, I was required to act like a client who had made a conscious decision to retain Mr. . This was in spite of the facts and documentation to the contrary and in spite of my testimony that three attorneys had advised me not to actively interfere but to cooperate and hope to come to some arrangement. I, however, was again wrong (according to Mr. .) in following the advice of the attorneys and should have had enough legal knowledge to ignore their recommendations. Consequently , I was to blame for Mr. 's misunderstandings and misinterpretations. It appears to me that neither Dr. Edelstein nor I were to be considered knowledgeable in any legal matters but if the attorney made a mistake I should have known all the legal ramifications!

4) Paying for benefits. I was informed by the panel that Mr. 's actions resulted in a benefit to me and, since I had not stopped him from acting after he had filed on my behalf, that he deserved to be paid for his actions. I would like to use Dr. Edelstein's analogy in this situation. Consider the following hypothetical event: a husband and his wife are separated but they are both in an accident in which both are injured. The husband rushes up to a doctor on the street and asks for assistance for both himself and his wife, indicating that his wife also wishes help. When the doctor arrives the wife indicates that she doesn't wish his help and would rather go to a physician of her own choosing. The doctor has already helped the husband and has started attending to the wife. She is in no position to stop him and he determines that she is adequately injured to justify the continuation of his services. He completes his care and, perhaps, has saved her life - certainly a great benefit to the woman. Of course, he's protected by the Good Samaritan act and is not concerned about any action against him.

The basic question raised is this: does the doctor have a right to charge the patient for his services when she never consented to his services or wanted his services in the first place? If he did charge the wife on the basis of the fact that her husband agreed to the services, would a court uphold these charges because the woman benefitted from the services or because she did not adequately stop him from carrying out the medical care?

I would like to know what law provides for lawyers to select their own clients, act as their attorneys, benefit them in some way, and then have a right to go after them for money never agreed to!!

5) Discrimination. Most appalling to me was the sexist behavior displayed by Messrs. and , as well as that continually exhibited by Mr. . When I introduced Dr. Edelstein to Mr. he addressed her as Mrs. Edelstein - I, of course, immediately corrected him. During the hearing I was addressed either as Mrs. Walling or Helene while the attorneys were adressed as Mr. or Mr. and never on a first name basis.

The attorneys in the proceedings were never interrupted whereas I was constantly interrupted and, at one point, had to say "let me finish" in order to be heard. All communications between the panel and Messrs. and were very respectful. When Messrs. and addressed me or asked me questions, they frequently used condescending and demeaning tones of voice along with expressions of incredulousness. In fact, when they were at one point asking me how I could possibly have the understandings of my agreements and/or obligations with Mr. , Mr. was audibly snickering and shaking his head throughout. None of the panelists interfered with his unprofessional and demeaning behavior. I therefore must assume it was condoned.

In giving me his opinion of my lack of agreement with Mr. , Mr. stated that it was the old story: "Your lips were saying 'no-no' but your heart was saying 'yes-yes.'" Such an analogy to a sexual situation was extremely inappropriate and unprofessional.

It was my distinct impression that Messrs. and treated me with condescension because I am a woman. I cannot imagine that they would treat any man in the same manner, nor did they do so in the course of the proceedings. Certainly few men would tolerate the kind of bullying and intimidating behavior to which I was subjected.

I must point out here that I have specified Messrs. and . Mr. treated me with the same respect afforded the men in the room. At no time did he use a condescending, annoyed, or incredulous tone of voice. He was at all times impartial and nonjudgmental. He was the only panel member who actually asked me to present my documentation and the only one to recognize that there was, indeed, a major misunderstanding between Mr. and myself.

In summary, Mr. , it is my opinion that the hearing was an abominable sham. I was misinformed, bullied, intimidated, and taken advantage of. My rights and benefits were denied and I was not given the opportunity to have my case heard in its entirety. I was not given the opportunity to question or call witnesses. I do not believe the Rules of Procedure were followed or even understood adequately to provide for a fair hearing. Finally, I believe that, as a woman, I was treated as a non-entity, seen as a sex object, and barely tolerated.

While this letter is lengthy, it provides only highlights of the experience. I am informing you of these facts not only to complain (as I am filing a complaint with the Ethics Board) but to inform you that: a) I am considering filing a Motion to Vacate and Reopen as I believe I have good cause; b) I am obtaining legal advice regarding an appeal of the arbitration decision to the courts. It is my understanding that the decision is final and binding only if it conforms to law which, at the moment, is in question; c) I am obtaining legal advice regarding my rights to bring legal action against Mr. and/or the Panel.

If you should wish to discuss this situation, I would be more than willing to meet with you, along with Professors Edelstein and/or Swanson, at your convenience. I thank you for your time and attention and do respectfully request a reply to my concerns.

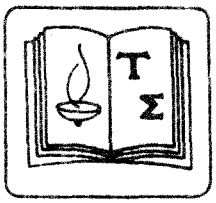
Yours truly,

Helene Walling

Helene Walling

cc: D. , Attorney
Ethics Board

C. Kang, Reporter
San Francisco Examiner
(Names deleted from copy)



The Telophase Society

1333 Camino Del Rio South Suite 105 · P.O. Box 33208 · San Diego, CA 92103 · (619) 299-0805

August 29, 1985

Honorable Lloyd G. Connelly, Chairman
Subcommittee on the Administration of Justice
1100 "J" Street, Fifth Floor
Sacramento, CA 95814

Dear Chairman Connelly:

My company, Telophase Society of America, and I have been in almost continuous litigation for the past fifteen years, involving over 35 attorneys. As a layman with considerable legal documentation and courtroom experience, there seems to be numerous procedural and substantive solutions for improvement. The profession in only a few years has plunged from one of high esteem with almost impeccable integrity to that of overt public hostility and abomination. Below are my considered suggestions for return to an elevated position by restructuring the California Bar's disciplinary system.

Procedural changes worthy of consideration include:

1) Published public notice of offending attorneys receiving complaints. This is to be followed by a public hearing with audio and visual media coverage publicizing the hearing.

2) All hearings are to be heard within 90 days of the written complaint. Hearing to be held in public facilities (e.g. unused park and recreation facilities and classrooms) near the office of the offending attorney.

3) Review and judging of claims will be done by a committee dominated by lay members with a minority of legal members. The latter's knowledge of the law will be used to define the depth of the breach. No hearing may last longer than one hour. A maximum of 15 minutes

may be used by the alleged offender to plead his/her case. Attorneys found guilty by the review board would be required to assist and prepare complaints for other laymen, if needed. The services are without charge; as a public service.

4) In the courtroom, more serious errors directly affecting the client should be pointed out immediately when recognized by the presiding judge. Examples include needless extension and expansion of the case, collusion with other attorneys, and frivolous actions.

Substantive solutions for improvement are:

1) Varying monetary penalties should be assessed depending on the severity of the indiscretion. Offenders should perform public service activities of a legal type, such as legal clerks. After suitable performance, return to regular practice could be considered.

2) Continued education, especially ethics, should be imposed on offenders. Stringent written and oral final examinations should be passed within a designated time.

3) Special state investigative counsel should be trained to check on their peers. Those found protecting or abetting guilty parties would be severly reprimanded. Such clandestine activities are possible only by assistance within the profession.

4) Rewards for superior attorneys would be elevation to a specific supergrade (i.e. like an English barrister.) Poor performers would be relegated to a substandard, restricted type of practice.

5) Public reprimand by the presiding judge on blantant errors of legal procedures in filing and in courtroom protocol should be encouraged. Stern lectures before other attorneys and clients would limit such reoccurrences.

I would like to appear on your September 30, 1985 program in San Diego at the Town & Country Hotel to more fully discuss this topic.

Sincerely,

Thomas B. Weber

Thomas B. Weber, Ph.D.
President

TBW/kv

APPENDIX G

KEN BOURKE
1455 F St.
San Diego, Ca. 921(
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The People Shall Judge

RECOMMENDATIONS

FOR IMPROVING THE ADMINISTRATION
OF ATTORNEY DISCIPLINE, AND LAYING
THE FOUNDATION FOR AN IMPROVED
JUDICIAL SYSTEM

PREPARED FOR

ASSEMBLY
CALIFORNIA LEGISLATURE

SUBCOMMITTEE ON
ADMINISTRATION OF JUSTICE

HEARING DATE: Sept. 30, 1985
PLACE: Town and Country Hotel

TO: Lloyd G Connelly, Chairperson
Lettie Young, Counsel
Wayne Grisham
Elihu M. Harris
Sunny Mojonnier
Maxine Waters

Draft proposal by
KEN BOURKE

suggestions from
VAUL GROUP, San Diego
P O Box 83014
San Diego, Ca. 92138

OPENING STATEMENT

(AND GENERAL OVERVIEW OF MULTI-FACETED PROBLEM)

The VAUL group was formed by Mr. Len Disman to improve the disciplinary process. Mr. Disman rented a meeting hall, and found out that the hall could be filled to overflowing with people who had complaints about their attorney, but the State Bar wouldn't listen to them. The Bar had sent everyone basically the same form letter, alluding that it was a civil problem, and not withing the jurisdiction of the State Bar, or that there was no foundation to the complaint.

Members of the VAUL group, which stands for VICTIMS AGAINST UNETHICAL ATTORNEYS, have been waiting for someone in the State Legislature to do something. VAUL members were greatly enthused when first word came out that an investigative hearing was going to be held in San Diego. Many of the members cannot come to the hearing, but they have sent in their own letter.

The State Bar has been almost totally unresponsive to complaints. The State Bar has never been known to call up the complainants and do an investigation. They have not been willing to take testimony, or allow evidence to be introduced. The letters stating no cause exists are mailed out to the complainants before the complainants even are allowed to substantiate the case.

No one really knows how bad the problem with the State Bar is. The actual number of complaining citizens with legitimate complaints against their attorney is probably around 50,000 per year. Probably only one person in five has found out the address of the State Bar, took the time to write a complaint, and mailed it. This partly explains why the State Bar only acknoledges recieving 8,932 complaints filed against attorneys in 1984, as reported in the Connie Kang, James Finefronk article published in the Examiner. Attorneys don't tell their clients about the Bar.

In this writer's request for the information, he was turned down. In an informal complaint letter, attached as EXHIBIT A, complainant Ken Bourke requested from the State Bar "statistics as to how may cases are investigated each year" and "how many complaints you receive annually" In the response, EXHIBIT B, the issue was completely avoided. Complainant was also told to "consult an attorney" and the situation was "civil in nature" and so the case was effectively canned without any further investigation.

This writer has met dozens of people at the VAUL group who all received similar "brush off" letters. Very few people will take the time to write a complaint to the State Bar because the majority now consider the State Bar a big joke, a paper tiger, a non-responsive indifferent bureaucracy.

This draft proposal addresses the big problem of how to get individual investigations going in each case, new hearing procedures, financing the system, appeals, consumer protection and getting your money's worth.

WHY THE STATE LEGISLATURE
SHOULD TAKE ACTION TO IMPOVE
THE DISCIPLINARY PROCESS

When the State Bar ignores the public's numerous complaints, it is unknowingly triggering law suits against attorneys. When ever the State Bar tells the complainant to "see an attorney" it is causing the attorney to be a defendant in an expensive malpractice case. The attorney of which this writer complained of was suited in the Superior Court, for example. He contacted his malpractice carrier, and costs on both sides started to escalate. Had the State Bar investigated, the attorney would not have been suited.

But people are getting fed up with the State Bar, and with the Court as well. It takes a lot of effort to suit an attorney and get any results. The problem is one of "judicial immunity" that judges give to attorneys. Suiting an attorney is not enough as the forum is not impartial or unbiased. Judges ignore the problem as well, and are reluctant to ever find an attorney, one of their fraternal brothers, of ever doing any wrong.

For this reason, the judicial proceedings against an attorney should be removed from the Courts. Suiting an attorney, because the State Bar says every case is "Civil in nature" is not a good solution for either party. Although the attorney may have a good chance of getting away with his crime in Court, it is still very time consuming and expensive for him. Malpractice insurance is not cheap. Attorneys will suffer more as the number of suits continues to escalate against them due to the State Bar's unwillingness to investigate, and the State Bar's continuing recomendations of consulting an attorney to suit the attorney.

The practice of the Chief Trial Counsel and the Staff Attorney at the Sate Bar, of sending out the "no grounds exist" letter, another of which I received in 1979, which is herein attached as EXHIBIT C, should be totally stopped, and instead, something constructive should be sent to the complainant which would guarantee an effective local investigation. Had I received some satisfaction in 1979 that the State Bar would at least take testimony and receive evidence, I would not today be so upset with the State Bar. When in 1984, I received another letter (the EXHIBIT B letter aforementioned) which sounded in the same language as the EXHIBIT C letter, five years earlier, I was convinced that the State Bar had not improved on its volume, efficiency, and willingness to conduct an effective investigation on the conduct of any attorney.

The State Legislature should act, to save both attorneys from being massively suited by public, and save the public from having to put up with the harrassment of a jucicial system that is usually biased and prejudiced against the complainant, and also is extraordinarily time consuming and expensive, even in resolving the most simple dispute on conduct and ethics.

Wherefore, the VAUL group, and this writer, recommends that the disciplinary process be handed back to the people, through the formation of Citizen Justice Panels, several hundred, or maybe even a thousand of them, to get control and handle the problem.

WHY THE STATE LEGISLATURE SHOULD ADOPT "CJP's" OR CITIZEN JUSTICE PANELS TO RESOLVE COMPLAINTS AGAINST ATTORNEYS

The number of complaints against attorneys is immense. The fact that the State Bar acknowledges receiving almost 9,000 complaints a year, but only holds hearings in a few hundred cases a year, still leaves over 8,000 dissatisfied members of the public without any relief each year.

As an interim measure, to protect a citizen's rights, before the Statute of Limitations runs out against an attorney, the State Bar should be instructed to:

1. Immediately send each complainant a Superior Court Complaint Form, a standard form complaint form, and told to file it immediately in his local Superior Court to preserve his legal rights to litigate before the Statute of Limitations runs out. Attorneys are favored in most cases with only a one year Statute of Limitations. Citizens should be advised that they will lose their right to suit unless they suit immediately. To facilitate getting the matter to trial as soon as possible, and with the least cost to the complainant, a standard Cause of Action Against Attorney form should be adopted, and mailed to the complainant, together with the refusal to investigate letter.

2. Most causes of action against attorneys fall into standard classes, wherefore the form can include these causes already stated in simple language. Typical causes of action against attorneys are: 1. misrepresentaion of fees. 2. over-charging, loading the hours, charging unauthorized phone calls, entertainment, unnecessary activities, phoney research, to the bill. 3. embezzlement, signing of checks for the client, without the client's knowledge or consent. 4. taking more than the law permits, exeeding the statutory limits. 5. engaging in frivilous discovery, running up $20,000 or $30,000 in bills, and accomplishing nothing. 6. Promising to take the matter to trial, but instead, painting a bad picture, and forcing or intimidating the client to settle with an unfavorable compromise stipulation, because the attorney is unprepared for trial. 7. making promises he will win the case, and no fee will be charged, to get the case "in house", on an oral agreement, then commence billing, on an hourly rate, and sending the bill after a settlement is made, but not advising the client beforehand of the immense sum. 8. refusing to file papers, letting a case go flat, because there is no money left in it for him, but not telling the client. 9. abusing the rules of conduct, misrepresenting intentions. 10. writing false declarations in support of motions. 11. putting a lot of junk motions on the law and motion calendar that get denied anyway. 12. engaging in the art of writing "threat letters" to extort money using "legal intimidation". 13. never giving the client a full set of his papers, pleadings from both sides, never showing correspondence received, always telling client he is "handling it" when in fact respones are not even filed and default judgements are even entered. The 8,000 complaints should be sampled to be sure the form is all-encompassing as to all causes of action.

IN A DEMOCRACY, IT IS PROPER, RIGHT, FITTING, AND ESSENTIAL, THAT CITIZENS CONTROL THEIR JUDICIARY PROCESS

The fundamental reason behind the formation of Citizen Justice Panels is the following reasoning:

1. Currently, there is no control, in this so called democracy, by the citizens, over their own judicial system. Citizens are slaves to to legal system that has control over them. They have no relief unless they have a law degree and are a member of the bar. Currently, filing a bar complaint is a big joke, and everyone knows nothing will happen. Attorneys are especially and very keenly aware that the State Bar does not discipline its own. Wherefore, attorneys extort, perjure, threat, and do as they please, even with the blessings of judges, and since the State Bar is a do nothing organization, and the attoreys know it they have every incentive to continue to get away with as much as they can. Once you know that nothing is going to happen to you, you go for more. No one is stopping the big rip-offs, so the situation is getting worse every year.

2. In a democracy, citizens should not have to answer to the State Bar, or file a complaint with some distant organization in Sacramento like the Bar, which is non-local in nature and cannot effectively investigate. Local bar associations only seem to want to have people arbitrate over the outrageous fees, and most citizens are intimidated and fearful of going to the Bar Association to have their fee dispute heard by more attorneys. There is no majority representation by the citizenship of the community, an the odds are against the citizen. Furthermore, there is no publicity, and all attorneys who are found to have a violation should have their names published in the local newspaper. In a democracy, proceedings should be open to the public. State Bar proceedings are so shut up air tight that for all practical purposes the public and the complainant usually do not know if anything is going on.

3. Citizens have not been allowed to have any part of the process. With Citizen Justice Panels, all the drawbacks of the existing tight lipped closed door system are done away with. Citizen Justice Panels will conduct open public hearings, promptly, with the press and news reporters and TV welcome, and a full exposure of every controversy with every attorney will be made. Successful attorneys would get good free advertising and public exposure at no cost. Bad attorneys would get a bad name. The public would at last get a glimps of their fee structure and get to know and understand what they are paying for. Rip-off attorneys could not stand the bad publicity and would eventually fold from economic loss, while good ones would gain.

3. Although creating and mailing out a standard Cause of Action Against Attorney would assist those members of the public in preserving their cause of action, and greatly increase their chance of being heard, at least in a Superior Court, this should only be a stop gap measure. As pointed out previously, it is not good as a permanent solution for everyone to end up in a biased, prejudiced, expensive court. It will help, however, in saving thousands of cases from being stamped out because the bar will not act and the consumer is not informed of how simple it is to file a complaint in the Superiour Court. Most consumers think it is a formidable task. With a stand Cause of Action Against Attorney form, together with a letter from the State Bar telling the complainant his cause is civil in nature, and with instructions on how to have a summons and complaint served, many more complaints would never-the-less be heard. Being heard is most important.

4. Furthermore, the legislature should immediately amend the Code of Civil Procedure, to: a.) make it unlawful for any attorney to file a motion to either Strike or Demurrer to the complaint, to insure that the matter will get to the calendaring department as soon as an answer is filed. b.) prohibit discovery, as it is used mostly as a harassment and intimidation technique by attorneys, and the public may not be aware of all the implications, motions to compel, sanctions, that could result, making the consumer wanting to quit. c.) amend the government code, and statutory fee schedule, so that fees are waived in every case where the causes of action are against an officer of the court, such an an attorney. d) remove the one year statute of limitations on causes of actions against attorneys, and go for parity, making it the same for all professions, and stop favoring attorneys. e.) allow cases to be retroactively filed, back at least until 1979, preferably earlier, 10 years back, so that all the cases that the State Bar has refused to hear, can still be filed in the Superior Court. This "equity" legislation is needed now.

5. With the above emergency legislation out of the way, the legislature should concentrate on a long term cost effective solution to the growing attorney discipline problem. To this end, the formation of local Citizen Justice Panels is recommened. It will possibly take several years to fully implement such a program. Thousands of citizens will participate in the disciplinary process. Although there is no problem getting thousands of citizens who would be more than happy to hear complaints against attorneys, it will take a little time to set up the administrative machinery. It will also take a little seed money, to get it started, but it should be fully self supporting and be able to pay back the seed money to the State Treasury after about one year in operation from the fees and fines levied by the Citizen Justice Panels. As all work will be done by citizen volunteers, all moneys collected in excess of actual costs of administration would be forwarded to the State Treasury. Instead of having a cost of $8,000,000, under the existing State Bar administration, there should be a surplus of $8,000,000. This could be used for public education as pointed out later.

6. Wherefore, the effect of bad publicity would be used as an element of the Citizen Justice Panel disciplinary procedure. The publicity, open hearings, and media coverage, would also greatly enhance the public's awareness of the rights a citizen has, and his education in the legal process would be enhanced. The big mystery that exists in the minds of the citizens about their legal system has to be destroyed. Televising these hearings would be a real big attraction. People are tired of getting ripped off by their phoney attorneys, and and the atmosphere is right for some major activity that will reverse the tables, and put a few attorneys on trial instead of them always putting innocent citizens on trial that refuse to pay some outrageous rip-off bill. There will be no end to attorney greed until there is a great exposing of the system, how little one gets for out-rageous charges, how attorneys take huge sums in stipulated settlements even without going to trial. Public education about the legal system and exposure of those who abuse the system, using its mystery, and legal intimidation, to take large sums of money, will help curtail the abuses. With local Citizen Justice Panels conducting the hearings, the little citizen will no longer be intimidated or afraid. He will outnumber the attorney, as the attorney will now answer on the citizen's home turf, and the attorney will no longer have a friend judge presiding to dismiss the case against the attorney. At last, the citizen will have a fair chance to present his case, and the citizens of the community will be able to sit in judgement and rule over the conduct and affairs in their own court rooms. It will only take about five citizens to form each Citizen Justice Panel, and the composition of the panel will be composed of all non-legal persons, with a good democratic cross section of the public being charged with the duty to render a decision. Preferably, on each local panel, there would be at least one doctor since doctors are always getting suited, and know the legal process from experience, and are generally at least as intelligent and well educated at attorneys, one police officer or peace officer, since they are also called into courtrooms to testify, and know something of what goes on, as they also sometimes have to hire attorneys, and have some experience, and one low income street person, since such people are usually very perceptive, having seen every trick and con game around town, and can psych out people pretty good, even if they are burned out, they still have plenty of time, one very old person, as these people remember what it was before all this sophistication, and also are not easily deceived, as old people frequently are skeptical, and also could spot a pheney, and don't believe everything they hear, and one ordinary person, someone who just had a divorce, civil dispute, car accident, or some small affair which brought him into contact with the system. Such a composition of people could certainly be able to use common sense, know the difference between right and wrong, and access fines and penalties, make recommendations for suspensions, disbarment, and write findings of fact, conclusions, and express their opinions.

HOW MANY CITIZEN JUSTICE PANELS NEED TO BE FORMED?

Based on an estimate of 8,000 complaints a year, and each volunteer panel hearing four cases a year, this would require 2,000 Citizen Justic Panels. In this writer's opinion handling four cases a year on a voluntary basis takes up quite a bit of time. As I served on professional standards and eithics panel proceedings for several years, I found the cases somewhat more time consuming, especially when the case goes up on appeal, and the matter must be tried twice, more or less. Actually, the right balance would occur when all the cases were being heard within 14 days of the complaint being filed, and justice was carried out quickly. There should be no long delays, in which witnesses disappear, go on vacations, or a lot of irrelevant side issues take precedence, such as what happens in law and motion hearings and discovery proceedings. The objective would be to hear the complaint, like in small claims court, and get a decision as fast as possible. Two thousand Citizen Justice Panels would initially take on the State Bar's annual 9,000 or probably 10,000 complaints. Each Citizen Justice Panel would be assigned 3 or 4 or 5 cases to work on. Also, the back log of the 8,000 cases not heard in 1984, 8,000 cases in 1983, 8,000 cases in 1982, and so forth could also be investigated. There are probably at least 50,000 complaints that have been silenced by the State Bar that are legitimate and should still be heard. Special legislation should be introduced, along with the legislation to form the Citizen Justice Panels, to empower the panels to have jurisdiction for everything going back ten years. Actually, there should be no statute of limitation on crimes committed by attorneys.

The 2,000 initial committees would be composed of 5 people each, all non-legal but reputable and intelligent people, with adequate time to hear the complaints. The State Bar has virtually no time to hear anything. Eight million dollars goes no where with the salaries the way they are. Attorney staff positions are expensive. Attorneys with experience inside the State Bar have already expressed dissatisfaction with the State Bar system. It will require a lot of people to pick up the huge back load of un-investigated cases. It will take at least 2,000 Citizen Justice Panels, 5 per panel, or 10,000 persons in all, to handle the case load effectively, and in a reasonably short period of time. There are a lot more than 10,000 people in California that want legal reform, so there will be no problem getting 10,000 volunteers. If nothing else, the almost 50,000 complainants whose cases where canned by the State Bar could be drawn on to help populate the Citizen Justice Panels. However, this may be prejudicial to the attorney, and this writer initially envisioned the Citizen Justice Panels populated through a local process locally controlled in each community or judicial district, using the names of people who who were known to have a good reputation for honesty. Whether locally appointed from five local community groups, each group appointing one, or elected from a pool of candidates during regular elections, would not matter so much. What would count would be the integrity and character of these people.

At present, there are reportedly about 90,000 licensed attorneys by the State Bar. Rounding that out to 100,000, and 2,000 Citizen Justic Panels, that makes one Citizen Justice Panel for every 50 attorneys. This 50 to 1 ratio seems fitting and appropriate. It could be assumed that each year, only four of them would be subjected to hearings, at the existing complaint rate. Those complaints would easily be disposed of by the five member Citizen Justice Panels.

To be sure that the matters were heard expediently and conveniently, the Citizen Justice Panels would be created in proportionate amounts to the attorney population in that County. If there are, for example, 5,000 licensed attorneys in San Diego County, and applying the 50 to 1 ratio, there would be 100 Citizen Justice Panels formed in San Diego County. Five Hundred Citizens would be needed to effectively handle these cases and be sure everything was heard.

Next, the Court Districts would be considered for that County. In San Diego, there are the North County, South Bay, East County, and San Diego Superior Court Districts. There are more cases heard, and more departments, in the San Diego district, so that local district would get the majority of the Citizen Justice Panels. Since it may be necessary initially to use the facilities of the Court to initially get the program started, it might be best to use the court rooms themselves, with all the available P. A. systems, witness stands, and television facility, to start the Citizen Justice Panel hearings there. The building are tax payer paid for and should be made available for this purpose. Since they are always closed promplty at five PM, when everyone goes home, they should be available for the community Citizen Justice Panel hearings, that would be convened at 7 PM, or other convenient evening time when members of the public could attend. The hearings should be scheduled for the convenience of the citizen plaintiff, and not for the attorney, and the citizen and his witnesses should not have to take off from his work to have his case heard. There should be no filing fees charged to the citizen, as he is entitled to have his grievance heard as a matter of justice and in equity alone. Every case should be heard, regardless of the person's economic status, and regardless of who prejudges the case as being frivilous. Only after everything is heard can that be determined. Unlike the State Bar, there will be no letters, just notices to the attorney to appear because a complaint has been filed with the Citizen Justice Panel, and the attorney is to come to give a full explanation, bring all his records, and answer to the complaint. This would be no different than getting a citation for driving too fast. Failure to appear would mean automatic suspension of the autorney's license, and a fine of $500 for costs incurred as the Citizen Justice Panel met to convene and the attorney did not appear. Further revenue would be generated according to a look-up table, and would include jail sentences.

For example, suppose an attorney is found by a simple majority of 3 out of 5 members on the panel, that the attorney was engaged in writing intimidating threat letters. EXHIBIT D gives some recommendations as to his punishment, which would vary according to the number of offenses. A decision would be mailed within 3 days.

WHY CITIZEN JUSTICE PANELS WILL WORK, AND NOTHING ELSE WILL DO THE JOB AS WELL, COST EFFECTIVELY, EFFICIENTLY, AND AS THOROUGHLY AS CITIZEN JUSTICE PANELS

The concept of Citizen Justice Panels is certainly nothing new and should not be considered as something radical. From earliest of ancient recorded times, when a man had a complaint he took it to the elders, who resided at the city gate. It was within the simple framework of community justice that a citizen resided and trusted. This is the way justice was intended to be, and should still be handled. A complaint should still be a local issue and should be heard by local citizens. When the justice system is controlled by the citizens, the citizens will have a trust in it. Furthermore, every citizen should actually have his day sitting as a judge, instead of always being subjected to judgement.

Furthermore, every citizen should have more choice over who will hear his case. Presently, you have one shot with an affidavit of prejudice against one judge purusant to CCP 170.6, and after that, your stuck, in the courts. What about some alternatives, real choices, before a case is heard. With Citizen Justice Panels, the citizen wouldn't even have to worry about prejudice aginst him. The attorney could have an opportunity to dismiss someone who knew him, and an alternate could be drawn at random by lot to replace the person. Impartiality would come from randomness, not from Voire Dire, which is loading the panel or jury in your favor, if possible. There would be no point in holding hearings in which the attorney could manipulate the hearing procedure with a lot of delays, so all the loading by voire dire would not be allowed. The citizens would control and have the dominant right to have the case heard by citizens appointed or elected to them to hear the case. After all, for years, the bar has made their suggestions and recommendations as to which attorneys should be appointed or elected to judgeships, and now it is time to reverse the process, and let the people direct decide what citizens are going to hear the cases against the law firms and attorneys. Attorneys should not have a big voice in this matter, as citizens never had any choice to choose from except what they see on the ballots, which is all attorneys. Citizen Justice Panels would be the final authority, and they would control and have all the same force and effect as judges currently have that are appointed to the bench.

However, Citizen Justice Panels would be volunteers, and unlike judges, who have big retirement pensions, and just want to get home early after a bum day at the court house, and as volunteers, would have a sincere interest in the proceedings. Citizen participation would be an immense boost to public confidence in the legal system. There is no doubt that it would work as well as it worked in ancient days. There is no substitute for individual responsibility and participation. In a democracy, it is an essential element. In addition to the formation of Citizen Justice Panels, the method of licensing should be simplified, more doors of opportunity opened, low low cost minimum wage services made available, and grade school and high school education in the laws of our state must be taught.

THE RESTRUCTURING OF LICENSING

All persons desiring to practice law would be able to practice limited law upon meeting simple requirements demonstrating and understanding of the local rules of court and the applicable Code Sections to which they would be working under.

The basic requirement to practice would be to pass a 100 question test composed of 50 true false questions and 50 multiple choice questions. There would be tests in the following areas:

1. PROBATE
2. FAMILY LAW
3. CIVIL LITIGATION
4. CRIMINAL LITIGATION

Someone wanting to represent a friend in a divorce case would simple take the 100 question test. If he passed, he would receive a mini-license or permit, much like a driver's license, good for four years. Every four years, he could renew the license by taking the test over again. The fee would be $50 and cover the administration of the testing program.

Anyone with a limited law permit could charge a limited fee, not to exceed $15 per hour, or three times the minumum wage, which ever is greatest. This way, presently licensed multi-disciplined attorneys could still charge anything they wanted, such as $125 per hour, and be exempt from labor charge controls. However, citizens who need low cost services would have an opportunity to all kinds of low priced legal services which are not presently available and will never be available until mini-licensing on a simple low cost proficiency testing basis is made part of the legal system.

The tests would be constructed to cover the practical matters facing the court, and would test applicants on proper filling out of forms, filing fees, use of declarations, filing motion papers, understanding applicable CCP and Rule of Court sections applicable to the specialty. No case law or history would be on the exam. There would be no limit on who many persons would be admitted to take the exam, and no grading on a curve. If a person gets above a 75%, he passes. These "Learner Permit" licenses would allow persons to direct entire the law profession from pratically right off the street, without an expensive and wasted education, as they would only have to learn what they need for the job at hand. Compensation is also limited until from practical experience, after two years working with people and judges in the court, the mini-licensee could apply to take a second more advanced test, which would then entitle him to double his fee schedule, to $30 per hour, 6 times minimum wage, whichever is greater.

This system would open up job opportunities for about one million persons. Also, about one million video tape and self-programmed instruciton booklets or self-teaching disk progarams wojld probably be sold each year, as prep tools for persons desring to get mini-licenses. This would stimulate the field of legal education and improve public awareness of our laws.

MANDATORY PUBLIC EDUCATION IN THE LAW

Every student, whether in public or private shools, should be required to read, write, spell, and know the law. From 6th grade through 12th grade, each student should be trained in the basic and most frequently cited sections of the penal code, civil code, code of civil procedure, education code, welfare, business and professions, and other codes. When the student is 18, he is no longer a minor. He is liable for breach of contract, and cannot void them. He should know the law.

All great kingdoms on earth have had systems for teaching law to every citizen. Moses would sit and teach the people the law every day. When the burden became to great, hundreds and even thousands of other persons taught others. Other great kings sent teachers throughout the land, to teach all their citizens the law. Whenever this was done, the kingdoms became great. There prevails today a great lack of understanding and shroud of mystery about our laws. No one understands them, as law after law is pushed onto the heaps of already existing law. There is a paranoia and fear of the law among most citizens. For the average citizen to open a copy of the Code of Civil Procedure is totally perplexing and confusing. This type of material should be easy reading and every individually responsible person should understand it.

So that all persons will have an equal opportunity and chance in court, regardless of their personal income, personal influence, and ability to afford an attorney, all citizens should be given a standard firm educational footing in the basic principals of civil litigation, criminal law, and a fimily law and probate. Wherefore, starting in sixth grade, at which time students have good verbal skills, reading and writing are easy, and they have good reasoning power and logical ability, the students would start their study of law by being intoduced to pleading paper, what is a complaint, summons, and answer. In seventh grade, they would learn about motions, and putting a case "at issue", talk to the clerk at the calendaring dept, and get practical knowledge. At ninth grade, they would read local pleadings from their own local courts, start learning about "causes of action", and start to draft their own pleadings for a final exam project. At tenth grade, they would learn basic trail techniques, opening statements and trial briefs, taking of deposition, subpoenas, and trail preparation. In eleventh grade, they would learn about direct and cross examination of witnesses, the evidence code, suppression of evidence, and jury instructions. In twelfth grade, they would learn about being a judge, judges college, writs, appeals, how to report incompetent judges, how to become a judge, voire dire of a jury, writing judgments and orders.

All teaching and instruction would be to focus on the practical side of responsibly conducting your own affairs. No one would then be afraid of the courtroom. No one should be allowed to graduate until he passes a basic general equivalency test in the legal process. This would give everyone a more fair chance starting out in life as an adult. In all great kingdoms, the great leaders made sure all the citizens knew the law, and went to great lengths to have the law taught throughout their kingdoms. We are way behind in this area of education. We are short-changing are youth. They need a well rounded education in the law.

SUMMARY AND CONCLUSION

It is hoped by this writer and by the many members of the VAUL group, that the Assembly and Senate will both enact bills and adopt legislation that will implement the concepts as suggested in this brief paper. VAUL has not drafted the bills for legislation or sponsorhsip because there is still a lot of skeptisism about what any legislature will do to help the situation. No one wants to waste their valuable time fighting an uphill battle that some members think will never be won taking their case to the State Legislature.

Wherefore, it is actually the general plan for VAUL to carry the matter directly to the public through the initiative process, bypassing the legislature altogether. In order to reach a large percentage of the registered voters is going to cost millions, and will require hiring of public relation firms, fund raising firms, and advertising firms. This is going to be a big job. Real significant voter approved reform looks like maybe five years away. With the support of some major newspapers, and the TV networks, and a lot of publicity, it could be speeded up. Already, numerous people have told VAUL that they can be counted on to circulate petitions. Others have said that they would like to make large donations. Doctors, who have been hard hit by attorneys, should make a significant contribution, hopefully maybe as much as twenty million dollars from the medical fields could be raised. Insurance companies, who also have been victimized heavily by attorneys, should be able as a group to match the doctors, hopefully with about a twenty million dollar contribution to get the initiative through. This would save doctors hundreds of millions in fees, just getting rid of the unethical attorneys that are always mailing them complaints.

Theoretically, the VAUL group, with only a couple hundred people, having registered at meetings, could be extinguished by a 90,000 member State Bar. But there are other groups now all over the State and all over the USA. And there are 22 million Californians, to take on the mere 90,000 attorneys. Since the State Bar, through its regulatory belief that only a small number of people should be allowed to be attorneys, has self-limited itself in size, it should be easier to overcome by the much greater number of citizens that would like to do away with the State Bar all together. If it ever came to a public vote, I don't know of anyone that would vote for the State Bar.

It would be wise for the State Bar to limit its function to collecting dues and keeping records. The disciplinary function belongs to the people. Educating the citizenship should be part of the public school program. Examinations for attorney licenses should be reduced to proficiency examinations and an understanding of the State Codes. Case law study is a waste of time and it is doubtful that any of the decisions are worth learning, as Rose Bird and others don't pay any attention to them, and justices do as they please, regardless of precedence. It is time the whole adversary system be revised, and replaced by a justice system, where the citizens have direct local control over the judicial process in their communities. Citizen Justice Panels will partially fullfill this desireable goal of fairness and justice for all, without raising taxes.

Furthermore, it should be said, that the persons who stand up and fight for what is fair and just, will probably get some big rewards in the future. In the last five years the State Bar and the ABA have done virtually nothing to improve self discipline. Attorneys can be convicted murderers, and still actively pursue their legal careers. In no other profession is this allowed. Real Estate Brokers, for example, automatically lose their license, even for pleading no contest to an alleged matter. Each quarter, the Real Estate Commissioner publishes his long list of permanent license revocations. It is amazing how many hundreds of people in other professions, like licensed real estate brokers, lose their license because of some simple little matter that somehow the commissioner is forced to take away the persons license, without a hearing. It is mandatory that the broker lose his license upon conviction of a feloney. There is no parity in the business professions, and attorneys can murder someone or commit some other atrocity and it will not have any effect on their license because there is no omnibus legislation that automatically catches and disbars all attorneys upon their conviction of a feloney. Some member of the State Legislature should recommend parity for license removal, and all professionals should lose their license for conviction of a feloney.

Also, in the matter of legal reform, not only should their be higher standards, disbarring the felons, but also, the legal system should be made easier to use by the common citizen, so he doesn't have to see some rip-off attorney that will overcharge him and take advantage of the citizen's lack of understanding of the legal system. To this end, this writer, about four years ago, maybe only three years ago, wrote to the Senate Judiciary Chairman, a letter, asking for a revision of the Codes to put them in simple common English. This letter was never acknowledged but a lot of copies of it were made and circulated, and everyone liked the ideas presented. Wherefore, I am attaching EXHIBIT "E", which embodies in it some further ideas for legal reform.

It is hoped by all this writing and explanation of feeling, that something constructive will come out of it all. It is hoped that the initiative process can be avoided and legal reform can come sooner through the legislative process. Even though perhaps the legislature cannot do much, perhaps it can do something. If nothing else, it can seek an appropriation for the VAUL group so that the VAUL group will have funds to draft the legislation and set up some model Citizen Justice Panels and give the Subcommittee the complete administrative package that has been worked out, including the appeals process, appellate Citizen Justice Panels, and the Supreme Citizen Justice Panel which would make the final decisions, like Rose Bird does. Adoption of a Citizen Justice Panel program would save millions of dollars and give citizens some satisfaction that something was being done because they would be doing it.

DATED: Sept. 30, 1985

Ken Bourke

KEN BOURKE, (V.A.U.L.)

Ken Bourke
1455 F St
San Diego, Ca 92101

619 233-6150

TO: STATE BAR

SUBJ: REQUEST FOR INFO

Dear Sir,

Earlier this year, an attorney filed a summons and complaint against me. However he did not serve it on me.

A few months after he did this, which I had no knowledge, he served a subpoena on me, and took my deposition, which was broad and sweeping, 45 pages, and covered the subject matter on the suit. He did not tell me I was a defendant. He also used a different case number, but same plaintiff, by which he got the subpoena issued and still I did not know I was the defendant.

A few months after the deposition, he amended his complaint against me using the material from the deposition. I had no knowledge about all this until a month after he filed an amended complaint. Then he had the complaint served on me.

I would like to know:

1. If this is legal procedure, normal and routine, approved by you.
2. If it is not, can I demur to this complaint, based on the fact that in the Code of Civil Procedure, it is wrong to take a person's deposition without first serving on the defendant the summons and complaint
3. Can you give me any statistics as to how many cases you investigate each year and take disciplinary action.
4. How many complaints you receive annually.

THANK YOU, KEN BOURKE

THE STATE BAR
OF CALIFORNIA

OFFICE OF TRIAL COUNSEL

1230 WEST THIRD STREET, LOS ANGELES, CALIFORNIA 90017-1488 (213) 482-8220

September 13, 1984

Ken Bourke
1455 F Street
San Diego, California 92101

Dear Mr. Bourke:

This will acknowledge receipt of your undated letter received in this office on September 7, 1984, wherein you request certain information.

Please be informed that the State Bar of California is limited by law. Specifically, it cannot give you legal advice, so it cannot advise you what your rights are in a given situation, or what you should do.

However, your particular situation is civil in nature and not within the disciplinary jurisdiction of this office.

If you have not already done so, you may wish to consider consulting an attorney of your choice.

We regret we cannot assist you in this matter.

Very truly yours,

Paul J. Virgo
Senior Trial Counsel

PJV/sar

THE STATE BAR OF CALIFORNIA

DEPARTMENT OF TRIAL COUNSEL

1230 WEST THIRD STREET
LOS ANGELES 90017
TELEPHONE (213) 482-8220

SAN FRANCISCO
TELEPHONE (415) 561-8200

September 26, 1979

Ken Bourke
Real Estate Sales
Post Office Box 1248
San Diego, CA 92112

Re: SD 79-188

Dear Mr. Bourke:

This will acknowledge of your letter dated September 4, 1979.

Careful consideration has been given to your complaint against this attorney. It has been concluded that there are no grounds for disciplinary action by the State Bar. The matter of which you complain appears to be civil in nature, and such disputes are not within our jurisdiction.

We are closing our file.

The authority of the State Bar is limited by law. We can discipline an attorney, or can recommend that he be disciplined, only for a violation of the State Bar Act, or of the Rules of Professional Conduct.

The conduct of which you complain does not fall within the prohibitions of that Act nor of those Rules.

Very truly yours,

H. Franklin Kissane

H. Franklin Kissane
Staff Attorney

HFK:kjr
Enclosure
P.S.: For the use of Mr. Meredith, I enclose our Informal Complaint Form.

STATUTORY PENALTY
TO BE IMPOSED UPON FINDING
ATTORNEY SENT AN UNFOUNDED
LETTER CONTAINING FALSE
PREMISES
OR ANY UNTRUTHS

1. FIRST OFFENSE: The first offense shall be punished by a fine of $500 and a term of six months in jail.

2. SECOND OFFENSE: The second offense against the pople shall be punished by a fine of $5,000 and five years in jail.

3. THIRD OFFENSE: Anyone committing the offense against the people shall be fined $10,000 and ten years in jail. Each time the offense is committed thereafter, the punishment shall double.

In additon, it shall be the order of the Citizen Justice Panel, that the summary of the proceedings be mailed to the local community newspapers for publication as a newsworthy item of public interest. If the newspaper does not or refuses to print the report, then the attorney shall be fined an amount in addtion to the amount above, and the newspaper shall be paid to publish the notice of the proceedings. Furthermore, the newspaper shall also be requested to announce when Citizen Justice Panel hearings are being conducted, as a local community public service announcement, and similarly, local radio and TV stations should be noticed. The name of the law firm, the attorney accused, and the name of the citizen plaintiff shall be clearly identified, as well as the nature of the investigation. Furthermore, in any preliminary announcement of a hearing, it shall be clearly stated that the hearing is public, and any interested party can attend, and can also request to speak at the hearing, and submit any evidence relevant or bearing on the case, including any citizen's previous complaint with the subject law firm or any of its attorneys or the attorney is question. There shall be no restrictions on televising the proceedings, and home video taping equipment, tape recorders, and other methods of making a record, shall be permitted, for any purpose, whether commercial, personal, or any other reason, such as for future use, or to be used in other litigation. No motions to suppress evidence, exclusion of witnesses, or other methods of limiting the scope of the proceedings shall be allowed. The Citizen Justice Committee will follow a relaxed method of investigation, much like a small claims court judge does, in which evidence can be taken of any kind, regardless of the evidence code, and attorneys shall be barred from participating, except as they are called to testify in their own behalf, if they so desire. There shall only be opening statements, main arguments, direct and cross examinations, closing arguments, and decisions under submission until mailed within 72 hours to the parties. Appeals would go to another Citizen Justice Panel.

KEN BOURKE
1455 F ST
SAN DIEGO CA 92101

TO: SENATOR OMER L RAIN
SENATE JUDICIARY COMMITTEE CHAIRMAN
SACRAMENTO, CAL.

DEAR MR. RAINS,

I AM A VERY MUCH CONCERNED CITIZEN OF THE STATE OF CALIFORNIA, AND I AM VERY MUCH CONCERNED WITH THE COST OF JUSTICE IN CALIFORNIA, AND THE EQUALITY OF ITS ADMINISTRATION. I SEE THINGS DIFFERENTLY FROM JUDGES AND ATTORNEYS, AND I WANT TO GIVE YOU A SIMPLE COMMON PERSON'S INPUT TO THE NEEDS OF THE GREAT PEOPLE OF THE STATE OF CALIFORNIA, THE STATE THAT LEADS THE NATION FOR INNOVATIONS AND REFORM IN ALL MATTERS OF SOCIAL JUSTICE AND THE GENERAL ADVANCEMENT OF ITS PEOPLE.

I MOVE FOR THE FOLLOWING REFORM:

1. COMMON LANGUAGE LAW - A RE-WRITING OF THE CODE OF CIVIL PROCEDURE
A RE-WRITING OF THE CIVIL CODE

A THERE EXISTS TODAY A SET OF BEWILDERING INTERPRETATIONS OF ONE'S RIGHTS AND REMEDIES. THERE IS NO QUICK THOUGHTFUL FAIR PROCESS ANYMORE.

B. A COMMON PERSON IS COMPLETELY LOST. HE CANNOT GRASP LATIN PHRASES QUICKLY. HE SPENDS 30 DAYS JUST LOOKING UP THE RULES BEFORE HE EVEN STARTS TO ANSWER.

C. A COMMON PERSON IS FORCED TO HIRE COUNSEL. IT BECOMES MANDATORY. YET THE COMMON PERSON IS NOT MUCH BETTER OFF WITH COUNSEL.. ATTORNEYS ARE DUMFOUNDED, THEY FILE LATE, GO FOR CCP 473 EXTENSIONS, FORGET TO PAY FILING FEES, DONT GIVE ADEQUATE NOTICE ON NOTICED MOTIONS, CLERKS BOUNCE THEIR WORK FOR INCOMPLETENESS, AND THE COMMON PERSON PAYS MORE.

D. THE SYSTEM IS CONTRARY TO THE PRINCIPALS OF GOD. GOD SAID IN THE BIBLE, EACH PERSON SHALL BE RESPONSIBLE FOR HIMSELF, AND EACH PERSON SHALL BRING HIS OWN CASE TO THE COURT. TODAY ALL I HEAR IS THAT "YOU NEED AN ATTORNEY" THIS IS CERTAINLY THE MOST DAMAGING IDEA FOR ANYONE TO ADVOCATE. IT IS DIAMETRICALLY OPPOSITE TO THE CONCEPT OF AN OPEN COURT DOOR WHERE EACH INDIVIDUAL CAN READILY GO INTO THE COURT AND HAVE HIS COURT CASE HEARD.

E. WHEREFORE I ADVOCATE THAT YOU CONSIDER A MAJOR REFORM OF OUR LEGAL SYSTEM AND CONSIDER REDUCING THE SYSTEM TO A SIMPLE LANGUAGE SYSTEM IN WHICH A COMMON PERSON CAN PURCHASE A SIMPLE SMALL PAPER BACK PROCEDURE BOOK AND PROCEED DIRECTLY FROM FIRST PLEADINGS AND ANSWERS TO JUDGE'S CHAMBERS.

2. COMMON LANGUAGE JUDGES CHOSEN FOR MORAL INTEGRITY

A. THERE SUPPOSEDLY IS TODAY A GREAT BACKLOG OF CASES, SOMETHING LIKE OVER 75,000 ON THE CIVIL CALENDAR ALONE IN THE LOS ANGELES JUDICIAL DISTRICT, AND THE TRIAL CALENDAR IS BACKLOGGED AT LEAST THREE YEARS.

B. THERE IS APPARENTLY A BIG MOVE TO BUILD MORE COURT ROOMS, EXPAND THE BENCH, INCREASE THE NUMBER OF JUDGES ON THE APPEALLATE COURT, AND CONTINUE TO INCREASE THE SIZE OF THE SYSTEM.

C. THE ANSWER TO THE PROBLEM IS NOT INCREASING THE SIZE. THE ANSWER IS TO HEAR THE ISSUES WITHOUT JAMMING THE LAW AND MOTION CALENDAR WITH ALL KINDS OF DEMURRERS, EX-PARTE ACTIONS, AMMENDING OF PLEADINGS, MORE SUPPLEMENTARY PLEADINGS, CROSS-COMPLAINTS, BRINGING IN NEW PARTIES, AND SPENDING TWO YEARS ON WHAT IS MOSTLY JUNK AND VENGEFUL TACTICS THAT ATTORNEYS USE AND CHARGE THEIR CLIENTS. MOST CASES OF COURSE NEVER GET TO TRIAL, THE CASE GETS LIQUIDATED IN A MASS OF COSTLY RULINGS THAT MEAN NOTHING BUT DRAIN THE ASSETS OF THE LITIGANTS. ELIMINATING LAW AND MOTION WOULD SAVE COSTS A MINT AND GET MOST CASES ON CALENDAR IN 2 MONTHS.

D. ELIMINATION OF JUNK LITIGATION - MOST ATTORNEYS KNOW HOW THEY CAN HANG THINGS UP IN LAW AND MOTION AND IF THEY KNEW THAT DEMURRERS AND DILATORY TACTICS WERE ELIMINATED THINGS WOULD IMPROVE. I ADVOCATE THE EXTENSION OF SMALL CLAIMS PROCEDURE UP TO $50,000 CLAIM LIMIT, AND THE ELIMINATION OF THE ATTORNEY IN ALL PROCEEDINGS BELOW $50,000 TO GUARANTEE FREE ACESS TO THE COURT ON AN EVEN SCALE FOR ALMOST EVERYONE.

E. THERE WILL BE NO NEED FOR EXPENSIVE JUDGES IF SUCH A SYSTEM IS VOTED ON AND APPROVED BY THE VOTERS OF THE STATE OF CALIFORNIA. EXPENSIVE JUDGES GO HAND IN HAND WITH EXPENSIVE ATTORNEYS AND ESOTERIC LANGUAGE. ITS ALL INCOMPATIBLE AND DAMAGING FOR A LOW COST FAIR SYSTEM. JUDGES SHOULD BE PEOPLE FROM THE COMMON COURSE OF LIFE. JUDGES SHOULD BE CHOSEN FOR INTEGRITY. EDUCATION AND INTEGRITY ARE NOT INTERCHANGEABLE AND THE EMPHASIS SHOULD BE BE DISCERNMENT OF MORAL ISSUE, RIGHTFUL ENTITLEMENT, AND NOT ALL BOGGED DOWN WITH CLERICAL ERROR AND PROCEDURE.

G. I DO NOT KNOW IF GOD HAS GIVEN OUR COUNTRY ANY MEN OF MORAL INTEGRITY ALL I SEE IS RIGHT'S GROUPS LIKE THE BAR FIGHTING TO PROTECT THEIR LIVLIHOOD. EVERYONE IS MORE WORRIED ABOUT THEIR OWN JOB THAN PRIZING JUSTICE ABOVE THEIR OWN INTERESTS. CERTAINLY SUCH A GROUP IS UNFIT TO BE JUDGES. THEY HAVE WRONG PRIORITIES. JUDGES MUST COME FROM DISINTERESTED WAYS OF LIFE, WHO VALUE JUSTICE ABOVE ALL, AND HAVE NO VESTED INTERESTS IN THE SYSTEM.

H. WHEREFORE, I THINK VOLUNTEERS FROM THE GENERAL POPULATION SHOULD BE POOLED, WHO SWEAR BEFORE GOD THAT THEY WILL DO JUSTICE FOR GOD, AND THE LITIGANTS THEMSELVES SELECT FROM THE POOL OF JUDGES THE PERSON BY MUTUAL AGREEMENT THAT THEY WILL APPEAR BEFORE. MUCH LIKE VOIRE DIRE, THE JUDGE WILL BE SELECTED FROM HIS QUALIFICATIONS.

I. A JUDGE WILL NEVER HAVE RETIREMENT OR ANY OTHER VESTED BENEFIT. HIS TERM ENDS UPON UPON HEARING THE CASE AND BEGINS WHEN HE IS RECEIVED ON A NEW CASE. THE PUBLIC WILL LEARN WHO IS A FAIR, UNPREJUDICED JUDGE, AND MAKE HIM THEIR JUDGE BY DEMAND. BAD JUDGES ARE AUTOMATICALLY ELIMINATED.

3. FORMATION OF A PUBLIC CONSUMER LAW COUNCIL TO REPLACE THE STATE BAR

A. I AM CONVINCED THAT THE STATE BAR IS NOT A SATISFACTORY SOLUTION TO THE HANDLING OF DISCIPLINARY PROBLEMS.

B. THE STATE BAR "CLOSES THE FILE" ON APPROXIMATELY 95 PERCENT OF OF THE COMPLAINTS WITHOUT ASKING FOR ANY INFORMATION, ALLOWING ANY REBUTTAL, AND OF COURSE, NEVER HAVING A HEARING. (MY BELIEF)

C. THE BIGGEST INCENTIVE THAT ANY COUNSEL OF THE STATE BAR WOULD HAVE IS KEEP THE CALENDAR CLEAN AND DO AS LITTLE AS POSSIBLE. I KNOW THAT A FEW ATTORNEYS TO "PRO BONO" IN HANDLING COMPLAINTS AND CONDUCTING ARBITRATION. THIS IS MUCH SELF PROTECTION OF THE GROUPS INTERESTS.

D. LAW BELONGS IN THE HANDS OF THE COMMON PEOPLE. IT DOES NOT BELONG IN THE HANDS OF THE SKILLED PROFESSIONAL. IT RIGHTFULLY BELONGS TO THE PEOPLE AND THE PEOPLE SHOULD NOT BE SHACKLED TO A STATE BAR THAT DICTATES DISCIPLINARY POLICY AND USES ITS OWN DISCRETIONARY POLICY TO "CLOSE THE FILE"

E. WE WILL NOT NEED A STATE BAR IF THE STATE GOES TO A COMMON LANGUAGE LAW SYSTEM AND A VOIRE DIRE JUDGE SELECTION SYSTEM.

G. HOWEVER, WHEN ANY QUESTIONABLE ACTIVITY TAKES PLACE, THE ISSUE SHOULD REMAIN IN THE HANDS OF THE PUBLIC AT LARGE. AGAIN, FROM A SELECTION OF VOLUNTEERS, A PANEL OF TEN IN EACH LOCAL COMMUNITY SHOULD HEAR THE GRIEVANCE. ONLY ONE OR AT MOST TWO ATTORNEYS SHOULD BE ALLOWED TO SIT ON SUCH A PANEL, AS THEY REPRESENT A MINORITY OF THE POPULATION.

H. THERE SHOULD BE NO APPEALS EXCEPT WHERE A LOCAL GRIEVANCE GROUP ON ITS OWN MOTION AGREES THAT THE PROBLEM IS TOO HARD FOR THEM.

I. SUCH A LOCAL COMMUNITY GROUP SHOULD DO ALL SENTENCING IN CRIMINAL CASES. THIS WOULD ELIMINATE THE DIS-SATISFACTION WITH THE CURRENT JUDGMENTS BEING HANDED DOWN BY SOFT OR TOUGH SENTENCERS.

CONCLUSION

ALL OF THE THOUGHT ABOVE IS FOUND IN THE BIBLE. IT IS GOD'S SYSTEM FOR A STABLE SOCIETY. I WOULD LIKE TO SEE IT PRESENTED ON THE BALLOT. I WOULD LIKE TO SEE IF GOD'S SYSTEM WOULD BE PREFERRED BY THE PEOPLE OVER THE PRESENT SYSTEM WHICH HAS EVOLVED OUT OF THE LAW SCHOOLS AND MINDS OF MEN. THE PRESENTLY EVOLVED SYSTEM IS A MASSIVE FAILURE, PREVENTS JUSTICE, IS UNEQUALLY ACCESSIBLE, FAVORS EITHER THE EXTREMELY POOR OR THE EXTREMELY RICH, AND HAS NO LOCAL COMMUNITY INVOLVEMENT. I HOPE YOU CAN USE THESE IDEAS TO PROMOTE YOUR RIGHT STANDING BEFORE GOD AND I AM SURE THAT GOD WILL DEFEND YOU AS YOU DEFEND HIS CAUSE.

CITIZEN OF THE GREAT STATE OF CALIF.

Ken Bourke

KEN BOURKE
1455 F ST.
SAN DIEGO CA 92101

THOMAS CARVER
LAWYER
2049 CENTURY PARK EAST, SUITE 1100
LOS ANGELES, CALIFORNIA 90067
AREA CODE (213) 553-3854

July 7, 1985

The Hon. Charles M. Calderon
Representative, District 59
The State Capitol
Assembly Mailroom
Sacramento, CA 95814

Dear Representative Calderon:

We have been following with some concern the press reports on the legislation that you have introduced, apparently at the request of the State Bar of California, in regard to "disciplinary proceedings".

In this context, reference is made to the several articles thereon published in The Los Angeles Daily Journal, including the recent article of June 12, 1985, on AB1275.

Reportedly, the proposed legislation adopts several of the procedures recommended by a State Bar Committee in 1984. Some of these procedures were recommended to the Supreme Court last year, and After full consideration, they were rejected.

At that time, on March 1, 1984, I addressed a letter to the President of the State Bar, objecting to the proposed rule changes. A copy of this letter, which appears equally applicable to the proposed legislation, is enclosed for consideration by yourself, and the other members of the State Assembly and Senate, charged with consideration of this subject.

As stated in the subject letter, our experience establishes that the disciplinary proceedings are presently employed, in part, as a means of "intimidation" of practicing attorneys, by opponents in litigation, including both the parties litigant and their attorneys. Although the standards of conduct have a specific rule to prevent such an abuse of the procedure, we have been advised, by members of the Office of Trial Counsel, that the rule has never been enforced, at least in

Los Angeles County. (Reference enclosed, p. 2:4.)

Although we have the highest respect for the office of the Trial Counsel, and the Board of Governors, it appears that in selecting cases for disciplinary procedures they do not employ any objective standard, or any standard of any type. As stated in our letter of March, 1984, in the absence of such standards, disciplinary proceedings, at least in Los Angeles County, have become a substantive part of "trial tactics" utilized by parties in litigation for their personal advantage. (Enclosure, p. 2:6.)

As to the suggestion that costs should be imposed upon attorneys that are the subject of discipline, we observe that such rule, in the form reported, is clearly unfair. In our opinion, it constitutes, on its face, a violation of the constitutional provisions on due process. If the legislature believes that "costs" should be assessed in disciplinary proceedings, we would recommend adoption of the federal practice, as to ethical investigation of executive officials; which provides for reimbursement of their costs,including attorneys fees, if the charges are unfounded.

Please note, that at least in Los Angeles County, the cost of defending a State Bar proceeding begins with a minimum of $1,000.00, and rapidly mounts thereafter. Our experience has established that "an effective defense" of disciplinary charges on the part of the accused attorney costs a minimum of at least $7,000, and in the event that review procedures are required, an additional cost could easily reach $20,000-30,000.

Imposition of costs upon the respondents would obviously inhibit their ability to maintain a fair and vigorous defense.

Since our last correspondence with the State Bar on this subject, we have reviewed, with some care, the series of articles published in the San Francisco Examiner; reportedly cited on several occasions, and the legislative debate on this subject.

We will not comment on the accuracy of any of the individual cases cited by the Examiner, but observe that they are relatively few, in the context of the total number of disciplinary proceedings.

More importantly, it is clear, from our experience in Los Angeles County, that the entire thrust of the Examiner articles, as indicated by the title "The Brotherhood" is inaccurate. It is neither true, nor fair, to assert that the lawyers participating in disciplinary procedures are partial to their "fellow lawyers". In the metropolitan areas, such as Los Angeles County, the concept of "brotherhood" or "collegiality" among practicing attorneys is minimal. We were disappointed that the President of the State Bar, Burke Crutchfield, did not address this subject more vigorously, in his response to the Examiner articles.

The record will illustrate that approximately 95% of all charges filed by the State Bar, in Los Angeles County, are upheld by the trial panels. The record will further indicate that upon review, both by the Board of Review, and the Supreme Court, many of the "factual findings" of the trial panels are reversed for lack of evidence.

We do not question the need for an appropriate disciplinary proceeding. This is evident from the reports published by the State Bar in the California Lawyer. (Reference enclosure at p. 3:4, citing the California Lawyer of August 1983 and February 1984.)

However, the present procedures are not adequate to achieve this objective, for they do not comply with even the basic requirements of due process of law. Among their other shortcomings, it appears that the composition of the hearing panels is biased, to exclude both members of racial minorities; and also those practitioners whose practice, by choice or necessity, consists principally of the representation of the impoverished.

An example of this type of bias, completely ignored in the "Examiner" articles, and other comments on the disciplinary procedures, was a recent action filed by the State Bar against an attorney that communicated with a jury panel, subsequent to discharge, on the necessity for a "black consciousness". Although such communications are customary, both in criminal cases, by district attorneys, and others, the State Bar indicated extreme concern at this procedure.

The Hon. Charles M. Calderon
July 7, 1985

We respectfully submit that the proposed increase in State Bar dues, and the allocation of additional funds to the State Bar to intensify the "disciplinary procedure" will not improve the present procedure, but will make it worse. As the procedure is presently flawed, and does not comply with constitutional requirements, an intensification thereof will only intensify its inequities, and improprieties.

In addition to the correspondence with the President of the State Bar, we have raised several of the issues presented above in a Brief recently filed in the Supreme Court. We have deferred communicating on the subject of the proposed legislation, in the expectation that a Supreme Court decision would clarify these issues. However, in view of the report that the legislature is disposed to act on the subject at this time, we are forwarding this correspondence for your review, and appropriate consideration.

Yours very truly,

THOMAS H. CARVER

THC:sk

cc: Elihu Harris, Representative,
District 13

David Heilbron, President,
State Bar of California

Burke Crutchfield, Past President,
State Bar of California

Ronald Stovitz, Esq.
Office of the State Bar Court

Herbert Rosenthal, Esq.
General Counsel, State Bar of California

THOMAS CARVER
LAWYER
2049 CENTURY PARK EAST, SUITE 1100
LOS ANGELES, CALIFORNIA 90067

AREA CODE (213) 553-3854
March 1, 1984

Dale Hanst, Esq.,
President
The State Bar of California
Schraam & Raduue
15 West Carrillo
Box 1260
Santa Barbara, CA 93102

Dear Mr. Hanst:

Reference is made to our recent correspondence on the proposed rules for discliplinary proceedings.

We appreciate your consideration in forwarding the communication to Ronald Stovitz, Esq., Assistant Director, Office of the State Bar Court.

We have the greatest regard for Mr. Stovitz, who has consistently demonstrated an innate sense of fairness, and a comprehension of the legal issues involved in disciplinary proceedings. At your request, he provided us, by letter dated February 22, 1984, copy to yourself, with copies of the proposed rules.

This letter is addressed to your office, in regard to proposed Rule 958 (and Rules of Procedure 460 and 461), on the assessment of costs. We will address the subject of Rule 959 in a separate communication.

We are addressing the letter to yourself, rather than to Mr. Stovitz, as we wish to assure that these communications are considered by the Board of Governors, and other State Bar officials responsible for supervision of the State Bar Disciplinary proceedings.

As indicated in our prior correspondence, our experience suggests that the disciplinary proceedings are presently employed, in part, as a means of "intimidation" to practicing attorneys, by opponents in litigation, including both parties and counsel.

Dale Hanst, Esq.
March 1, 1984

At least in the Los Angeles area, where a large proportion of California attorneys presently practice; amounting, at last report, to at least 40% of the present lawyers, the State Bar receives and processes, without question, complaints filed by clients who are reluctant to complete fee payments, insurers and claims adjusters who are dissatisfied with vigorous representation, of injured parties, and even by opposing attorneys or parties in the midst of pending litigation!

I emphasize the filing of the complaints by parties in the course of litigation; as it is obvious that there would be available a forum, that is, the presiding judge, to resolve such matters in open court, and in accordance with accepted judicial procedures.

Our experience has demonstrated that the attitudes and action of sitting judges on the complaints presented to the State Bar is markedly different from the reaction of the lawyers, and lay members of the Hearing Panels.

Although the State Bar rules, and the Canons of Ethics (sometimes known as Rules of Professional Conduct) both prescribe the filing of complaints against attorneys to obtain a "personal advantage", we have been advised by the trial examiners of the State Bar that such rules are considered applicable only when the Complaint is deemed to be "exclusively" for the purpose of obtaining a personal advantage. In accordance with such interpretation, we have been advised that the rule against use of disciplinary proceedings for personal advantage is ignored, and has never been enforced, at least in Los Angeles County.

Although the trial counsel obviously "screens" complaints in some manner, we have not been able to ascertain any set standard, established by either the office of trial counsel, the Board of Governors, or otherwise applicable, that would establish a level of conduct, comprehensible to both members of the State Bar, and others, as to the acts that result in "disciplinary proceedings".

In the absence of such standards, and for other reasons, disciplinary proceedings, at least in Los Angeles County, have become, in part, a substantive part of "trial tactics" utilized by parties in litigation for their personal advantage. As I am sure you recognize, even the filing of a complaint with the State Bar has a "chilling effect" on vigorous adversy. The processing of such a complaint, particularly when filed by an adverse party,

will obviously impact on the representation of clients in litigation, and otherwise.

As indicated in our prior correspondence, this factor has not been considered, insofar as we can determine, by the Board of Governors, or by any other body concerned with adjudication and discipline.

We are fully cognizant of the need for an appropriate disciplinary procedure for members of the State Bar. We experience daily infractions of the canons of ethics and the Rules of Professional Conduct. Many of these acts are committed in the course of contested litigation. For the reasons outlined above, we prefer, as a matter of professional courtesy, to refer such acts to sitting judges, rather than to file complaints, with the State Bar. [We recognize that the two procedures are separate and distinct, and could, under appropriate conditions, be utilized concurrently].

The need for an appropriate disciplinary proceeding is evident from the reports on discipline published in the State Bar's report, the "California Lawyer". In this context, reference is made to the edition of August 1983, Volume III, No. 8; as well as the most recent publication, February 1984

However, as previously indicated, the present procedures, in our opinion, are not adequate for the present requirements, nor the objectives of the Supreme Court in administering the practice of law in California.

The suggestion that the respondent in these proceedings should pay, in addition to such discipline, including reproval as may be otherwise imposed, the costs of the proceedings, only aggravates already inadequate procedures.

The proposed Rule 958(b) would result in the imposition of costs in a minimum of $1,000, for any proceeding brought to hearing. In addition, the State Bar would be authorized to require Reporters' Transcripts, in the expectation that the costs would be borne by the Respondent, in the event that culpability were determined by the Hearing Panel. Apparently, the Respondent would also be required to pay the Court appearance fee of the Reporters.

Finally, the Respondent would be obliged to pay "taxable costs".

The reference to "taxable costs" recoverable in civil proceedings, indicates the shortcomings of the proposed rule. In civil proceedings, it is axiomatic that costs will be assessed in favor of the prevailing party. The proposed rule is unilateral. Costs would only be assessed against the respondent. Obviously, the State Bar, and the office of Trial Counsel, are thus placed in a "can't lose" situation.

The proposed rule is obviously unfair, and in our opinion constitutes, on its face, a violation of the Constitutional provisions on due process.

In thus criticising the proposed rule, we have carefully considered the comment of Mr. Stovitz that "33 states of the union" have a cost assessment mechanism in attorney discipline cases". After 35 years of practice we have concluded that due process is seldom achieved by "majority vote". If the proposed rule is erroneous, and violates due process, it is not enhanced by its adoption by other states.

Moreover, in our experience there is already, at least in Los Angeles County, a strong trend against a "vigorous defense" of disciplinary charges on the part of the accused attorney. The proposed rule would obviously add to that trend. An accused attorney would have a very strong incentive to stipulate to an adjudication, provided that he would not be subjected to costs. A vigorous defense would begin, as indicated above, with a maximum cost of $1,000, and with the present expense of reporters' fees, could rapidly amount to several thousand additional dollars.

Any suggestion that such imposition of costs in a defense would not inhibit the proceedings is contradicted by the rulings of the Supreme Court as to similar cost assessments with justices of the peace, and other judicial proceedings.

I am not completely clear as to the meaning of Mr. Stovitz' comments that the other states that now assess costs against disciplinary lawyers and the American Bar Assn. standards have concluded that a cost assessment against the Bar would "call into question decisions to find an attorney culpable."

Insofar as I can determine, the fact that costs are assessed in favor of the prevailing party has not affected the decisions of the civil courts, in either the California or the federal courts. The suggestion that such provision would affect the

decisions of the present hearing panels only indicates that such procedures, as presently constituted, are not the equivalent of trial before a duly constituted court.

As previously indicated, many of the lawyers who have had occasion to study the proceedings of the State Bar have already concluded that as presently constituted, the procedures are not adequate to protect the rights of either complaining parties, or the respondents. The proposal to assess costs against the respondent would not improve the situation.

For the reasons set forth above, we again submit that the proposed rule should be vacated, and withdrawn from consideration by the Supreme Court. We also urge the Board of Governors to review, at the earliest possible occasion, the present procedures of the State Bar Court, particularly as employed in Los Angeles County, to ensure appropriate standards are employed in the processing of complaints, by the office of the trial counsel, and to obtain hearing panels representative of the practicing lawyers, and the general community, and to ensure that appropriate standards of due process are applicable at all levels of the proceedings.

Insofar as we can determine, one of the principal functions of the integrated bar, embodied in the State Bar of California, is the establishment of a disciplinary procedure that achieves the objectives of the Supreme Court, and of the Legislature, in providing for such an organization. Insofar as the present procedure falls short of these objectives, it is unfair to both the Supreme Court, which relies on the State Bar for this purpose, and to the California citizens in general.

We express our appreciation for your consideration of our comments and remain,

Yours very truly,

THOMAS H. CARVER

THC:rj
cc: Ronald W. Stovitz, Esq.

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September 25, 1985

Elihu M. Harris, Chairman, Assembly Judiciary Committee
Bill Lockyer, Chairman, Senate Judiciary Committe
Hon. Robert Presley, State Senator
Care, Lettie Young, Counsel
1100 J Street, Fifth Floor
Sacramento, Ca. 95814

Re: Subcommittee On Administration Of Justice-Hearing, September 30, 1985

Dear Senators and Chairman Harris:

In an effort to bring light to the problem, of which your hearing is a part, I am making the following comments and request they be made part of the record of the above hearing.

First, before the Legislature abandons the State Bar and starts a dismemberment process, it should weigh carefully the innuendo's or charges, the certainty and cost of substitute systems, and the practicality of working within the State Bar to make changes.

To be sure, there are changes needed in disciplinary laws, the procedural steps and, equally important,the human element of attorney discipline "enforcement."

It will be regrettable if the baby is thrown out with the bath;the emphasis, of course, must be upon (i) the burdensome tasks presently carried by the California Supreme Court,(ii) improved protection to the public in the fields of (a) money honesty, (b) competency, subject to inherent limits of a license suspension or revocation system, (iii) cost effectiveness.

The sheer numbers of State Bar (disciplinary) matters require that Supreme Court involvement be cut back. What was practical in 1928 when the Bar was about 12,000, is not so now.

The Examiner's "poll" which appears more or less as a sidebar indicates more than a majority of lawyers and judges polled favors bringing in courts of appeal.This should be phased in.

As to improved protection to the public, within the limits of the process,objection must be expressed to the implied premises or promises of advocates of basic change that faster procedures will catch dishonest and incompetent lawyers and remove them before more harm can be done. Within limits, this can be done . It must be the goal.The argument is, of course, that

swifter proceedings will be a deterrent generally.This conclusion in my opinion is more theoretical than real as to lawyers.

The new "inactive enrollment" procedure (A. B. 1275). if it can be successfully implemented, should give added public protection.

It is believed that,in addition to faster action generally, the cause of prevention will be aided if a special standing sub-committee, composed of representatives of the Legislature, the Supreme Court and the State Bar, actively encourages individual lawyers and firms to observe the rules, particularly in money and competency respects. This will be done by publicity.

Aid of local bar associations should be solicited.

Through voluntarism, so to speak, the end can be more easily accomplished than dozens of individual "police" (enforcement) proceedings. Also, even the police do not catch criminals in time.

The State Bar, with whom lawyers will presumably have contact at least now and then, is the logical partner in the three-way effort.

As to the third element of concern, cost effectiveness, the writer does not feel qualified to speak, except in a limited way.

The writer feels confident that, with less discretion available under the law and simpler procedure, the State Bar's efforts can be made cost effective to a greater extent than they have been. No criticism is intended but notemust be taken that the State Bar, like a business organization to which it has been (erroneously) compared, has been undergoing re-organization after re-organization. That does not make for effective morale or efficiency. Others are more qualified to discuss personnel.

Lastly, it is appropriate to ask: How much will a change-over cost? How long will it last, moreover, before encountering serious criticism and problems? Who is to "guarantee" it, so to speak-the individuals outside the Legislature who now clamor for it, the individual legislators who form the committees that now seem inclined to lose confidence in the State Bar and the many lawyers who have devoted countless hours without compensation to the State Bar discipline activities.

Thus, it is urged that the very important policy decision, as to continued vitality of the State Bar in the area of attorney discipline not be acted upon at this time or in undue haste. The dues impasse logically is a completely separate matter.

Second, as to the "backlog," so called, the situation obviously calls for emergency action. Again, it is the writer's belief this calls for leadership within the State Bar. Without intending criticism, the writer believes it is not a satisfactory position to overlook the use of task forces of members of the State Bar who have had experience in handling complaints at the "in take" level and who would serve for expenses only. It is submitted volunteers in the form of paralegals loaned by law firms could be used. All would have to be duly commissioned so to speak and be given cautions and guidelines (confidentiality, etc.)

In fairness to current State Bar personnel, it is the the writer's belief that backlog problems, at one point or another, have cropped up during the writer's 22 years with the State Bar.

The Board of Governors and others have worked diligently to avoid bottlenecks. It is believed the system is in better shape, overall, than it has ever been, but obviously it requires attention.

Under any approach serious cases in the backlog, of course, will be screened out, to the extent this has not already been done.

Third. As many are aware, disciplinary action against a California attorney required a "verified accusation" before the State Bar Act (1927) permitted informal complaints about the conduct of a member of the State Bar.

These informal complaints, sometimes referred to in ABA or news reports as "complaints" and sometimes as "files opened" or "cases," have been described in a court decision (Chronicle Pub. Co. v. Superior Court, 54 Cal. 2d 548):

> "The State Bar will accept a complaint from any member of the public who feels, rightly or wrongly, that he has been aggrieved by the action of the attorney, or feels interested in complaining about an attorney, no matter how informally made the complaint may be. These complaints are confidential unless they result in disciplinary action taken against the attorney. Many such complaints found to be unfounded are never brought to the attention of the attorney."

A written statement of the "complaint" is required by present rules of procedure. However, it is not required to be made under oath.

A substantial percentage of State Bar disciplinary funds appears to be spent in receiving, processing and investigating these "complaints, the total "intake" now being around 8,700, annually.

Without detailing the office procedures (which include a letter to the complainant under State Bar procedural rules), it is apparent that analyzing and, if appropriate, investigating these complaints, and writing reports thereton, take up a great amount of time. Note: The Kroeker Report of the Coyle Committee would pass off much of this work to the independent Deptartment of Investigation staffed by investigators.

In the writer's opinion, with mounting membership in the California Bar, increased salary levels and "cost of doing business," the reasonableness of continuing this liberality in receiving "complaints" of the nature described in the Chronicle case, should be explored.

The problem, in my opinion, is that determination of whether to call for the attorney's explanation and (as of January 1, 1980) "cooperation" involves either intuition or time consuming assignments for "investigation" that probably will be inconclusive. Then, also there is memo. writing for the "file," as noted above.

It is suggested for serious consideration

1-That a greater burden be placed on persons desiring to make "complaints," before they are "filed" and enter the process and data bank. For example, in proper situations, the complainant would be advised that

"Your complaint against has been RECEIVED.

Before it can be ACCEPTED FOR INVESTIGATION , it is necessary that you supply us with the following:

(Insert Check List-which will include such items as name, address and telephone number of witness who can corroborate your statement-letters or other writing corroborating your statement; letters from Attorney X for period_____ and copy of your replies, if any), Did this transaction occur when Atty X was practicing law; if so, give addresses and telephone numbers of his law office for this transaction)

Then state what will happen if information not received,, and phone number of investigator or attorney who will answer questions.

Again, the complainant should be required to answer the following:

Did a person other than a member of your family or a State Bar employee assist you in deciding to file this Complaint or in its wording; if so, please give name, address and phone number.

It is the writer's impression, gained from years of proximity to the present liberal "complaint" system, that in some cases a person such as opposing counsel formulates a "complaint" letter without his or her name appearing.

Likewise, with the burgeoning legal malpractice Bar, an attorney retained for a civil malpractice suit, may advise the client to complain to the State Bar about the defendant attorney and may assist in the complaint.

It is not implied this action is illegal; in fact, it may be what is directed by ABA Model rules.

However, under California disciplinary case law, the motive of a complainant may be inquired into in contested hearings. Thus, in cases where another attorney does not appear as a person involved in the complaint process, the questions proposed will bring out that fact.

Also, experience shows that sometimes, when a case is settled with verbal approval, the client may be offered advice by a banker, real estate broker or financial planner as to the "deal," and then seek to back out, complaining to the State Bar if his or her attorney does not follow instructions.

To cut down the size of the "complaints, numerically, consideration should be given to making more use of Bus. & Prof. Code 6043. This section permits State Bar officials, in their discretion, to require the filing of a verified accusation stating specific charges and specific facts. This, of course, need not be used often. But there are persons who complain that attorneys or attorneys and judges are in a "conspiracy" against them, or that a particular attorney is "crooked and should be disbarred," without specific evidence or facts to justify such general accusations.

2. Consideration should be given to providing a State Bar staff member, attorney or paralegal, to aid complainants in writing their complaint, if they desire help.

This would be somewhat similar to assistance available to small claims court litigants.

3. Present efforts to provide alternative dispute resolution methods, if the complaint is not accepted for investigation, should be continued.

Fourth. if California disciplinary law is too lenient upon offenders-attorneys convicted of serious crimes or attorneys not convicted of crimes but who commit serious client offenses-it is because of the way the law has developed.

Philosophically, arguments can be made pro or con "felony disbarments or disbarments upon final conviction" of specified

crimes.

As public officers or public employees, State Bar staff attorneys, volunteer examiners, members of hearing panels or of the Review Department are bound to follow the law.

In the late 30's, in a case known as Egan v. State Bar, 10 Cal. 2d 458, 462, the State Bar recommended disbarment for a non conviction money offense in comparatively small amount- a first offense. The state Supreme Court declined to adopt the recommendation, and imposed a suspension, citing mitigating circumstances.To mitigate or not has since been a common issue.

In the mid 50's, in a case known as In re Hallinan, 43 Cal. 2d 243, a unanimous state Supreme Court rejected the State Bar's position that conviction of the offense commonly known as "tax evasion" required "automatic" disbarment under Bus. & Prof. Code 6101-9102 as the sections then read.

The 1955 amendments and implementing court and State Bar rules permitted the State Bar to bring in more evidence than the mere "record of conviction." They permitted the Court to impose an interim suspension until the matter of appropriate discipline, suspension or disbarment, was finally settled. But they codified the ruling of In re Hallinan, that the Supreme Court could suspend, rather than disbar, is "conviction" cases.

Commencing in the early 70's, long suspension, with some period "actual" began to be used, as an alternative to disbarment.

Whether this was wise seems doubtful, in hindsight, because it lead to difficulties in application. Primarily it seems to have been used in first offense cases where the attorney had made restitution. The Court's attitude in "conviction" cases seems to have been to uphold the State Bar's usually made "disbarment" recommendation. However, in some cases, the Court's opinion stressed rehabilitation and other factors to justify less than disbarment.

In my tenure as general counsel (1954-1964) probation was little used. There were no long suspensions as above described. In one "conviction" case, a first offense, where the State Bar had recommended disbarment, I urged the reinstatement procedure provided adequate relief. The Court accepted this argument but, mindful of pleas on behalf of the attorney, ordered the usual 5 year period shortened. The petition for reinstatement was filed. After hearing, the State Bar recommended denial. On petition for review, I lost; the court ordered reinstatement.

Somewhat similarly, in several reinstatement proceedings near the end of my tenure, the State Bar recommended denial; the Supreme Court ordered reinstatement.

The State Bar Act(which has never been amended in this respect)provides that in non conviction matters the State Bar entity may impose a reproval, public or private, or recommend suspension or disbarment. Bus. & Prof. Code sec.6078. But, for a wilful violation of Rules of Professional Conduct only, the maximum discipline is three years. Bus. & Prof. Code sec. 6077.

This range implies that offenses may be prosecuted and judged according to their seriousness and facts; that not every offense requires prosecution as a disbarment case "for the protection of the public interest."

In fact,over zealous " prosecution" according to the views of one indivdual attorney, raises questions of denial of equal protection of the laws and of possible civil liability, should the prosecution fail.

On the other hand, acceptance of"negotiated pleas" to avoid trial and "processing",that are unduly lenient,raises the problem of lack of protection to the public, the courts and the legal profession., as well as of equal protection.

But individual errors in judgment, not detected by the reviewing unit, should not condemn the system.

Fifth. if it is the consensus that there should be stricter attorney discipline laws and regulations, this can be accomplished within the State Bar framework. Amendments to the State Bar Act could be made, for example, 1-To drop out the Review Department (as was done in 1976-1979), 2-To provide the State Bar as represented by General Counsel or Chief Prosecutor, with the consent of Board sub committee, would petition the Court for review of a decision believed unduly lenient. Presently the attorney only is given the right to so petition. 3-To eliminate private reprovals as "secretive" or ineffective. 4. To place limitations on the allowable period of a suspension, thus confining it to minor offenses or those with clear mitigation, and forcing a disbarment recommendation for serious offenses. 5. To lengthen the period before a disbarred attorney could normally ask for reinstatement.

If higher standards and more "enforcement" are desired there are others ways to bring it about. For eample, the Supreme Court could announce a general policy of imposing more severe sanctions as to offenses committed after a certain date. The State Bar could join in such a policy as to its role.

In conclusion, I urge your Joint Committee not to make a snap judgment on "reform" of the California disciplinary processes. Rather, after a cooling off period, there should be tri-partite meetings of those most concerned, to wit, the Legislature, the Court, the State Bar and individuals proposing change.

Respectfully submitted,

APPENDIX J

RICHARD G. ALBERTON
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Office of Assemblyman Lloyd Connelly
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Att'n: Ms. Lettie Young

Dear Mr. Assemblyman:

Your legislative assistant Ms. Young suggested that I address and send to your office a letter incorporating my proposed input to the current legislative inquiry into the California State Bar, to be included in the record of your committee hearings. This is that letter.

FIRSTLY, The American Court System does produce JUSTICE most of the time. If we do not believe this, we will have anarchy.

SECONDLY, The American Court System is less than perfect. It should produce Justice MORE of the time.

We may only improve it if we have the courage to examine into its defects and weaknesses. Let us do so.

Civil Trials essentially examine into the issue of

You Owe Me ←-------→ No, I Don't
You Owe Me More ←-→ No, I Owe You Less

The scales of justice balance two pans of dollars.

The effort to obtain or retain more dollars than you should, to steal money in the Civil Court, by false testimony, is known as PERJURY... and the statistics establish that this crime in the presence of the judge, often with the connivance of the attorney, is seldom if ever punished.

Federal Judge Warren J. Ferguson, in a letter to me, declared PERJURY is the CANCER of the American System of Justice, and Federal Judge Marvin Frankel, ret., wrote LYING is a CONTAGION in the American Courts.

This Attorney, RICHARD G. ALBERTON, is the first to be published, the ONLY Attorney in American History, to CRUSADE to deter PERJURY, this CONTAGIOUS CANCER, in the American Courts, and he has done so, primarily, in the State of California, where he has practiced law, and where he has been subjected to the harassment of the State Bar of California.

Each and every case in which the parties may be deterred from trial by the fear of punishment for PERJURY, will be a case in which two or more attorneys will not earn fees for the trial thereof. The deterrence of bringing such cases to trial jepoardizes the economic safety net of the legal profession, and the State Bar or California, as the TRADE ASSOCIATION referred to in the Examiner BROTHERHOOD Series, is, necessarily opposed to such an economic crisis.

This letter, however, is addressed to the HYDE side of the State Bar JAECKLE and HYDE psyche. How does the State Bar of California operate its DISCIPLINARY department?

FIRSTLY, the DISCIPLINARY DEPARTMENT probably does arrive at a JUST result, however late, most of the time. This is probably true.

SECONDLY, it is a CERTAINTY that the Disciplinary System of the State Bar is less than perfect, and the BROTHERHOOD Series of last March has now brought about, for the first time since 1927, a legislative inquiry, to seek to improve the Disciplinary Process for the Attorneys in California.

This Attorney proposes that the Inquiry in the Legislature should focus NOT ONLY upon the protection of the Public, but ALSO upon the protection of the Attorneys of the State of California.

There is a proposal to be considered September 30, 1985, at the special joint hearings of the Senate and Assembly Judicial Committies at San Diego, to create a new state structure to police attorneys because the "Bar has not adequately policed itself." Permit me to address this proposal in a number of ways.

Ms. Kang and Mr. Finefrock of the Examiner wrote, which is beyond dispute, and the infrequent exceptions prove the fact, that the Supreme Court of the State of California RUBBER STAMPS the State Bar disciplinary rulings. While it sits, purportedly as a "trial court", it does not take evidence and it severely limits attorneys seeking relief for it does not allow the time to develop arguments in depth (15 minutes maximum is the usual rule), and, as I shall develop to this Joint Hearing, for policy or political reasons it can, as it did to this Attorney, elect to ignore the CRIMINAL MISCONDUCT of the State Bar of California and to deny such a "purported trial", any form of Judicial Review at all, to this Attorney.

The proposal to create a new state structure, "an independent regulator under the jurisdiction of the State Supreme Court" may give the appearance of an efficient reform, may speed some results to protect the public, and may, therefore, help to solve the problem which the BROTHERHOOD Series addressed.

Such a new state structure, such an independent regulator, which may protect the lay public, if the "purported" trial of the Supreme Court of California will be the ONLY avenue which the accused attorney may trod, will continue to leave him or her NAKED and exposed to discipline WITHOUT a JUDICIAL PROCEEDING, a TRIAL IN FACT. There is NO SUPERVISION!

The proposal to establish a new agency, however, does not address the OTHER PROBLEMS which the Legislature should now consider while it is examining some of the WORMS in the CAN at the State Bar of California.

The members of ALL other professions and occupations in California which are subject to administrative supervision, pursuant to the Administrative Procedures Act, may be exposed to the supervision and discipline of their own profession or occupation, BUT, if they reject the proposed discipline, as proposed company punishment in the Code of Military Justice, they may demand a trial. There they will have the opportunity to present and test evidence by the trial rules of the Code of Civil Procedure and the Evidence Code in a California Trial Court.

Attorneys should have equivalent and equal rights as those of other professions or occupations to obtain TRIALS and to be accorded all

of the rights and protections of such proceedings. Attorneys should not be the ONLY SECOND CLASS CITIZENS when their own State Bar attacks them

In its procedures the State Bar Court (so-called, but expressly NOT a Judicial Body, and merely the Administrative Arm of the Supreme Court) conducts hearings, purportedly, under the rules of the Legislature enacted for the protection of ALL citizens in the Code of Civil Procedure.

We accept that in Adminstrative Proceedings, there may be some relaxation of such rules...BUT, such Administrative Proceedings for other occupations and professions are subject to the right to obtain a TRIAL before a COURT where the accused may seek to establish the FACTS, where the rules will NOT BE RELAXED.

Without such protection for the accused, there MUST NOT be such relaxation of the rules which were enacted to protect the accused from injustice.

The State Bar of California, the members of which are the most educated citizens regarding the requirement of fair play and due process of the law, having the knowledge that the accused attorney will NOT obtain a TRIAL to test proposed discipline chew up and defecate the Code of Civil Procedure in its Court.

There are cases permitting the State Bar Disciplinary Committees to apply or NOT APPLY the protection of the Code of Civil Procedure...cases in that Supreme Court which RUBBER STAMPS its Administrative Arm, the State Bar of California.

The State Bar Disciplinary Department, therefore, is limited by the parameters of NATURAL LAW which only Kings and Queens have utilized in days gone by in other parts of the world.

An EXAMPLE, experienced by this Attoney, was the offer into evidence by Mr. Tom Low, a State Bar Deputy, of the ENTIRE transcript of lengthy testimony of this Attorney in an underlying SuperiorCourt trial--and when this Attorney objected, for such admission would be impossible if objected to in a "legitimate trial" in a Court of the State of California, Mr. Low cited as AUTHORITY for his motion to ADMIT the five (5) volumes of testimony, the words "SUI GENERIS" (used in other State Bar cases approved by the Supreme Court), the five (5) volumes were accepted in evidence by this NON JUDICIAL State Bar Committee. This Attorney did not complain that any portion of the prior testimony was not true but did object that he should be permitted to explain any portion thereof to be heeded by the State Bar Committee.

After all, the Federal Courts refer to State Bar Disciplinary Proceedings as QUASI CRIMINAL. It may be contemplated that the bureaucracy of the State Bar Disciplinary Department has retreated from this concept to deny accused counsel the protections which he or she would have with that concept during disciplinary proceedings, for if that was not the purpose, it has surely been the effect.

Where the State Bar Disciplinary System deprives the accused protections under the Code of Civil Procedure and a presumption of innocence to be overcome, if at all, beyond a reasonable doubt, or, at least, by more than a milimeter more than 50%, in a disciplinary process which the State Bar denies is quasi criminal, it would necessarily appear that the "elders" of the State Bar are acquainted with NEITHER the Constitution NOR the words of the Apocrypha attributed to BEN SIRA that.....

"HE WHO DEPRIVES ONE OF HIS LIVELIHOOD SLAYS HIM"

It was an unusal case,(which this Attorney anticipated in a communication to the State Bar in his own case) that of Martin B. v. Committee of Bar Examiners, April 1983, in which the Supreme Court relieved Martin B. of his SLAYED status imposed upon him by the State Bar--he who had been acquitted of a forcible rape 12-0 by a jury, and acquitted of a forcible rape 11-1 by another jury (while a Marine in the Los Angeles area ten years before--was tried anew (for a second time) by the Committee of Bar Examiners of the State Bar---which asserted NO DOUBLE JEOPARDY in trying him once again (Supreme Court in most states have allowed this as they uniformly protect their State Bars). In Martin B. case ALL of the transcripts of his earlier criminal proceedings had been ROUTINELY destroyed because of the passage of time; the judge was deceased; most witnesses were either out of State or otherwise not available; and the Committee tried the case with a "stacked deck" for the available witnesses were ONLY the former prosecutor and the two complaining women.

The Committee was NOT seeking to IMPRISON Martin B. again for the crimes of which he had already been acquitted--it was JUST seeking to deprive him of his profession and intended livelihood--it was JUST seeking to SLAY him. Oh, what a twisting of the Constitution! What a travesty!

The Supreme Court, this time, did not RUBBER STAMP the State Bar and posed that the Committee should have had "a certain degree of integrity" and ruled that Martin B. had had no "reasonable opportunity to defend himself"; that the proceedings "were inherently unfair"; and that "all conclusions of the committee should be disregarded". This case was under submission in the Supreme Court while the Supreme Court was denying "review" in the Alberton case in which, in addition to the factors present in Martin B., the loss of the testimony was not ROUTINE and the State Bar was CRIMINALLY responsible for the lost testimony of the complainant and had ADMITTED its GROSS OUTRAGEOUS NEGLIGENCE in the loss and destruction of the testimonies of seventeen (17) witnesses who had appeared and testified in the aborted previous hearing.

The Chief Justice Rose Bird characterized the refusal of the Supreme Court to consider the Alberton Case as "an unwarranted departure from established practice" of the Supreme Court.

The Supreme Court would examine into the lack of "a certain degree of integrity" of the Committee and the State Bar in the case of Martin B. but would not examine into the CRIMINALITY and admitted fault of the Committee and the State Bar in the Ablerton case.

Let us consider a more generic concept...
there are countless cases which the bureaucratic State Bar has obtained the RUBBER STAMP of the Supreme Court and without critical supervision, which state BROAD concepts which are used by the Disciplinary Committee to strech the exposure of the accused attorneys and to justify the discipline imposed...broad paint brushes. Each of these should be examined to check this expansion of power which has accompanied the growth of the bureaucracy of the State Bar. 1927 to 1985 has been too long a time without effective supervision or hardly any supervision at all.
Power has corrupted, and the nearly absolute power has nearly absolutely corrupted.

ALL of the foregoing regarding the Case of Alberton is documented in the papers transmitted herewith, and I offer to testify under oath as to each and every fact stated herein and therein. Each of the Attorneys who has represented the State Bar in the Alberton Case has, in fact, committed the acts and participated in the Conspiracy of which they are accused.

As stated in the lengthy article

WATERGATE WEST...CALIFORNIA STATE BAR-GATE

> "The State Bar is the administrative arm of the Supreme Court, not unlike the child of an act of making love. Its parent Supreme Court, like many parents, has closed its eyes, ears and nose to the concept that its child has committed a crime...ignored the sight, ignored the sound, and most particularly, the smell thereof, in a manner not unlike that of a mother who denies the pregnancy of her daughter who is not 'that kind of a girl'".

FINALLY, there is one ESSENTIAL REFORM which I propose. For those attorneys, and I was not the only one, who are abused by the games of the State Bar in its disciplinary process, there must be an available INSPECTOR GENERAL, or OMBUDSMAN (and as many as may be necessary to handle the volume and be accessible throughout the State) to inquire into the abuse claimed by an accused...to terminate violations of the mandate for fair trial and Due Process. This must be available to the accused at the State Bar level, but MUST include lay personnel, MUST include the supervision of our Trial Courts, our Superior Courts, Law and Motion Departments, to which the accused MUST have access. The present system which, after the fact of such abuse, ONLY provides the accused and now "found culpable" attorney a "purported trial" where evidence is not received and the protection of the Code of Civil Procedure is moot...is not Due Process of the Law.

Even Attorneys are entitled to fair trials.

There are enclosed herewith the foollowing (nubered in Red)

(1) Portions of a letter about the BROTHERHOOD SERIES
(2) WATERGATE WEST...CALIFORNIA STATE BAR-GATE, AND WHY I WAS FORCED TO ACCEPT EARLY RETIREMENT (34 pages)
  (a) Copy of Letter of April 30, 1981, which PROVES the felony of the State Bar personnel involved
  (b) Copy of transcript of December 14, 1978, in which the State Bar ADMITTED its own GROSS, OUTRAGEOUS NEGLIGENCE
  (c-1) Re: The bad faith of the decision of the State Bar Disciplinary Committee
  (C-2) Copy of material transmitted to State Bar prior to and clarevoyantly im anticipation of the Martin B. decision of the Supreme Court in April of 1983
  (d) Article LA Daily Journal re Martin B. case
  (e) Comparison of Martin B. and the Alberton Cases.
(3) Concise statement re the refusal of the Supreme Court ot Review the Alberton Case and the subsequent mis-conduct of the Supreme Court.

(4) PERJURY IN THE CIVIL COURT, and What to Do About It...revised and updated...which was originally published in 1970 in a Journal Report of the Los Angeles Daily Journal, by its then courageous Editor, now retired, Russ Jourdane
(5) Precis of Article above numbered (4)
(6) Few notes from cases and law reviews re pefjury and the search for the truth
(7) Copy of letter to an Alameda Supervisor April 2, 1985, re the cost of the courts and the lack of need for more courtrooms.

I should be pleased if I may be accorded the privilege to appear and testify and respond to questions at a subsequent hearing of your committes jointly or separately. Please be again assured that I can document each and every accusation which I have made.

May I anticipate that I shall have your response and comments at an early date.

Cordially and sincerely,

RICHARD G. ALBERTON
P.O. Box 3158
Daly City, CA 94015
(415) 928 8000

WILDERNESS GUIDELINES

BONDED

WILDERNESS CONSULTANTS 607 FIGUEROA STREET, FOLSOM, CA 95630 (916) 985-2467

08/28/85

Ms. K. Connie Kang
Mr. James A. Finefrock
San Francisco Examiner
San Francisco, Calif.

Dear Ms. Kang and Mr. Finefrock

As two individuals who have been and continue to be in the midst of legal complications that have extended well beyond our expectations (and imaginations) we commend you on the realities presented via your articles entitled "The Brotherhood - Justice for Lawyers". The situations in which the people were placed might tend to create skepticism for the "non involved", yet, they depict circumstances that are becoming increasingly more familiar to the general population.

After examining these scenarios, however, the question remains: How can we begin to address the problem of a legal system whose technicians:

1. Lack the proper impetus to "live-up" to the ethical tenets/standard that their position/profession implies (i.e., They are primarily motivated by money)
2. Face no legitimate system of accountability (i.e., from reading your article we now know what the State Bar is all about)
3. Seem bent on destroying the system they swear to uphold in order to perpetuate their profession.

Upon discussing this quandary, and deliberating over the problems it suggests, we have arrived at some conclusions that appear to merit consideration. Subsequently, we have decided to pass along these conclusions to ascertain if you might be interested in assisting in generating public interest/action.

As the previously mentioned questions might indicate, a vehicle needs to be developed that can address several points. We believe this "vehicle" should take the form of a program that would assist individuals in avoiding our legal "miasma", while it concomitantly addresses the issues of legal "ethicality" and accountability. This program could take the form of a clinic whose primary purpose could be concerned with pre-legal, civil situations. It could provide a setting much like that of arbitration, where, within the parameters of structured, organized conversation, two parties at odds would be given the opportunity to discuss and resolve their differences. Rather than have a lawyer present, however, a qualified "layman" would conduct the proceedings. (Qualified in the sense that they could understand the personalities and emotions of the individuals as

well as the potential legal ramifications of an unresolved dispute). This individual would induce both parties toward a reasonable solution, while continually stressing the undesirable circumstances the parties could face should they decide to move their differences into the "legal arena". The clinic would use the services of one or two attorneys only to handle the procedural work generated by the type of agreement reached.

Although the parties may still decide to seek legal council, it is anticipated that the pre-legal experience would remain beneficial. It would provide the parties with some idea as to what the legal issues actually are, what kind of questions to ask an attorney, and how to ask them, as well as what to look for regarding a response. We could even provide a "fallow-up" service to ascertain what the attorneys are actually doing.

The clinic could become involved with mid-legal and post-legal problems, we like to refer to this as the "legal-shock" portion of the clinics. It could assist individuals who, having already been "smitten by the system", are seeking a clear and concise outline as to what is transpiring in their case (or has transpired) and why they are in the situation they're in. Although this won't serve to rid the individual of legal complications, it may assist them in:

1. Ascertaining the right questions to ask their lawyers as to what can be done to resolve their situation
2. Ascertaining the potential of malpractice
3. Help the individual cope with the reality of their situation.

The clinic could also compile information gathered from people as to the quality of service rendered by attorneys, as well as problems that exist in the legal system. This information could be disseminated to the public on a regular basis, or upon request, via the newspapers, TV., etc. This could serve to gather public anger/response, or in helping people obtain worthwhile counsel. Hopefully, this process would have some impact as to the issues of legal conduct and accountability

Well, that's what we've come up with. Obviously, the ideas presented are only in the formative stages and steps need to be taken to improve, alter or change them. As for now, we feel that the next step may be the distribution of some sort of flyer that would summarize our ideas/interest and suggest a meeting in Sacramento for all those concerned. If we receive a positive response, then we propose the development of a small pilot project in Sacramento to ascertain the viability of the concept. If we received a positive response from this process, we would secure media coverage regarding the meeting and its purpose which might serve to generate even more public activity.

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Taking into consideration the complications that such a project poses as well as the ever present public apathy, there is no question that the task we're proposing will be difficult. If there is any way in which you could help to further these interest and concerns, your efforts would be greatly appreciated. Perhaps you know of a group, or groups of people who's interests are the same as ours, or simply publicize the idea. Or??? Whatever your contribution could be, we hope you will give the idea your consideration.

We thank you for your time, and please, keep shoving this problem to the forefront. People must become aware.

Sincerely

Jim Palombo, lecturer
Criminal Justice Dept. Cal. State
Criminal Justice Consultant Sac. Ca.

R. W. Bovard
Folsom, Ca.

SEP 26 1985

58 3/4 Panoramic Way
Berkeley, California 94704
22 September 1985

Justice Robert Coyle
California Legislators
California State Bar Board of Governors
Task Force Members
and All Others Concerned about the Present State
of the Maladministration of the Law in California

I write to plead with all of you to NOT accept a change in the procedure of disciplining malpractice already identified AS ALL THAT IS NEEDED TO STRAIGHTEN OUT THE CORRUPTION CURRENTLY OPERATING IN CALIFORNIAN COURTS.

The maladministration of the law in California is far more complex and sweeping in scope. Unidentified malpractice that negates the law is permitted under the California Bar's Ethical Code for Professional Conduct. Those victimized by unidentified malpractice have no real chance to defend themselves against the collusion of multiple lawyers on both sides of a case who rig both preparation and hearing among themselves to determine decisions and then cover-up for each other. In theory on paper, such a victim supposedly has a chance; in the real world of the courts, the victim has no chance at all.

This matter is separate and distinct and of far greater importance than the issues now scheduled to be heard by you in next Monday's meeting.

I was invited to submit an outline of the testimony I wished to present to the Joint Interim Hearing to be held on September 30, 1985. I was not selected to be heard because, I believe, I am saying "too much," more than the hearing wishes to consider. The narrowness of the hearing's objectives does not make the warning I wish to communicate to you less important, however.

Enclosed is the testimony you would have heard from me. You can, of course, put the entire manuscript in the wastebasket. But if you have any commitment whatsoever to our country and our form of government, you will read it. I believe I am the only person who is openly voicing the connections between the malpractice of lawyers and the treason inherent in undercutting our laws.

Sincerely,

Nancy G. Priddis

Mrs. Nancy G. Priddis

Proposals for Improving the Quality
of the Administration of the Law in California

Testimony for a Joint Subcommittee Meeting Concerning
State Bar Discipline to be held on September 30, 1985

To regard a change in the manner of attorney discipline as the only correction needed in California's administration of the law is to adopt a simplistic view of the most serious political problem that a state can have. Other equally important areas need improvement as well, if the political structure mandated by our Constitution is to be preserved.

The following nine proposals address the correction of California's legal malpractice and malsdministration of the law from different prospectives:

A. Rescind the bar's ethical code - the most important proposal offered here - and adopt the ABA Ethical Code (Point 1).
B. Establish a network of responsibility to counteract the network of corruption now operating (Points 2, 3, and 6).
C. Educate the public (Point 4 and 5).
D. Conduct research with which to identify related areas needing corrective amendment and/or legislation (Point 7 and 8).
E. Correct the Legislature's false assumptions (Point 9).

1. Rescind the right of the California State Bar to elect its own ethical code with respect to its relationship both to clients and among lawyers.

A. The Californian Legislature enacted the State Bar Act, which requires each lawyer uphold the U.S. Constitution and federal and state laws. The Legislature did not enact the bar's Ethical Code for Professional Conduct; the bar's membership adopted this code as the ethical standard by which it judges its own professional conduct - despite the possibility that the code might have an unethical effect in the administration of the law, despite the fact that the code was always considered highly controversial and its undesirable potential openly debated in the 1930's by the Roscoe Pound Institute of Yale University.

Because of the bar's strategic position and the bar's monopoly of franchise in our political structure, the California people have lost sight of the fact that the bar is not a part of our government but a separate "public corporation" operating within it; and that the bar's ethical code is not law and not a part of the State Bar Act, and was not chosen honestly in the interest of furthering the bar's "public service."

This ethical code is a statement of a syndicated focus or attitude which lawyers can assume as a conventionalized "legal mind-set." The seemingly defensible rationale for the code obscures its unethical possibilities and its inherent opportunities for financial and political power to be gained by lawyers and their selected clientele. The bar's business is anything but "public service;" it is "public exploitation" for the self-serving interests of the bar. Not all lawyers or all judges are seduced into adopting and using the unethical possibilities of the ethical code for self-gain, but then those who do not do not bother to fight for our negated laws and principles either. They avert their eyes; they "live and let live" instead.

The rationale of this code sounds innocuous. The code claims that an attorney's first principle is his absolute loyality to "the best interests of his client," and that the attorney's loyality will assure that client of 1) secrecy for his confidences, and 2) a devoted ally to organize and present his case, and 3) his best chance for a fair trial under our adversarial system.

The code is ethical enough to require that all threats of bodily harm be reported to authorities. It also directs that upon discovery that the client is about to commit a crime, the attorney should try to

dissuade the client to not do so, and states that the attorney may silently withdraw his services without explanation if he wishes, but that the attorney does not have to withdraw. All questions regarding how an attorney is to regard the unethical legality in representing such a client are left unanswered. The attorney must draw upon whatever understanding of right and wrong he has retained from his home training in such matters.

The code is silent on the major ethical issues. It does not attempt to define the attorney's ethical duties upon his discovery that the client has unlawful objectives in engaging in litigation; or that the client has already committted a crime and is in possession of the fruits of that crime; or that to represent "the client's best interests" in such a situation will cause the attorney to defend "status quo," which will mean that the attorney will attempt to "legitimize" a previously hidden crime by means of "processing it with adjudication" and thereby to secure its respectibility and acceptance in society.

In such situations, a lawyer's legal services amount to "whitewash" and to a sort of undeclared/unofficial "Fifth Amendment" designed to screen off the truth from discovery. The lawyer deliberately engages in the obstruction of justice and/or equity. The lawyer is striving to exempt his client from the application of the very law that is proper and lawful for the situation - that is to say, if the law is to be upheld at all. For at the same time, it is the civil right of the client's opponent to expect that the law - enacted in the public's behalf by legislatures of the public's representatives who were paid for that service with public tax monies collected for that purpose - that law will be upheld in the courtroom in defense of that client's opponent. There is no fence-sitting in this: lawyers either strive to uphold the law or they strive to defeat it.

Important services that this lawyer will render the criminal client include 1) the withholding of evidence by prevention of its discovery, 2) the invention of confusion in order to distract, 3) the intimidation and harrassment of the opponent in order to gain advantage, especially effective in illegally securing "stipulations," 4) slander, various types of the misuse of the English language, various denials of basic logic in order to mislead, 5) the unethical manipulation of the known weaknesses of the judge, and 6) the corruption of the integrity of the opposing lawyers.

In short, the lawyer's legal services are intent upon preventing the operation of the first two principles supposedly governing any adjudication: the discovery of the truth, and the accomplishment of justice and/or equity. All six activities listed above are those of an accessory to the successful commission of a crime, but the California bar's ethical code causes all of these criminal activities to be considered "lawful legal services" because under the Californian ethical code, the lawyer is just being "loyal to his client's best interests." All six techniques listed above are construed as merely the techniques of "clever lawyering."

If such "clever lawyering" is successful, then the injustice it has caused is considered to be due to the faults of the opposing lawyer, because, in theory, he could have and should have stooped to practice equally unethical "clever lawyering" himself in other to balance out and nullify the unethical activities of the first one; but too bad; apparently, it is reasoned, "he wasn't smart enough to do so" so the injustice that the victim must suffer is just the victim's tough luck for not being smart enough, or rich enough, to get a "clever lawyer" in the first place. The victim cannot sue the opponent lawyer for his unethical "cleverness," and his own lawyer "did nothing wrong but lose."

Thus the unethical effects of the bar's code spirals upon themselves, working to further corrupt court environment through unrealistic expectations that the dynamics of the adversarial system will take care of unethical practices when, in fact, the adversial system has been further rigged to compound the effect of unethicalness. "Clever lawyering" is, in reality, undefined malpractice, but because the bar's ethical code condones its operation as justifiable "technique," it is not permitted to be expressed as malpractice and therefore can be neither identified nor prosecuted.

B. The second part of the bar's ethical code requires that a lawyer not only refrain from "snitching" about a client's crimes but also not "snitch" on other lawyers whom he may also discover engaged in wrongdoing. No lawyer has ever been allowed to criticize or tell the truth about a judge. Telling on a judge, attempting to tell on a judge, would cause a lawyer's immediate disbarment.

"Not snitching" can be excused among adolescents who are struggling to establish their personalities apart from their elders. But to allow such an ethic to rule in the decision-making of mature adults who are responsible for the orderly administration of our government is not excusable. It amounts to passive collusion in promoting wrongdoing and lawlessness.

Moreover, it leads to the active and more serious types of collusion in which the entire preparation and hearing of a case is rigged by lawyers representing both sides of the case. Long concatenations of collusion cover up in turn for the previous lawyers' malpractice because "nobody finks on a brother of the Brotherhood." The "next" lawyer misrepresents, misinterprets, misadvises with contradictions, omits options, misses due dates, etc. with assurance. The likelihood that a client will ever discover a legally recognized basis for a claim of malpractice in time (a year), will be able to organize a presentation of the complaint, will be able to locate a malpractice lawyer, will be able to articulate the claim well enough to persuade that lawyer to be willing to pursue the claim of the client's violated rights is so infinitesimal as to be nonexistent.

The opposing lawyer can malpractice all he likes because he is automatically exempted from danger of prosecution; his own client won, and the opposing victim is not allowed by law to sue him, although she is the only person motivated sufficiently to take the trouble to do so.

The important task is to make sure the victim's lawyers do not "get nailed" for their part in railroading the decision; hence a concatenation of interests is established in which the larger law firm advises small satellite firms on attitudes to assume, methods of client control, devious manipulations to employ, etc. The organization resembles a type of "legal mafia" with a popular, highly respected "hired gun" for its don. Membership pays off. The big firm exerts influence for small firms when and where it is needed while remaining itself big and successful. Everyone's back gets scratched.

C. The effectiveness of the bar's unethical code is further assured by additional protective devices: the assumptions, "requirements," and "conditions" which have been installed in the sequence of "judicial processing" so that the "clever lawyering of a hired gun" cannot lose:

1. the dismissal of a lawyer's overall responsibility for a case, because this responsibility is vested in "the client" (no matter how ignorant of the law that client may be).

2. the dismissal, as much as possible, of written documentation in favor of oral communication which, it is later revealed, is accorded no legal standing in any subsequent court hearing.

3. the subjugation of clients to a state of an absolute dependency upon their lawyers. The client's state of "ignorant-although-held-responsible" status amounts to a servitude from which the client has no way to escape. The helplessness of the litigant already victimized by collusion is furthered by the very act of engaging the service of a lawyer; in doing so, the victim surrenders her right to speak for herself and her lawyer refuses to speak for her, for he must not "fink" on his brothers of the Brotherhood - "if he knows what's good for him," which is the Brotherhood's very heavy hand that silences every lawyer. If the victim tries to speak, she is fined heavily for "obstreperousness." At the same time she doesn't dare attempt to present her case pro per because then no end of advantage would be taken of her in other ways.

4. the irresponsibility of a judge for the quality of his adjudication: for his failure to uphold the law, to find the facts necessary to support his decision, to adjudicate impartially and be upright

in his deliberations. The standards for judging judicial service are just as faultily "expressed by omission" in the Canons that compose the Code of Judicial Conduct as the lack of standards by which to define malpractice by lawyers.

5. the exploited loopholes, omissions, vaguely worded and ambiguous directives, the syndromes of laws that, when practiced together, effect a completely different outcome from the one stated as the intent of the Legislature. I call this the "Picasso effect" because just as in a Picasso painting, denotively the surface of written law is made to appear to support one policy, but beneath that surface and put to practice, another image forms. The law is actually carrying out, unannounced, hidden policy that is contradictory to the superficial communication suggested by its denotative wording. The policy which is actually being effected is the very policy for which the California electorate has already communicated active disapproval by means of their vote on the ballot.

6. "reductive processing:" a trivialization of all matters and all issues when they are handled by lawyers, until nothing of any meaning, nothing of any real semblance to the original situation remains to be presented in the litigation or in its hearing. What is "heard" is total fabrication, total contradiction to the truth.

Californians lack all means of gaining a perspective from which to assess this "weird and wonderful" practice of the law which is taking place in their state. They would have to visit one of the two libraries of the American Bar Association, in Chicago or Washington, D.C., in order to examine the ABA's special comparative study of the ethical codes of other states, if they wished to see the matter more clearly. In the ABA's volume on this study, the ethical code of each state is compared with the specific comparable recommendation proposed by ABA ethical code.

Exhibit A is my paste-up of the ABA's findings regarding California's ethical code, or more precisely stated, California's absence of an ethical code. Addendum A testifies to this : the articulation of a definition of the various acts which constitute legal malpractice in other states is not made in positive assertion in this state.

Malpractice is not positively defined in California. Rather it is negatively defined - which is to say, the victim must prove that she had a right under California or Federal law but that right was violated through lawyer malpractice. Such a proof argued from the negative prospective requires a far longer and a more complex reasoning because it involves the review and discussion of the entire case, and because the reasoning may be rebutted with the sophistry of those endless ambiguities allowed by the Californian ethical code. The narrowness of the definition of extrinsic fraud really means that the snake gets all the lines and enjoys all the rights. The victim cannot "surmount the burden of proof" and is accorded no rights at all. Common sense, vigilante action, even a roll of the dice would provide a statistically better chance of obtaining some sort of justice than litigation within our present Californian judicial system.

There is no excuse for California's failure to define in positive assertion with the English language the terms and standards of legal malpractice and then hold its lawyers accountable accordingly. Mankind invented language to spell out, to objectify, to lay out for consideration its thoughts expressed in words. Just because California is the "picture capital" of the world (due to its movie - TV - video industry) does not mean that its citizenry should be forced to forego the service of the tool of language.

Nor should the bar be allowed to expand its political power over the Californian people by preventing the prosecution of malpractice. At present malpractice is a wide-open field for all comers in this state, including those immigrants from other states who were disbarred for malpractice at home. Lacking the articulation of positive definition means that, in practical terms, there is no such thing as "legal malpractice" in the state of California. Without the stability afforded by written language, "anything goes" in our courts.

D. Nor is there any excuse for California's failure to provide an effective and efficient method with which the public may seek a redress of the legitimate grievances it has suffered in the hands of malpracticing lawyers. At present such procedures as are pretended to exist are a mockery.

ABA Model DR 1-102

DR 1-102 Misconduct.

(A) A lawyer shall not:

(1) Violate a Disciplinary Rule.

(2) Circumvent a Disciplinary Rule through actions of another.[12]

(3) Engage in illegal conduct involving moral turpitude.[13]

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) Engage in conduct that is prejudicial to the administration of justice.

(6) Engage in any other conduct that adversely reflects on his fitness to practice law.[14]

CALIFORNIA DR 1-102

DR 1-102

[There is no comparable disciplinary rule.]

ABA Model DR 7-101

DR 7-101 Representing a Client Zealously.

(A) A lawyer shall not intentionally:[66]

(1) Fail to seek the lawful objectives of his client through reasonably available means[67] permitted by law and the Disciplinary Rules, except as provided by DR 7-101(B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.

(2) Fail to carry out a contract of employment entered into with a client for professional services, but he may withdraw as permitted under DR 2-110, DR 5-102, and DR 5-105.

(3) Prejudice or damage his client during the course of the professional relationship,[68] except as required under DR 7-102(B).

(B) In his representation of a client, a lawyer may:

(1) Where permissible, exercise his professional judgment to waive or fail to assert a right or position of his client.

(2) Refuse to aid or participate in conduct that he believes to be unlawful, even though there is some support for an argument that the conduct is legal.

CALIFORNIA Rule 7-101

DR 7-101

[There is no comparable disciplinary rule.]

DR 1-103 Disclosure of Information to Authorities.

(A) A lawyer possessing unprivileged knowledge of a violation of DR 1-102 shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.[15]

(B) A lawyer possessing unprivileged knowledge or evidence concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.[16]

CALIFORNIA DR 1-103

DR 1-103

[There is no comparable disciplinary rule.]

ABA Model DR 7-102

DR 7-102 Representing a Client Within the Bounds of the Law.

(A) In his representation of a client, a lawyer shall not:

(1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another.[69]

(2) Knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

(3) Conceal or knowingly fail to disclose that which he is required by law to reveal.

(4) Knowingly use perjured testimony or false evidence.[70]

(5) Knowingly make a false statement of law or fact.

(6) Participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false.

(7) Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent.

(8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

(B) A lawyer who receives information clearly establishing that:

(1) His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected person or tribunal, except when the information is protected as a privileged communication.[71]

(2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.[72]

CALIFORNIA DR 7-101

Rule 7-101 Advising the Violation of Law.

A member of the State Bar shall not advise the violation of any law, rule or ruling of a tribunal unless he believes in good faith that such law, rule or ruling is invalid. A member of the State Bar may take appropriate steps in good faith to test the validity of any law, rule or ruling of a tribunal.

As I have already stated, the malpractice of the successful opposing lawyer goes unchallenged because the victim is not allowed to sue.

As for suing her own lawyers, the victim is confronted with the following intellectual tasks:

1. She must be able to read and understand the Civil Code, Civil Procedure Code, the Rules of Court, Evidence Code, possibly the Penal Code, the Canons governing judicial peformance, the Business and Professional Code, and the Constitutional Code.

2. She must be able to locate and read Mr. Witkin's commentaries without which Californian law would probably mean next to nothing to anybody.

3. She must be able to identify and circumvent all the little unwritten local "conventions," the little "in-group" sycophancies related to the pecking order among lawyers because "that's the way we lawyers do it among ourselves," which are the set niceties of professional courtesy that were used to take one advantage after another of her.

4. She must be able to read and digest all the decisional law handed down in cases from the various higher courts. She must "shepherdize" the issues of her case, even though these cases often contradict one another and some cases might turn out to be "depublished" after all her struggles. In this regard may I add that some fields of law such as Domestic Relations which accounts for over a third of all court caseload are very swiftly moving and relentlessly fragmented areas for the evolution of decisional law; therefore, the task of attempting to keeping abreast of new developments is next to impossible for the lawyer working full-time in the field much less the layman.

5. She must be able to discover, conceptulize, and hold in her mind for comparison "what should have happened" with "what did happen" according to all of those codes, conventions, and decisions - an especially difficult task when she holds a full-time job that is equally detailed with complexities.

6. She must be able to write her complaint in a legally respected style, using the legally respected terminology and concepts that should not be but are required in the communication - if she is to have any hope at all of securing a hearing for herself. Californian lawyers today have no standards; they do as little as possible and try to get away with as much as possible. The only weapons any client has to employ in her own defense is 1) a recognition early in the game that she is the only person who is going to defend her because her lawyers are going to sell her interests out in any way that the political climate of the court assures them of greater personal gain by doing so; and 2) an educated skill in writing the English language; 3) an educated skill of reading and comprehending whatever law she manages to locate that is applicable to her situation; and 4) a fierce determination that borders on the kamikaze to demand that her country's government be honest and principled in its administration of the political power invested in it. With the help of the grace of God, her ability to use of these four "weapons" may be powerful enough to force the lawyers surrounding her to practice the law somewhat honorably - at least to some extent.

7. She must predicated her statements upon sources derived only from written materials such as trial transcript, papers submitted in evidence, letters, etc. as were available for the court's consideration at time of trial.

8. She must argue only from the basis of affirmative statements that may be directly confirmed by reference to the written documents. She may not use any reasoning which involves inference or circumstantial evidence - even though the decision reached by the judge in her case was based on such "oblique" reasoning - if any reasoning from any factual evidence could be demonstrated to have been used at all.

In other words, even though the decisions made in her entire case were determined by means of fraudulent allegations and withheld evidence manipulated by colluding lawyers "outside of the courtroom" and off all "written record," the victim is forbidden to use the very methods of logical discourse which are necessary to present that fact. The logic

of such discussion as would be necessary to present the violation of her civil rights is declared "inadmissible" and "outside the bounds of judicial consideration." Judges may infer - even from no demonstratable evidence at all - but members of the public may not, even to show that judge's inferences were based upon fraud perpetrated upon the court.

This prohibition is one of the major ways that the courts protect the awards won by malpractice from correction, and thereby the offending lawyers from discipline. As a teacher, I cannot understand how the public schools are expected to teach the skills of critical thinking such as inference-making to students while the same levels of difficulty in critical thinking are declared, with a completely straight face, to be too complex and possibly devious to represent the elements of adult malpractice for consideration in courtrooms. The prohibition is itself pure chicanery in the service of misused political power by the courts.

9. The victim sits alone to compose the writings that are to fulfil these eight requirements listed above for the presentation of a malpractice suit. No lawyer will help her. Instead her lawyer is to act as a "judge," before whom she must argue and win her "case" before he will consent to present her complaint as litigation in a real court hearing. He will not help her with the organization because he would then be guilty of "finking" on a Brother in the eyes of the Brotherhood. The reaches of the bar's ethical code are wide and deep.

Can a victim of legal malpractice hope to thread her way through such a labyrinth of "requirements?" Of course not. The very adoption of such impossible demands is deliberate; it constitutes a "set-up." That's the purpose of the requirements; the victim isn't supposed to be able to get her act together. If any victim does manage to organize a valid malpractice suit, then somebody along the way must have slipped up. Members of the Brotherhood are not supposed to fail each other in this regard.

This tenuous thread through these inhuman demands of this labyrinth is all that remains in California courts of a victim's civil rights - to due process, to a redress of grievances, to ownership of private property. This tenuous thread exists "in theory" - but in theory only, as does the victim's civil rights.

E. The final product of the California Bar Association's ethical code is a syndication of the product of the other four: fencing for the illegal and immoral privileges of crime and wealth; fencing for other lawyers engaged in malpractice; fencing in the maintenance of other collateral laws and conventions in support of unidentified malpractice; and fencing in the form of impossible demands made of a victim trying to organize the presentation of a malpractice suit.

The product that is syndicated is the "legal mind-set" that has become the major characteristic of the fashionable California lawyer. Lawyers of this mind-set are ready and willing to exploit the strategic position of their "franchised business opportunity." This mind-set seeks more than the opportunity to maximize financial gain and the "right to work." It seeks political power, as much as is possible to exert within society, which necessitates the negation of legitimately vested poltical power in order to transform/transfer legitimate poltical power to the bar. No activity is now rejected by bar members as "too unethical" if it achieves that purpose.

The syndication of this product has meant the growth of a "cronyism network" of lawyers and judges who all hold the same "legal mind-set" and who are all intent upon the same goal: the establishment of a silent but dictatorial oligarchy which will surplant the three-divisioned balance of power mandated by our present constitutions. As excessive as such a statement may at first seem, this cronyism network is properly regarded as a fifth column of white-collar criminals engaged in treason for the personal gain of group members.

The treason is quiet treason unannounced. Seemingly all the divisions of our government and their various offices continue to function, but they do not. One after another of these offices are staffed with compliant "servants" who are ruled by the will of the legal oligarchy and willingly block all efforts to represent the public's interest within the functioning of our government.

The legislatures continue to generate enacted law which is duly printed in codes, but the import of that law is undercut and negated in the courtroom. Public taxes continue to be used to support legislative and court activities, but these activities do not represent the best interests of the public (save that of maintaining the illusion of "general public order" while the years of take-over are being effected). The public's interest is being exploited and negated to make way for the advantage of criminal and wealthy interests (which are often one and the same).

Public lands, buildings, and capital goods are sold to private cronies; enormous debts contracted in the public's name are owed to cronies; advantageous tax rates are manipulated for cronies; loans arranged at usury rates for the profit of cronies; enormous PAC handouts distributed for the interests of cronies; and so on. Manipulation of fine-print sophistry through means of contracts, warranties, deeds, accounting methods, mergers and the draining off of assets, and other varieties of "legal paper" has caused a general divestiture by these American cronies of their countrymen and of their country - while, by the same means, lawyers reaped the benefits of the transfer for themselves and their "selected clientele." The entire operation is very "legal" in the eyes of our "judicial system" (insofar as it is correctly "papered"), but it is moral filth in terms of the political health and well-being of our country. Our country is being systematically "financially raped" by this crony network.

The fine tastes, polished life styles, exquisite manners of the lawyers in this crony network belie the ethical wastes of their minds. There is no lie they won't tell, nothing they won't steal, no advantage they won't take, no honor or sacred precept they will not violate. They stand for nothing and for no one except self-centered, self-interested greed. They call their exploitation of our helpless people "entrepreneurship" and praise the callous efficiency of their work.

This legal mind-set originated in California. The California Bar Association's ethical code embodies it. The "Picasso effect" of this ethical code is the advocation of the most arrogant contempt for our legislatures and our Constitution, the most ruthless distain for the innocent, helpless laymen as "suckers," and a complete disavowal for the responsibility of the fiduciary trust invested in their franchised offices within our government. "Statesmanship" is a word and a concept they refuse to hear of and are completely incapable of acknowledging. They feel no loyality or commitment for this country or its people.

This fashionable mind-set works locally through the dominance of the big law firm in a district/region. The big firm establishes a patronage/fealty "system" which destroys the integrity of smaller firms in the area, who cannot afford to hold out economically against the manipulation of the big firm's demand for "professional courtesies." If the big firm's hired gun says, "Sell your client out. We want to win this one," the smaller firm has no choice but to comply - that is, if the smaller firm hopes to survive in the long run.

The hired gun of the big firm operates with every advantage:
- because he commands higher fees, he can use more staff to compose more sophistic claims, research farfetched relationships, and write confusing amounts of "more paper" per case;
- because he claims relationships with prestigious law schools, he can claim to be articulating in his pleadings the latest decisional interpretation of a law (a claim that may later be revealed as a first-class lie);
- because he lacks all sense of "right and wrong," he attacks the opposition like a piranha: he lies, slanders, intimidates, harrasses to acerbate, withholds all evidence and all honest confrontation of of issues to be adjudicated, manipulates the judge privately, introduces late tricky motions but withholds their presentation except on "paper" so that there is no open discussion in the hearing and the opposing litigant has no idea what the judge is actually silently and secretly considering in his deliberations; and finally the hired gun steals because by taking a case in a 50% contingency basis, he can calculate to a nicety his personal gain from every dime he gouges out of the victim, although he plays the game not for monetary gain but because he loves to go for the kill;
- because he lacks any standards of ethical practice whatsoever, the hired gun psyches out judges, opposing lawyers, witnesses, etc. for any weakness he can exploit; he wins cases by destroying the other

people involved in the case: the sick he makes feel inadequate by mockery; the insecure he flatters with his "buddy-buddy" confidences while at the same time intimidating with flaunted evidence of his worldly success; the prejudiced he provides methods to satisfy their prejudice; and so on:

because the hired gun cannot count on winning a case unless he tricks, he never stops, and the pressure of the trickery is endless - until decent lawyers refuse to accept cases against the trickster, not because such cases cannot be won, but because the unrelenting "evil" that must be confronted at every turn is so exhausting in terms of the opposing lawyer's personal energy, that no case against him is "worth it;"

No small firm can hope to withstand such a barrage. Cases are not being won in California by the orderly presentation of evidence according to the dictates of enacted law. Cases are won in California by what amounts to guerilla warfare and "murder ball."

Case by case, by such methods the "big firms" maintain their successful images of power, maintain their place of ascendancy over other firms, maintain their control over their fiefdoms. In addition, by such methods, the big firm maintains the political clout of its voice in the state, its place in the pecking order of the cronyism network on a state-wide basis. The cronyism network is just as ready to take illegal, unfair advantage on a state-wide level as the big firm is at the local level. It is a highly coordinated network with one intent: to control the financial and political power of this state.

Without the advent of the data-processing made possible by computers and their peripheral technology, such a highly coordinated development would probably not be possible. But now, if the truth were admitted, the effect of such absolute coordination is that there is rapidly becoming only one ruling party in California and in this county, that of the legal oligarchy. The hoopla of Republican and Democratic parties has been reduced to mere circus intended to distract and confuse the unrepresented masses, and to generate numberless "middle-management" positions and their bureaucratic mazes, which are, in the last analysis, only devices to shield the court party from public identification. Our government has many such offices, complete outfitted to staff and office furniture, that do nothing but prevent any representation of the public's interest from ever being "officially" recognized.

At times the policies of the oligarchy may merge with some of the declared policies of Republican and Democratic policies when such convergence is expedient, but these groups are separate entities and their objectives are very different. If the oligarchy had felt any loyality for America, our people would not now face a debt of two trillon dollars, a defense system that does not work and will cost twice again as much as its original price to maintain, an industrial system in ruins because of tax manipulation, incoherent domestic and foreign policies, an increasingly devalued currency, and most abysmal state of public ignorance concerning the real state of affairs in our country that any American people have ever had to bear. We have been lied to and manipulated with commericial "Hollywood image-making" techniques until no one knows if there is a single person of integrity left to lead us. We could not even conceptualize the warning Stockman sent us five years ago although we had suffered Watergate less than six years before. The oligarchy controls every facet of our thoughts.

The oligarchy serves as the visible edge of the political power of the less than fifty conglomerates that own our banks, our industries, our farms, our transportation, our media, our real estate, our jobs, and our lives. America, which used to be its own best customer, has been bought out so that now "everything is rented" at completely arbitrary (usually horrendous) rates. To divest our democratic government of its power, the oligarchy employs anthills of lawyers, all carefuly regimented in hierarchies, whose topmost executives block all possible correction of the political "bias" being promoted. It is significant that those who would control this nation are quick to control the U.S. Department of Justice and its subdivisions, the Office of Budget and Management, and the Federal Trade Commission.

The chain of command and control is very long, very complete, and staffed with lawyers all the way. Malpractice at the local level is predicated upon essentially the same bag of tricks employed at the higher levels: misuse of the English language, withholding of evidence,

distracting confusion, various forms of intimidation and slander, and an unethical manipulation of the known weaknesses of those opposing in order to corrupt all vestiges of integrity remaining in our society.

California's vicious ethical code is causal; it creates and condones the self-serving exploitation that it incites in the mind-set of the fashionable California lawyer. Other forms of corruption arise from the effects of this ethical code are consequential.

The remaining eight proposals of this testimony (Points 2-9) are offered as suggestions which might begin to remedy, at least in part, the consequential forms of corruption that have now been firmly established in the "conventional ways that we California's lawyers practice the law."

2. Legislate the professional responsibility of a lawyer so that it is parallel with the professional responsibility of a doctor. Which is to say, a medical patient is not required to become proficient in medical knowledge in order to direct his doctor's treatment of him; in like manner, a legal client should not be required to acquire a legal education in order to "direct" his lawyer's representation of that client's legal interests.

3. Legislate a lawyer's written compliance with established forms of legal procedure that were devised in the past to ensure orderly processing of legal matters. In this way, litigation will have a greater chance to proceed on the basis of the discovery of truth and applicable law, rather than by the fraudulent "irregularity" and trickery that made possible by unrecorded oral communication.

   A. Reinstate the validity of the semantic content of the English language and the orderly logic of argumentation in those forms - by fining punitively according to given percentage points of the yearly gross income earned those lawyers who misuse either.

   B. Require written documentation of defined issues and agreements at each event in the formal procedure - so that such events and documents as Settlement Conferences, Financial Statements, and the Findings of Fact/Conclusions of Law are used purposely and not reduced to meaninglessness.

   C. Force all records, all claims, all issues to be revealed in advance, or suffer the penalty of having such records and issues declared inadmissible. Cause the phenomenon of "surprise attack," as in guerilla warfare, introduce late for the purpose of throwing the entire case into confusion, to be outlawed as illegal. Demand that cases be won honestly, not by tricks. Prevent motions that have never been heard in the courtroom from suddenly "winning the case."

   D. Cause an attorney's admission that "he did not prepare the case" to be regarded as an automatic confession of the guilt of malpractice (just as it would be regarded already in many other states).

   E. Make an attorney legally responsibile for the truth of his own statements before the court so he is not longer allowed to lie irresponsibly in order to cover up for his client's crimes. If his client lied to this lawyer, then the lawyer may pass the fines with interest along to his client.

   F. Force lawyers to deliver written documentation - even though such a requirement will prevent lawyers from packing their case load with computerized forms - because only written documentation will provide clients with the legal evidence necessary to prove malpractice has occurred.

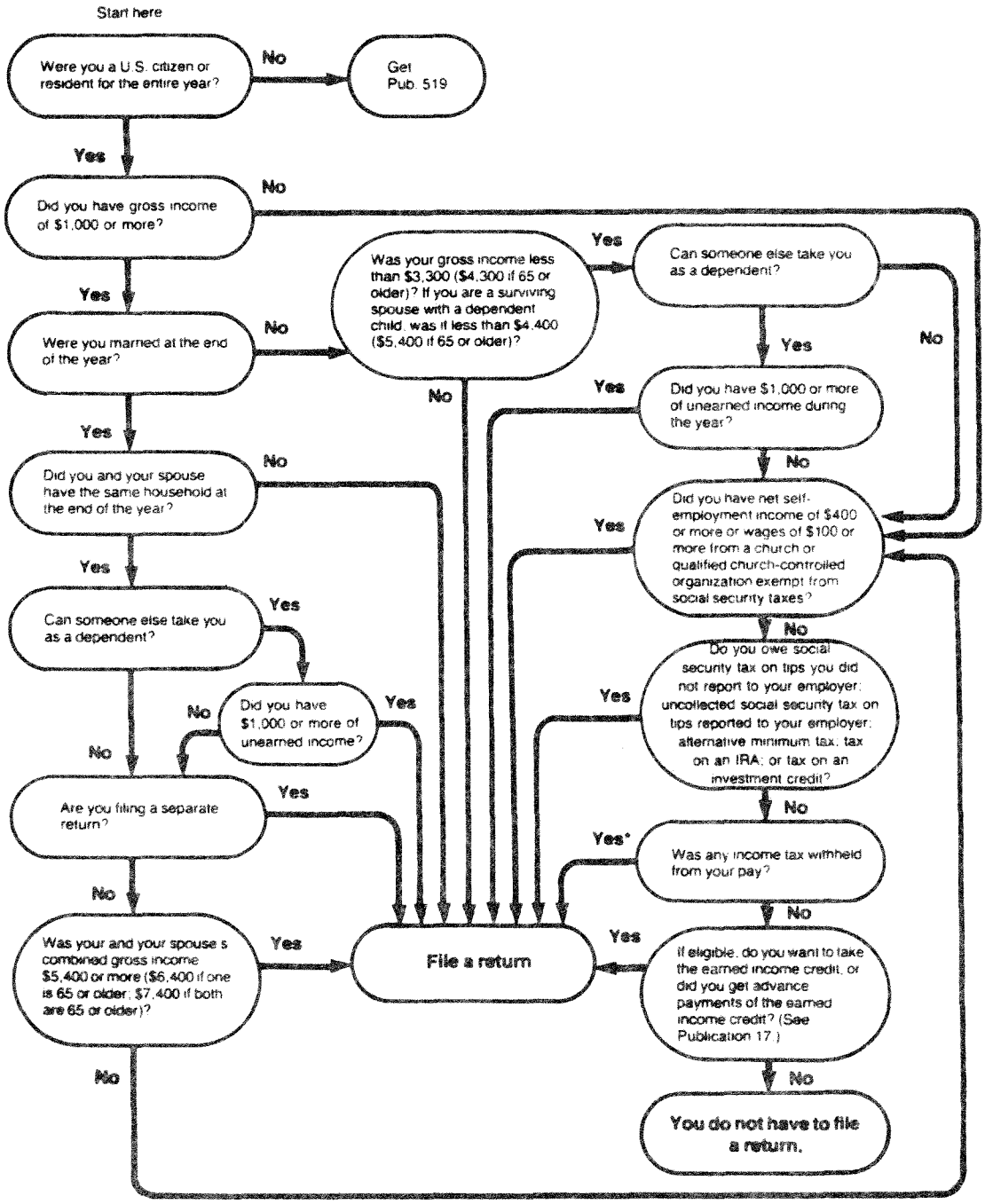
   G. When the use of computerized forms will violate the integrity of the representation of the litigated situation, force the attorney to take legal responsibility for the damages so caused. In other words, force attorney to assume full responsibility for the entire situation; any item or aspect that will be not included in the computerized form shall be documented in written form for the client.

4. Provide the public with an adequate chance to study the law that they are required to know in order to "direct" their lawyers.

A. Provide every litigant with a schematic representation of the legal process, its sequence, its options, its due dates, its probable ranges of time allotments, perhaps a rough idea of the needed work hours, and citations to the codes for further reading about each process. See Exhibit B.

Who Must File a Federal Income Tax Return

Follow the arrows to find out whether you must file a federal income tax return. Answer each question with "Yes" or "No." The answer will lead you to one of two final boxes: "File a return," or "You do not have to file a return."



B. Provide also a schematic of the organized codes, with cited reference to those sections of the law to be applied in the client's case.

C. Provide in public libraries access to the California codes and Witkin's commentaries on those codes. Provide the litigant with a honest chance of contact with the laws that are supposedly ruling his life. Such knowledge will aid in holding lawyers accountable for upholding the law; people cannot demand their rights under the law when they have no real chance to know what the law is. Technologically, a Lexis connection with a printer could provide a reference service to both statutory and decisional law, and would be a boon to a basic understanding of American citizenship.

5. Legislate the establishment of a body of professional counseling to aid the victims of malpractice.

A. The conceptual demands involved in pursuing a complaint of malpractice - in comparing "what should have happened" with "what did happen," and in not only reading the law and in distinguishing between the law and the conventionized tricks employed by lawyers to defeat the law, but in writing of such matters by oneself in a manner that will command the attention of one's own lawyer (in the manner prescribed for an appellate brief) and will compel him to "mouthpiece" that claim before a court - are such impossible demands to make of most malpractice victims that in reality those conceptual demand legitimizes malpractice. Legislate into existence professional aid that is capable of being loyal to the victims' interests, and not to the task of covering up for the misdeeds of bar members.

B. Establish a separate authority over malpractice that is located outside of the bar and outside of regular court matters where it will serve as the same sort of "check and balance" that our government system has had the wisdom to have established elsewhere for other branches of our government. The California Department of Consumer Affairs would be the proper governmental unit within which to establish such an authority.

C. Change the law so that the litigant who is victimized by the malpractice of his opponent's lawyer is able to confront and legally accuse that malpracticing attorney of damages. That victim has a citizen's right to expect the establishment of honest courts, has a civil right to a fair trial, and is the only person motivated to pursue this malpracticing attorney. The opponent profited, the bar won't be bothered; without the suit, the opposing lawyer gets off scot-free no matter how corruptly he practiced.

6. Provide judges with the ethical support of "threatened discipline." Such support will aid those judges who need it the means to resist "Brotherhood" pressure, and the temptation to condone corrupt actions such as "rubberstamping" and passive forbearance.

Judges are not now independent because we have allowed them to become tin gods. They answer to no authority even though within the last decade we have faced a presidential crisis that testified to the corrupting influence of absolute power unchallenged. The independence of judges is better protected when judges are held accountable.

A. Rewrite the first and third canons of the Code of Judicial Conduct so that the duties of a judge are spelled out: to uphold the law, to discover facts, to adjudicate without prejudice, to use discretion only for demonstratably good reason. Appellate decisions provide many instances of maladjudication in which the judge did not carry out the duties of his office but that judge pays no penalty for doing so. At the same time, no relief is offered to the judge's victim, who is counselled that he "must just accept as best he can the injustice which the court has arbitrarily arranged to befall him" because, the reasoning goes on, "the judicial system is fragile and it is the duty of the citizen to support it, not tear it down with negative criticism." Such reasoning denies the role of the loyal opposition in maintaining the integrity of government.

B. Legislate the adoption of the Gitelson Creed as an oath of office required of all judges. See Exhibit C .

Such an adoption will (1) re-establish the Legislature's insistence in the semantic content of the word "justice" as the highest abstract value to be honored in adjudication, (2) re-establish the fundamental directive "to do justice" as the courts' first principle (in opposition to the doing of "injustice" that can be achieved with sophistic reasoning), and (3) require judges to exercise their affirmative powers and duties in order to make sure that "justice is done."
No authority will admit how much maladjudication goes unaddressed because judges are not exercising their affirmative powers, because they are not preventing the following conditions from corrupting the first responsibility of the courts, the accomplishment of justice:

1. Confusion deliberately generated by the unexplained contradictions and technical manipulations (often suddenly sprung to overthrow orderly proceedings) by lawyers. This sort of confusion is compounded by judges who mumble and slur as well as deliver their decisions like a machine gun so that a trial transcript is required to learn in exact words what the decision was.

A TRIAL JUDGE'S CREDO MUST INCLUDE HIS AFFIRMATIVE DUTY TO BE AN INSTRUMENTALITY OF JUSTICE*

By: Judge Alfred Gitelson, Superior Court, Los Angeles
and Bruce L. Gitelson, The California Bar

[The authors hope this article will serve as some incentive for further study by the judiciary so that there will evolve a yardstick, an Oath of Hippocrates for the judiciary, which will then be known to, upheld, and expanded by counsel.

A condensed version of article originally published in 7 Santa Clara Lawyer 7 (1966).]

The concept of justice for all under equal law, equally administered, is not self-executing. It comes alive and exists when trial judges, dedicated to the credo that it is their affirmative duty to see that justice is done, render to every man his due, fairly and impartially, without bias, prejudice or passion, irrespective of race, color, creed, economic or social status.

Under our adversary system, only the trial judge impartially seeks the facts and the applicable law. Theoretically, counsel must cite all applicable authorities even though contrary to their contentions, but generally parties do not knowingly or willingly seek to propound law adverse to their interests. Because contested cases are in truth and in fact "trials by combat," the co-author, a trial judge, doubts that this should be required. Presumably, counsel are governed by ethical standards but, retained to win, often feel impelled by circumstances to assert extreme positions. Somewhere between each side's contentions lies the relevant law. One party may be represented by counsel of greater ability, resourcefulness and diligence or may be possessed of greater economic means than his adversary, with the result that the quality of preparation and presentation is not evenly balanced. The only possible equalizer is the trial judge.

The objective of the law and courts is to do justice. The trial judge cannot be negative. He fails in his purpose or function if he is merely an umpire, a referee, a symbol, or an ornament. The cause belongs to the parties, not to counsel. Mere inadvertence, or the lack of either diligence or competence on the part of counsel, should not be allowed to reduce the trial to a farce or sham.

To the extent possible, every action should be decided on its merits. This frequently requires the trial judge to exercise affirmative powers and duties with respect to pleadings, evidence, conduct of counsel, witnesses, and whatever may be reasonably necessary during trial to prevent prejudice to a party or a miscarriage of justice. For instance, upon his own motion, he should direct attention to defects in pleadings and grant leave to amend, or to evidentiary matters overlooked and within reasonable limits, by proper questions, bring out facts, thereby fairly performing a function of his office.

He performs a proper judicial duty, sua sponte, when he strikes irrelevant and redundant allegations, incompetent evidence, improper argument of counsel or dismisses a fictitious, frivolous or sham action.

He well serves the interest of justice when he protects witnesses from abusive or improper interrogation, explains the privilege against self-incrimination, restricts examination into immaterial and collateral matters, informs witnesses in proper instances of their right to use a written memorandum made from personal knowledge to refresh their memory while testifying, and requires counsel to excuse them upon completion of their testimony.

The fundamental duty "to do justice" requires the trial judge to be most vigilant and vigorous in protecting individuals, as well as minority and majority groups, against encroachment upon their fundamental liberties. This duty is not delegable to either counsel or appellate tribunals.

Upon his own motion, the trial judge should, in furtherance of justice and though it be against the will of counsel, suggest, and even require, the attendance of witnesses and the production of evidence which may prove or disprove facts in controversy. He should also appoint and call expert witnesses. It cannot be gainsaid that the parties' experts are consciously or unconsciously conditioned to testify in support of the contentions of the side by which they are retained, regrettably without full regard for the ethical duty of attempting honorably and learnedly to testify to the application of the principles of their profession to the facts involved. Impartiality is only in the self interest of the expert appointed by the trial judge.

A trial judge is bound to make and to advise the parties of the basis of his decision by memorandum opinion, however short, and by precise, specific findings of fact and conclusions of law he has found -- not those prepared by counsel merely in an attempt to affirm the judgment on appeal. Litigants are entitled to know that their cause was not resolved by a decision as a result of bias, prejudice, personal philosophy, or the arbitrary exercise of autocratic power.

The affirmative duties of the trial jduge arise and exist from the ever-evolving concept of his role in the rendition of justice. The era of fear of trial judges because of bribery, corruption, political pressures, social or economic status, or the arbitrary exercise of power is diminishing. Each cause calls for and requires the intense interest, diligence, sincere desire and objective to do and render justice not merely for or restricted to the purposes of the trial court, but to allow and assist in an appeal. It is - or should be - the desire and hope of every trial judge that if he has failed to do justice his judgment will be reversed. It is not an answer, nor is it compatible with the theory and objective of the administration of justice, that the trial judge doesn't have time to do the things "he would like to do" or which "he knows he should do." Master calendars may seek to justify their existence by statistics of speed of calendaring and assigning cases. But once a case is assigned for trial, the parties are entitled to, and the affirmative duties of the trial judge compel him to give to the parties and to their cause, the deliberate hearing, study and consideration which the legal and just disposition of the cause reasonably requires. Just as ethics of the market place are not necessarily the ethics of the court, neither are the rules and mechanical facilities designed for increasing production in our industrial society to govern the trial of a cause. The essence of justice is its quality. Its rendition is handmade, laborious and even tedious, but personal and individual.

Though precedent and authority too numerous to cite here exist for all of the foregoing, true justification comes not from precedent but from the concept and obligation of the trial judge's credo.

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*8 TRIAL JUDGE'S JOURNAL 1 (January, 1969)

2. Despair generated by the cold-blooded lawlessness that is discovered to rule the interrelationships and calculations of court officials. The network is very complete. The odds that the victim can discover a higher official of integrity who has the power and a willingness to intervene in the defense of the victim in any way are pretty low.

3. An emotional state deliberately provoked by insult, humiliation, threats, mockery, fear, injustice, etc. for the purpose of rendering a false impression before the court, and which reduces the victim to a defensive state of numbness or an overt reaction for which the victim is then castigated.

4. A lack of funds with which to bring a confrontation of the malpractice in another or a higher court. Funds wasted in the first hearing often preclude any hope of another.

5. The lack of legal representation that is willing to be loyal to the malpractice victim and to formulate a legal presentation that will confront it.

When the judge is not held responsible for the quality of litigation in his courtroom, or when he is not upright in his own decision-making processes , or when he is more sensitive to minor improprieties in courtroom demeanor than blatant misuse of legal powers invested in attorneys as they deny due process, these five conditions listed above exercise the overwhelming authority of the courtroom, not the judge.

No judge has the right to demand obsequiousness like a petty tyrant. Judges are public servants of the California people, and their authority and their dignity is predicated upon their upright deeds.

The litigant who has an excellent citizenship record (represented by a 30-year employment, credit, and police record) and who has never been "obstreperous" before, deserves to be heard out by the judge when she complains that perjury and fraud are corrupting her case. A channel of communication needs to be devised because it is very possible that the victim is the only person in the case who is telling the truth, that the lawyers together are denying a hearing of her interests and rigging the litigation's outcome.

C. Provide Jack Frankel's office with the authority necessary to penalize judges who fail to carry out the work of their office because of laziness or of moral turpitude. Use the Gitelson Creed to define judicial misconduct As in the case of lawyers, fine judges percentage points of their gross salaries and give that award to the judge's victim.

D. Prevent prejudiced judges, about whom complaints of demonstrable prejudice have been registered in the past, from hearing cases that will expose that particular group to the known prejudice of that particular judge. For example, direct Ralph Gampell to prevent "women-haters" from adjudicating the dissolutions of marriage.

E. Require that the judge - not the litigants and not their counsel - write out the reasoning by which the judge reached his decision.

F. If, before the time of signing the Interlocutory decree, the judge discover that he has been misled by counsel on one or both sides and that his reasoning is false or inadequate, require that the judge rescind his proposed decision and re-assign the case for a new hearing - or face intense disciplinary measures himself from the Commission on Judicial Performance. In other words, legislate the creation of a network of responsibility that will counterbalance the existing "cronyism" network.

7. Amend the California Constitution with an Equal Rights Statement which guarantees women equal standing before the court.

A. Spell out in carefully defined steps the method by which women who have been victimized because of their sex by lawyers and judges in litigation may seek the redress of this grievance in California courts. Vague references to the Equal Protection clause do not now adequately protect the rights of women in the courtroom.

B. Order that demographic and jurisprudential research be made on the disfranchisement and impoverishment of women that is accomplished by prejudicially determined adjudication. The states of New York and New Jersey have already made such studies. Superior Court Judge Michael E. Ballachey of Hayward presented his observations on this matter in CEB some three to five years ago. Fund the group known as Women in the Law to supervise the commission of this study.

C. At the same time, commission three additional studies:

1. Research the insidious polarization of society's traditional values that has been carried out from sexist perspectives. The "male" attitude which esteems the self-serving aggressive pursuit and the single value of money has been adopted as the single standard for court decisions by our male-domineered judiciary. By the same token, the so-called "feminine" values such as compassion, loyality, trust, etc. - which are the values which allow a society's members to cooperatively live together - are regarded as being too effeminate, too "wimpish" to be honored by being given any weight in adjudication.

Untrammeled male aggression, especially within marriage, is being regarded as "splendid entrepreneurship" by the judiciary instead of

"unlicensed exploitation" as it should be. Marriage is not a business opportunity within which an accountant husband should be allowed to "make money" at the expense of the wife. A woman's compassion, loyality and trust with regard for her husband's welfare should not be viewed by the court as a sucker's open invitation for exploitation by the husband.

By denying the existence of the traditional concept of "fiduciary trust established by the bonds of marriage," the courts have exalted "male aggression" and destroyed the legal representation of the true basis of marriage. The trust of men by women is biologically based; men are physically stronger and capable of more intense energy. If a stable marriage is to be established, the wife has to trust the husband, and wish to take care of him. There is no way to legislate the reality of that relationship out of existence.

By exalting "money" and "aggression," the judiciary has debased the value of any standard by which "exploitation" might be defined. It is now impossible for a woman to received a fair trial in a California court. The courts regard a woman merely as a "maimed animal" (Aristotle) to be used for the money she can earn, the housework she will do, and the sexual services she will provide - until she is "dumped" and replaced by a younger model by her husband. She is a subclass of citizen, at best a indentured servant or peon, to be demeaned in litigation and dispossessed of her property.

By the same standards and for the same reasons, it is also impossible for the "public's interest" as it is invested in our laws to receive a fair trial, an honest hearing of its interests. Both women and the general public have been deliberately handicapped to the point of disfranchisement by judiciary's monomanaic "interpretation" of money as the supreme societal value. Accordingly, there are no usury laws, no anti-trust laws, no environmental control laws, next to no power in consumer advocacy groups, and no end of wasted taxes fraudulently spent for graft and special interests - to same a few; there are others - all dependent upon manipulations by lawyers in our courts, and protected by threats of massive law suits.

The extreme representations of male "aggression" and "money" now so completely rule the attitudes, the calendars, and the service provided by the courts that courts are mainly concerned with litigation concerning the privileges of the criminal and of the wealthy. The legal rights of those two groups are given every consideration, while the legal rights of women and the public are given short shift, or none at all.

The California Bar tailors its attitudes to accomodate "where the money is." Their ethical code can accomodate any "enterprise," even the most questionable, as the "legal service of representing the client's best interests" regardless of how lawless or immoral the client's objectives are. Any amount of chicanery can be used to make the questionable enterprise win, and bar members can duck all responsibility for "upholding the law," enacted law which is the legal expression of the public's well-being. All the lawyer has to say is that "a lawyer's first duty lies in his allegience to his individual client." He can deny the interests of women and the public by saying, " Listen, your case hasn't got any money in it so don't bug me. I'm in this business to make money. I leave the principles to somebody else."

In short, the bar is a syndicated championing of criminal and wealthy privilege because that is "where the money is." The public - and particularly women, who are paid lower salaries - just "haven't got it," unless the lawyer can hook into public tax money for its payoff.

At the same time court attitudes have been transferred to society at large, with the result that merciless social behavior according to that same single-mindedness "I got mine" is now the dominate stance of both offensive and defensive attitudes in all classes of society. Society's attitudes are ultimately derived from the principles validated in court decisions. People tailor their lives to fit them just as they shape their lives to fit the tax codes.

2. Research the dehumanizing effect that long-term careers in legal practice can have on some types of personalities. Some personalities are reduced to a sort of psychopathic "Rambo" state. While this state

of mind may be admired by the thoughtless for the profits its vicious style of "clever lawyering" can amass, its mind-set is more akin to the desire for dominance of the serial killers: it experiences thrills when it preys on helpless people, it has no capacity for humane feelings, and its professional reputation is built on a compulsive addiction which actually has no relationship to money earned.

Use the study to identify those lawyers who need psychiatric counseling because they lack the ethical character to be trusted with the power of attorney in the courts. Require these lawyers seek counsel with an ongoing surveillance system. At the present time, the secrecy of the bar's complaint/discipline system means the Californian public is provided no forewarning, no protection, and no rescue from these "white-collar" criminals who are in the last analysis psychopathic thugs. Women, children, the elderly, the poor, the uneducated, the gullible, and politically depressed minorities are targeted as their certain victims.

3. Investigate the sexist bias of the California Supreme Court refusal to consider issues involving sexually biased decisions made by lower courts. That bias sets the tone of decisions throughout the entire state. While there is a Civil Rights section under the Attorney General Office, it is effectively inoperative in this area.

8. Address and amend the unconstitutionality inherent in ambiguously written law such as in the example of the California Family Law Act.

When the import and directive of a statute are unclear, limitless opportunities for unconstitutional maladministration are discovered by the lawyers. The Legislature needs to review state law and either pointedly rewrite with specifics or amend for clarification. The Legislature should not duck the responsibility of lawmaking because it wishes to save face with its individual local constituencies. Ducking the responsibility of being specific, by "requiring judicial interpretation to determine the law," hands the political power inherent in lawmaking to the judiciary system. California ends up with a "government by oligarchy" composed of court officials.

The California Family Law Act of 1970 provides a locus classicus for hidden unconstitutionality that is in addition to its effective impoverishment of women that is documented by Lenore Weitzman's definitive study "The New Divorce: The Illusion of Equality in No-Fault Divorce" and other studies made with Carol Bruch of U.C Davis Law School, which have been published in a book, The Marriage Contract, by Da Capo Press, N.Y.

The Family Law Act of 1970 is unconstitutional in the following ways:

A. The abrupt change in commitments assumed by the spouses by their pre1970 marriage gave an unconscionable advantage to husbands who had taken total and absolute control of the couple's financial matters for the decades prior to 1970. By the new law, the husband was no longer held accountable for any kind of financial trusteeship of the wife's interests, so that in effect any heretofore secret mismanagement of their financial affairs that had benefited the husband alone was suddenly declared legitimate.

At the same time the wife's right to share in the control of the couple's financial management was not enacted until 1975, but she was held legally responsible for her husband's separate financial acts until 1978. Thus the financial rights of wives of older marriages were legally wiped out without any means of legal recourse for the fraud that had been committed under an exploitation of the fidiciary trust the two spouses had contracted when they married. Even quasi-CPA's (who are not CPA's) were not held responsible for the use of their professional knowledge in defrauding their wives.

Such a husband was not held responsible for misinformation and other forms of deceit told to the wife in order to induce her compliance with decisions that were not in her best interests. Nor was he held responsible for emotional manipulation and harrassment as the techniques he had used to further induce her compliance. Nor was he held responsible for deficit spending of the community property arranged to benefit himself alone. We are forced to recognize the power of deficit spending very clearly today.

Under the old marriage law the husband could have been prosecuted easily; under the new law he was declared to have the right to "cheat his wife as much and in any way he could devise," as is being taught currently in CEB courses in Family Law.

B. The Family Law Act's phrase "misappropriation of funds" provides no directives to a litigant who is held responsible for directing her attorney as to how to proceed with such a claim. As a result, the phrase becomes a tool for sophistry; it is interpreted first one way and then another, sliding from one strategy for action to another, but always requiring the involvement of some means and method that is not being addressed at that (any given) moment, until it is "too late now."

If lawyers can claim (or pretend) ignorance regarding the correct method with which to proceed with this three-word phrase in the wife's defense, then it is unconstitutional to proceed with the court's legalization of the husband's defrauding of the wife. Such decisions are both immoral and illegal.

C. Crimes otherwise clearly defined and prosecuted under the California Penal Code are regarded as nonentities within the context of marriage. Marriage is regarded as a lawless state in which any type of male persecution of a woman may occur unabated without fear of being made to assume legal responsibility for it.

The prohibition of all testimony regarding the physical and emotional harrassment and manipulation of the wife, even though such "harrassment and manipulation" served as the means by which the husband "misappropriated the funds," is unconstitutional - because the wife is prevented from defending herself, from stating and presenting evidence of her case to authorities, and from securing a redress of grievances for herself. Which is to say, the denial of the testimony is a denial of the civil rights of due process, a redress of grievances, and the right to own private property which is legitimately defended by government.

The marriage contract is not a "contract" as "contracts" are otherwise defined by law and honored by the courts; it is a worthless piece of paper to be used only as a conveyance to the male of a license to exploit. Expressed in lurid terms, it is a license to financially rape his wife, while the bar's ethical code is a license for the gang-action by unethical colluding lawyers who are enriching themselves by assisting the husband by "holding the woman down." Such ugly metaphors accurately portrays this type of contemporary litigation under the terms of the Family Law Act. When divorce cases are taken on a contingency basis, the bar's ethical code is permiting an unscrupulous opposing lawyer to take a percentage of every cent he can gouge out of the wife by whatever means he can devise - which is "profit by theft" by anybody's definition but a lawyer's.

All Legislative lip service to the contrary, it is unconstitutional to so debase, by deceitfully manipulative law, the major institution on which the continuation of organized society depends.

And it is unconstitutional to write a law that provides lawyers with so many opportunities to practice so unethically for immoral reasons.

9. Address and amend the false assumptions of the Legislature.

A. The judiciary is not speaking the same English language that the Legislature uses to comunicate the statutes it enacts. Words, phrases, traditional principles and ideals, traditional definitions of crimes are all very different and sometimes nonexistent (negated altogether). For example, "lying" and "thieving" as crimes do not exist any more, because, it is rationalized by the courts, "everybody lies and steals." By the same token, there is no such thing as "sworn testimony" anymore, in depositions, on trial transcripts, on IRS returns, etc.

B. The adversarial system as it is currently practiced in California is not resulting in fair trials. Other factors and conditions peculiar to Californian "practice of law" (such as the bar's ethical code) defeat the fairness that is theoretically implicit in debate between advocates. California's version of "law" is peculiarly its own and very peculiar (suspect) as well. The lawlessness of the Wild West did not disappear with the passing of the frontier.

C. Enacting a law and printing it in an official code does not mean that that law as so written and printed is being administered in Californian courts. Written law and practiced law are two totally separate and distinct entities.

D. Malpractice cannot be detected from the "paperwork" of a case, especially when the litigation has been rigged by lawyers on both sides. In most cases malpractice is accomplished orally, which means the laws defining the requirements for an accusation of malpractice are actually defending malpractice. Malpractice needs to be defined by withheld evidence, illogical turns in procedure, a lack of integrity between the situation and the decision (a lack of justice), and the emotional state of the victim with regard to the decision. Victims after such a trial can be so shocked that they cannot articulate anything. Malpracticing lawyers count upon the appearance of this state, and expand and exploit it.

E. The bar should not be expected to police itself; such an expectation is too much to ask of human nature, and especially of a trade union that is intent upon expanding its franchised "right to work" in the sphere in which it already controls the power of life and death over the rest of us. Malpractice is financially and politically the most lucrative form oflegal practice today; its power in the courts "makes very powerful friends." The bar will never willingly surrender any part of that franchise.

F. A fine of two thousand dollars means little or nothing to a lawyer. For the "average" wage earner in America, people like me, that sum means a month's wages. For a lawyer at $100 an hour, it represents two to three days' work, and many lawyers earn twice and three times the amount $100.

Since "money" is the only language that communicates with lawyers, the Legislature needs to speak "it" with authority. If lawyers were fined percentage points of their gross (not net) income and those points were expressed in increments of 5% (such as 5, 10, 15, etc.), lawyers might suddenly be moved to recognize the seriousness of the effects of their malpractice in other people's lives.

An increase use of the penalty of disbarment would also bring lawyers back to reality, especially if disbarment were meeted out in increments of two years (beginning with two years - 2, 4, 6, etc.), and coupled with the disbarment, a requirement that the lawyer show that he gainfully earn his living at another type of employment during that period - that is, IF the lawyer hoped to have his license to practice law reinstated again at the conclusion of those years.

G. The finality of court decision should not be regarded the be-all and end-all of the court's service to Californian society. When decisions that have been reached by corrupt means are defiantly upheld because the court regards any complaint of that corruption as a challenge to its authority, then the court's own attitude is not doing the California's judiciary system any favors. The court is denying the validity of the concept of "the loyal opposition." Those who are honest will strive to keep our courts honest; they will listen; they will regard justifiable resentment and criticism as a source of ideas for improvement.

It is true that finality is the basis of the courts' political power. Accordingly, a judge may have the political power to tell me that he will force me to accept the denial of my civil rights that his malpracticing friends in collusion with one another have arranged to befall me.

But that judge does not have the political right to tell me that. Such a statement is counter to every principle of our government. It is not within the scope of a judge's "discretion" to regard "injustice" as too much trouble and too time-consuming to straighten out. No judge and no court has the political right to dismiss offhandedly an individual's legal rights as a "regretable but unavoidable sacrifice" for the continuity of his calendar, or the the stability of the "system," or the vested interests of his cronies' legal careers.

H. The California Legislature is absolutely alone in this. We have disbanded our federal government, which heretofore could have been counted upon to remind us of the principles of this nation. But no longer.

Lowell Jensen of the Justice Department's Criminal Division is not going to be willing to regard lawyers as white-collar criminals operating through the medium of the courts no matter what they do, even though such white-collar crime is suppposedly his speciality. William Bradford Reynolds is already not demanding the recognition any citizen's civil rights of any kind anywhere, and the U.S. Commission on Civil Rights is an absolute nullity - as is California's Commission on the Rights of Women. James Miller and his successor are not going to prosecute the cartel exercised by lawyers against the public interest under the antitrust laws, and "Judge" William Webster of our FBI is not going to regard any activity as treasonous if such an accusation might make political waves before he is appointed to the U.S. Supreme Court. There is no point in considering Edwin Meese. All these people should help you if they did their appointed job, but they aren't going to.

In the past, California has been the bell weather of new ideas and innovative solutions such as the Commission on Judicial Performance, no-fault divorce, and the "taxpayers' revolt." The question now is whether the California Legislature can find within itself the strength to correct and discipline its biggest financial contributors to its political campaigns in order to protect the public from legal malpractice.

I. There is a morality in this country that will not be denied. That morality is not restricted to the ceremonious formalities of organized religion. It is rather the honesty expressed by the honest use of language, of honest purposes reached by honest means, of honest relationships between people.

Our government, both state and federal, cannot hope to survive without that honesty and that morality. When the courts are used for illegal and immoral purposes, and the Legislature winks at it and the public fails to express its wrath concerning it, then both are guilty of nonfeasance, for not doing what is its duty to do. I, speaking to you through this testimony, am the public. More than a California litigant, I am an American citizen appauled at the lawlessness tolerated of Californian lawyers, and I am not alone. If you, the Legislature, can not hear our righteous anger in this testimony, you must be deaf, dumb, and blind.

For some six years I have written to you and every office in the Californian government even remotely responsible for the courts about these matters. The printing and mailing costs of those many letters have cost me thousands of dollars. If you now do not take steps to rectify these wrongdoings, then I will accuse you of malfeasance, of profiting too greatly yourselves by the lawyers' malpractice to represent the public's interest with honest government. Moreover, I will accuse you, in your failure to take action, of the even more serious crime of failing to hand on to our children our most precious possession, our democratic form of government.

Nancy G Rudis
September 24, 1985

3555 Aero Court
San Diego, CA 92123
September 30, 1985

California Legislative Subcommittee
on the Administration of Justice

Attention : Lettie Young, Counsel

Madam Chairman :

My limited experience with the legal system indicates that the major problem is one of philosophy. By and large, lawyers are not able to solve simple problems in logic. They do not understand what is meant by " emperical evidence for the truth of a proposition.

This is clearly in evidence when " A " asserts that " B " is unethical . To establish this premise involves inductive reasoning: the universal proposition is established by an exhaustive enumeration of all the instances subsumable under it. But, of course, nothing can be done before the meaning of unethical is understood.

In the " California Civil Procedure during Trial " , Handbook No. 13 of the series entitled ' Continuing Education Of the Bar ' the subject of EITHICS is discussed at some length. But not logically.

The definition of ETHICS in Black' s Law Dictionary is " What is generally called the " ethics " of the profession is but consensus of expert opinion as to necessity of professional standards ." This clearly says that legal ethics is nothing more than specified procedures. If this is accepted, then the entire program of Attorney Discipline may be programmed and solved in microseconds by computers.

John B. Smyth

John B. Smyth

STS

I am Sarah T. Staples, a 70 year old who has worked all my life - looking forward to live quiet and peacefully in my old age in a small home on three acres of land in the county of San Diego since the early 1950's.

I had the good fortune of never being involved with attorney's. For this reason, experience had not prepared me to deal with the routine duplicity and dishonesty I've encountered in the last several years.

In order to suppliment my Social Security check, I wanted to sell an acre of my property for the purpose of establishing my security. When I had to refinance the property for the purpose of lot-splitting, I did not know that I had an easement problem. The people who wanted to buy the acre had an attorney who sent me a message that since I had used the road since the early 50's I was entitled to an easement. Without my knowledge and without being retained by me, he sent letters to the three neighbors demanding that they grant me an easement and that if they didn't I would sue them. The neighbors immediately got an attorney themselves. Due to my inexperience and lack of knowlege plus my confidence in the ethics of lawyers I was convinced to retain him. The litigation issues with my neighbors became complicated - for which I had to pay.

My lawyer didn't even tell the engineers or me to have the road surveyed - which until it was <u>too late</u> - they did survey and it was discovered that a part of the so-called easement actually belonged to me. Had everything been initiated properly, I would have my home and security today, instead of being heavily indebt...no home and no security.

Sarah Thetis Staples • P.O. Box 1093 • Escondido, California 92025

The lawyers incompetance threw me out of my home. I am now homeless with failing health, a husband also who is in poor health, living in a rented room, without any security.

Also, through the extended time of all these problems I had to get a high interest rate hard money loan. Because of the stress and pressures, I lost my job in 1980. I knew I had no answer, but to sell the property. A buyer was located to purchase the property, but the selling of the property was not accepted by the lawyer. He sabotaged the sale and recommended the next day that I list the property with a friend of his who was in the real estate business.

When this happened, the loss of 185,000 cash which would have put me in a small mobile home after debts were paid, I felt the need of someone else to help me. I called the Bar Association and was not helped at all. I saught help over and over again, but was totally ignored because I could not pay their fees. I found an attorney eventually that seemed to advise properly. All his actions were a total loss to me. He had the opportunity to get me and my husband a life estate, but he blew it by not following my emphatic re-uest. The life estate was lost because of his refusal to follow instructions.

Lawyers complicate your problems. They work together for their own benefit. The purpose of this is ~~to get or~~ simply GREED. The greed of lawyers makes it obvious that fees for solving cases speedily means small fees....a fact that they agree will not allow them to countenance. The monopoly and close shop aspects of the present lawyer system represents a conspiracy and tyranny.

A citizens body of non-attorney's should over-rule the Bar Association to expose its institutionalized and routine cover-up for the systemized victimization of the general public by attorneys. To ask the Bar Assn. to police attorneys is like asking the"Fox to guard the Chicken Coop". Attorneys should be denied the right to lengthen law suits, therefore, denying justice to the people who retain their services and pay with their taxes the judicial systems, again composed entirely by attorneys. The system of delayed justice enforced

by the attorneys to satisfy their greed..."Delayed Justice" means "No Justice", violated every principal embodied in the Declaration of Independance. America is full of Senior Citizens today, like myself, who have been VICTIMIZED and made destitute by the manipulation of attorneys.

When I read about all the suffering being endured today by these innocent people executed by the systems of injustice... I grieve with them.

All systems of Injustice must change. It will be through the exposure of what is going on by VICTIMIZED INNOCENT PEOPLE.

Sarah T. Stapleton
9-30-1995

EXHIBIT A

Assembly
California Legislature

Subcommittee on the Administration of Justice

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LETTIE YOUNG
COUNSEL

ROSEMARY SANCHEZ
SECRETARY

LLOYD G. CONNELLY
CHAIRPERSON

Date: September 25, 1985

To: Chairman and Members of the Assembly Subcommittee on the Administration of Justice
Chairman and Members of the Assembly Judiciary Committee
Chairman and Members of the Senate Judiciary Committee

From: Lettie Young

Subject: Joint Interim Hearing on Attorney Discipline

On Monday, September 30, 1985, a joint interim hearing will be held by the Assembly Judiciary Subcommittee, the Assembly Judiciary Committee, and the Senate Judiciary Committee to investigate the attorney discipline function of the State Bar of California. The hearing is scheduled from 9 a.m. to 5 p.m. in the Sportee Room of the Town and Country Hotel, 500 Hotel Circle North, in San Diego, during the State Bar's Annual Meeting.

The purpose of this memorandum is to provide you with background information for the hearing. Related materials are included in this hearing packet.

Although clients with complaints of lawyer misconduct have had recourse in the State Bar since 1928, only recently has the discipline system come under heavy fire from the public and the media for protectionism, delay, and leniency. Attention has focused particularly on the backlog of 5,400 complaints filed with the Bar.

In response to this criticism, the State Bar has undertaken a series of reforms in the discipline system. It has, for example, sought improved management of its Office of Trial Counsel by authorizing new personnel and improved data processing capacity. It has also instituted a master calendar for trying cases. This year, it sponsored AB 1275 (Calderon), Chapter 453, Statutes of 1985, to revise discipline procedures under the State Bar Act (Business and Professions Code Section 6000 et seq.). It conducted examinations of specific aspects of the discipline system, such

as the delay and backlog and the investigation process. (See the excerpts from the Coyle Committee Report and the report on the Kroeker Report.)

The State Bar also requested additional financial support for further improvement of the processing and disposition of complaints. In SB 405 (Lockyer), it proposed an increase in annual membership fees for 1986 and 1987, of which a portion would be applied to the costs of discipline. SB 405 was subsequently amended in conference committee to (a) allocate a portion of a one-year only dues increase to discipline costs and (b) provide a new $10 fee for 1986 for discipline costs. When the proposal failed to gain passage before the close of this legislative year, it became a two-year bill, still awaiting Assembly approval of the conference committee amendments.

Many critics, however, contend that the State Bar's efforts are insufficient to clean up the perceived miasma of attorney discipline. They claim that the problem will worsen unless the discipline function is removed from the Bar and placed in an independent board or agency.

Observers generally contrast the regulation of other professionals, such as physicians, with that afforded lawyers, who, if they practice law in California, are required to be members of the State Bar. The basic differences are apparent. Licensing and discipline of other professionals are conducted by state administrative boards, for example, the Board of Medical Quality Assurance. Such boards are typically within the Department of Consumer Affairs. The State Bar, in contrast, is not an administrative board in the ordinary sense of the phrase. It in fact has constitutional status within the judicial branch of government, pursuant to Article VI, Section 9 of the California Constitution. The State Bar, under the State Bar Act, functions as an administrative arm of the California Supreme Court in matters of admission and discipline of attorneys. (See Business and Professions Code Sections 6064 and 6076.) The Act has been upheld against challenges based on violation of the separation of powers clause of the Constitution as to delegation of judicial power to an administrative body. Whereas discipline proceedings of other professionals are governed by the Administrative Procedure Act, attorney proceedings are governed by several other laws - the State Bar Act, State Bar Rules of Professional Conduct, State Bar Rules of Procedure, and Rules of Practice of the State Bar Court.

Some critics suggest that the duty of attorney discipline should reside instead with a new administrative board under the jurisdiction of the California Supreme Court. This recommendation, which was recently made by a majority of the Senate Task Force on the State Bar Discipline System, will be presented at the hearing. Since lawyers are officers of the court, owing not only the duty of fidelity to a client but also the duty of good faith and honorable dealing to the court, their discipline arguably should remain with the court.

Indeed, two recent decisions by the California Supreme Court confirm the dissatisfaction with the State Bar's discipline system. In Saleeby v. State Bar of California, 39 Cal.3d 547 (1985) mod. 85 Daily Journal D.A.R. 2890 (August 15, 1985), the Court held that the procedures for administering the Client Security Trust Fund (to reimburse clients for losses caused by dishonest lawyers) failed to provide a record for judicial review and denied due process. The Court consequently ordered the Bar to formulate new rules. It also directed the Bar to reconsider its rule prohibiting the payment of attorneys' fees from any source for the prosecution of Client Security Fund matters and reformulate a rule permitting attorneys to receive compensation for their assistance. The plaintiff's attorney in Saleeby was entitled to an award of attorneys' fees under the private attorney general statute (Code of Civil Procedure Section 1021.5).

In the second case, In re Nevill, 85 Daily Journal D.A.R. 3178 (September 12, 1985), the Supreme Court ruled that the State Bar's recommended discipline of suspension and subsequent probation was inadequate for an attorney who had been convicted of voluntary manslaughter in the shooting of his wife. The Court concluded that disbarment was the more appropriate remedy.

This interim hearing will be primarily a forum in which to discuss, and seek solutions to, the controversial problem of dealing with attorney discipline in California. Witnesses have been asked to address the following policy and technical issues:

1. What is the State Bar's role in disciplining lawyers in California?

2. What is the structure of the State Bar lawyer discipline system, including the role of the Board of Governors, Board Committee on Admissions and Discipline, State Bar Court, Office of Trial Counsel, and Office of State Bar Court?

3. What is the relationship between the State Bar lawyer discipline system and (a) the California Supreme Court and (b) the California Legislature?

4. What are the steps in processing and disposing of a complaint filed with the State Bar against an attorney?

5. What reforms in the lawyer discipline system have been implemented by the State Bar since 1970? To what extent have the recommendations of the Coyle Committee and the Kroeker Report been adopted?

6. What are the American Bar Association Standards for lawyer discipline proceedings? To what extent does the State Bar meet these standards? Should the ABA's offer to evaluate the State Bar lawyer discipline system in California be accepted?

7. How does the State Bar lawyer discipline system compare with those in other jurisdictions in terms of (a) structure and organization, (b) time to process complaints, and (c) degree of discipline?

8. How does the State Bar lawyer discipline system compare with other California regulatory boards and agencies in terms of (a) structure and organization, (b) time to process complaints, and (c) degree of discipline?

9. Should an independent disciplinary board, separate and apart from the State Bar, be established to handle complaints against lawyers for professional misconduct? How would such an independent board operate? What changes in existing law would be necessary to establish such an independent system?

10. What is the cost of operating the State Bar lawyer discipline system and who pays for it? What are the State Bar's expenses in processing a typical disciplinary case? Should the proposal in AP 1260 (La Follette) be adopted?

11. Many critics claim that the degree of discipline in the State Bar lawyer discipline system is too lenient. What changes should be made regarding the degree of discipline?

12. The State Bar lawyer discipline system has been criticized as "secretive" or overprotective of the rights of the lawyers whom it is supposed to regulate. What changes should be made regarding the confidentiality of lawyer discipline?

13. Reportedly, the average lawyer discipline case takes 3½ years before final disposition. What are the reasons for this delay? What changes would expedite the processing of complaints?

14. What additional changes are needed to make the lawyer discipline system work properly and fulfill its purpose of protecting the public?

If you have any questions or need more information regarding the hearing, please do not hesitate to call me at 324-7593.

CHRONOLOGY OF THE STATE BAR DISCIPLINARY PROCESS

1928 Disciplinary process, using volunteers, is instituted, in conjunction with the state Legislature's passage of The State Bar Act in 1927. Chief among the state bar's original statutory purposes is regulating attorney admissions and discipline. In 1966, California voters write the state bar and its disciplinary function into the California constitution.

1929 In April, 1929, the second year the discipline system is in effect, it is noted that "complaints are fewer, and more than a majority of these are trivial." But the state bar's Board of Governors still is "confronted with the double duty of protecting clients against improper conduct of their lawyers and likewise of protecting lawyers against unfounded accusations of disgruntled clients," reports The Journal of the State Bar.

1928 to Early 1960s The system continues in what was then referred to as a "simplified" manner. Volunteer assistant secretaries screen disciplinary complaints and refer them directly to members of local administrative committees throughout the state for investigation. The local committees make the findings and recommendations in accordance with the facts, for dismissal, reproval or disbarment, to the state bar's Board of Governors, which receives the records in each case. The accused lawyer in person or represented by an attorney then argues his/her case to the board orally or in writing and is allowed to introduce any further relevant evidence. The 15 lawyers on the board serve as judges. Their recommendations then go to the Supreme Court.

Early 1960s The state bar begins to hire a few employees to screen disciplinary complaints. However, the emphasis on volunteers continues, particularly at the hearing panel level. All cases still are tried by volunteer examiners, but staff acquires the power to terminate matters on specific grounds.

1966 The state bar creates a disciplinary board of 15 volunteer lawyers and delegates to it the intermediate review functions previously exercised by the Board of Governors.

1970 An American Bar Association commission, headed by retired U.S. Supreme Court Justice Tom Clark, uses California's system as the basis for its model recommendations to improve lawyer disciplinary programs in other states.

Circa 1973 The state bar begins a staff examiner program, for the first time employing lawyers full-time to investigate and "try" disciplinary matters. Also about this time, responsibility for screening and investigating all matters is placed with the state bar disciplinary enforcement staff.

1973 The Board of Governors' ad hoc Committee on Discipline recommends substantial revisions to the disciplinary program, including the following that are implemented in whole or in large part:

*Establish procedures for identifying and routing out of the disciplinary system as early as possible those matters not likely to result in discipline.

*Consider increased public relations activity, such as preparing a pamphlet on the disciplinary process.

*Allow complainants and respondents to enter into stipulations for disposition before further formal proceedings occur or to conclude matters with a private reproval.

*Establish an expedited dismissal procedure on state bar motion after formal charges are issued.

*Adopt an admonition procedure for lesser offenses.

*Have experienced attorneys initially screen all complaints.

*Overhaul statistical record-keeping systems.

*Conduct improved education programs for referees.

1974 - 1976 The hearing panel size is fixed at one member unless either party, within a certain time, requests a three-member panel.

1976 The first major revision of the Rules of Procedure takes effect. Although the function of issuing notices to show cause to the accused remains with local investigation committees, a unified disciplinary board is created. Hearings are held before a three-member panel, whose decision becomes final unless intermediate review is requested. If it is requested, then the review panel makes a non-binding recommendation to the hearing panel. For the first time, stipulations as to facts and discipline and non-disciplinary disposition of an admonition are introduced into the system. Another first: Public members are appointed to the disciplinary board by the Board of Governors.

1979

January The State Bar Court is created by the Board of Governors to serve as a unified adjudicative body. The board delegates to the State Bar Court its adjudicative power in 13 different regulatory matters, including original disciplinary matters, the Client Security Fund and attorney-client mandatory fee arbitration.

1979 to September, 1984 Under the State Bar Court system, the Office of Trial Counsel screens all disciplinary matters and performs all investigative work. The State Bar Court's Investigation

Department referees determine whether reasonable cause exists to issue formal charges or whether the matter should be dismissed. Formal hearings are held before a panel of referees or the Hearing Department of the State Bar Court. Office of Trial Counsel attorneys present evidence against the respondent attorneys. In most cases, hearing panels consist of three referees, one of whom may be a non-attorney, unless the parties stipulate to a one-member panel. Mandatory, binding review of all formal proceedings is reinstituted within the State Bar Court in an effort to improve the quality and consistency of final State Bar Court recommendations and assure more public input in disciplinary matters. A Review Department, consisting of 15 members and including three public members, sits in bank, reviewing all Hearing Department decisions and all stipulations as to facts and disposition approved by the Investigation referee.

1979 The ABA establishes model standards for lawyer disciplinary procedures, adopting many of California's pioneering practices, and recommends them to other jurisdictions.

1982 In January, the Board of Governors creates a Department of Probation, comprised of volunteer referees within the State Bar Court, to see that disciplined attorneys adhere to their probation conditions. Previously, compliance was monitored through affidavits by the disciplined attorneys, who were required to file quarterly reports that they had complied with the State Bar Act and the Rules of Professional Conduct. Under the new system, probation monitors, drawn from a pool of experienced public and attorney referees, supervise from one to three disciplined attorneys living in their city or county and work with them to set specific compliance criteria, schedule compliance reports, recommend early probation termination, if appropriate, to the Review Department, and otherwise assess the attorneys' compliance.

1983

July

Recognizing that complaints against lawyers are increasing as the state bar's membership grows, and that a significant backlog of complaints exists at the staff investigation level, the Board of Governors approves a multifaceted plan to reduce the complaint backlog. Among otner things, the plan gives Trial Counsel staff greater authority to dismiss meritless charges as well as allow nonlawyer investigators and paralegals to present complaints to investigation referees. The state bar's chief executive officer also creates a 10-member "backlog team" to assist in tackling the burden. The team begins its work in September.

October

A mandatory settlement conference program is adopted for formal disciplinary matters. Previously operating successfully on a voluntary basis, the mandatory conferences take effect in the 11 counties that in 1982 heard approximately 85 percent of state bar disciplinary matters. They now are conducted weekly on a master calendar basis at the state bar's San Francisco and Los Angeles offices. Also, rule 956 of the California Rules of Court goes into effect, providing that in reprovals, attorneys may have certain duties (such as returning clients' files and passing the Professional Responsibility Examination) imposed upon them.

November

A Subcommittee on Expediting the Disciplinary Process is appointed by Board of Governors' Committee on Adjudication and Discipline Chair Philip M Schafer. The nine-member subcommittee, chaired by U.S. District Court Judge Robert E. Coyle, is charged with examining all procedural aspects of the disciplinary process and seeking out inefficiencies at every point from the time a complaint is received to its final disposition.

1984

January — Microcomputers begin tracking cases in State Bar Court Hearing Department.

March — The Subcommittee on Expediting the Disciplinary Process issues a report with recommendations to solve problems of disciplinary case backlog and delay.

June — The Board of Governors adopts most of the subcommittee's recommendations, including proposals to:

*As a two-year pilot project, give staff attorneys in Trial Counsel authority to issue notices to show cause, a function previously performed by the State Bar Court's Investigation Department referees.

*Eliminate requirement for approval of stipulations by Investigation Department referees.

*Authorize Trial Counsel to issue admonitions.

*Create a master calendar system.

*Use one-person hearing panels, unless a three-member panel is requested by the parties.

*Use compensated referees in certain types of long or complex cases.

*Use a separate pool of referees to hear fee dispute arbitrations.

*The Subcommittee on Expediting the Disciplinary Process is extended for two years.

September — Recommended changes take effect.

December — The Board of Governors approves the addition of six investigators in the Office of Trial Counsel to help cope with the continuing increase in the number of disciplinary complaints.

KR/8072C
February, 1985

EXHIBIT C

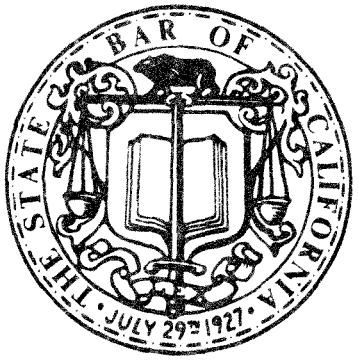
The California State Bar Act and Rules of Professional Conduct

RELATED CONSTITUTIONAL PROVISIONS

CALIFORNIA RULES OF COURT RELATING TO ATTORNEY ADMISSION AND DISCIPLINARY PROCEEDINGS

RELATED STATUTES REGARDING DISCIPLINE OF ATTORNEYS OR DUTIES OF THE STATE BAR

MINIMUM STANDARDS FOR A LAWYER REFERRAL SERVICE IN CALIFORNIA



THE STATE BAR OF CALIFORNIA

APRIL 1985

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CONSTITUTION OF CALIFORNIA
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Article VI

Section 6. The Judicial Council consists of the Chief Justice and one other judge of the Supreme Court, 3 judges of courts of appeal, 5 judges of superior courts, 3 judges of municipal courts, and 2 judges of justice courts, each appointed by the Chief Justice for a 2-year term; 4 members of the State Bar appointed by its governing body for 2-year terms; and one member of each house of the Legislature appointed as provided by the house.

Council membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term.

The council may appoint an Administrative Director of the Courts, who serves at its pleasure and performs functions delegated by the council or the Chief Justice, other than adopting rules of court administration, practice and procedure.

To improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, not inconsistent with statute, and perform other functions prescribed by statute.

The Chief Justice shall seek to expedite judicial business and to equalize the work of judges. The Chief Justice may provide for the assignment of any judge to another court but only with the judge's consent if the court is of lower jurisdiction. A retired judge who consents may be assigned to any court.

Judges shall report to the Judicial Council as the Chief Justice directs concerning the condition of judicial business in their courts. They shall cooperate with the council and hold court as assigned. (Adopted November 8, 1966. Amended November 5, 1974.)

Section 8. The Commission on Judicial Performance consists of 2 judges of courts of appeal, 2 judges of superior courts, and one judge of a municipal court, each appointed by the Supreme Court; 2 members of the State Bar who have practiced law in this State for 10 years, appointed by its governing body; and 2 citizens who are not judges, retired judges, or members of the State Bar, appointed by the Governor and approved by the Senate, a majority of the membership concurring. All terms are 4 years.

Commission membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term. (Adopted November 8, 1966. Amended November 5, 1974; November 2, 1976.)

Section 9. The State Bar of California is a public corporation. Every person admitted and licensed to practice law in this State is and shall be a member of the State Bar except while holding office as a judge of a court of record. (Adopted November 8, 1966.)

The State Bar Act

[PUBLISHERS NOTE: Unless otherwise indicated, statutes are effective on January 1 following enactment.]

An act to add Chapter 4, comprising sections 6000 to 6154, inclusive, to Division III and to add section 30013 to Division XXX of the Business and Professions Code, relating to the State Bar of California, its organization, government, membership and powers, the practice of law and the solicitation of legal business, and repealing acts and parts of acts specified herein.

Approved February 3, 1939. Statutes 1939, ch. 34, p. 347. In effect September 19, 1939. Amended Statutes 1939, ch. 980. (Sections amended subsequent to 1939 are indicated.)

The people of the State of California do enact as follows:

Section 1. Chapter 4, comprising sections 6000 to 6154, inclusive, is hereby added to Division III of the Business and Professions Code to read as follows:

CHAPTER 4. ATTORNEYS.

ARTICLE 1. GENERAL PROVISIONS

§ 6000. Short Title

This chapter of the Business and Professions Code constitutes the chapter on attorneys. It may be cited as the State Bar Act. (Origin: State Bar Act, §1.)

§ 6001. State Bar; Perpetual Succession; Seal; Powers; Laws Applicable

The State Bar of California is a public corporation. It is hereinafter designated as the State Bar.

The State Bar has perpetual succession and a seal and it may sue and be sued. It may, for the purpose of carrying into effect and promoting its objectives:

(a) Make contracts.

(b) Borrow money, contract debts, issue bonds, notes and debentures and secure the payment or performance of its obligations.

(c) Own, hold, use, manage and deal in and with real and personal property.

(d) Construct, alter, maintain and repair buildings and other improvements to real property.

(e) Purchase, lease, obtain options upon, acquire by gift, bequest, devise or otherwise, any real or personal property or any interest therein.

(f) Sell, lease, exchange, convey, transfer, assign, encumber, pledge, dispose of any of its real or personal property or any interest therein, including without limitation all or any portion of its income or revenues from membership fees paid or payable by members.

(g) Do all other acts incidental to the foregoing or necessary or expedient for the administration of its affairs and the attainment of its purposes.

No law of this state restricting, or prescribing a mode of procedure for the exercise of powers of state public bodies or state agencies, or classes thereof, including, but not by way of limitation, the provisions contained in Division 3 (commencing with section 11000), Division 4 (commencing with section 16100), and Part 1 (commencing with section 18000) and Part 2 (commencing with section 18500) of Division 5, of Title 2 of the Government Code, shall be applicable to the State Bar, unless the Legislature expressly so declares. (Origin: State Bar Act, §2. Amended by Stats. 1957, ch. 1526; Stats. 1978, ch. 380.)

§ 6002. Members

The members of the State Bar are all persons admitted and licensed to practice law in this State except justices and judges of courts of record during their continuance in office. (Origin: State Bar Act, §§3, 7.)

§ 6003. Classes of Members

Members of the State Bar are divided into two classes:

(a) Active members.

(b) Inactive members.

(Origin: State Bar Act, §4.)

§ 6004. Active Members

Every member of the State Bar is an active member until as in section 6007 of this code provided or at his request, he is enrolled as an inactive member. (Origin: State Bar Act, §§5, 6. Amended by Stats. 1957, ch. 737; Stats. 1977, ch. 58.)

§ 6005. Inactive Members

Inactive members are those members who have requested that they be enrolled as inactive members or who have been enrolled as inactive members by action of the board of governors as in section 6007 of this code provided. (Origin: State Bar Act, §5. Amended by Stats. 1957, ch. 737.)

§ 6006. Retirement from Practice; Privileges of Inactive Members

Active members who retire from practice shall be enrolled as inactive members at their request.

Inactive members are not entitled to hold office or vote or practice law. Those who are enrolled as inactive members at their request may, on application and payment of all fees required, become active members. Those who are enrolled as inactive members as in section 6007 of this code provided may become active members as in said section 6007 provided.

Inactive members have such other privileges, not inconsistent with this chapter, as the board of governors provides. (Origin: State Bar Act, §8. Amended by Stats. 1957, ch. 737; Stats. 1977, ch. 58.)

§ 6007. Involuntary Treatment or Confinement; Enrollment as an Inactive Member; Restoration to Capacity

(a) When a member requires involuntary treatment pursuant to the provisions of Article 6 (commencing with section 5300) of Chapter 2 of Division 5 of, or Part 2 (commencing with section 6250) of Division 6 of the Welfare and Institutions Code, or under an order pursuant to section 3051, 3106.5 or 3152 of the Welfare and

Institutions Code he or she has been placed in or returned to inpatient status at the California Rehabilitation Center or its branches, or he or she has been determined insane or mentally incompetent and is confined for treatment or placed on outpatient status pursuant to the provisions of the Penal Code, or on account of his or her mental condition a guardian or conservator, for his or her estate or person or both, has been appointed, the board of governors or an officer of the State Bar shall enroll the member as an inactive member.

The clerk of the appropriate court concerned in any of the above proceedings shall immediately transmit to the board a certified copy of any determination, order, or adjudication for involuntary treatment or confinement or for the appointment of a guardian or conservator.

The clerk of the appropriate court concerned shall also transmit to the State Bar a certified copy of any notice of certification for intensive treatment filed with the court pursuant to Article 4 (commencing with section 5250) of Chapter 2 of Division 5 of the Welfare and Institutions Code.

The State Bar of California may procure a certified copy of any determination, order, adjudication, appointment or notice when the clerk concerned has failed to transmit one or when the proceeding was had in a court other than a court of this state.

In the case of an enrollment pursuant to this subdivision, the State Bar shall terminate the enrollment when the member has had the fact of his or her restoration to capacity judicially determined, upon the member's release from inpatient status at the California Rehabilitation Center or its branches pursuant to section 3053, 3109 or 3151 of the Welfare and Institutions Code, or upon the member's unconditional release from the medical facility pursuant to section 5304 or 5305 of the Welfare and Institutions Code; and on payment of all fees required.

When a member is placed in, returned to, or released from inpatient status at the California Rehabilitation Center or its branches, or discharged from the narcotics treatment program, the Director of Corrections or his or her designee shall transmit to the State Bar a certified notice attesting to such fact.

(b) The board shall also enroll a member of the State Bar as an inactive member in each of the following cases:

(1) A member asserts a claim of insanity or mental incompetence in any pending action or proceeding, alleging his or her inability to understand the nature of the action or proceeding or inability to assist counsel in representation of the member.

(2) The court makes an order assuming jurisdiction over the member's law practice, pursuant to section 6180.5 or 6190.3.

(3) After notice and opportunity to be heard before the board or a committee, the board finds that the member, because of mental infirmity or illness, or because of the habitual use of intoxicants or drugs, is (i) unable or habitually fails to perform his or her duties or undertakings competently, or (ii) unable to practice law without danger to the interests of his or her clients and the public. No proceeding pursuant to this paragraph shall be instituted unless the board or a committee finds, after preliminary investigation, or during the course of a disciplinary proceeding, that probable cause exists therefor.

In the case of an enrollment pursuant to subdivison (b) the board shall terminate the enrollment upon proof that the facts found as to the member's disability no longer exist and on payment of all fees required.

(c) The pendency or determination of a proceeding or investigation provided for by this section shall not abate or terminate a disciplinary investigation or proceeding except as required by the facts and law in a particular case.

(d) No membership fees shall accrue against the member during the period he or she is enrolled as an inactive member pursuant to this section. (Added by Stats. 1949, ch. 947; Amended by Stats. 1957, ch. 737; Stats. 1967, ch. 1667; Stats. 1968, ch. 1374; Stats. 1969, ch. 351; Stats. 1972, ch. 489; Stats. 1975, ch. 86, effective May 17, 1975; Stats. 1977, ch. 58; Stats. 1983, ch. 254.)

§ 6008. Property, Exemption from Taxation

All property of the State Bar is hereby declared to be held for essential public and governmental purposes in the judicial branch of the government and such property is exempt from all taxes of the State or any city, city and county, district, public corporation, or other political subdivision, public body or public agency. (Added by Stats. 1957, ch. 1526.)

§ 6008.1 Bonds, Notes, etc.; Liability; Approval

No bond, note, debenture, evidence of indebtedness, mortgage, deed of trust, assignment, pledge, contract, lease, agreement or other contractual obligation of the State Bar shall:

(a) Create a debt or other liability of the State nor of any entity other than the State Bar (or any successor public corporation).

(b) Create any personal liability on the part of the members of the State Bar or the members of the board of governors or any person executing the same, by reason of the issuance or execution thereof.

(c) Be required to be approved or authorized under the provisions of any other law or regulation of this State. (Added by Stats. 1957, ch. 1526.)

§ 6008.2 Bonds, Notes, etc.; Exemption from Taxation

Bonds, notes, debentures and other evidences of indebtedness of the State Bar are hereby declared to be issued for essential public and governmental purposes in the judicial branch of the government and, together with interest thereon and income therefrom, shall be exempt from taxes. (Added by Stats. 1957, ch. 1526.)

§ 6008.3. Default Upon Obligations; Rights and Remedies

The State Bar may vest in any obligee or trustee the right, in the event of default upon any obligation of the State Bar, to take possession of property of the State Bar, cause the appointment of a receiver for such property, acquire title thereto through foreclosure proceedings, and exercise such other rights and remedies as may be mutually agreed upon between the State Bar and the holder or proposed holder of any

such obligation. (Added by Stats. 1957, ch. 1526.)

§ 6008.4 Exercise of Powers by Board of Governors

All powers granted to the State Bar by sections 6001 and 6008.3 may be exercised and carried out by action of its board of governors. In any resolution, indenture, contract, agreement, or other instrument providing for, creating, or otherwise relating to, any obligation of the State Bar, the board may make, fix, and provide such terms, conditions, covenants, restrictions, and other provisions as the board deems necessary or desirable to facilitate the creation, issuance, or sale of such obligation or to provide for the payment or security of such obligation and any interest thereon, including, but not limited to, covenants and agreements relating to fixing and maintaining membership fees. (Added by Stats. 1957, ch. 1526.)

§ 6008.5 Pledge of Membership Fees; Prohibition Against Reduction of Maximum Fee

Whenever the board has pledged, placed a charge upon, or otherwise made available all or any portion of the income or revenue from membership fees for the payment or security of an obligation of the State Bar or any interest thereon, and so long as any such obligation or any interest thereon remains unpaid, the Legislature shall not reduce the maximum membership fee below the maximum in effect at the time such obligation is created or incurred, and the provisions of this section shall constitute a convenant to the holder or holders of any such obligation. (Added by Stats. 1957, ch. 1526.)

ARTICLE 2. ADMINISTRATION

§ 6010. Board of Governors in General

The State Bar is governed by a board known as the board of governors of the State Bar. The board has the powers and duties conferred by this chapter. (Origin: State Bar Act, §20.)

§ 6011. Number of Members

The board consists of 22 members. (Amended by Stats. 1975, ch. 874; Stats 1978, ch. 995.)

§ 6012. Bar Districts

For the purpose of conducting elections of the attorney members of the board, the state is divided into State Bar districts constituted by combining counties and designated by numbers, as follows:

(a) State Bar District No. 1, comprising the following counties: Del Norte, Humboldt, Mendocino, Siskiyou, Modoc, Trinity, Shasta, Lassen, Plumas, Sierra, Tehama, Glenn, Colusa, Butte, Yuba, Sutter, Lake, Nevada and Placer.

(b) State Bar District No. 2, comprising the following counties: El Dorado, Amador, Calaveras, Alpine, Tuolumne, Mariposa, Mono, Sacramento, San Joaquin, Yolo, Napa, Solano, Sonoma and Marin.

(c) State Bar District No. 3, comprising the following counties: Contra Costa, Alameda and Santa Clara.

(d) State Bar District No. 4, comprising the City and County of San Francisco.

(e) State Bar District No. 5, comprising the following counties: Stanislaus, Merced, Madera, Fresno, Kings, Tulare and Kern.

(f) State Bar District No. 6, comprising the following counties: San Mateo, Santa Cruz, San Benito, Monterey, San Luis Obispo, Santa Barbara and Ventura.

(g) State Bar District No. 7, comprising the County of Los Angeles.

(h) State Bar District No. 8, comprising the following counties: Inyo, San Bernadino, Orange and Riverside.

(i) State Bar District No. 9, comprising the following counties: Imperial and San Diego. (Amended by Stats. 1975, ch. 874.)

§ 6013. Membership from Bar Districts and Young Lawyer Associations

The attorney membership of the board is composed of:

(a) One member from each of State Bar Districts 1, 2, 5, 6, 8 and 9.

(b) Two members from each of State Bar Districts 3 and 4.

(c) Five members from State Bar District 7.

(d) One member from the membership of the California Young Lawyers Association appointed pursuant to section 6013.4. (Origin: State Bar Act, §1. Amended by Stats 1975, ch. 874; Stats. 1978, ch. 995.)

§ 6013.4 Members from Young Lawyers Association; Term; Vacancy

Notwithstanding any other provision of law, one member of the board shall be elected by the board of directors of the California Young Lawyers Association, from the membership of that association.

Such member shall serve for a term of one year, commencing at the conclusion of the annual meeting next succeeding the election and is eligible for reelection. A vacancy shall be filled by election in the manner provided herein for the unexpired term. (Added by Stats. 1978, ch. 995.)

§ 6013.5. Public Members; Appointment; Qualifications; Term

Notwithstanding any other provision of law, six members of the board shall be members of the public who have never been members of the State Bar or admitted to practice before any court in the United States. They shall be appointed through 1982 by the Governor, subject to the confirmation of the Senate.

Each of such members shall serve for a term of three years, commencing at the conclusion of the annual meeting next succeeding his appointment, except that for the initial term after enactment of this section, two shall serve for one year, two for two years, and the other two for three years, as determined by lot.

In 1983 one public member shall be appointed by the Senate Committee on Rules and one public member shall be appointed by the Speaker of the Assembly.

For each of the years, 1984 and 1985, two public members shall be appointed by the Governor, subject to the confirmation of the Senate.

Each respective appointing authority shall fill any vacancy in and make any reappointment to each respective office. (Added by Stats. 1975, ch. 874; Amended by Stats. 1979, ch. 1041; Stats. 1984, ch. 16.)

§ 6013.6 Attorney Employee of Public Agency; Member of Board of Governors; Job-Related Benefit

(a) Except as provided in subdivision (b), any attorney who is a full-time employee of any public agency and who serves as a member of the Board of Governors of the State Bar shall not suffer any loss of rights, promotions, salary increases, retirement benefits, tenure, or other job-related benefits, which the attorney would otherwise have been entitled to receive.

(b) Notwithstanding the provisions of subdivision (a), any public agency which employs an attorney who serves as a member of the Board of Governors of the State Bar may reduce the attorney's salary, but no other right or job-related benefit, pro rata to the extent that the attorney does not work the number of hours required by statute or written regulation to be worked by other employees of the same grade in any particular pay period and the attorney does not claim available leave time. The attorney shall be afforded the opportunity to perform job duties during other than regular working hours if such a work arrangement is practical and would not be a burden to the public agency.

(c) The Legislature finds that service as a member of the Board of Governors of the State Bar by an attorney employed by a public agency is in the public interest.

This section shall remain in effect only until January 1, 1990, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1990, deletes or extends that date. (Added by Stats. 1983, ch. 646.)

§ 6014. Election of Members; Successive Terms

Five of the attorney members of the board are elected each year for terms of three years each.

No person shall be nominated for, or eligible to, membership on the board who has served as a member for three years next preceding the expiration of his current term, or would have so served if his current term were completed.

Within the meaning of this section, the time intervening between any two successive annual meetings is deemed to be one year. (Amended by Stats. 1975, ch. 874.)

§ 6015. Qualifications of Members

No person is eligible for attorney membership on the board unless he is an active member of the State Bar and unless he maintains his principal office for the practice of law within the State Bar district from which he is elected.

One member of the board from State Bar District 7 elected in 1939, and any successor to this member, at the time of his election shall, and any member from the district may, maintain his principal office for the practice of law outside of the City of Los Angeles.

One member of the board from State Bar District 3 elected in 1941, and any successor to this member, at the time of his election shall, and any member from the district may, maintain his principal office for the practice of law outside of the City of Oakland. (Amended by Stats. 1975, ch. 874.)

§ 6016. Tenure of Members; Vacancies; Interim Board

The term of office of each attorney member of the board shall commence at the conclusion of the annual meeting next succeeding his election, and he shall hold office until his successor is elected and qualified.

Vacancies in the board of governors shall be filled by the board by special election or by appointment for the unexpired term.

The board of governors may provide by rule for an interim board to act in the place and stead of the board when because of vacancies during terms of office there is less than a quorum of the board. (Amended by Stats. 1968, ch. 545; Stats. 1975, ch. 874.)

§ 6017. Terms of Members from Respective State Bar Districts

Members of the board shall be elected for terms of three years as follows:

(a) In 1939, one member each shall be elected from State Bar Districts 4, 6 and 8 and two members from State Bar District 7.

(b) In 1940, one member each shall be elected from State Bar Districts 1, 3, 5, 7 and 9.

(c) In 1941, one member each shall be elected from State Bar Districts 2, 3 and 4 and two members shall be elected from State Bar District 7.

Thereafter, five members of the board shall be elected each year, each for three year terms, from the State Bar Districts in which vacancies will occur in that year by reason of the expiration of the term of office of a member theretofore elected thereto. (Origin: State Bar Act, §14.)

§ 6018. Nominations; Qualifications to Vote

Nominations of members of the board shall be by petition signed by at least twenty persons entitled to vote for such nominees.

Only active members of the State Bar maintaining their principal offices for the practice of the law in the respective State Bar districts shall be entitled to vote for the member or members of the board therefrom. (Origin: State Bar Act, §15.)

§ 6019. Elections

Each place upon the board for which a member is to be elected shall for the purposes of the election be deemed a separate office.

If only one member seeks election to an office, the member is deemed elected. If two or more members seek election to the same office, the election shall be by ballot. The ballots shall be mailed to those entitled to vote at least twenty days prior to the date of canvassing the ballots and shall be returned by mail to the principal office of the State Bar, where they shall be canvassed at least five days prior to the ensuing annual

meeting. At the annual meeting, the count shall be certified and the result officially declared.

In all other respects the elections shall be as the board may by rule direct. (Origin: State Bar Act, §15. Amended by Stats. 1981, ch. 836.)

§ 6020. Officers in General

The officers of the State Bar are a president, four vice presidents, a secretary and a treasurer. One of the vice presidents may also be elected to the office of treasurer. (Origin: State Bar Act, §10. Amended by Stats. 1957, ch. 551.)

§ 6021. Election; Time; Assumption of Duties

Within the period of 180 days next preceding the annual meeting, the board, at a meeting called for that purpose, shall elect the president, vice presidents and treasurer for the ensuing year. Such officers shall be elected from among the board members who have at least one or more years to complete their respective terms.

The newly elected president, vice presidents and treasurers shall assume the duties of their respective offices at the conclusion of the annual meeting following their election. (Origin: State Bar Act, §11. Amended by Stats. 1943, ch. 278; Stats. 1957, ch. 551; Stats. 1970, ch. 310; Stats. 1973, ch. 17.)

§ 6022. Secretary

The secretary shall be selected annually by the board and need not be a member of the State Bar. (Origin: State Bar Act, §18. Amended by Stats. 1970, ch. 510.)

§ 6023. Continuance in Office

The officers of the State Bar shall continue in office until their successors are elected and qualify. (Origin: State Bar Act, §19.)

§ 6024. Duties of Officers

The president shall preside at all meetings of the State Bar and of the board, and in the event of his absence or inability to act, one of the vice-presidents shall preside.

Other duties of the president, vice-presidents, and the duties of the secretary and the treasurer, shall be such as the board may prescribe. (Origin: State Bar Act, §17.)

§ 6025. Rules and Regulations; Determination as to Meetings and Quorum

Subject to the laws of this State, the board may formulate and declare rules and regulations necessary or expedient for the carrying out of this chapter.

The board shall by rule fix the time and place of the annual meeting of the State Bar, the manner of calling special meetings thereof and determine what number shall constitute a quorum of the State Bar. (Origin: State Bar Act, §27.)

§ 6026. Reports; Matters Considered at Meeting

At the annual meeting, reports of the proceedings by the board since the last annual meeting, reports of other officers and committees and recommendations of the board shall be received.

Matters of interest pertaining to the State Bar and the administration of justice may be considered and acted upon. (Origin: State Bar Act, §40.)

§ 6026.5. Public Meetings; Exceptions

Every meeting of the board shall be open to the public except those meetings, or portions thereof, relating to:

(a) Consultation with counsel concerning pending or prospective litigation.

(b) Involuntary enrollment of active members as inactive members due to mental infirmity or illness or addiction to intoxicants or drugs.

(c) The qualifications of judicial appointees, nominees, or candidates.

(d) The appointment, employment or dismissal of an employee, consultant, or officer of the State Bar or to hear complaints or charges brought against such employee, consultant, or officer unless such person requests a public hearing.

(e) Disciplinary investigations and proceedings, including resignations with disciplinary investigations or proceedings pending, and reinstatement proceedings.

(f) Appeals to the board from decisions of the Board of Legal Specialization refusing to certify or recertify an applicant or suspending or revoking a specialist's certificate.

(g) Appointments to or removals from committees, boards, or other entities.

(h) Joint meetings with agencies provided in Article VI of the California Constitution. (Added by Stats. 1975, ch. 874.)

§ 6027. Special Meetings

Special meetings of the State Bar may be held at such times and places as the board provides. (Origin: State Bar Act, §41.)

§ 6028. Payment of Expenses; Compensation

(a) The board may make appropriations and disbursements from the funds of the State Bar to pay all necessary expenses for effectuating the purposes of this chapter.

(b) Except as provided in subdivision (c), no member of the board shall receive any other compensation than his necessary expenses connected with the performance of his duties as a member of the board.

(c) Public members of the board appointed pursuant to the provisions of section 6013.5, public members of the examining committee appointed pursuant to section 6046.5, and public members of any disciplinary board appointed pursuant to section 6086.6 shall receive, out of funds appropriated by the board for this purpose, fifty dollars ($50) per day for each day actually spent in the discharge of official duties, but in no event shall this payment exceed five hundred dollars ($500) per month. In addition, these public members shall receive, out of funds appropriated by the board, necessary expenses connected with t

performance of their duties. (Origin: State Bar Act, §28. Amended by Stats. 1977, ch. 304, effective July 8, 1977; Stats. 1982, ch. 327, effective June 30, 1982.)

§ 6029. Appointment of Committees, Officers and Employees; Salaries and Expenses

The board may appoint such committees, officers and employees as it deems necessary or proper, and fix and pay salaries and necessary expenses. (Origin: State Bar Act, §22.)

§ 6030. Executive Functions; Enforcement of Chapter; Injunction

The board shall be charged with the executive function of the State Bar and the enforcement of the provisions of this chapter. The violation or threatened violation of any provision of Articles 7 (commencing with section 6125) and 9 (commencing with section 6150) of this chapter may be enjoined in a civil action brought in the superior court by the State Bar and no undertaking shall be required of the State Bar. (Origin: State Bar Act, §21. Amended by Stats. 1961, ch. 2033.)

§ 6031. Functions in Aid of Jurisprudence, Justice, Professional Matters and Public Relations

(a) The board may aid in all matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice, including, but not by way of limitation, all matters that may advance the professional interests of the members of the State Bar and such matters as concern the relations of the bar with the public.

(b) Notwithstanding this section or any other provision of law, the board shall not conduct or participate in, or authorize any committee, agency, employee, or commission of the State Bar to conduct or participate in any evaluation, review, or report on the qualifications, integrity, diligence, or judicial ability of any specific justice of a court provided for in Section 2 or 3 of Article VI of the California Constitution without prior review and statutory authorization by the Legislature.

The provisions of this subdivision shall not be construed to prohibit a member of the State Bar from conducting or participating in such an evaluation, review, or report in his or her individual capacity.

The provisions of this subdivision shall not be construed to prohibit an evaluation of potential judicial appointees or nominees as authorized by Section 12011.5 of the Government Code. (Origin: State Bar Act, §23. Amended by Stats. 1945, ch. 177; Stats. 1984, ch. 16.)

ARTICLE 2.5. CONFLICTS OF INTEREST

§ 6035. Definitions

Unless the contrary is stated or clearly appears from the context, the definitions set forth in Chapter 2 (commencing with section 82000) of Title 9 of the Government Code shall govern the interpretation of this article. (Added by Stats. 1978, ch. 752, effective September 14, 1978.)

§ 6036. Disqualification of Member for Financial or Personal Interest; Exceptions; Disclosure

(a) Any member of the board of governors must disqualify himself or herself from making, participating in the making of, or attempting to influence any decisions of the board or a committee of the board if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public or members of the State Bar generally or any significant segment thereof, on:

(1) Any business entity in which the member has a direct or indirect investment worth more than one thousand dollars ($1,000);

(2) Any real property in which the member has a direct or indirect interest worth more than one thousand dollars ($1,000);

(3) Any source of income including clients, other than loans by a commercial lending institution in the regular course of business, aggregating two hundred fifty dollars ($250) or more in value received by or promised to the member within twelve months prior to the time when the decision is made; or

(4) Any business entity in which the member is a director, officer, partner, trustee, employee, or holds any position of management.

(b) Any member of the board of governors must likewise disqualify himself or herself when there exists a personal nonfinancial interest which will prevent the member from applying disinterested skill and undivided loyalty to the State Bar in making or participating in the making of decisions.

(c) Notwithstanding subdivisions (a) and (b), no member shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the action or decision to be made. The fact that a member's vote is needed to break a tie does not make his or her participation legally required for the purposes of this section.

(d) A member required to disqualify himself or herself because of a conflict of interest shall (1) immediately disclose the interest, (2) withdraw from any participation in the matter, (3) refrain from attempting to influence another member, and (4) refrain from voting. It is sufficient for the purpose of this section that the member indicate only that he or she has a disqualifying financial or personal interest.

(e) For purposes of this article and unless otherwise specified, "member" means any appointed or elected member of the board of governors. (Added by Stats. 1978, ch. 752, effective September 14, 1978.)

§ 6037. Violations by Members; Validity of Action or Decision of Board; Termination of Member; Misdemeanor; Civil and Criminal Penalties

No action or decision of the board or committee of the board shall be invalid because of the participation therein by a member or members in violation of section 6036. However, any member who intentionally violates the provisions of subdivision (a) of section 6036 is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceeding five days, or by a fine not exceeding one thousand dollars ($1,000), or by both, and, if the member is an attorney member of the board, a certified copy of the record of conviction shall be transmitted to the Supreme Court for disposition as provided in sections

6101 and 6102. Upon entry of final judgment of conviction, the member's term of office on the board of governors, and duties and authority incidental thereto, shall automatically terminate. Any member who intentionally violates the provisions of subdivision (b) of section 6036 shall be liable for a civil penalty not to exceed five hundred dollars ($500) for each violation, which shall be assessed and recovered in a civil action in a court of competent jurisdiction brought in the name of the state only by a district attorney of a county in which the member resides or maintains offices and the penalty collected shall be paid to the treasurer of that county. (Added by Stats. 1978, ch. 752, effective September 14, 1978; Amended by Stats. 1981, ch. 714; Stat. 1983, ch. 1092.)

§ 6038. Conflict of Interest Provisions of the State Bar

Attorney members of the Judicial Council, members of the Commission on Judicial Performance who are not judges, and employees designated in the Conflict of Interest Code of the State Bar of California are subject to provisions of this article with respect to making, participating in the making, or attempting to influence, governmental decisions of their respective state agencies other than decisions of a judicial or quasi-judicial nature. (Added by Stats. 1984, ch. 727, effective July 1, 1985.)

ARTICLE 3. COMMITTEES OF THE STATE BAR

§ 6040. Local Administrative Committees in General

The board of governors may create local administrative committees and delegate to them such of its powers and duties as seems advisable. The board may in its discretion divide any committee into units or sections with concurrent powers and duties in order to handle the work of the committee more expeditiously. The board may also prescribe the powers of the committee and the units or sections thereof. (Origin: State Bar Act, §30.)

§ 6041. Membership

A local administrative committee shall be composed of active members of the State Bar. (Origin: State Bar Act, §30. Amended by Stats. 1981, ch. 836.)

§ 6042. Tenure of Members

The members of local administrative committees, except ex-officio members of the board of governors, shall hold office at the pleasure of the board. (Origin: State Bar Act, §31.)

§ 6043. Investigation, Findings and Report; Action by the Board

Each local administrative committee shall:

(a) Receive and investigate complaints as to the conduct of members.

(b) Make findings, whenever ordered by the board.

(c) Make recommendations and forward its report to the board for action.

The board may:

(a) Act upon the report.

(b) Take additional evidence.

(c) Set aside the report and hear the whole case de novo.

Notwithstanding the foregoing, a local administrative committee, its chairman, or a member of the staff of the State Bar, duly authorized by the board, may, in its or his discretion, require the filing of a verified accusation by a complainant stating specific charges and specific facts, or may require specific evidence or facts in support of the complaint, before proceeding with an investigation or hearing, as may be provided in rules of procedure adopted by the board. (Origin: State Bar Act, §32. Amended by Stats. 1963, ch. 1496.)

§ 6044. Subjects of Investigation

The board or any committee appointed by the board, with or without the filing or presentation of any complaint, may initiate and conduct investigations of all matters affecting or relating to:

(a) The State Bar, or its affairs.

(b) The practice of the law.

(c) The discipline of the members of the State Bar.

(d) The acts or practices of a person whom the board or the committee has reason to believe has violated or is about to violate any provision of Articles 7 (commencing with section 6125) and 9 (commencing with section 6150) of this chapter.

(e) Any other matter within the jurisdiction of the State Bar. (Origin: State Bar Act, §34. Amended by Stats 1961, ch. 2033.)

§ 6045. Other Duties

The local administrative committee shall perform such other duties in furtherance of the execution of the provisions of this chapter as the board may direct. (Origin: State Bar Act, §33.)

§ 6046. Examining Committee; Powers

The board may establish an examining committee having the power:

(a) To examine all applicants for admission to practice law.

(b) To administer the requirements for admission to practice.

(c) To certify to the Supreme Court for admission those applicants who fulfill the requirements provided in this chapter. (Origin: State Bar Act, §24.)

§ 6046.5. Examining Committee; Public Members; Appointment; Term; Rights and Duties

Two members of the examining committee shall consist of public members who have never been members of the State Bar or admitted to practice before any court in the United States. The nonattorney members shall be appointed by the nonattorney members of the board of governors and shall serve for a term of four years except that for the initial term after enactment of this section, the first nonattorney appointed shall serve for two years and the other for four years. Such nonattorney members shall have the same rights, powers and privileges as an attorney member except that such member shall not participat

in the drafting of questions submitted to applicants on the State Bar entrance examination. (Added by Stats. 1975, ch. 874.)

§ 6047. Rules and Regulations of Examining Committee

Subject to the approval of the board, the examining committee may adopt such reasonable rules and regulations as may be necessary or advisable for the purpose of making effective the qualifications prescribed in Article 4. (Origin: State Bar Act, §24.1.)

§ 6048. Committees to Take Evidence; Record of Hearing

The board may also appoint one or more committees to take evidence on behalf of the board and to forward the same to the board with a recommendation for action by the board.

A record of all hearings shall be made and preserved by the board or committee. (Origin: State Bar Act, §26.)

§ 6049. Power to Take Evidence, Administer Oaths, and Issue Subpoena

In the conduct of investigations and upon the trial and hearing of all matters, the board and any committee having jurisdiction, including the examining committee, may:

(a) Take and hear evidence pertaining to the proceeding.

(b) Administer oaths and affirmations.

(c) Compel, by subpoena, the attendance of witnesses and the production of books, papers and documents pertaining to the proceeding. (Origin: State Bar Act, §§26, 34.)

§ 6049.1. Records and Transcripts in Disciplinary Proceedings as Evidence

In all disciplinary proceedings in this State, certified or duly authenticated copies of findings, conclusions, orders or judgments made or entered in any court of record, or any body authorized by law or by rule of court to conduct disciplinary proceedings against attorneys, of the United States, or of any State or Territory of the United States or of the District of Columbia in any disciplinary proceeding therein against the same person, shall be admissible in evidence, and so far as relevant and material shall be prima facie evidence of the facts, matters and things set forth therein.

The duly authenticated transcript of the testimony taken in such out-of-state proceedings shall be admissible in evidence in any disciplinary proceeding against the same person in this State.

This section, except to the extent that it states or declares the law in effect prior to the effective date of this section, shall not apply in any disciplinary proceeding pending on said date in this State or thereafter commenced in this State against any attorney based on charges which were the subject of a disciplinary proceeding in this State against the same attorney prior to said date. (Added by Stats. 1945, ch. 349.)

§ 6049.2. Reception of Testimony Given in Contested Civil Action of Special Proceeding

In all disciplinary proceedings pursuant to this chapter, the testimony of a witness given in a contested civil action or special proceeding to which the person complained against is a party, or in whose behalf the action or proceeding is prosecuted or defended, may be received in evidence, so far as relevant and material to the issues in the disciplinary proceedings, by means of a duly authenticated transcript of such testimony and without proof of the nonavailability of the witness; provided, the board or administrative committee may order the production of and testimony by such witness, in lieu of or in addition to receiving a transcript of his testimony and may decline to receive in evidence any such transcript of testimony, in whole or in part, when it appears that the testimony was given under circumstances that did not require or allow an opportunity for full cross-examination. (Added by Stats. 1961, ch. 2033.)

§ 6050. Disobedience of Subpoena as Contempt

Whenever any person subpoenaed to appear and give testimony or to produce books, papers or documents refuses to appear or testify before the board or a committee, or to answer any pertinent or proper questions, or to produce such books, papers or documents, he is in contempt of the board or the committee. (Origin: State Bar Act, §34.)

§ 6051. Attachment for Disobeying Subpoena; Proceedings and Punishment; Alternative Procedure: Order to Show Cause

The chairman or presiding officer of the board or the committee having jurisdiction shall report the fact that a person under subpoena is in contempt of the board or committee to the superior court in and for the county in which the proceeding, investigation or other matter is being conducted and thereupon the court may issue an attachment in the form usual in the superior court, directed to the sheriff of the county, commanding the sheriff to attach such person and forthwith bring him before the court.

On the return of the attachment, and the production of the person attached, the superior court has jurisdiction of the matter, and the person charged may purge himself of the contempt in the same way, and the same proceedings shall be had, and the same penalties may be imposed, and the same punishment inflicted, as in the case of a witness subpoenaed to appear and give evidence on the trial of a civil cause before a superior court.

In lieu of the procedure hereinabove provided, the court may enter an order directing the person alleged to be in contempt to appear before the court at a specified time and place and then and there show cause why he has not attended or testified or produced the writings as required. A copy of the order shall be served upon such person. If it appears to the court that the subpoena was regularly issued and no good cause is shown for the refusal to appear or testify or produce the writings, the court shall enter an order that the person appear, testify, or produce writings, as the case may be. Upon failure to obey the order, the person shall be dealt with as for contempt of court.

A proceeding pursuant to this section shall be entitled "In the Matter of (state name), Alleged Contemnor re State Bar (proceeding, investigation or matter) No. (insert number)." (Origin: State Bar Act, §34. Amended by Stats. 1963, ch. 1496.)

§ 6052. Administration of Oaths; Issuance of Subpoenas; Dispositions

Any member of the board, or of any committee or unit or section thereof, having jurisdiction, may administer oaths and issue any subpoena.

Depositions may be taken and used as provided in the rules of procedure adopted by the board pursuant to this chapter. (Amended by Stats. 1961, ch. 2033; Stats. 1965, ch. 290; Stats. 1981 ch. 184.)

§ 6053. Examination of Mental or Physical Condition, Reports

Whenever in an investigation or proceeding provided for or authorized by this chapter, the mental or physical condition of the member of the State Bar is a material issue, the board or the committee having jurisdiction may order the member to be examined by one or more physicians or psychiatrists designated by it. The reports of such persons shall be made available to the member and the State Bar and may be received in evidence in such investigation or proceeding. (Added by Stats. 1968, ch. 1374, operative July 1, 1969.)

ARTICLE 4. ADMISSION TO THE PRACTICE OF LAW

§ 6060. Qualifications; Examination and Fee

To be certified to the Supreme Court for admission and a license to practice law, a person who does not comply with section 6062 shall:

(a) Be of the age of at least 18 years.

(b) Be of good moral character.

(c) Before beginning the study of law, have either:

(1) Completed at least two years of college work, which college work shall be not less than one-half of the collegiate work acceptable for a bachelor's degree granted upon the basis of a four-year period of study by a college or university approved by the examining committee; or

(2) Have attained in apparent intellectual ability the equivalent of at least two years of the college work hereinabove defined. Such equivalent with respect to a person applying for admission to a law school accredited by the examining committee shall be determined by the dean or faculty thereof and with respect to all other persons shall be determined by the examining committee. The determination by the examining committee may be made after a personal interview with the person or the examining committee may require him to pass a written examination. Such examination may be given by the examining committee, or, if the examining committee so elects, the examination may be given under its supervision by such members of the faculty of a college as the examining committee may select or by the Department of Education of this state; provided, however, that any person who receives an adverse determination by the committee without an examination or fails an examination given directly by the committee shall, upon demand made within 30 days after receiving notice thereof, have the right to be reexamined either by such faculty members or department as the committee may decide. In the event that the examination is given by the Department of Education, a fee for such examination shall be charged by the department, which fee shall not exceed fifteen dollars ($15).

The requirements of paragraph (2) of this subdivision shall not apply to a person who had reached the age of 25 years prior to commencing the study of law and who commenced such study and registered with the examining committee as provided in subdivision (d) of this section prior to January 1, 1955.

(d) Have registered with the examining committee as a law student within three months after beginning the study of law. The examining committee, upon good cause being shown, may permit a later registration.

(e) Have either:

(1) Graduated from a law school accredited by the examining committee requiring substantially the full time of its students for three years.

(2) Graduated from a law school accredited by the examining committee requiring a part only of its students' time for four years.

(3) Studies law diligently and in good faith for at least four years, which study shall be:

(i) In a law school that is authorized to confer professional degrees and requires classroom attendance of its students for a minimum of 270 hours a year; or

(ii) In a law office in this state and under the personal supervision of a member of the State Bar of California who is, and for at least five years last past continously has been, engaged in the active practice of law; or

(iii) In the chambers and under the personal supervision of a judge of a court of record of this state; or

(iv) By instruction in law from a correspondence law school requiring 864 hours of preparation and study per year for four years.

(v) By any combination of the methods referred to in paragraph (3) of this subdivision.

It shall be the duty of the attorney or judge referred to under (ii) and (iii) of paragraph (3) of this subdivision to render such periodic reports to the examining committee as the committee may require.

(4) Commenced the study of law and registered as a law student as provided in subdivision (d) of this section prior to January 1, 1954, and completed four years of law study, diligently and in good faith.

(f) Have passed a final bar examination given by the examining committee.

(g) After completion of his first year of law study, have passed a first-year law student's examination given by the examining committee. This requirement shall not apply to a student who satisfactorily completes the first-year course of instruction in a law school accredited by the examining committee and who either (1) commenced the study of law and registered with the examining committee as provided in subdivision (d) of this section prior to

January 1, 1954, or (2) had completed at least two years of college work as defined in this section prior to matriculating in such accredited law school, nor shall this requirement apply to an applicant who has passed the bar examination of a sister state or of a country wherein the common law of England constitutes the basis of jurisprudence. An applicant who is required to take such first-year examination shall not receive credit for his first year of law study until he has passed such examination; nor shall he receive credit for any law study subsequent to the first year, and before he shall have passed such examination, unless for good cause in a particular case the committee decides that credit should be given for such subsequent study or for some part thereof.

The examination which the students in their first year of law studies are required to take shall be given twice a year at reasonable intervals. (Origin: State Bar Act, §24.2. Amended by Stats. 1953, ch. 1090; Stats. 1959, ch. 1084; Stats. 1970, ch. 251; Stats. 1971, ch. 1748; Stats. 1972, ch. 1285; Stats. 1973, ch. 1052; Stats. 1974, ch. 316, effective May 31, 1974.)

§ 6060.5. Different Bar Examination for Particular Applicants

Neither the board, nor any committee authorized by it, shall require that applicants for admission to practice law in California pass different final bar examinations depending upon the manner or school in which they acquire their legal education.

This section shall not prohibit the board, or any committee authorized by it, from establishing a different bar examination for applicants who are admitted to practice before the highest court of another state or of any jurisdiction where the common law of England constitutes the basis of jurisprudence. (Original section Added by Stats. 1946, ch. 65; Repealed by Stats. 1959, ch. 1268; present section Added by Stats. 1971, ch. 1666.)

§ 6060.6. (Repealed by Stats. 1969, ch. 587.)

§ 6060.7. (Repealed by Stats. 1969, ch. 587.)

§ 6060.8. (Repealed by Stats. 1959, ch. 1268.)

§ 6060.9. Accreditation of Law Schools; Prohibited Conditions

Approval of any agency or agencies not existing under and by virtue of the laws of this State shall not be made a condition for accreditation of any California law school. (Added by Stats. 1957, ch. 647.)

§ 6061. (Repealed by Stats. 1959, ch. 1268.)

§ 6062. Out-of-State Attorneys

To be certified to the Supreme Court for admission, and a license to practice law, a person, who has been admitted to practice law outside of this state, shall:

(a) Be of the age of at least 18 years.

(b) Be of good moral character.

(c) Have been admitted to practice before the highest court of a sister state or of any foreign state or country and (1) have been actively and substantially engaged in the practice of law in any such jurisdiction or jurisdictions for at least four years out of the six years immediately preceding the filing of his application for admission to practice in this state or (2) demonstrated to the satisfaction of the examining committee that his experience and qualifications qualify him to take an examination. Teaching in a law school accredited by the committee and services as a judge of a court of law shall be considered practice within the meaning of this section. In determining what constitutes practice for at least four years out of the next six years immediately preceding the filing of the application, time spent, subsequent to September 16, 1940, and prior to two years after termination of hostilities between the United States and the nations with which the United States is now at war as determined by Act of Congress or proclamation of the President, in active duty as a member of the United States Army, the United States Navy, the United States Marine Corps, the United States Coast Guard, or any of their respective components, or on active sea duty as an officer or member of the crew on or in connection with vessels documented under the laws of the United States, or vessels owned by, chartered to, or operated by or for the account or use of, the War Shipping Administrator, when the applicant is not engaged in the practice of law within the meaning of this requirement shall be excluded.

(d) Have passed such examination as in the discretion of the examining committee may be required; provided, however, that those persons admitted to practice law in a foreign state or country where the common law of England does not constitute the basis of jurisprudence shall be required to pass the final bar examination given by the examining committee to general applicants pursuant to subdivision (f) of section 6060. (Origin: State Bar Act, §24.3. Amended by Stats. 1941, ch. 766; Stats. 1945, ch. 176; Stats. 1967, ch. 970; Stats. 1970, ch. 251; Stats. 1971, ch. 1748; Stats. 1972, ch. 1285; Stats. 1974, ch. 34.)

§ 6063. Fees

Applicants for admission to practice shall pay such reasonable fees, fixed by the board, as may be necessary to defray the expense of administering the provisions of this chapter, relating to admission to practice. These fees shall be collected by the examining committee and paid into the treasury of the State Bar. (Origin: State Bar Act, §24.4.)

§ 6064. Admission

Upon certification by the examining committee that the applicant has fulfilled the requirements for admission to practice law, the Supreme Court may admit such applicant as an attorney at law in all the courts of this State and may direct an order to be entered upon its records to that effect. A certificate of admission thereupon shall be given to the applicant by the clerk of the court. (Origin: State Bar Act, §24.5.)

§ 6064.1. Advocacy of Overthrow of Government

No person who advocates the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means, shall be certified to the Supreme Court for admission and a license to practice law. (Added by Stats. 1951, ch. 179.)

§ 6065. Inspection of Papers and Grading

Any unsuccessful applicant for admission to practice, after he has taken any examination and within four months after the

results thereof have been declared, has the right to inspect his examination papers at the office of the examining committee located nearest to the place at which the applicant took the examination.

The applicant also has the right to inspect the grading of the papers whether the record thereof is marked upon the examination or otherwise. (Origin: State Bar Act §38. Amended by Stats. 1974, ch. 34.)

§ 6065.5. (Repealed by Stats. 1978, ch. 751, operative January 1, 1982.)

§ 6066. Review of Refusal of Certification

Any person refused certification to the Supreme Court for admission to practice may have the action of the board, or of any committee authorized by the board to make a determination on its behalf, pursuant to the provisions of this chapter, reviewed by the Supreme Court, in accordance with the procedure prescribed by the court. (Origin: State Bar Act, §38.)

§ 6067. Oath

Every person on his admission shall take an oath to support the Constitution of the United States and the Constitution of the State of California, and faithfully to discharge the duties of any attorney at law to the best of his knowledge and ability. A certificate of the oath shall be indorsed upon his license. (Origin: Code Civ. Proc., §278.)

§ 6068. Duties of Attorney

It is the duty of an attorney:

(a) To support the Constitution and laws of the United States and of this State.

(b) To maintain the respect due to the courts of justice and judicial officers.

(c) To counsel or maintain such actions, proceedings or defenses only as appear to him legal or just, except the defense of a person charged with a public offense.

(d) To employ, for the purpose of maintaining the causes confided to him such means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

(e) To maintain inviolate the confidence, and at every peril to himself to preserve the secrets, of his client.

(f) To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged.

(g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.

(h) Never to reject, for any consideration personal to himself, the cause of the defenseless or the oppressed. (Origin: Code Civ. Proc., §282.)

§ 6069. Authorization for Disclosure of Financial Records; Subpoena; Notice; Review

(a) Every member of the State Bar shall be deemed by operation of this law to have irrevocably authorized the disclosure to the State Bar and the Supreme Court pursuant to section 7473 of the Government Code of any and all financial records held by financial institutions as defined in subdivisions (a) and (b) section 7465 of the Government Code pertaining to accounts which the member must maintain in accordance with the Rules of Professional Conduct; provided that no such financial records shall be disclosed to the State Bar without a subpoena therefor having been issued pursuant to section 6049 of this code, and further provided that the board of governors shall by rule provide notice to the member similar to that notice provided for in subdivision (d) of section 7473 of the Government Code. Such notice may be sent by mail addressed to the member's current office or other address for State Bar purposes as shown on the member's registration records of the State Bar.

The State Bar shall, by mail addressed to the member's current office or other address for State Bar purposes as shown on the member's registration records of the State Bar, notify its members annually of the provisions of this subdivision (a).

(b) With regard to the examination of all financial records other than those mentioned in subdivision (a) of this section, held by financial institutions as defined in subdivisions (a) and (b) of section 7465 of the Government Code, no such financial records shall be disclosed to the State Bar without a subpoena therefor having been issued pursuant to section 6049 of this code and the board of governors shall by rule provide for service of a copy of the subpoena on the customer as defined in subdivision (d) of section 7465 of the Government Code and an opportunity for the customer to move the board or committee having jurisdiction to quash the subpoena prior to examination of the financial records. Review of the actions of the board or any committee on such motions shall be had only by the Supreme Court in accordance with the procedure prescribed by the court. Service of a copy of any subpoena issued pursuant to this subdivision (b) may be made on a member of the State Bar by mail addressed to the member's current office or other address for State Bar purposes as shown on the member's registration records of the State Bar. If the customer is other than a member, service shall be made pursuant to Chapter 4 (commencing with section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure, except that service may be made by an employee of the State Bar.

(c) For purposes of this section, "member of the State Bar" or "member" means every member of the State Bar, law firm in California of which a member of the State Bar is a member, and law corporation within the meaning of Article 10 of Chapter 4 of Division 3 of this code. (Added by Stats. 1976, ch. 1320; Amended by Stats. 1978, ch. 1346.)

ARTICLE 5. DISCIPLINARY AUTHORITY OF THE BOARD OF GOVERNORS

§ 6075. Method as Alternative and Cumulative

In their relation to the provisions of Article 6, concerning the

disciplinary authority of the courts, the provisions of this article provide a complete alternative and cumulative method of hearing and determining accusations against members of the State Bar.

§ 6076. Rules of Professional Conduct; Formulation

With the approval of the Supreme Court, the Board of Governors may formulate and enforce rules of professional conduct for all members of the bar in the State. (Origin: State Bar Act, §25.)

§ 6076.5. Initiative Measures; Changes in Rules of Professional Conduct; Procedure

(a) With the approval of the Supreme Court, the members of the State Bar may formulate by initiative, pursuant to the provisions of this section, rules of professional conduct for all members of the bar in the state.

(b) Only active members of the State Bar shall be proponents of initiative measures pursuant to this section.

(c) Prior to the circulation of any initiative petition for signatures, the proponents shall file the text of the proposed initiative measure with both the Secretary of the State Bar and the Clerk of the Supreme Court.

(d) Upon receipt of the text of a proposed initiative measure, the secretary shall prepare a summary of the chief purposes and points of the proposed initiative measure. The summary shall give a true and impartial statement of the purpose of the measure in such language that it shall not be an argument or likely to create prejudice either for or against the measure. The secretary shall provide a copy of the summary to the proponents within 30 days after receipt of the final version of the proposed measure. If during the 30-day period the proponents submit amendments, other than technical, nonsubstantive amendments, to the final version of such measure, the secretary shall provide a copy of the summary to the proponents within 30 days after receipt of such amendments.

(e) The proponents of any proposed initiative measure shall, prior to its circulation, place upon each section of the petition, above the text of the measure and across the top of each page of the petition on which signatures are to appear, in boldface type not smaller than 12-point, the summary prepared by the secretary.

(f) All such initiative petitions shall have printed across the top thereof in 12-point boldface type the following: "Initiative measure to be submitted directly to the members of the State Bar of California."

(g) Any initiative petition may be presented in sections, but each section shall contain a full and correct copy of the title and text of the proposed measure.

(h) The petition sections shall be designed so that each signer shall personally affix his or her:

(1) Signature;

(2) Printed name;

(3) State Bar membership number; and

(4) Principal office address for the practice of law.

Only a person who is an active member of the State Bar at the time of signing the petition is entitled to sign it.

The number of signatures attached to each section shall be at the discretion of the person soliciting the signatures.

(i) Any member of the State Bar, or employee or agent thereof, may circulate an initiative petition anywhere within the state.

Any person circulating a petition may sign the section he or she is circulating if he or she is otherwise qualified to do so.

(j) Each section shall have attached thereto the affidavit of the person soliciting the signatures stating:

(1) The qualifications of the solicitor;

(2) That the signatures affixed to the section were made in his or her presence;

(3) That to the best of his or her knowledge and belief, each signature is the genuine signature of the person whose name it purports to be;

(4) That to the best of his or her knowledge and belief, each State Bar membership number is the genuine membership number of the person whose number it purports to be; and

(5) The dates between which all signatures were obtained.

The affidavit shall be verified free of charge by any officer authorized to administer oaths.

Petitions so verified shall be prima facie evidence that the signatures thereon are genuine and that the persons signing are active members of the State Bar. Unless and until it be otherwise proven upon official investigation, it shall be presumed that the petition presented contains the signatures of the requisite number of active members of the State Bar.

(k) All sections of the petition shall be filed with the Secretary of the State Bar within 180 days after the date upon which the secretary mailed or delivered to the proponents a copy of the summary specified in subdivision (d), but all sections circulated in any State Bar district shall be filed at the same time.

(l) No initiative measure shall be submitted to the members of the State Bar for a vote unless with regard to each State Bar district the petition has been signed by at least 20 percent of the number of active members whose principal office for the practice of law was within the district as of the January 1 preceding the date upon which all sections of the petition from all State Bar districts were filed with the secretary.

(m) The secretary shall promptly determine the total number of signatures from each State Bar district affixed to the petition. If the total number of signatures from any State Bar district is less than the number required by subdivision (l), the secretary shall so notify the proponents

and no further action shall be taken in regard to the petition. If the total number of signatures from each and every State Bar district is equal to or greater than the number required by subdivision (l), the secretary shall verify the names and State Bar membership numbers, and may, in his discretion, verify the office addresses and signatures of the persons who signed the petition. If the total number of verified signers of the petition from any State Bar district is less than the number required by subdivision (l), the secretary shall so notify the proponents and no further action shall be taken in regard to the petition. If the total number of verified signers of the petition from each and every State Bar district is equal to or greater than the number required by subdivision (l), the secretary shall cause the initiative measure to be submitted within 90 days to all of the active members of the State Bar for mail vote pursuant to such rules and regulations as the board may from time to time prescribe.

(n) The board of governors, without petition, may also direct the secretary to cause an initiative measure embodying a rule of professional conduct formulated by the board to be submitted to all of the active members of the State Bar for mail vote in accordance with the rules and regulations prescribed by the board.

(o) If a majority of the active members of the State Bar fail to approve the initiative measure, the secretary shall so notify the proponents and the Clerk of the Supreme Court.

If a majority of the active members of the State Bar approve the initiative measure, the secretary shall cause the measure to be submitted to the Supreme Court for its consideration as a rule of professional conduct.

(p) The rules of professional conduct submitted to the Supreme Court pursuant to the provisions of this section, when approved by the Supreme Court, shall have the same force and effect as the rules of professional conduct formulated by the board of governors and approved by the Supreme Court pursuant to sections 6076 and 6077. (Added by Stats. 1977, ch. 478.)

§ 6077. Rules of Professional Conduct—Sanctions for their Violation

The rules of professional conduct adopted by the board, when approved by the Supreme Court, are binding upon all members of the State Bar.

For a wilful breach of any of these rules, the board has power to discipline members of the State Bar by reproval, public or private, or to recommend to the Supreme Court the suspension from practice for a period not exceeding three years of members of the State Bar. (Origin: State Bar Act, §29. Amended by Stats. 1957, ch. 1249.)

§ 6077.5. Attorney Collection Agencies

An attorney and his or her employees who are employed primarily to assist in the collection of a consumer debt owed to another, as defined by Section 1788.2 of the Civil Code, shall comply with all of the following:

(a) The obligations imposed on debt collectors pursuant to Article 2 (commencing with Section 1788.10) of Title 1.6C of Part 4 of Division 3 of the Civil Code.

(b) Any employee of an attorney who is not a member of the State Bar of California, when communicating with a consumer debtor or with any person other than the debtor concerning a consumer debt, shall identify himself or herself, by whom he or she is employed, and his or her title or job capacity.

(c) Without the prior consent of the debtor given directly to the attorney or his or her employee or the express permission of a court of competent jurisdiction, an attorney or his or her employee shall not communicate with a debtor in connection with the collection of any debt at any unusual time or place, or time or place known, or which should be known, to be inconvenient to the debtor. In the absence of knowledge of circumstances to the contrary, an attorney or his or her employee shall assume that the convenient time for communicating with the debtor is after 8 a.m. and before 9 p.m., local time at the consumer's location.

(d) If a debtor notifies an attorney or his or her employee in writing that the debtor refuses to pay a debt or that the debtor wishes the attorney or his or her employee to cease further communications with the debtor, the attorney or his or her employee shall not communicate further with the debtor with respect to such debt, except as follows:

(1) To advise the debtor that the attorney or his or her employee's further efforts are being terminated.

(2) To notify the debtor that the attorney or his or her employee or creditor may invoke specific remedies which are ordinarily invoked by such attorney or creditor.

(3) Where applicable, to notify the debtor that the attorney or creditor intends to invoke his or her specific remedy.

(4) Where a suit has been filed or is about to be filed and the debtor is not represented by counsel or has appeared in the action on the debt in propria persona.

For the purpose of this section, "debtor" includes the debtor's spouse, parent, or guardian, if the debtor is a minor, executor, or administrator.

(e) An attorney or his or her employee shall not take or threaten to take any nonjudicial action to effect disposition or disablement of property if (1) there is no present right to possession of the property claimed as collateral through an enforceable security interest; (2) there is no present intention to take possession of the property; or (3) the property is exempt by law from that disposition or disablement.

(f) An attorney or his or her employee shall not cause charges to be made to any person for communications, by concealment of the true purposes of the communication. The charges include, but are not limited to, collect telephone calls and telegram fees.

(g) Within five days after the initial communication with a debtor in connection with the collection of any unsecured debt, an attorney or his or her employee shall, unless the following information is contained in the initial

communication or the debtor has paid the debt, send the debtor a written notice containing the following:

(1) The amount of the debt.

(2) The name of the creditor to whom the debt is owed.

(3) A statement that unless the debtor, within 30 days receipt of the notice, disputes the validity of the debt or any portion thereof, the debt will be assumed to be valid by the attorney or his or her employee.

(4) A statement that if the debtor notifies the debt collector in writing within the 30-day period that the debt, or any portion thereof, is disputed, the attorney or his or her employee will obtain a writing, if any exists, evidencing the debt or a copy of the judgment against the debtor and a copy of such writing or judgment will be mailed to the debtor by the attorney or his or her employee.

(5) A statement that, upon the debtor's written request within the 30-day period, the attorney or his or her employee will provide the debtor the name and address of the original creditor, if different from the current creditor.

If the debtor notifies the attorney or his or her employee in writing within the 30-day period described in this section that the debt or any portion thereof is disputed, or that the debtor requests the name and address of the original creditor, the attorney and his or her employee shall cease collection of the debt or any disputed portion thereof, except for filing suit thereon, until the attorney obtains a writing, if any exists, evidencing the debt or a copy of a judgment or the name and address of the original creditor, and a copy of such writing or judgment or the name and address of the original creditor is mailed to the debtor by the attorney or his or her employee.

(h) If any debtor owes multiple debts and makes any single payment to any attorney or his or her employee with respect to the debts, the attorney may not apply such payment to any debt which is disputed by the debtor and, where applicable, shall apply such payment in accordance with the debtor's directions.

(i) A willful breach of this section constitutes cause for the imposition of discipline of the attorney in accordance with section 6077. (Added by Stats. 1984, ch. 118.)

§ 6078. Power to Discipline and Reinstate

After a hearing for any of the causes set forth in the laws of the State of California warranting disbarment, suspension or other discipline, the board has the power to recommend to the Supreme Court the disbarment or suspension from practice of members or to discipline them by reproval, public or private, without such recommendation.

The board may pass upon all petitions for reinstatement. (Origin: State Bar Act, §26.)

§ 6079. (Origin: State Bar Act, §34; Repealed by Stats. 1984, ch. 1355.)

§ 6080. Records

The board shall keep a record of all disciplinary proceedings. In all disciplinary proceedings resulting in a recommendation to the Supreme Court for disbarment or suspension, the board shall keep a transcript of the evidence and proceedings therein and shall make findings of fact thereon. The board shall render a decision to be recorded in its minutes. In disciplinary proceedings in which no discipline has been imposed, the records thereof may be destroyed after 5 years. (Origin: State Bar Act, §26. Amended by Stats. 1965, ch. 920.)

§ 6081. Report to Supreme Court

Upon the making of any decision recommending the disbarment or suspension from practice of any member of the State Bar, the board shall immediately file a certified copy of the decision, together with the transcript and the findings, with the Clerk of the Supreme Court. Upon enrolling a member as an inactive member pursuant to section 6007 of this code, or upon terminating or refusing to terminate such enrollment pursuant to such section the board shall immediately give appropriate written notice to the member and to the Clerk of the Supreme Court. (Origin: State Bar Act, §26. Amended by Stats. 1957, ch. 737.)

§ 6082. Review by Supreme Court

Any person complained against and any person whose reinstatement the board may refuse to recommend may have the action of the board, or of any committee authorized by it to make a determination on its behalf, pursuant to the provisions of this chapter, reviewed by the Supreme Court in accordance with the procedure prescribed by the court. (Origin: State Bar Act, §38.)

§ 6083. Time for Review, Burden of Proof

(a) A petition to review or to reverse or modify any decision recommending the disbarment or suspension from practice of a member of the State Bar may be filed with the Supreme Court by the member within 60 days after the filing of the decision recommending such discipline.

(b) A petition to review or to reverse or modify any decision reproving a member of the State Bar, or any action enrolling him as an inactive member pursuant to section 6007 of this code or refusing to restore him to active membership, pursuant to such section may be filed with the Supreme Court by the member within 60 days after service upon him of notice of such decision or action.

(c) Upon such review the burden is upon the petitioner to show wherein the decision or action is erroneous or unlawful. (Origin: State Bar Act, §26. Amended by Stats. 1957, ch. 737.)

§ 6084. Order by Supreme Court

When no petition to review or to reverse or modify has been filed within the time allowed therefor in cases in which a certified copy of the decision is filed pursuant to section 6081 of this code, and in any case in which such a petition is filed within the time allowed therefor, the Supreme Court shall make such order as it may deem proper in the circumstances. Notice of such order shall be given to the member and to the State Bar. A petition for rehearing may be filed within the time

generally provided for petitions for rehearing in civil cases. (Origin: State Bar Act, §26. Amended by Stats. 1957, ch. 737.)

§ 6085. Rights of Person Complained Against

Any person complained against shall be given reasonable notice and have a reasonable opportunity and right:

(a) To defend against the charge by the introduction of evidence.

(b) To be represented by counsel.

(c) To examine and cross-examine witnesses.

He shall also have the right to the issuance of subpoenas for attendance of witnesses to appear and testify or produce books and papers, as provided in this chapter. (Origin: State Bar Act, §35.)

§ 6086. Procedure

The board of governors, subject to the provisions of this chapter, may by rule provide the mode of procedure in all cases of complaints against members. (Origin: State Bar Act, §37.)

§ 6086.5. Disciplinary Boards; Establishment; Powers; Rules

The board of governors may establish one or more committees, known as disciplinary boards, to act in its place and stead in the determination of disciplinary and reinstatement proceedings and proceedings pursuant to subdivision (b) of section 6007 to the extent provided by rules adopted by the board of governors. In such proceedings a disciplinary board may exercise the powers and authority vested in the board of governors by this chapter, except as limited by rules of the board of governors.

For the purposes of sections 6007, 6043, 6049, 6049.2, 6050, 6051, 6052, 6077 (excluding the first sentence), 6078, 6080, 6081 and 6082, "board" includes "disciplinary board."

Nothing herein shall authorize a disciplinary board to adopt rules of professional conduct or rules of procedure. (Added by Stats. 1965, ch. 973; Amended by Stats. 1977, ch. 58.)

§ 6086.6. Public Members; Appointment; Term

Two members of any disciplinary board appointed pursuant to section 6086.5 shall consist of public members who have never been members of the State Bar or admitted to practice before any court in the United States. Such nonattorney members shall be appointed by the Governor and shall serve for a term of four years except that for the initial term after enactment of this section, the first nonattorney appointed shall serve for two years and the other for four years. (Added by Stats. 1975, ch. 874.)

§ 6086.7 Misconduct; Misrepresentation; Incompetent Representation; Referral to State Bar

Whenever a reversal of a judgment in a judicial proceeding is based in whole or in part upon misconduct, incompetent representation, or willful misrepresentation by counsel, the court that ordered reversal of the judgment shall cause the matter to be reported to the State Bar of California for investigation with regard to the appropriateness of initiating disciplinary action against the attorney. The court shall also notify the attorney involved that the matter has been referred to the State Bar for investigation. (Added by Stats. 1982, ch. 181.)

§ 6087. Effect of Chapter on Powers of Supreme Court

Nothing in this chapter shall be construed as limiting or altering the powers of the Supreme Court of this State to disbar or discipline members of the bar as this power existed prior to the enactment of Chapter 34 of the Statutes of 1927, relating to the State Bar of California. (Origin: State Bar Act, §26. Amended by Stats. 1951, ch. 177.)

ARTICLE 6. DISCIPLINARY AUTHORITY OF THE COURTS

§ 6100. Disbarment or Suspension

For any of the causes provided in this article, arising after his admission to practice, an attorney may be disbarred or suspended by the Supreme Court. (Origin: Code of Civ. Proc., §287. Amended by Stats. 1951, ch. 177.)

§ 6101. Conviction of Crimes Involving Moral Turpitude

(a) Conviction of a felony or misdemeanor, involving moral turpitude, constitutes a cause for disbarment or suspension.In any proceeding, whether under this article or otherwise, to disbar or suspend an attorney on account of that conviction, the record of conviction shall be conclusive evidence of guilt of the crime of which he or she has been convicted.

(b) The district attorney, city attorney, or other prosecuting agency shall notify the Office of the State Bar of the State Bar of California of the pendency of an action against an attorney charging a felony or misdemeanor immediately upon obtaining information that the defendant is an attorney. The notice shall identify the attorney and describe the crimes charged and the alleged facts. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is an attorney, and the clerk shall record prominently in the file that the defendant is an attorney.

(c) The clerk of the court in which an attorney is convicted of a crime, shall within 48 hours after the conviction, transmit a certified copy of the record of conviction to the office of the State Bar. Within five days of receipt, the office of the State Bar shall transmit the record of any conviction which involves or may involve moral turpitude to the Supreme Court with such other records and information as may be appropriate to establish the Supreme Court's jurisdiction. The State Bar of California may procure and transmit the record of conviction to the Supreme Court when the clerk has not done so or when the conviction was had in a court other than a court of this state.

(d) The proceedings to disbar or suspend an attorney on account of such a conviction shall be undertaken by the Supreme Court, pursuant to the procedure provided in this section and section 6102, upon the receipt of the certified copy of the record of conviction.

(e) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of those sections. (Origin: Code Civ. Proc., §§287(1), 288, 289. Amended by Stats. 1953, ch. 44; Stats. 1955, ch. 1190; Stats. 1984, ch. 1355.)

§ 6102. Immediate Suspension and Subsequent Disbarment Upon Conviction of Crime; Procedure

(a) Upon the receipt of the certified copy of the record of conviction, if it appears therefrom that the crime of which the attorney was convicted involved or that there is probable cause to believe that it involved moral turpitude, the Supreme Court shall suspend the attorney until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal, or has otherwise become final, and until the further order of the court. Upon good cause shown the court may set aside the suspension when it appears to be in the interest of justice to do so, with due regard being given to maintaining the integrity of and confidence in the profession.

(b) If, after adequate notice and opportunity to be heard (which hearing shall not be had until the judgment of conviction has become final or, irrespective of any subsequent order under the provisions of section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence), the court finds that the crime of which the attorney was convicted, or the circumstances of its commission, involved moral turpitude it shall enter an order disbarring the attorney or suspending him or her from practice for a limited time, according to the gravity of the crime and the circumstances of the case; otherwise it shall dismiss the proceedings. In determining the extent of the discipline to be imposed in a proceeding pursuant to this article any prior discipline imposed upon the attorney may be considered.

(c) The court may refer the proceedings or any part thereof or issue therein, including the nature or extent of discipline, to the State Bar for hearing, report, and recommendation.

(d) The record of the proceedings resulting in the conviction, including a transcript of the testimony therein, may be received in evidence.

(e) The Supreme Court shall prescribe rules for the practice and procedure in proceedings had pursuant to this section and section 6101.

(f) The other provisions of this article providing a procedure for the disbarment or suspension of an attorney do not apply to proceedings pursuant to sections 6101 and 6102, unless expressly made applicable. (Origin: Code Civ. Proc., §299. Amended by Stats. 1941, ch. 1183; Stats. 1955, ch. 1190; Stats. 1981, ch. 714.)

§ 6103. Sanctions for Violation of Oath or Attorney's Duties

A wilful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension. (Origin: Code Civ. Proc., §287(2).)

§ 6104. Appearing for Party without Authority

Corruptly or wilfully and without authority appearing as attorney for a party to an action or proceeding constitutes a cause for disbarment or suspension. (Origin: Code Civ. Proc., §287(3).)

§ 6105. Permitting Misuse of Name

Lending his name to be used as attorney by another person who is not an attorney constitutes a cause for disbarment or suspension. (Origin: Code Civ. Proc., §287(4).)

§ 6106. Moral Turpitude, Dishonesty or Corruption Irrespective of Criminal Conviction

The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension.

If the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding is not a condition precedent to disbarment or suspension from practice therefor. (Origin: Code Civ. Proc., §287(5).)

§ 6106.1. Advocacy of Overthrow of Government

Advocating the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means, constitutes a cause for disbarment or suspension. (Added by Stats. 1951, ch. 179.)

§ 6106.5. Insurance Claims; Fraud

It shall constitute cause for disbarment or suspension for an attorney to do any of the following:

(a) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

(b) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any such claim. (Added by Stats. 1978, ch. 174, effective May 31, 1978.)

§ 6107. Proceedings Upon Court's Own Knowledge or Upon Information

The proceedings to disbar or suspend an attorney, on grounds other than the conviction of a felony or misdemeanor, involving moral turpitude, may be taken by the court for the matters within its knowledge, or may be taken upon the information of another. (Origin: Code Civ. Proc., §289.)

§ 6108. Accusation

If the proceedings are upon the information of another, the accusation shall be in writing and shall state the matters charged, and be verified by the oath of some person, to the effect that the charges therein contained are true.

The verification may be made upon information and belief when the accusation is presented by an organized bar association. (Origin: Code Civ. Proc., §§290, 291.)

§ 6109. Order to Appear and Answer; Service

Upon receiving the accusation, the court shall make an order requiring the accused to appear and answer it at a specified time, and shall cause a copy of the order and of the accusation to be served upon the accused at least five days before the day appointed in the order. (Origin: Code Civ. Proc., §292.)

§ 6110. Citation

The court or judge may direct the service of a citation to the accused, requiring him to appear and answer the accusation, to be made by publication for thirty days in a newspaper of general circulation published in the county in which the proceeding is pending, if it appears by affidavit to the satisfaction of the court or judge that the accused either:

(a) Resides out of the State.

(b) Has departed from the State.

(c) Can not, after due diligence, be found within the State.

(d) Conceals himself to avoid the service of the order to show cause.

The citation shall be:

(a) Directed to the accused.

(b) Recite the date of the filing of the accusation, the name of the accuser, and the general nature of the charges against him.

(c) Require him to appear and answer the accusation at a specified time.

On proof of the publication of the citation as herein required, the court has jurisdiction to proceed to hear the accusation and render judgment with like effect as if an order to show cause and a copy of the accusation had been personally served on the accused. (Origin: Code Civ. Proc., §292.)

§ 6111. Appearance; Determination Upon Default

The accused shall appear at the time appointed in the order, and answer the accusation, unless, for sufficient cause, the court assigns another day for that purpose. If he does not appear, the court may proceed and determine the accusation in his absence. (Origin: Code Civ. Proc., §293.)

§ 6112. Answer

The accused may answer to the accusation either by objecting to its sufficiency or by denying it.

If he objects to the sufficiency of the accusation, the objection shall be in writing, but need not be in any specific form. It is sufficient if it presents intelligibly the grounds of the objection.

If he denies the accusation, the denial may be oral and without oath, and shall be entered upon the minutes. (Origin: Code Civ. Proc., §§294, 295.)

§ 6113. Time for Answer After Objection

If an objection to the sufficiency of the accusation is not sustained, the accused shall answer within the time designated by the court. (Origin: Code Civ. Proc., §296.)

§ 6114. Judgment Upon Plea of Guilty or Failure to Answer; Trial Upon Denial of Charges

If the accused pleads guilty, or refuses to answer the accusation, the court shall proceed to judgment of disbarment or suspension.

If he denies the matters charged, the court shall, at such time as it may appoint, proceed to try the accusation. (Origin: Code Civ. Proc., §297.)

§ 6115. Reference to Take Depositions

The court may, in its discretion, order a reference to a committee to take depositions in the matter. (Origin: Code Civ. Proc., §298.)

§ 6116. Judgment

When an attorney has been found guilty of the charges made in proceedings not based upon a record of conviction, judgment shall be rendered disbarring the attorney or suspending him from practice for a limited time, according to the gravity of the offense charged. (Origin: Code Civ. Proc., §299.)

§ 6117. Effect of Disbarment or Suspension

During such disbarment or suspension, the attorney shall be precluded from practicing law.

When disbarred, his name shall be stricken from the roll of attorneys. (Origin: Code Civ. Proc., §299.)

§ 6118. (Origin: Code Civ. Proc., §301. Repealed by Stats. 1963, ch. 79.)

ARTICLE 7. UNLAWFUL PRACTICE OF LAW

§ 6125. Necessity of Active Membership in State Bar

No person shall practice law in this State unless he is an active member of the State Bar. (Origin: State Bar Act, §47.)

§ 6126. Unauthorized Practice or Advertising as a Misdemeanor

Any person advertising himself as practicing or entitled to practice law or otherwise practicing law, after he has been disbarred or while suspended from membership in the State Bar, or who is not an active member of the State Bar, is guilty of a misdemeanor. (Origin: State Bar Act, §49; Pen. Code, §161a.)

§ 6127. Contempt of Court

The following acts or omissions in respect to the practice of law are contempts of the authority of the courts:

(a) Assuming to be an officer or attorney of a court and acting as such, without authority.

(b) Advertising or holding oneself out as practicing or as entitled to practice law or otherwise practicing law in any court, without being an active member of the State Bar.

Proceedings to adjudge a person in contempt of court under this section are to be taken in accordance with the provisions of Title V of Part III of the Code of Civil Procedure. (Origin: Code Civ. Proc., §§281, 1209.)

§ 6127.5. Law Corporation Under Professional Corporation Act

Nothing in sections 6125, 6126 and 6127 shall be deemed to apply to the acts and practices of a law corporation duly certificated pursuant to the Professional Corporation Act, as

contained in Part 4 (commencing with section 13400) of Division 3 of Title 1 of the Corporations Code, and pursuant to Article 10 (commencing with section 6160) of Chapter 4 of Division 3 of this code, when the law corporation is in compliance with the requirements of (a) the Professional Corporation Act; (b) Article 10 (commencing with section 6160) of Chapter 4 of Division 3 of this code; and (c) all other statutes and all rules and regulations now or hereafter enacted or adopted pertaining to such corporation and the conduct of its affairs. (Added by Stats. 1968, ch. 1375.)

§ 6128. Deceit, Collusion, Delay of Suit and Improper Receipt of Money as Misdemeanor

Every attorney is guilty of a misdemeanor who either:

(a) Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party.

(b) Willfully delays his client's suit with a view to his own gain.

(c) Willfully receives any money or allowance for or on account of any money which he has not laid out or become answerable for.

Any violation of the provisions of this section is punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both. (Origin: Pen. Code §160. Amended by Stats. 1976, ch. 1125.)

§ 6129. Buying Claim as Misdemeanor

Every attorney who, either directly or indirectly, buys or is interested in buying any evidence of debt or thing in action, with intent to bring suit thereon, is guilty of a misdemeanor.

Any violation of the provisions of this section is punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both. (Origin: Pen. Code §161. Amended by Stats. 1976, ch. 1125.)

§ 6130. Disbarred or Suspended Attorney Suing as Assignee

No person, who has been an attorney, shall while a judgment of disbarment or suspension is in force appear on his own behalf as plaintiff in the prosecution of any action where the subject of the action has been assigned to him subsequent to the entry of the judgment of disbarment or suspension and solely for purpose of collection. (Origin: Code Civ. Proc., §300.)

§ 6131. Aiding Defense Where Partner or Self has Acted as Public Prosecutor; Misdemeanor and Disbarment

Every attorney is guilty of a misdemeanor and, in addition to the punishment prescribed therefor, shall be disbarred:

(a) Who directly or indirectly advises in relation to, or aids, or promotes the defense of any action or proceeding in any court the prosecution of which is carried on, aided or promoted by any person as district attorney or other public prosecutor with whom such person is directly or indirectly connected as a partner.

(b) Who, having himself prosecuted or in any manner aided or promoted any action or proceeding in any court as district attorney or other public prosecutor, afterwards, directly or indirectly, advises in relation to or takes any part in the defense thereof, as attorney or otherwise, or who takes or receives any valuable consideration from or on behalf of any defendant in any such action upon any understanding or agreement whatever having relation to the defense thereof.

This section does not prohibit an attorney from defending himself in person, as attorney or counsel, when prosecuted, either civilly or criminally. (Origin: Pen. Code, §§162, 163.)

ARTICLE 8. REVENUE.

§ 6140. Fees; Active Members; Time of Payment

(a) The board shall fix the annual membership fee as follows:

(1) For active members who have been admitted to the practice of law in this state for three years or longer at a sum not exceeding one hundred seventy-five dollars ($175) for 1984 and one hundred eighty dollars ($180) for 1985.

(2) For active members who have been admitted to the practice of law in this state for less than three years but more than one year preceding the first day of February of the year for which the fee is payable, at a sum not exceeding one hundred five dollars ($105) for 1984 and one hundred fifteen dollars ($115) for 1985.

(3) For active members who have been admitted to the practice of law in this state for less than one year preceding the first day of February of the year for which the fee is payable, at a sum not exceeding one hundred dollars ($100).

(b) For the years commencing January 1, 1973, and ending December 31, 1985, the board may increase the annual membership fee fixed pursuant to subdivision (a) by an additional amount not exceeding ten dollars ($10) in any or all of such years, the additional amount in any year to be applied only to the cost of land and buildings to be used to conduct the operations of the State Bar, including furniture, furnishings, equipment, architects' fees, construction and financing costs, landscaping and other expenditures incident to the acquisition, construction, furnishing and equipping of such land and buildings, the payment of interest on and the repayment of moneys borrowed for such purposes, and the reimbursement of the State Bar's treasury expended for those purposes.

(c) The annual membership fee for active members is payable on or before the first day of February of each year.

This section shall remain in effect only until January 1, 1986, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1986, deletes or extends that date. (Added by Stats. 1971, ch. 1338. Amended by Stats. 1980, ch. 1363; Stats. 1981, ch. 1010; Stats. 1982, ch. 1436; Stats. 1983, ch. 322.)

§ 6140.3. (Repealed by Stats. 1980, ch. 1363, operative January 1, 1982.)

§ 6140.5. Client Security Fund; Establishment; Payments; Administration; Funding

(a) The board may establish and administer a Client Security Fund to relieve or mitigate pecuniary losses caused by the dishonest conduct of those active members of the State Bar. Any payments from the fund shall be discretionary and shall be subject to such regulation and conditions as the board shall prescribe. The board may delegate the administration of the fund to the disciplinary board provided for in section 6086.5, or to any board or committee created by the board of governors.

(b) Commencing January 1, 1972, the board may increase the annual membership fees fixed by it pursuant to section 6140 by an additional amount per active member not to exceed ten dollars ($10) in any year, the additional amount to be applied only for the purposes of the fund. (Added by Stats. 1971, ch. 1338.)

§ 6141. Inactive Members; Fee; Age Exception

(a) The board shall fix the annual membership fee for inactive members at a sum not exceeding twenty dollars ($20). The annual membership fee for inactive members is payable on or before the first day of February of each year.

(b) An inactive member shall not be required to pay the annual membership fee for inactive members for any calendar year following the calendar year in which the member attains the age of seventy (70) years. (Origin: State Bar Act, §45. Amended by Stats. 1953, ch. 352; Stats. 1964, 1st Ex. Sess., ch. 29; Stats. 1971, ch. 1338; Stats. 1975, ch. 673.)

§ 6141.1. Waiver of Membership Fee

The payment by any member of the annual membership fee, any portion thereof, or any penalty thereon, may be waived by the board as it may provide by rule. (Added by Stats. 1941, ch. 144; Amended by Stats. 1977, ch. 58.)

§ 6142. Certificate of Payment

Upon the payment of the annual membership fees, each member shall receive a certificate issued under the direction of the board evidencing the payment. (Origin: State Bar Act, §44.)

§ 6143. Suspension for Nonpayment and Reinstatement; Penalties

Any member, active or inactive, failing to pay any fees after they become due, and after two months written notice of his delinquency, shall be suspended from membership in the State Bar.

He may be reinstated upon the payment of accrued fees and such penalties as may be imposed by the board, not exceeding double the amount of delinquent dues. (Origin: State Bar Act, §46.)

§ 6144. Disposition of Fees

All fees shall be paid into the treasury of the State Bar, and, when so paid, shall become part of its funds. (Origin: State Bar Act, §46.)

§ 6145. Annual Statement

The board annually shall prepare a statement showing the total amount of receipts and expenditures of the State Bar for the twelve months preceding. The statement shall be promptly certified under oath by the president and treasurer to the Chief Justice of the Supreme Court. (Origin: State Bar Act, §48.)

ARTICLE 8.5. CONTINGENCY FEE AGREEMENTS

§ 6146. Limitations, Periodic Payments

(a) An attorney shall not contract for or collect a contingency fee for representing any person seeking damages in connection with an action for injury or damage against a health care provider based upon such person's alleged professional negligence in excess of the following limits:

(1) Forty percent of the first fifty thousand dollars ($50,000) recovered.

(2) Thirty-three and one-third percent of the next fifty thousand dollars ($50,000) recovered.

(3) Twenty-five percent of the next one hundred thousand dollars ($100,000) recovered.

(4) Ten percent of any amount on which the recovery exceeds two hundred thousand dollars ($200,000).

The limitations shall apply regardless of whether the recovery is by settlement, arbitration, or judgment, or whether the person for whom the recovery is made is a responsible adult, an infant, or a person of unsound mind.

(b) If periodic payments are awarded to the plaintiff pursuant to section 667.7 of the Code of Civil Procedure, the court shall place a total value on these payments based upon the projected life expectancy of the plaintiff and include this amount in computing the total award from which attorney's fees are calculated under this section.

(c) For purposes of this section:

(1) "Recovered" means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim. Costs of medical care incurred by the plaintiff and the attorney's office overhead costs or charges are not deductible disbursements or costs for such purpose.

(2) "Health care provider" means any person licensed or certified pursuant to Division 2 (commencing with section 500) or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or licensed pursuant to Chapter 2.5 (commencing with section 1440) of Division 2 of the Health and Safety Code; and any clinic, health dispensary, or health facility, licensed pursuant to Division 2 (commencing with section 1200) of the Health and Safety Code. "Health care provider" includes the legal representatives of a health care provider.

(3) "Professional negligence" is a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that the services are

within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital. (Added by Stats. 1975, 2nd Ex. Sess., ch. 1; Amended by Stats. 1975, 2nd Ex. Sess., ch. 2, effective September 24, 1975, operative December 12, 1975; Stats. 1981, ch. 714.)

§ 6147. Contract; Duplicate Copies; Contents; Effect of Noncompliance; Application to Contracts for Recovery of Workers' Compensation Benefits

(a) An attorney who contracts to represent a plaintiff on a contingency fee basis shall, at the time the contract is entered into, provide a duplicate copy of the contract, signed by both the attorney and the plaintiff, or his guardian or representative, to the plaintiff, or to the plaintiff's guardian or representative. The contract shall include, but is not limited to, the following:

(1) A statement of the contingency fee rate which the client and attorney have agreed upon.

(2) A statement as to how disbursements and costs incurred in connection with the prosecution or settlement of the claim will affect the contingency fee and the client's recovery.

(3) A statement as to what extent, if any, the plaintiff could be required to pay any compensation to the attorney for related matters that arise out of their relationship not covered by their contingency fee contract. This may include any amounts collected for the plaintiff by the attorney.

(4) Unless the claim is subject to the provisions of section 6146, a statement that the fee is not set by law but is negotiable between attorney and client.

(5) If the claim is subject to the provisions of section 6146, a statement that the rates set forth in that section are the maximum limits for the contingency fee agreement, and that the attorney and client may negotiate a lower rate.

(b) Failure to comply with any provision of this section shall render the agreement voidable at the option of the plaintiff, and the attorney shall thereupon be entitled to collect a reasonable fee.

(c) This section shall not apply to contingency fee contracts for the recovery of workers' compensation benefits. (Added by Stats. 1982, ch. 415.)

ARTICLE 9. UNLAWFUL SOLICITATION

§ 6150. Relation of Article to Chapter

This article is a part of Chapter 4 of this division of the Business and Professions Code, but the phrase "this chapter" as used in Chapter 4 does not apply to the provisions of this article unless expressly made applicable.

§ 6151. Runners and Cappers—Definitions

As used in this article:

(a) A runner or capper is any person, firm, association or corporation acting in any manner or in any capacity as an agent for an attorney at law, whether the attorney is admitted in California or any other jurisdiction, in the solicitation or procurement of business for such attorney at law as provided in this article.

(b) An agent is one who represents another in dealings with one or more third persons. (Origin: Statutes of 1931, ch. 1043; Deering's Gen. Laws (1937), Act 592, §5. Amended by Stats. 1963, ch. 206.)

§ 6152. Prohibition of Solicitation

(a) It is unlawful for:

(1) Any person, in his individual capacity or in his capacity as a public or private employee, or for any firm, corporation, partnership or association to act as a runner or capper for any such attorneys or to solicit any business for any such attorneys in and about the state prisons, county jails, city jails, city prisons, or other places of detention of persons, city receiving hospitals, city and county receiving hospitals, county hospitals, justice courts, municipal courts, superior courts, or in any public institution or in any public place or upon any public street or highway or in and about private hospitals, sanitariums or in and about any private institution or upon private property of any character whatsoever.

(2) Any person to solicit another person to commit or join in the commission of a violation of subdivision (a).

(b) A general release from a liability claim obtained from any person during the period of the first physical confinement, whether as an inpatient or outpatient, in a clinic or health facility, as defined in sections 1203 and 1250 of the Health and Safety Code, as a result of the injury alleged to have given rise to such claim and primarily for treatment of such injury, is presumed fraudulent if such release is executed within 15 days after the commencement of such confinement or prior to release from such confinement, whichever occurs first.

(c) Nothing in this section shall be construed to prevent the recommendation of professional employment where such recommendation is not prohibited by the Rules of Professional Conduct of the State Bar of California.

(d) Nothing in this section shall be construed to mean that a public defender or assigned counsel may not make known his or her services as a criminal defense attorney to persons unable to afford legal counsel whether such persons are in custody or otherwise. (Origin: Statutes of 1931, ch. 1043. Amended by States. 1963, ch. 206; Stats. 1976, ch. 1016; Stats. 1977, ch. 799, effective September 14, 1977.)

§ 6153. Violation as Misdemeanor; Forfeitur of Public Office or Employment

Any person, firm, partnership, association, or corporation violating subdivision (a) of section 6152 is guilty of a misdemeanor, and is punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both.

Any person employed either as an officer, director, trustee, clerk, servant or agent of this state or of any county or other

municipal corporation or subdivision thereof, who is found guilty of violating any of the provisions of this article, shall forfeit the right to his office and employment in addition to any other penalty provided in this article. (Origin: Statutes of 1931, ch. 1043. Amended by Stats. 1976, ch. 1016; Stats. 1976, ch. 1125; Stats. 1977, ch. 799, effective September 14, 1977.)

§ 6154. Invalidity of Contract for Services

Any contract for professional services secured by any attorney at law in this State through the services of a runner or capper is void. (Origin: Statutes of 1931, ch. 1043; Deering's Gen. Laws (1937), Act 592, §6.)

ARTICLE 10. LAW CORPORATIONS
(Added by Stats. 1968, ch. 1375.)

§ 6160. Nature

A law corporation is a corporation which is registered with the State Bar of California and has a currently effective certificate of registration from the State Bar pursuant to the Professional Corporation Act, as contained in Part 4 (commencing with section 13400) of Division 3 of Title 1 of the Corporations Code, and this article. Subject to all applicable statutes, rules and regulations, such law corporation is entitled to practice law. With respect to a law corporation the governmental agency referred to in the Professional Corporation Act is the State Bar.

§ 6161. Application for Registration

An applicant for registration as a law corporation shall supply to the State Bar all necessary and pertinent documents and information requested by the State Bar concerning the applicant's plan of operation, including but not limited to a copy of its articles of incorporation, certified by the Secretary of State, a copy of its bylaws, certified by the secretary of the corporation, the name and address of the corporation, the names and addresses of its officers, directors, shareholders and employees who will render professional services, the address of each office, and any fictitious name or names which the corporation intends to use. The State Bar may provide forms of application. If the board of governors or a committee authorized by it finds that the corporation is duly organized and existing pursuant to the General Corporation Law, that each officer (except as provided in section 13403 of the Corporations Code), director, shareholder and each employee who will render professional services is a licensed person as defined in the Professional Corporation Act, and that from the application it appears that the affairs of the corporation will be conducted in compliance with law and the rules and regulations of the State Bar, the State Bar shall upon payment of the registration fee in such amount as it may determine issue a certificate of registration. The application shall be signed and verified by an officer of the corporation.

§ 6162. Report of Changes of Personnel, Officers, etc.

Within such time as the State Bar may by rule provide, the law corporation shall report in writing to the State Bar any change in directors, officers, employees performing professional services and share ownership, and amendments to its articles of incorporation and bylaws.

§ 6163. Annual Report

Each law corporation shall file with the State Bar annually and at such other times as the State Bar may require a report containing such information pertaining to qualification and compliance with the statutes, rules and regulations referred to in section 6127.5 of this code as the State Bar may determine. The fee for filing such a report shall be fixed by the State Bar. All reports shall be signed and verified by an officer of the corporation.

§ 6164. Name

The name of a law corporation and any name or names under which it may be rendering professional services shall contain and be restricted to the name or the last name of one or more of the present, prospective, or former shareholders or of persons who were associated with a predecessor person, partnership, corporation or other organization or whose name or names appeared in the name of such predecessor organization and shall include the words "professional corporation" or wording or abbreviations denoting corporate existence.

§ 6165. Licensed Personnel

Except as provided in section 13403 of the Corporations Code, each director, shareholder, and each officer of a law corporation shall be a licensed person as defined in the Professional Corporation Act.

§ 6166. Disqualified Shareholder; Income

The income of a law corporation attributable to professional services rendered while a shareholder is a disqualified person (as defined in the Professional Corporation Act) shall not in any manner accrue to the benefit of such shareholder or his shares in the law corporation.

§ 6167. Misconduct

A law corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute a cause for discipline of a member of the State Bar, under any statute, rule or regulation now or hereafter in effect. In the conduct of its business, it shall observe and be bound by such statutes, rules and regulations to the same extent as if specifically designated therein as a member of the State Bar.

§ 6168. Investigation of Conduct; Powers

The State Bar may conduct an investigation of the conduct of the business of a law corporation.

Upon such investigation, the board of governors, or a committee authorized by it, shall have power to issue subpoenas, administer oaths, examine witnesses and compel the production of records, in the same manner as upon an investigation or formal hearing in a disciplinary matter under the State Bar Act. Such investigation shall be private and confidential, except to the extent that disclosure of facts and information may be required if a cease and desist order is thereafter issued and subsequent proceedings are had.

§ 6169. Notice to Show Cause; Hearing; Findings and Recommendations; Review

(a) When there is reason to believe that a law corporation has violated or is about to violate any of the provisions of this article or the Professional Corporation Act or of any other pertinent statute, rule or regulation, the State Bar may issue a notice directing the corporation to show cause why it should not be ordered to cease and

desist from specified acts or conduct or its certificate of registration should not be suspended or revoked. A copy of the notice shall be served upon the corporation in the manner provided for service of summons upon a California corporation.

(b) A hearing upon the notice to show cause shall be held before a standing or special committee appointed by the board of governors. Upon the hearing, the State Bar and the corporation shall be entitled to the issue of subpoenas, to be represented by counsel, to present evidence, and examine and cross-examine witnesses.

(c) The hearing committee shall make findings in writing and shall either recommend that the proceedings be dismissed or that a cease and desist order issue or that the certificate of registration of the corporation be suspended or revoked. Such determination may be reviewed by the board of governors or by a committee authorized by the board of governors to act in its stead, upon written petition for review, filed with the State Bar by the corporation or the State Bar within 20 days after service of such findings and recommendation. Upon review, the board of governors or the committee may take additional evidence, may adopt new or amended findings, and make such order as may be just, as to such notice to show cause.

§ 6170. Judicial Review

Any action of the State Bar or the board of governors or a committee of the State Bar provided for in this article may be reviewed by the Supreme Court by petition for review pursuant to rules prescribed by the Supreme Court.

§ 6171. Formation of Rules and Regulations

With the approval of the Supreme Court, the State Bar may formulate and enforce rules and regulations to carry out the purposes and objectives of this article, including rules and regulations requiring (a) that the articles of incorporation or bylaws of a law corporation shall include a provision whereby the capital stock of such corporation owned by a disqualified person (as defined in the Professional Corporation Act) or a deceased person shall be sold to the corporation or to the remaining shareholders of such corporation within such time as such rules and regulations may provide, and (b) that a law corporation as a condition of obtaining a certificate pursuant to the Professional Corporation Act and this article shall provide and maintain security by insurance or otherwise for claims against it by its clients for errors and omissions arising out of the rendering of professional services.

§ 6172. Disciplinary Powers of Supreme Court

Nothing in this article shall be construed as affecting or impairing the disciplinary powers and authority of the Supreme Court or of the State Bar in respect of conduct of members of the State Bar nor modifying the statutes and rules governing such conduct, except as expressly provided in this article and except that members of the State Bar may properly render legal services as officers or employees of a law corporation and may participate as shareholders, officers and directors thereof, under the terms and conditions provided by this article and the Professional Corporation Act.

ARTICLE 11. CESSATION OF LAW PRACTICE—JURISDICTION OF COURTS

(Added by Stats. 1974, ch. 589.)

§ 6180. Unfinished Client Matters; Notice of Cessation; Jurisdiction of Courts

When an attorney engaged in law practice in this state dies, resigns, becomes an inactive member of the State Bar, is disbarred, or is suspended from the active practice of law and is required by the order of suspension to give notice of such suspension, leaving an unfinished client matter for which no other active member of the State Bar with the consent of the client has agreed to assume responsibility, notice of cessation of law practice shall be given and the courts of this state shall have jurisdiction, as provided in this article.

§ 6180.1. Notice; Form and Contents; Persons Notified

The notice shall contain such information as may be required by any order of disbarment, suspension, or of acceptance of the attorneys' resignation, and by any rule of the Supreme Court, Judicial Council, or the State Bar. It shall be mailed to all persons who are then clients, to opposing counsel, to courts and agencies in which the attorney then had pending matters with an identification of the matter, to any errors and omissions insurer, to the State Bar and to any other person or entity having reason to be informed of such death, change of status or discontinuance or interruption of law practice. In the event of the death or incompetency of the attorney, the notice shall be given by the personal representative or guardian or conservator of the attorney or, if none, by the person having custody or control of the files and records of the attorney. In other cases, the notice shall be given by the attorney or a person authorized by the attorney or by the person having custody and control of the files and records. (Amended by Stats. 1975, ch. 387.)

§ 6180.2. Application for Assumption of Jurisdiction Over Law Practice; Venue

Notwithstanding the giving of notice pursuant to section 6180.1, a client of the attorney, the State Bar or an interested person or entity may make application to the superior court for the county where the attorney maintains or most recently has maintained his principal office for the practice of law or where he resides, for assumption by the court of jurisdiction over the law practice to the extent provided in this article.

§ 6180.3. Contents and Verification of Application

The application shall be verified, shall state facts showing probable cause to believe that notice of cessation is required pursuant to section 6180, and shall state the following:

(a) The occurrence of one or more of the events stated in section 6180;

(b) Probable cause to believe that supervision of the court is warranted because the attorney has left an unfinished client matter for which no other active member of the State Bar has, with the consent of the client, agreed to assume responsibility; and

(c) Probable cause to believe that the interests of one or

more clients of the attorney or of one or more other interested persons or entities will be prejudiced if the proceeding herein provided is not maintained. (Amended by Stats. 1975, ch. 387.)

§ 6180.4. Hearing on Application; Issuance of Order to Show Cause; Service

The application shall be set for hearing and an order to show cause shall be issued, directing the attorney, or his personal representative, or, if none, the person having custody and control of the files and records, to show cause why the court should not assume jurisdiction over the law practice as provided in this article. A copy of the application and order to show cause shall be served upon the person to whom it is directed by personal delivery or, as an alternate method of service, by certified or registered mail, return receipt requested, addressed to the attorney at the latest address shown on the official membership records of the State Bar or to the personal representative at the latest address shown in the probate proceeding. If the attorney has a guardian or conservator, copies shall also be served upon such fiduciary in similar manner. The court may prescribe additional or alternative methods of service of the application and order to show cause, and may prescribe methods of notifying and serving notices and process upon other persons and entities in cases not specifically provided for herein.

§ 6180.5. Findings of Court; Order Assuming Jurisdiction; Appointment and Powers of Attorneys

If the court finds that (a) one or more of the events stated in section 6180 has occurred, (b) that supervision of the courts is warranted because the affected attorney has left an unfinished client matter for which no other active member of the State Bar has with consent of the client agreed to assume responsibility, and (c) that the interest of one or more of the clients of the attorney or one or more other interested persons or entities will be prejudiced if the proceeding herein provided is not maintained, it may make an order assuming jurisdiction over the attorney's practice pursuant to this article. If the person to whom the order to show cause is directed does not appear the court may make its order upon the verified application or such proof as it may require. Thereupon the court shall appoint one or more active members of the State Bar to act under its direction and may order such appointed attorneys to do one or more of the following:

(1) Examine the files and records of the law practice, and obtain information as to any pending matters which may require attention;

(2) Notify persons and entities who appear to be clients of the attorney of the occurrence of the event or events stated in section 6180 and inform them that it may be to their best interest to obtain other legal counsel;

(3) Apply for extensions of time pending employment of such other counsel by the client;

(4) With the consent of the client, file notices, motions and pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained;

(5) Give notice to appropriate persons and entities who may be affected, other than clients, of the occurrence of such event or events;

(6) Arrange for the surrender or delivery of clients' papers or property; and

(7) Do such other acts as the court may direct to carry out the purposes of this article.

The court shall have jurisdiction over the files and records and law practice of the affected attorney for the limited purposes of this section, and may make all orders necessary or appropriate to exercise this jurisdiction. (Amended by Stats. 1975, ch. 387.)

§ 6180.6. Limitation on Conduct of Supervised Law Practice

Nothing in this article shall authorize the court or an attorney appointed by it pursuant to this article to approve or disapprove of the employment of legal counsel, fix terms of legal employment, fix the compensation which may have been earned by the affected attorney, or supervise or in any way to undertake to conduct such law practice except to the limited extent provided by paragraphs (3) and (4) of section 6180.5.

§ 6180.7. Employment of Appointed Attorney or Associates by Client of Affected Attorney

Unless court approval is first obtained, neither the attorney appointed pursuant to this article nor his corporation nor any partners or associates of such attorney shall accept employment as an attorney by any client of the affected attorney on any matter pending at the time of such appointment. Action taken pursuant to paragraphs (3) and (4) of section 6180.5 shall not be deemed such employment.

§ 6180.8. Interim Orders; Service

Upon a finding by the court that it is more likely than not that the application will be granted and that delay in making the orders described in section 6180.5 will result in substantial injury to clients, or to others, the court, without notice or upon such notice as it shall prescribe, may make interim orders containing such provisions as the court deems appropriate under the circumstances. Such order shall be served in the manner provided in section 6180.4, and if the application and order to show cause have not yet been served, they shall be served at the time of serving the order made pursuant to this section.

§ 6180.9. Pending Proceedings in Probate, Guardianship, or Conservatorship; Subjection of Legal Representative to Orders of Court

If there is a pending proceeding in probate, guardianship, or conservatorship relating to the affected attorney, the court having jurisdiction pursuant to this article may inquire into acts done by the legal representative of the attorney concerning the law practice. Upon reasonable notice to the legal representative, the court may determine that the acts of the legal representative relating to such law practice shall be subject to its orders pursuant to this article.

§ 6180.10. Application of Lawyer-Client Privilege to Appointed Attorney; Disclosures

Persons examining the files and records of the law practice of the affected attorney pursuant to this article shall observe the lawyer-client privilege and shall make disclosure only to the extent necessary to carry out the purposes of this article. Such disclosure is a disclosure which is reasonably necessary for the accomplishment of the purpose for which the affected attorney was consulted. The appointment of such member of the State

Bar shall not affect the lawyer-client privilege which privilege shall apply to communications by or to the appointed lawyers to the same extent as it would have applied to communications by or to the affected attorney.

§ 6180.11. Liabilities of Persons and Entities

Except for willful acts or omissions, no person or entity shall incur any liability by reason of the institution or maintenance of the proceeding. No person shall incur any liability for any act done or omitted to be done pursuant to order of the court under this article. No person or entity shall be liable for failure to apply for court jurisdiction under this article. Nothing herein shall affect any obligation otherwise existing between the affected attorney and any other person or entity.

§ 6180.12. Appointed Attorneys; Compensation; Reimbursement for Necessary Expenses

A member of the State Bar appointed pursuant to section 6180.5 shall serve without compensation. However, the member may be paid reasonable compensation by the State Bar in cases where the State Bar has determined that the member has devoted extraordinary time and services which were necessary to the performance of the member's duties under this article. All payments of compensation for time and services shall be at the discretion of the State Bar. Any member shall be entitled to reimbursement from the State Bar for necessary expenses incurred in the performance of the member's duties under this article. Upon court approval of expenses or compensation for time and services the State Bar shall be entitled to reimbursement therefor from the affected attorney or his or her estate. (Amended by Stats. 1983, ch. 254.)

§ 6180.13. Stay or Appeal of Order

An order made pursuant to this article is nonappealable, and shall not be stayed by petition for a writ except as ordered by the superior court or the appellate court.

§ 6180.14. "Attorney" and "Law Practice" Defined

As used in this article, "attorney" means a member or former member of the State Bar; "law practice" means (a) a law practice conducted by an individual; (b) a law practice conducted by a partnership, if section 6180 applies to all partners; and (c) a law practice conducted by a law corporation, if section 6180 applies as to all shareholders of the corporation. This article does not apply to legal services rendered as an employee, or under a contract which does not create the relationship of lawyer and client. (Amended by Stats. 1981, ch. 714.)

ARTICLE 12. INCAPACITY TO ATTEND TO LAW PRACTICE--JURISDICTION OF COURTS
(Added by Stats. 1975, ch. 387.)

§ 6190. Authority of Courts; Attorney Incapable of Practice; Protection of Clients

The courts of the state shall have the jurisdiction as provided in this article when an attorney engaged in the practice of law in this state has, for any reason, including but not limited to excessive use of alcohol or drugs, physical or mental illness, or other infirmity or other cause, become incapable of devoting the time and attention to, and providing the quality of service for, his or her law practice which is necessary to protect the interest of a client if there is an unfinished client matter for which no other active member of the State Bar, with the consent of the client, has agreed to assume responsibility.

§ 6190.1. Probable Cause; Application for Assumption by Court of Jurisdiction

If, after adequate notice and opportunity to be heard, a local administrative committee or hearing panel of the State Bar finds probable cause to believe that the facts set forth in section 6190 have occurred and that the interests of the client or of an interested person or entity will be prejudiced if the proceeding herein provided is not maintained, the client, the State Bar, or an interested person or entity may apply to the superior court for the county where the attorney maintains or most recently has maintained his or her principal office for the practice of law or where such attorney resides, for assumption by the court of jurisdiction over the law practice to the extent provided in Article 11 (commencing with section 6180) of Chapter 4 of Division 3 of this code.

§ 6190.2. Application; Verification; Contents

The application shall be verified and shall state facts showing each of the following:

(a) The findings made by the local administrative committee pursuant to section 6190.1.

(b) The interest of the applicant.

(c) The manner in which the attorney was given notice and an opportunity to be heard before the local administrative committee.

(d) Facts showing probable cause to believe that the interests of the client or of an interested person or entity will be prejudiced if the proceeding herein provided is not maintained.

§ 6190.3. Findings; Orders

If the court finds that (a) the facts set forth in section 6190 have occurred, (b) the affected attorney was given adequate notice and reasonable opportunity to be heard before the local administrative committee or hearing panel, and (c) that the interests of the client, or of an interested person or entity will be prejudiced if the proceeding provided herein is not maintained, the court may make all orders provided for by the provisions of Article 11 (commencing with section 6180) of Chapter 4 of Division 3 of this code.

§ 6190.4. Law Governing

The provisions of Article 11 (commencing with section 6180) of Chapter 4 of Division 3 of this code shall apply to the proceeding, whenever possible.

§ 6190.5. Concurrent Proceedings

The proceeding may be maintained concurrently with a disciplinary investigation or proceeding provided for by this chapter.

§ 6190.6. Termination of Proceedings

Upon motion duly made by any interested party, the court may terminate the proceedings.

Article 13. ARBITRATION OF ATTORNEYS' FEES
(Added by Stats. 1978, ch. 719.)

§ 6200. Establishment of System and Procedure; Exemptions; Voluntary or Mandatory Nature; Rules

(a) The board of governors shall, by rule, establish, maintain, and administer a system and procedure for the arbitration of disputes concerning fees charged for professional services by members of the State Bar or by members of the bar of other jurisdictions. Such rules may include provision for a filing fee in such amount as the Board of Governors may, from time to time, determine.

(b) This article shall not apply to any of the following:

(1) Disputes where the attorney is also admitted to practice in another state, and he or she maintains no office in the State of California, and no material portion of the services were rendered in the State of California.

(2) Claims for affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct, except as provided in subdivision (a) of section 6203.

(3) Disputes where the fee to be paid by the client or on his or her behalf has been determined pursuant to statute or court order.

(c) Arbitration under this article shall be voluntary for a client and shall be mandatory for an attorney if commenced by a client.

(d) The board of governors shall adopt rules to allow arbitration of attorney fee disputes under this article to proceed under arbitration systems sponsored by local bar associations in this state. Rules of procedure promulgated by local bar associations are subject to review by the board to insure that they provide for a fair, impartial, and speedy hearing and award. In adopting or reviewing these rules, the board may provide for one lay member of any arbitration panel of three arbitrators.

(e) In any arbitration conducted pursuant to this article by the State Bar or by a local bar association, pursuant to rules of procedure approved by the board of governors, the arbitrator or arbitrators, as well as the arbitrating association and its directors, officers, and employees, shall have the same immunity which attaches in judicial proceedings.

(f) In the conduct of arbitrations under this article the arbitrator or arbitrators may do all of the following:

(1) Take and hear evidence pertaining to the proceeding.

(2) Administer oaths and affirmations.

(3) Compel, by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the proceeding. (Amended by Stats. 1984, ch. 825.)

§ 6201. Notice to Client; Stay of Action; Right to Arbitration; Waiver by Client

(a) The rules adopted by the board of governors shall provide that, except as to an action filed in small claims court, an attorney shall forward a written notice to the client prior to or at the time of service of summons in an action against the client for recovery of fees covered by the provisions of this article. The written notice shall be in such form as the board of governors may prescribe, but shall include a statement of the client's right to arbitration under this article. Failure to give this notice shall be a ground for the dismissal of the action.

The rules adopted by the board of governors shall provide that the client's failure to request arbitration within 30 days after receipt of notice from the attorney shall be deemed a waiver of the client's right to arbitration under the provisions of this article.

(b) If an attorney, or the attorney's assignee, subject to the provisions of this article, commences an action in any court, other than a small claims court, and the dispute is not one to which subdivision (b) of Section 6200 applies, the client may stay the action by serving and filing a request for arbitration in accordance with the rules established by the board of governors pursuant to subdivision (a) of Section 6200. If, prior to the client initiating arbitration proceedings under this article, the attorney files an action against the client in small claims court for recovery of a fee covered by the provisions of this article, the small claims action, including any appeal, shall not be stayed under the provisions of this section, and the matter shall not be subject to arbitration under this article while the matter is pending in small claims court or after judgment is given in that court. The request for arbitration shall be served and filed prior to the filing of an answer in the action; failure to so request arbitration prior to the filing of an answer shall be deemed a waiver of the client's right to arbitration under the provisions of this article if notice of the client's right to arbitration was given pursuant to subdivision (a).

(c) Upon filing and service of the request for arbitration, the action shall be stayed, without the necessity of court order, until the award of the arbitrators is issued or the arbitration is otherwise terminated. The stay may be vacated in whole or in part, after a hearing duly noticed by any party or the court, if the court finds that the matter, or any part of it, is not an appropriate one for arbitration under the provisions of this article. The action may thereafter proceed subject to the provisions of Section 6204.

(d) A client's right to request or maintain arbitration under the provisions of this article is waived by the commencement of an action or the filing of any pleading by the client seeking judicial resolution of a fee dispute to which this article applies, or seeking affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct. (Amended by Stats. 1979, ch. 878; Stats. 1982, ch. 979; Stats. 1984, ch. 825.)

§ 6202. Disclosure of Attorney-Client Communication or Attorney's Work Product; Limitation

The provisions of Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code shall not prohibit the disclosure of any relevant communication, nor shall the provisions of Section 2016 of the Code of Civil Procedure be construed to prohibit the disclosure of any relevant work product of the attorney in connection with: (1) an arbitration hearing pursuant to this article; (2) a trial after arbitration; or

(3) judicial confirmation, correction, or vacation of an arbitration award. In no event shall such disclosure be deemed a waiver of the confidential character of such matters for any other purpose. (Amended by Stats. 1982, ch. 979; Stats. 1984, ch. 825.)

§ 6203. Award; Contents; Finality; Petition to Court; Award of Fees and Costs

(a) The award shall be in writing and signed by the arbitrators concurring therein. It shall include a determination of all the questions submitted to the arbitrators, the decision of which is necessary in order to determine the controversy. The State Bar, or the local bar association delegated by the State Bar to conduct the arbitration, shall deliver to each of the parties with the award, an original declaration of service of the award.

The arbitrators may receive evidence relating to claims of malpractice and professional misconduct, but only to the extent that those claims bear upon the fees to which the attorney is entitled. The arbitrators shall not award affirmative relief, in the form of damages or offset or otherwise, for injuries underlying any such claim. Nothing in this section shall be construed to prevent the arbitrators from awarding a refund of unearned prepaid fees.

(b) Even if the parties to the arbitration have not agreed in writing to be bound, the arbitration award shall become binding upon the passage of 30 days after mailing of notice of the award, unless a party has, within the 30 days, sought a trial after arbitration pursuant to Section 6204. If an action has previously been filed in any court, any petition to confirm, correct, or vacate the award shall be to the court in which the action is pending, and may be served by mail on any party who has appeared, as provided in Chapter 4 (commencing with Section 1003) of Title 14 of Part 2 of the Code of Civil Procedure; otherwise it shall be in the same manner as provided in Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure. If no action is pending in any court, the award may be confirmed, corrected, or vacated by petition to the court having jurisdiction over the amount of the arbitration award, but otherwise in the same manner as provided in Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure.

(c) A court confirming, correcting, or vacating an award under this section may award to the prevailing party reasonable fees and costs including, if applicable, fees or costs on appeal, incurred in obtaining confirmation, correction, or vacation of the award. The party obtaining judgment confirming, correcting, or vacating the award shall be the prevailing party except that, without regard to consideration of who the prevailing party may be, if a party did not appear at the arbitration hearing in the manner provided by the rules adopted by the board of governors, that party shall not be entitled to attorney's fees or costs upon confirmation, correction, or vacation of the award. (Amended by Stats. 1982, ch. 979; Stats. 1984, ch. 825.)

§ 6204. Agreement to be Bound by Award of Arbitrator; Trial After Arbitration in Absence of Agreement; Prevailing Party; Effect of Award and Determination

(a) The parties may agree in writing to be bound by the award of the arbitrators. In the absence of an agreement, either party shall be entitled to a trial after arbitration. Either party shall be entitled to a trial after arbitration if sought within 30 days, pursuant to subdivisions (b) and (c).

(b) If there is an action pending, the trial after arbitration shall be initiated by filing a rejection of arbitration award and request for trial after arbitration in that action within 30 days after mailing of notice of the award. If the rejection of arbitration award has been filed by the plaintiff in the pending action, all defendants shall file a responsive pleading within 30 days following service upon the defendant of the rejection of arbitration award and request for trial after arbitration. If the rejection of arbitration award has been filed by the defendant in the pending action, all defendants shall file a responsive pleading within 30 days after the filing of the rejection of arbitration award and request for trial after arbitration. Service may be made by mail on any party who has appeared; otherwise service shall be made in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure. Upon service and filing of the rejection of arbitration award, any stay entered pursuant to Section 6201 shall be vacated, without the necessity of a court order.

(c) If no action is pending, the trial after arbitration shall be initiated by the commencement of an action in the court having jurisdiction over the amount of money in the controversy within 30 days after mailing of notice of the award. After the filing of such an action, the action shall proceed in accordance with the provisions of Part 2 (commencing with Section 307) of the Code of Civil Procedure concerning civil actions generally.

(d) The party seeking a trial after arbitration shall be the prevailing party if that party obtains a judgment more favorable than that provided by the arbitration award, and in all other cases the other party shall be the prevailing party. The prevailing party may, in the discretion of the court, be entitled to an allowance for reasonable attorneys' fees and costs incurred in the trial after arbitration, which allowance shall be fixed by the court. Without regard to consideration of who the prevailing party may be, if a party does not appear at the arbitration hearing in the manner provided by the rules adopted by the board of governors, that party shall not be entitled to attorneys' fees upon a trial after arbitration. In fixing the attorneys' fees, the court shall consider the award and determinations of the arbitrators, in addition to any other relevant evidence.

(e) Except as provided in this section, the award and determinations of the arbitrators shall not be admissible nor operate as collateral estoppel or res judicata in any action or proceeding. (Amended by Stats. 1979, ch. 878; Stats. 1982, ch. 979; Stats. 1984, ch. 825.)

§ 6205. Construction of Article

The procedures provided for in this article shall apply to disputes concerning fees charged for professional services rendered on and after the date this article becomes effective.

§ 6206. Arbitration Barred if Time for Commencing Civil Action Barred; Exception

The time for filing a civil action seeking judicial resolution of a dispute subject to arbitration under this article shall be tolled from the time an arbitration is initiated in accordance with the rules adopted by the board of governors until (a) 30 days after

receipt of notice of the award of the arbitrators, or (b) receipt of notice that the arbitration is otherwise terminated, whichever comes first. Arbitration may not be commenced under this article if a civil action requesting the same relief would be barred by any provision of Title 2 (commencing with section 312) of Part 2 of the Code of Civil Procedure; provided that this limitation shall not apply to a request for arbitration by a client, pursuant to the provisions of subdivision (b) of section 6201, following the filing of a civil action by the attorney. (Amended by Stats. 1984, ch. 825.)

ARTICLE 14. FUNDS FOR THE PROVISION OF LEGAL SERVICES TO INDIGENT PERSONS
(Added by Stats. 1981, ch. 789.)

§ 6210. Legislative Findings; Purpose

The Legislature finds that, due to insufficient funding, existing programs providing free legal services in civil matters to indigent persons, especially underserved client groups, such as the elderly, the disabled, juveniles, and non-English-speaking persons, do not adequately meet the needs of these persons. It is the purpose of this article to expand the availability and improve the quality of existing free legal services in civil matters to indigent persons, and to initiate new programs that will provide services to them. The Legislature finds that the use of funds collected by the State Bar pursuant to this article for these purposes is in the public interest, is a proper use of the funds, and is consistent with essential public and governmental purposes in the judicial branch of government. The Legislature further finds that the expansion, improvement, and initiation of legal services to indigent persons will aid in the advancement of the science of jurisprudence and the improvement of the administration of justice.

§ 6211. Establishment by Attorney of Demand Trust Account; Interest Earned to be Paid to State Bar; Other Accounts not Prohibited; Rules of Professional Conduct, Authority of Supreme Court or State Bar not Affected

(a) An attorney or law firm, which in the course of the practice of law receives or disburses trust funds, shall establish and maintain an interest bearing demand trust account and shall deposit therein all client deposits that are nominal in amount or are on deposit for a short period of time. All such client funds may be deposited in a single unsegregated account. The interest earned on all such accounts shall be paid to the State Bar of California to be used for the purposes set forth in this article.

(b) Nothing in this article shall be construed to prohibit an attorney or law firm from establishing one or more interest bearing bank accounts or other trust investments as may be permitted by the Supreme Court, with the interest or dividends earned on the accounts payable to clients for trust funds not deposited in accordance with subdivision (a).

(c) With the approval of the Supreme Court, the State Bar may formulate and enforce rules of professional conduct pertaining to the use by attorneys or law firms of interest bearing trust accounts for unsegregated client funds pursuant to this article.

(d) Nothing in this article shall be construed as affecting or impairing the disciplinary powers and authority of the Supreme Court or of the State Bar or as modifying the statutes and rules governing the conduct of members of the State Bar.

§ 6212. Establishment by Attorney of Demand Trust Account; Amount of Interest; Remittance to State Bar; Statements and Reports

An attorney who, or a law firm which, establishes an interest bearing demand trust account pursuant to subdivision (a) of section 6211 shall comply with all of the following provisions:

(a) The interest bearing trust account shall be established with a bank or such other financial institutions as are authorized by the Supreme Court.

(b) The rate of interest payable on any interest bearing demand trust account shall not be less than the rate paid by the depository institution to regular, nonattorney depositors. Higher rates offered by the institution to customers whose deposits exceed certain time or quantity qualifications, such as those offered in the form of certificates of deposit, may be obtained by an attorney or law firm so long as there is no impairment of the right to withdraw or transfer principal immediately (except as accounts generally may be subject to statutory notification requirements), even though interest may be sacrificed thereby.

(c) The depository institution shall be directed to do all of the following:

(1) To remit interest on the average daily balance in the account, less reasonable service charges, to the State Bar, at least quarterly.

(2) To transmit to the State Bar with each remittance a statement showing the name of the attorney or law firm for whom the remittance is sent, the rate of interest applied, and the amount of service charges deducted, if any.

(3) To transmit to the depositing attorney or law firm at the same time a report showing the amount paid to the State Bar for that period, the rate of interest applied, the amount of service charges deducted, if any, and the average daily account balance for each month of the period for which the report is made. [See appendix A for Supreme Court order pursuant to Statutes 1978, Chapter 789.]

§ 6213. Definitions

As used in this article:

(a) "Qualified legal services project" means either of the following:

(1) A nonprofit project incorporated and operated exclusively in California which provides as its primary purpose and function legal services without charge to indigent persons and which has quality control procedures approved by the State Bar of California.

(2) A program operated exclusively in California by a nonprofit law school accredited by the State Bar of California which meets the requirements of subparagraphs (A) and (B).

(A) The program shall have operated for at least two years at a cost of at least twenty

thousand dollars ($20,000) per year as an identifiable law school unit with a primary purpose and function of providing legal services without charge to indigent persons.

(B) The program shall have quality control procedures approved by the State Bar of California.

(b) "Qualified support center" means an incorporated nonprofit legal services center, which has as its primary purpose and function the provision of legal training, legal technical assistance, or advocacy support without charge and which actually provides through an office in California a significant level of legal training, legal technical assistance, or advocacy support without charge to qualified legal services projects on a statewide basis in California.

(c) "Recipient" means a qualified legal services project or support center receiving financial assistance under this article.

(d) "Indigent person" means a person whose income is (1) 125 percent or less of the current poverty threshold established by the United States Office of Management and Budget, or (2) who is eligible for Supplemental Security Income or free services under the Older Americans Act or Developmentally Disabled Assistance Act. With regard to a project which provides free services of attorneys in private practice without compensation, "indigent person" also means a person whose income is 75 percent or less of the maximum levels of income for lower income households as defined in section 50079.5 of the Health and Safety Code. For the purpose of this subdivision, the income of a person who is disabled shall be determined after deducting the costs of medical and other disability-related special expenses.

(e) "Fee generating case" means any case or matter which, if undertaken on behalf of an indigent person by an attorney in private practice, reasonably may be expected to result in payment of a fee for legal services from an award to a client, from public funds, or from the opposing party. A case shall not be considered fee generating if adequate representation is unavailable and any of the following circumstances exist:

(1) The recipient has determined that free referral is not possible because of any of the following reasons:

(A) The case has been rejected by the local lawyer referral service, or if there is no such service, by two attorneys in private practice who have experience in the subject matter of the case.

(B) Neither the referral service nor any attorney will consider the case without payment of a consultation fee.

(C) The case is of the type that attorneys in private practice in the area ordinarily do not accept, or do not accept without prepayment of a fee.

(D) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate and consistent with professional responsibility, referral will be attempted at a later time.

(2) Recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other nonpecuniary relief, or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims.

(3) A court has appointed a recipient or an employee of a recipient pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction.

(4) The case involves the rights of a claimant under a publicly supported benefit program for which entitlement to benefit is based on need.

(f) "Legal Services Corporation" means the Legal Services Corporation established under the Legal Services Corporation Act of 1974, (Public Law 93-355; 42 U.S.C. 2996 et seq.).

(g) "Older Americans Act" means the Older Americans Act of 1965, as amended (Public Law 89-73; 42 U.S.C. Sec. 3001 et seq.).

(h) "Developmentally Disabled Assistance Act" means the developmentally Disabled Assistance and Bill of Rights Act of 1975, as amended (Public Law 94-103; 42 U.S.C. 6001 et seq.).

(i) "Supplemental security income recipient" means an individual receiving or eligible to receive payments under Title XVI of the federal Social Security Act, or payments under Chapter 3 (commencing with section 12000) of Part 3 of Division 9 of the Welfare and Institutions Code. (Amended by Stats. 1984, ch. 784.)

§ **6214. Qualified Legal Service Projects**

(a) Projects meeting the requirements of subdivision (a) of section 6213 which are funded either in whole or part by the Legal Services Corporation or with Older Americans Act funds shall be presumed qualified legal services projects for the purpose of this article.

(b) Projects meeting the requirements of subdivision (a) of section 6213 but not qualifying under the presumption specified in subdivision (a) shall qualify for funds under this article if they meet all of the following additional criteria:

(1) They receive cash funds from other sources in the amount of at least twenty thousand dollars ($20,000) per year to support free legal representation to indigent persons.

(2) They have demonstrated community support for the operation of a viable ongoing program.

(3) They provide one or both of the following special services:

(A) The coordination of the recruitment of substantial numbers of attorneys in private practice to provide free legal representation to indigent persons or to qualified legal services

projects in California.

(B) The provision of legal representation, training, or technical assistance on matters concerning special client groups, including the elderly, the disabled, juveniles, and non-English-speaking groups, or on matters of specialized substantive law important to the special client groups.

§ 6214.5. Law School Program—Date of Eligibility for Funding

A law school program that meets the definition of a "qualified legal services project" as defined in paragraph (2) of subdivision (a) of Section 6213, and that applied to the State Bar for funding under this article not later than February 17, 1984, shall be deemed eligible for all distributions of funds made under Section 6216. (Added by Stats. 1984, ch. 784.)

§ 6215. Qualified Support Centers

(a) Support centers satisfying the qualifications specified in subdivisions (b) of section 6213 which were operating an office and providing services in California on December 31, 1980, shall be presumed to be qualified support centers for the purposes of this article.

(b) Support centers not qualifying under the presumption specified in subdivision (a) may qualify as a support center by meeting both of the following additional criteria:

(1) Meeting quality control standards established by the State Bar.

(2) Being deemed to be of special need by a majority of the qualified legal services projects.

§ 6216. Distribution of Funds

The State Bar shall distribute all moneys received under the program established by this article for the provision of civil legal services to indigent persons. The funds first shall be distributed 18 months from the effective date of this article, or upon such a date, as shall be determined by the State Bar, that adequate funds are available to initiate the program. Thereafter, the funds shall be distributed on an annual basis. All distributions of funds shall be made in the following order and in the following manner:

(a) To pay the actual administrative costs of the program, including any costs incurred after the adoption of this article and a reasonable reserve therefor.

(b) Eighty-five percent of the funds remaining after payment of administrative costs allocated pursuant to this article shall be distributed to qualified legal services projects. Distribution shall be by a pro rata county-by-county formula based upon the number of persons whose income is 125 percent or less of the current poverty threshold per county. For the purposes of this section, the source of data identifying the number of persons per county shall be the latest available figures from the United States Department of Commerce, Bureau of the Census. Projects from more than one county may pool their funds to operate a joint, multicounty legal services project serving each of their respective counties.

(1) (A) In any county which is served by more than one qualified legal services project, the State Bar shall distribute funds for the county to those projects which apply on a pro rata basis, based upon the amount of their total budget expended in the prior year for legal services in that county as compared to the total expended in the prior year for legal services by all qualified legal services projects applying therefor in the county. In determining the amount of funds to be allocated to a qualified legal services project specified in paragraph (2) of subdivision (a) of Section 6213, the State Bar shall recognize only expenditures attributable to the representation of indigent persons as constituting the budget of the program.

(B) The State Bar shall reserve 10 percent of the funds allocated to the county for distribution to programs meeting the standards of subparagraph (A) of paragraph (3) and paragraphs (1) and (2) of subdivision (b) of section 6214 and which perform the services described in subparagraph (A) of paragraph (3) of section 6214 as their principal means of delivering legal services. The State Bar shall distribute the funds for that county to those programs which apply on a pro rata basis, based upon the amount of their total budget expended for free legal services in that county as compared to the total expended for free legal services by all programs meeting the standards of subparagraph (A) of paragraph (3) and paragraphs (1) and (2) of subdivision (b) of section 6214 in that county. The State Bar shall distribute any funds for which no program has qualified pursuant hereto, in accordance with the provisions of subparagraph (A) of paragraph (1) of this subdivision.

(2) In any county in which there is no qualified legal services projects providing services, the State Bar shall reserve for the remainder of the fiscal year for distribution the pro rata share of funds as provided for by this article. Upon application of a qualified legal services project proposing to provide legal services to the indigent of the county, the State Bar shall distribute the funds to the project. Any funds not so distributed shall be added to the funds to be distributed the following year.

(c) Fifteen percent of the funds remaining after payment of administrative costs allocated for the purposes of this article shall be distributed equally by the State Bar to qualified support centers which apply for the funds. The funds provided to support centers shall be used only for the provision of legal services within California. Qualified support centers that receive funds to provide services to qualified legal services projects from sources other than this article, shall submit and shall have approved by the State Bar a plan assuring that the services funded under this article are in addition to those already funded for qualified legal services projects by other sources. (Amended by Stats. 1984, ch. 784.)

§ 6217. Maintenance of Quality Services, Professional Standards, Attorney-Client Privilege; Funds to be Expended in Accordance with Article; Interference with Attorney Prohibited

With respect to the provision of legal assistance under this

article, each recipient shall ensure all of the following:

(a) The maintenance of quality service and professional standards.

(b) The expenditure of funds received in accordance with the provisions of this article.

(c) The preservation of the attorney-client privilege in any case, and the protection of the integrity of the adversary process from any impairment in furnishing legal assistance to indigent persons.

(d) That no one shall interfere with any attorney funded in whole or in part by this article in carrying out his or her professional responsibility to his or her client as established by the rules of professional responsibility and this chapter.

§ 6218. Eligibility for Services; Establishment of Guidelines; Funds to be Expended in Accordance with Article

All legal services projects and support centers receiving funds pursuant to this article shall adopt financial eligibility guidelines for indigent persons.

(a) Qualified legal services programs shall ensure that funds appropriated pursuant to this article shall be used solely to defray the costs of providing legal services to indigent persons or for such other purposes as set forth in this article.

(b) Funds received pursuant to this article by support centers shall only be used to provide services to qualified legal services projects as defined in subdivision (a) of section 6213 which are used pursuant to a plan as required by subdivision (c) of section 6216, or as permitted by section 6219.

§ 6219. Provisions of Work Opportunities and Scholarships for Disadvantaged Law Students

Qualified legal services projects and support centers may use funds provided under this article to provide work opportunities with pay, and where feasible, scholarships for disadvantaged law students to help defray their law school expenses.

§ 6220. Private Attorneys Providing Legal Services Without Charge; Support Center Services

Attorneys in private practice who are providing legal services without charge to indigent persons shall not be disqualified from receiving the services of the qualified support centers.

§ 6221. Services for Indigent Members of Disadvantaged and Underserved Groups

Qualified legal services projects shall make significant efforts to utilize 20 percent of the funds allocated under this article for increasing the availability of services to the elderly, the disabled, juveniles, or other indigent persons who are members of disadvantaged and underserved groups within their service area.

§ 6222. Financial Statements; Submission to State Bar; State Bar Report

A recipient of funds allocated pursuant to this article annually shall submit a financial statement to the State Bar, including an audit of the funds by a certified public accountant or a fiscal review approved by the State Bar, a report demonstrating the programs on which they were expended, a report on the recipient's compliance with the requirements of section 6217, and progress in meeting the service expansion requirements of section 6221.

The Board of Governors of the State Bar shall include a report of receipts of funds under this article, expenditures for administrative costs, and disbursements of the funds, on a county-by-county basis, in the annual report of State Bar receipts and expenditures required pursuant to section 6145.

§ 6223. Expenditure of Funds; Prohibitions

No funds allocated by the State Bar pursuant to this article shall be used for any of the following purposes:

(a) The provision of legal assistance with respect to any fee generating case, except in accordance with guidelines which shall be promulgated by the State Bar.

(b) The provision of legal assistance with respect to any criminal proceeding.

(c) The provision of legal assistance, except to indigent persons or except to provide support services to qualified legal services projects as defined by this article.

§ 6224. State Bar; Powers; Determination of Qualifications to Receive Funds; Denial of Funds; Termination; Procedures

The State Bar shall have the power to determine that an applicant for funding is not qualified to receive funding, to deny future funding, or to terminate existing funding because the recipient is not operating in compliance with the requirements or restrictions of this article.

A denial of an application for funding or for future funding or an action by the State Bar to terminate an existing grant of funds under this article shall not become final until the applicant or recipient has been afforded reasonable notice and an opportunity for a timely and fair hearing. Pending final determination of any hearing held with reference to termination of funding, financial assistance shall be continued at its existing level on a month-to-month basis. Hearings for denial shall be conducted by an impartial hearing officer whose decisions shall be final. The hearing officer shall render a decision no later than 30 days after the conclusion of the hearing. Specific procedures governing the conduct of the hearings of this section shall be determined by the State Bar pursuant to section 6225.

§ 6225. Implementation of Article; Adoption of Rules and Regulations; Procedures

The Board of Governors of the State Bar shall adopt the regulations and procedures necessary to implement this article and to ensure that the funds allocated herein are utilized to provide civil legal services to indigent persons, especially underserved client groups such as but not limited to the elderly, the disabled, juveniles, and non-English-speaking persons.

In adopting the regulations the Board of Governors shall comply with the following procedures:

(a) The board shall publish a preliminary draft of the regulations and procedures, which shall be distributed, together with notice of the hearings required by subdivi-

sion (b), to commercial banking institutions, to members of the State Bar, and to potential recipients of funds.

(b) The board shall hold at least two public hearings, one in southern California and one in northern California where affected and interested parties shall be afforded an opportunity to present oral and written testimony regarding the proposed regulations and procedures.

§ 6226. Implementation of Article; Resolution

The program authorized by this article shall become operative only upon the adoption of a resolution by the Board of Governors of the State Bar stating that regulations have been adopted pursuant to section 6225 which conform the program to all applicable tax and banking statutes, regulations, and rulings.

§ 6227. Credit of State Not Pledged

Nothing in this article shall create an obligation or pledge of the credit of the State of California or of the State Bar of California. Claims arising by reason of acts done pursuant to this article shall be limited to the moneys generated hereunder.

§ 6228. Severability

If any provision of this article or the application thereof to any group or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

CROSS REFERENCE TABLE
ORIGINS OF THE 1939 STATE BAR ACT

State Bar Act, Statutes 1927, Chapter 34, p. 38. Section	State Bar Act, Statutes 1939, Chapter 34, p. 347. Section
1	6000
2	6001
3	6002
4	6003
5	6004-6005
6	6004
7	6002
8	6006
9	6011-6016
10	6020
11	6021
12	Uncodified
13	Uncodified
14	6017
15	6018-6019
16	6016
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46	6143-6144
47	6125
48	6145
49	6126
50	Uncodified

Code of Civil Procedure Section	State Bar Act, Statutes 1939, Chapter 34, p. 347. Section
278	6067
281	6127
282	6068
287	6100-6101, 6103-6106
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292	6109-6110
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301	6118

Penal Code Section	State Bar Act, Statutes 1939, Chapter 34, p. 347. Section
160	6128
161	6129
161a	6126
162	6131
163	6131

General Laws Statutes	State Bar Act, Statutes 1939, Chapter 34, p. 347. Section
1931, ch. 1043	6151-6154

RULES OF PROFESSIONAL CONDUCT*

In Effect January 1, 1975

Revised Rules Approved by Order of the Supreme Court Filed December 31, 1974 together with subsequent revisions.

The following revision constitutes the first complete revision of the Rules of Professional Conduct. The first set of Rules of Professional Conduct were approved by the Supreme Court effective May 24, 1928. For the last official printing of the former revision of the Rules, see (1969) 1 Cal.3d Rules amended 1972 and 1973.

RULE 1-100. RULES OF PROFESSIONAL CONDUCT, IN GENERAL.

These rules of professional conduct, adopted by the Board of Governors of the State Bar of California, pursuant to the provisions of the State Bar Act, shall become effective upon approval by the Supreme Court of California. When so approved, these rules shall be binding upon all members of the State Bar, and the wilful breach of any of these rules shall be punishable as provided by law. Nothing in these rules is intended to limit or supersede any provision of law relating to the duties and obligations of attorneys or the consequences of a violation thereof. The prohibition of certain conduct in these rules is not to be interpreted as an approval of conduct not specifically mentioned. These rules may be cited and referred to as "Rules of Professional Conduct of the State Bar of California".

Wherever in these rules reference is made to a law firm or association, such reference shall also apply to a law corporation.

RULE 1-101. MAINTAINING INTEGRITY AND COMPETENCE OF THE LEGAL PROFESSION.

A member of the State Bar shall not further the application for admission to practice law of another person known by him to be unqualified in respect to character, education, or other relevant attribute. This rule shall not prevent a member from serving as counsel of record for an applicant for admission to practice in proceedings related to such admission.

RULE 2-101. GENERAL PROHIBITION AGAINST SOLICITATION OF PROFESSIONAL EMPLOYMENT.

(Repealed by order of Supreme Court, effective April 1, 1979.)

RULE 2-101. PROFESSIONAL EMPLOYMENT.

This rule is adopted to foster and encourage the free flow of truthful and responsible information to assist the public in recognizing legal problems and in making informed choices of legal counsel.

Accordingly, a member of the State Bar may seek professional employment from a former, present or potential client by any means consistent with these rules.

(A) A "communication" is a message concerning the availability for professional employment of a member or a member's firm. A "communication" made by or on behalf of a member shall not:

(1) Contain any untrue statement; or

(2) Contain any matter, or present or arrange any matter in a manner or format which is false, deceptive, or which tends to confuse, deceive or mislead the public; or

(3) Omit to state any fact necessary to make the statements made, in the light of the circumstances under which they are made, not misleading to the public; or

(4) Fail to indicate clearly, expressly or by context, that it is a "communication"; or

(5) State that a member is a certified specialist unless the member holds a current certificate as a specialist issued by the California Board of Legal Specialization pursuant to a plan for specialization approved by the Supreme Court; or

(6) Be transmitted in any manner which involves intrusion, coercion, duress, compulsion, intimidation, threats or vexatious or harassing conduct.

(B) No solicitation or "communication" seeking professional employment from a potential client for pecuniary gain shall be delivered by a member or a member's agent in person or by telephone to the potential client, nor shall a solicitation or "communication" specifically directed to a particular potential client regarding that potential client's particular case or matter and seeking professional employment for pecuniary gain be delivered by any other means, unless the solicitation or "communication" is protected from abridgment by the Constitution of the United States or by the Constitution of the State of California. A potential client includes a former or present client.

Notwithstanding the foregoing, nothing in this subdivision (B) shall limit or negate the continuing professional duties of a member or a member's firm to former or present clients, or a member's right to respond to inquiries from potential clients.

(C) A member or member's firm shall not solicit or accept professional employment offered or obtained through the acts of an agent, runner or capper, which acts would be in violation of law, or which, if performed by a member of the State Bar, would be in violation of subdivisions (A) or (B) of this rule 2-101.

** (D) The Board of Governors of the State Bar shall formulate and adopt standards as to what "communications"

* NOTE: As adopted and approved, the new rules are prospective in application but neither their adoption nor anything in their provisions will constitute a bar to a disciplinary proceeding in progress or later commenced for an alleged violation of the Rules of Professional Conduct in effect prior to January 1, 1975. For this purpose, the prior rules are continued.

** Pursuant to rule 2-101(D) the Board of Governors of the State Bar has adopted the following standards; effective May 25, 1979.

(1) A "communication" which contains guarantees, war-

[Footnote continued on next page]

will be presumed to violate subdivisions (A) or (B) of this rule 2-101. The standards shall have effect exclusively in disciplinary proceedings involving alleged violations of these rules as presumptions affecting the burden of proof. "Presumption affecting the burden of proof" means that presumption defined in Evidence Code sections 605 and 606. The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on members of the State Bar.

(E) The member shall retain for one year a true and correct copy or recording of any "communication" made by written or electronic media pertaining to the member or the member's firm. Upon written request, the member or the member's firm shall make any such copy or recording available to the State Bar, and, if requested, shall provide to the State Bar the evidence of the facts upon which any factual or objective claims contained in the "communication" are based. (Adopted by order of Supreme Court, effective April 1, 1979.)

RULE 2-102. PUBLICITY IN GENERAL.

(Repealed by order of Supreme Court, effective April 1, 1979.)

RULE 2-102. LEGAL SERVICE PROGRAMS.

(A) The participation of a member or a member's firm in a bona fide program, activity or organization that furnishes, recommends, or pays for legal services, including but not limited to group, prepaid and voluntary legal service organizations, programs or activities is encouraged, and is not, of itself, a violation of these rules. A program or activity is not bona fide if its organization or operation allows any third person, organization or group to interfere with or control the performance of the member's duties to his or her clients; or allows unlicensed persons to practice law; or allows any third person, organization or group to receive directly or indirectly any part of the consideration paid to the member of the State Bar except as permitted by these rules; or would violate rule 2-101.

(B) The participation of a member of the State Bar in a lawyer referral service established, sponsored, supervised and operated in conformity with the Minimum Standards for a Lawyer Referral Service in California (hereinafter "Standards") is encouraged, and is not, of itself, a violation of these rules. The Board of Governors of the State Bar shall formulate and adopt the Standards, which, as from time to time amended, shall be effective and binding on members of the State Bar. (Amended by order of Supreme Court, effective April 1, 1979.)*

RULE 2-103. PROFESSIONAL NOTICES, LETTERHEADS, OFFICES AND LAW LISTS.

(Repealed by order of Supreme Court, effective April 1, 1979.)

RULE 2-104. RECOMMENDATION OF PROFESSIONAL EMPLOYMENT.

(Repealed by order of Supreme Court, effective April 1, 1979.)

RULE 2-105. ADVISING INQUIRERS THROUGH THE MEDIA ON SPECIFIC LEGAL PROBLEMS.

(Repealed by order of Supreme Court, effective February 20, 1985.)

RULE 2-106. SPECIALIZATION.

(Repealed by order of Supreme Court, effective April 1, 1979.)

RULE 2-107. FEES FOR LEGAL SERVICES.

(A) A member of the State Bar shall not enter into an agreement for, charge or collect an illegal or unconscionable fee.

(B) A fee is unconscionable when it is so exorbitant and wholly disproportionate to the services performed as to shock the conscience of lawyers of ordinary prudence practicing in the same community. Reasonableness shall be determined on the basis of circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. Among the factors to be considered, where appropriate, in determining the reasonableness of a fee are the following:

(1) The novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly.

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.

(3) The amount involved and the results obtained.

(4) The time limitations imposed by the client or by the circumstances.

(5) The nature and length of the professional relationship with the client.

(6) The experience, reputation, and ability of the lawyer or lawyers performing the services.

[Footnote continued from previous page]

ranties or predictions regarding the result of legal action is presumed to violate rule 2-101, Rules of Professional Conduct.

(2) A "communication" which contains testimonials about or endorsements of a member is presumed to violate rule 2-101, Rules of Professional Conduct.

(3) A "communication" which is delivered in person or by telephone to a potential client who is in such a physical, emotional or mental state that he or she would not be expected to exercise reasonable judgment as to the retention of counsel, is presumed to violate rule 2-101, Rules of Professional Conduct.

(4) A "communication" which is transmitted at the scene of an accident or at or en route to a hospital, emergency care center or other health care facility is presumed to violate rule 2-101, Rules of Professional Conduct.

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* PUBLISHER'S NOTE: Minimum Standards for a Lawyer Referral Service in California may be found at appendix b.

(7) Whether the fee is fixed or contingent.

(8) The time and labor required.

(9) The informed consent of the client to the fee agreement.

RULE 2-108. FINANCIAL ARRANGEMENTS AMONG LAWYERS.

(A) A member of the State Bar shall not divide a fee for legal services with another person licensed to practice law who is not a partner or associate in the member's law firm or law office, unless:

(1) The client consents in writing to employment of the other person licensed to practice law after a full disclosure has been made in writing that a division of fees will be made and the terms of such division; and

(2) The total fee charged by all persons licensed to practice law is not increased solely by reason of the provision for division of fees and does not exceed reasonable compensation for all services they render to the client.

(B) Except as permitted in subdivision (A), a member of the State Bar shall not compensate, give or promise anything of value to any person licensed to practice law for the purpose of recommending or securing employment of the member or the member's firm by a client, or as a reward for having made a recommendation resulting in employment of the member or the member's firm by a client. A member's offering of or giving a gift or gratuity to any person licensed to practice law, who has made a recommendation resulting in the employment of the member or the member's firm, shall not of itself violate this rule, provided that the gift or gratuity was not offered in consideration of any promise, agreement or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future. (Amended by order of Supreme Court, effective October 1, 1979.)

RULE 2-109. AGREEMENTS RESTRICTING THE PRACTICE OF A MEMBER OF THE STATE BAR.

(A) A member of the State Bar shall not be a party to or participate in an agreement, whether in connection with the settlement of a lawsuit or otherwise, if the agreement restricts the right of a member of the State Bar to practice law.

(B) Nothing in subdivision (A) of this rule shall be construed as prohibiting such a restrictive agreement which:

(1) is a part of an employment or partnership agreement between members of the State Bar provided said restrictive agreement does not survive the term of said partnership or employment; or

(2) requires payments to a member of the State Bar upon his permanent retirement from the practice of law.

RULE 2-110. ACCEPTANCE OF EMPLOYMENT.

A member of the State Bar shall not seek or accept employment to accomplish any of the following objectives, nor shall the member do so if he knows or should know that the person solicited for or offering the employment wishes to accomplish any of the following objectives:

(A) Bring a legal action, conduct a defense, or assert a position in litigation, or otherwise take steps, solely for the purpose of harassing or maliciously injuring any person or to prosecute or defend a case solely out of spite.

(B) Present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by good faith argument for an extension, modification or reversal of existing law.

(C) Take or prosecute an appeal solely for delay, or for any other reason not in good faith. (Amended by order of Supreme Court, effective April 1, 1979.)

RULE 2-111. WITHDRAWAL FROM EMPLOYMENT.

(A) In general.

(1) If permission for withdrawal from employment is required by the rules of a tribunal, a member of the State Bar shall not withdraw from employment in a proceeding before that tribunal without its permission.

(2) In any event, a member of the State Bar shall not withdraw from employment until he has taken reasonable steps to avoid forseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

(3) A member of the State Bar who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned. However, this rule shall not be applicable to a true retainer fee which is paid solely for the purpose of insuring the availability of the attorney for the matter.

(4) If upon or after undertaking employment, a member of the State Bar knows or should know that the member ought to be called as a witness on behalf of the member's client in litigation concerning the subject matter of such employment, the member may continue employment only with the written consent of the client given after the client has been fully advised regarding the possible implications of such dual role as to the outcome of the client's cause and has had a reasonable opportunity to seek the advice of independent counsel on the matter. In civil proceedings, the written consent of the client shall be filed with the court not later than the commencement of trial. In criminal proceedings, the written consent need not be filed with the court but the member has the duty, before testifying, of satisfying the court that such consent has been obtained from the client if representing the defendant. The member may continue employment and the client's consent need not be obtained in the following circumstances:

(a) If the member's testimony will relate solely to an uncontested matter; or

(b) If the member's testimony will relate solely to a matter of formality and there is not reason to believe that substantial evidence will be offered in opposition to the testimony; or

(c) If the member's testimony will relate solely to the nature and value of legal services rendered in the case by the lawyer or his firm to the client; or

(d) If the member is representing the People, if the member obtains the consent of the head of the particular office representing the People, and if the member's continued representation is not inconsistent with the principles of recusal. (Amended by order of the Supreme Court, effective November 1, 1979.)

(5) If, after undertaking employment in contemplated or pending litigation, a member of the State Bar learns or it is obvious that he or a lawyer in his firm may be called as a witness other than on behalf of his client, he may continue the representation until it is apparent that his testimony is or may be prejudicial to his client.

(B) Mandatory Withdrawal.

A member of the State Bar representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a member of the State Bar representing a client in other matters shall withdraw from employment, if:

(1) He knows or should know that his client is bringing a legal action, conducting a defense, asserting a position in litigation, or otherwise having steps taken for him solely for the purpose of harassing or maliciously injuring any person or solely out of spite, or is taking or prosecuting an appeal merely for delay, or for any other reason not in good faith; or

(2) He knows or should know that his continued employment will result in violation of these Rules of Professional Conduct or of the State Bar Act; or

(3) His mental or physical condition renders it unreasonably difficult for him to carry out the employment effectively.

(C) Permissive Withdrawal.

If Rule 2-111(B) is not applicable, a member of the State Bar may not request permission to withdraw in matters pending before a tribunal and may not withdraw in other matters, unless such request or such withdrawal is because:

(1) His client:

(a) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law; or

(b) Personally seeks to pursue an illegal course of conduct; or

(c) Insists that the member of the State Bar pursue a course of conduct that is illegal or that is prohibited under these Rules of Professional Conduct or the State Bar Act; or

(d) By other conduct renders it unreasonably difficult for the member of the State Bar to carry out his employment effectively; or

(e) Insists, in a matter not pending before a tribunal, that the member of the State Bar engage in conduct that is contrary to the judgment and advice of the member of the State Bar but not prohibited under these Rules of Professional Conduct or the State Bar Act; or

(f) Deliberately disregards an agreement or obligation to the member of the State Bar as to expenses or fees; or

(2) His continued employment is likely to result in a violation of these Rules of Professional Conduct or of the State Bar Act; or

(3) His inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal; or

(4) His mental or physical condition renders it difficult for him to carry out the employment effectively; or

(5) His client knowingly and freely assents to termination of his employment; or

(6) He believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

RULE 3-101. AIDING UNAUTHORIZED PRACTICE OF LAW.

(A) A member of the State Bar shall not aid any person, association, or corporation in the unauthorized practice of law.

(B) A member of the State Bar shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.

RULE 3-102. FINANCIAL ARRANGEMENTS WITH NON-LAWYERS.

(A) A member of the State Bar or the member's firm shall not directly or indirectly share legal fees except with a person licensed to practice law except that:

(1) An agreement by a member of the State Bar with member's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the member's death, to his or her estate or to one or more specified persons.

(2) A member of the State Bar who undertakes to complete unfinished legal business of a deceased member of the State Bar may pay to the estate of the deceased member of the State Bar or other person legally entitled thereto that proportion of the total compensation which fairly represents the services rendered by the deceased member of the State Bar.

(3) A member of the State Bar or the member's firm may include employees not members of the State Bar in a retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(B) A member of the State Bar shall not compensate or give or promise anything of value to any person or entity for the purpose of recommending or securing employment of the member or the member's firm by a client, or as a reward for having made a recommendation resulting in employment of the member or the member's firm by a client. A member's offering of or giving a gift or gratuity to any person or entity, which has made a recommendation resulting in the employment of the member or the member's firms, shall not of itself violate this rule, provided that the gift or gratuity was not offered in consideration of any promise, agreement or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future. (Amended by order of Supreme Court, effective October 1, 1979.)

(C) A member of the State Bar shall not compensate or give or promise anything of value to any representative of the press, radio, television or other communication medium in anticipation of or in return for publicity of the member, the member's firm, or any other attorney as such in a news item, but the incidental provision of food or beverages shall not of itself violate this subdivision. (Amended by order of Supreme Court, effective April 1, 1979.)

RULE 3-103. FORMING A PARTNERSHIP WITH A NON-LAWYER.

A member of the State Bar shall not form a partnership with a person not licensed to practice law if any of the activities of the partnership consist of the practice of law.

RULE 4-101. ACCEPTING EMPLOYMENT ADVERSE TO A CLIENT.

A member of the State Bar shall not accept employment adverse to a client or former client, without the informed and written consent of the client or former client, relating to a matter in reference to which he has obtained confidential information by reason of or in the course of his employment by such client or former client.

RULE 5-101. AVOIDING ADVERSE INTERESTS.

A member of the State Bar shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless (1) the transaction and terms in which the member of the State Bar acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in manner and terms which should have reasonably been understood by the client, (2) the client is given a reasonable opportunity to seek the advice of independent counsel of the client's choice on the transaction, and (3) the client consents in writing thereto.

RULE 5-102. AVOIDING THE REPRESENTATION OF ADVERSE INTERESTS.

(A) A member of the State Bar shall not accept professional employment without first disclosing his relation, if any, with the adverse party, and his interest, if any, in the subject matter of the employment. A member of the State Bar who accepts employment under this rule shall first obtain the client's written consent to such employment.

(B) A member of the State Bar shall not represent conflicting interests, except with the written consent of all parties concerned.

RULE 5-103. PURCHASING PROPERTY AT A PROBATE, FORECLOSURE OR JUDICIAL SALE.

A member of the State Bar shall not directly or indirectly purchase property at a probate, foreclosure or judicial sale in an action or proceeding in which such member or any partner or associate of such member appears as attorney for a party or is acting as executor, trustee, administrator, guardian or conservator.

As used in this rule, the term "associate" means an employee or fellow employee who is a member of the State Bar.

RULE 5-104. PAYMENT OF PERSONAL OR BUSINESS EXPENSES INCURRED BY OR FOR A CLIENT.

(A) A member of the State Bar shall not directly or indirectly pay or agree to pay, guarantee, or represent or sanction the representation that he will pay personal or business expenses incurred by or for a client, prospective or existing and shall not prior to his employment enter into any discussion or other communication with a prospective client regarding any such payments or agreements to pay; provided this rule shall not prohibit a member:

(1) with the consent of the client, from paying or agreeing to pay to third persons such expenses from funds collected or to be collected for the client; or

(2) after he has been employed, from lending money to his client upon the client's promise in writing to repay such loan; or

(3) from advancing the costs of prosecuting or defending a claim or action or otherwise protecting or promoting the client's interests. Such costs within the meaning of this subparagraph (3) shall be limited to all reasonable expenses of litigation or reasonable expenses in preparation for litigation or in providing any legal services to the client.

(B) Nothing in Rule 5-104 shall be deemed to abrogate any of the provisions set forth in Rules 5-101 through 5-103.

(C) Nothing in this Rule 5-104 shall prohibit a member of the State Bar from reading or showing this Rule to a prospective client and describing the nature and extent of the conduct prohibited by this rule.

RULE 5-105. COMMUNICATION OF WRITTEN SETTLEMENT OFFER.

A member of the State Bar shall promptly communicate to the member's client all amounts, terms and conditions of any written offer of settlement made by or on behalf of an opposing party. As used in this rule, "client" includes a person employing the member of the State Bar who possesses the authority to accept an offer of settlement, or, in a class action, who is a representative of the class. (Added by order of Supreme Court, effective March 15, 1979.)

RULE 6-101. FAILING TO ACT COMPETENTLY.

(A) (1) Attorney competence means the application of sufficient learning, skill, and diligence necessary to discharge the member's duties arising from the employment or representation.

(2) A member of the State Bar shall not intentionally or with reckless disregard or repeatedly fail to perform legal services competently.

(B) Unless the member associates or, where approprate, professionally consults another lawyer who the member reasonably believes is competent, a member of the State Bar shall not

(1) Accept employment or continue representation in a legal matter when the member knows that the member does not have, or will not acquire before performance is required, sufficient time, resources and ability to, perform the matter with competence, or

(2) Repeatedly accept employment or continue representation in legal matters when the member reasonably should know that the member does not have, or will not acquire before performance is required, sufficient time, resources and ability to, perform the matter with competence.

(C) As used in this rule, the term "ability" means a quality or state of having sufficient learning and skill and being mentally, emotionally and physically able to perform legal services. (Amended by order of Supreme Court, effective October 21, 1983.)

[The text of former rule 6-101, which was in effect from January 1, 1975 to October 23, 1983 is reprinted below for your convenience:

A member of the State Bar shall not willfully or habitually

(1) Perform legal services for a client or clients if he knows or reasonably should know that he does not possess the learning and skill ordinarily possessed by lawyers in good standing who perform, but do not specialize in, similar services practicing in the same or similar locality and under similar circumstances unless he associates or, where appropriate, professionally consults another lawyer who he reasonably believes does possess the requisite learning and skill;

(2) Fail to use reasonable diligence and his best judgment in the exercise of his skill and in the application of his learning in an effort to accomplish, with reasonable speed, the purpose for which he is employed.

The good faith of an attorney is a matter to be considered in determining whether acts done through ignorance or mistake warrant imposition of discipline under Rule 6-101.]

RULE 6-102. LIMITING LIABILITY TO CLIENT.

A member of the State Bar shall not attempt to exonerate himself from or limit his liability to his client for his personal malpractice. This rule shall not prevent a member of the State Bar from settling or defending a malpractice claim.

RULE 7-101. ADVISING THE VIOLATION OF LAW.

A member of the State Bar shall not advise the violation of any law, rule or ruling of a tribunal unless he believes in good faith that such law, rule or ruling is invalid. A member of the State Bar may take appropriate steps in good faith to test the validity of any law, rule or ruling of a tribunal.

RULE 7-102. PERFORMING THE DUTY OF MEMBER OF THE STATE BAR IN GOVERNMENT SERVICE.

A member of the State Bar in government service shall not institute or cause to be instituted criminal charges when he knows or should know that the charges are not supported by probable cause. If, after the institution of criminal charges, a member of the State Bar in government service having responsibility for prosecuting the charges becomes aware that those charges are not supported by probable cause, he shall promptly so advise the court in which the criminal matter is pending.

RULE 7-103. COMMUNICATING WITH AN ADVERSE PARTY REPRESENTED BY COUNSEL.

A member of the State Bar shall not communicate directly or indirectly with a party whom he knows to be represented by counsel upon a subject of controversy, without the express consent of such counsel. This rule shall not apply to communications with a public officer, board, committee or body.

RULE 7-104. THREATENING CRIMINAL PROSECUTION.

A member of the State Bar shall not threaten to present criminal, administrative or disciplinary charges to obtain an advantage in a civil action nor shall he present or participate in presenting criminal, administrative or disciplinary charges solely to obtain an advantage in a civil matter.

RULE 7-105. TRIAL CONDUCT.

In presenting a matter to a tribunal, a member of the State Bar shall:

(1) Employ, for the purpose of maintaining the causes confided to him such means only as are consistent with truth, and shall not seek to mislead the judge, judicial officer or jury by an artifice or false statement of fact or law. A member of the State Bar shall not intentionally misquote to a judge or judicial officer the language of a book, statute or decision; nor shall he, with knowledge of its invalidity and without disclosing such knowledge, cite as authority a decision that has been overruled or a statute that has been repealed or declared unconstitutional. A member of the State Bar shall refrain from asserting his personal knowledge of the facts at issue, except when testifying as a witness.

(2) Disclose, unless privileged or irrelevant, the identities of the clients he represents.

RULE 7-106. COMMUNICATION WITH OR INVESTIGATION OF JURORS.

(A) Before the trial of a case, a member of the State Bar connected therewith shall not communicate directly or indirectly with anyone he knows to be a member of the venire from which the jury will be selected for the trial of the case.

(B) During the trial of a case:

(1) A member of the State Bar connected therewith shall not communicate directly or indirectly with any member of the jury.

(2) A member of the State Bar who is not connected therewith shall not communicate directly or indirectly with a juror concerning the case.

(C) Rule 7-106(A) and (B) do not prohibit a member of the State Bar from communicating with veniremen or jurors as a part of the official proceedings.

(D) After discharge of the jury from further consideration of a case with which the member of the State Bar was connected, the member of the State Bar shall not ask questions of or make comments to a member of that jury that are intended to harass or embarrass the juror or to influence the juror's actions in future jury service.

(E) A member of the State Bar shall not conduct directly or indirectly an out of court investigation of either a venireman or a juror of a type likely to influence the state of mind of such venireman or juror in present or future jury service.

(F) All restrictions imposed by Rule 7-106 upon a member of the State Bar also apply to communications with or investigations of members of a family of a venireman or a juror.

(G) A member of the State Bar shall reveal promptly to the court improper conduct by a venireman or a juror, or by another toward a venireman or a juror or a member of his family of which the member of the State Bar has knowledge.

RULE 7-107. CONTACT WITH WITNESSES.

A member of the State Bar shall not:

(A) Suppress any evidence that he or his client has a legal obligation to reveal or produce.

(B) Advise or directly or indirectly cause a person to secrete himself or to leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness therein.

(C) Directly or indirectly pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of his testimony or the outcome of his case. Except where prohibited by law, a member of the State Bar may advance, guarantee or acquiesce in the payment of:

(1) Expenses reasonably incurred by a witness in attending or testifying.

(2) Reasonable compensation to a witness for his loss of time in attending or testifying.

(3) A reasonable fee for the professional services of an expert witness.

RULE 7-108. CONTACT WITH OFFICIALS.

(A) A member of the State Bar shall not directly or indirectly give or lend anything of value to a judge, official, or employee of a tribunal unless the personal or family relationship between the member and the judge, official or employee is such that gifts are customarily given and exchanged.

(B) A member of the State Bar shall not directly or indirectly, in the absence of opposing counsel, communicate with or argue to a judge or judicial officer, upon the merits of a contested matter pending before such judge or judicial officer, except in open court; nor shall he, without furnishing opposing counsel with a copy thereof, address a written communication to a judge or judicial officer concerning the merits of a contested matter pending before such judge or judicial officer. The rule shall not apply to ex parte matters.

RULE 8-101. PRESERVING IDENTITY OF FUNDS AND PROPERTY OF A CLIENT.

(A) All funds received or held for the benefit of clients by a member of the State Bar or firm of which he is a member, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts labelled "Trust Account", "Client's Funds Account" or words of similar import, maintained in the State of California, or, with written consent of the client, in such other jurisdiction where there is a substantial relationship between his client or his client's business and the other jurisdiction and no funds belonging to the member of the State Bar or firm of which he is a member shall be deposited therein or otherwise commingled therewith except as follows:

(1) Funds reasonably sufficient to pay bank charges may be deposited therein.

(2) Funds belonging in part to a client and in part presently or potentially to the member of the State Bar or firm of which he is a member must be deposited therein and the portion belonging to the member of the State Bar or firm of which he is a member must be withdrawn at the earliest reasonable time after the member's interest in that portion becomes fixed. However, when the right of the member of the State Bar or firm of which he is a member to receive a portion of trust funds is disputed by the client, the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) A member of the State Bar shall:

(1) Promptly notify a client of the receipt of his funds, securities, or other properties.

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the member of the State Bar and render appropriate accounts to his client regarding them; preserve such records for a period of no less than five years after final appropriate distribution of such funds or properties; and comply with any order for an audit of such records issued pursuant to the Rules of Procedure of the State Bar.

(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the member of the State Bar which the client is entitled to receive. (Amended by order of Supreme Court, effective October 21, 1983.) [See appendix A for Supreme Court order pursuant to Statutes 1978, Chapter 789.]

RULE 9-101. DISCIPLINARY AUTHORITY OF THE STATE BAR.

A member of the State Bar shall comply with conditions attached to public or private reprovals administered by the State Bar pursuant to Business and Professions Code sections 6077 and 6078 and rule 956, California Rules of Court. (Added by order of Supreme Court, effective November 18, 1983.)

TITLE II
MISCELLANEOUS RULES

DIVISION II

Rules Relating to Attorney Admission and Disciplinary Proceedings and Review of State Bar Proceedings

(Adopted by Supreme Court of the State of California, effective March 19, 1956, pursuant to the provisions of Business and Professions Code section 6102.)

RULE 951 DISCIPLINARY PROCEEDINGS ON ATTORNEY'S CONVICTION OF CRIME

(a) [Temporary Suspension Order]

A petition to set aside an order suspending an attorney until further order of the court, as provided by section 6102(a) of the Business and Professions Code, may be filed within 15 days after such order is made. The petition shall be verified and may be accompanied by points and authorities. Disposition thereof shall be based upon the record of conviction, the petition and upon any written opposition thereto, and shall be without prejudice to a final order. If the judgment of conviction becomes final or an order of probation of the character described in section 6102(b) of the Business and Professions Code is made while such petition is pending and undetermined, the proceeding may be consolidated with the proceeding provided for in paragraph (b) of this rule. If a reference, as contemplated by paragraphs (c) and (d) hereof, precedes the order of temporary suspension, a petition to set aside the order may not be filed.

(b) [Final Order]

After a judgment of conviction has become final or after an order of probation of the character described in section 6102(b) of the Business and Professions Code has been made, The State Bar shall so inform the court and the court shall order the attorney, within such time as the court shall fix in the order, to show such cause in writing as he may have in law or in fact why a final order of disbarment or suspension should not be made. The written return of the attorney shall be verified, shall specify the grounds relied upon, shall expressly state whether a hearing is desired and, if so, the particular issues upon which he desires to offer evidence and the general nature of such evidence, and shall be accompanied by points and authorities. The written return may also include (1) a request for termination of the suspension and dismissal of the proceeding upon the ground that the crime and the circumstances of its commission did not involve moral turpitude, and (2) any facts or points relied upon with respect to the imposition or extent of discipline. If no request for a hearing is made, the right to hearing may be deemed waived. Within 20 days after service of the written return, The State Bar may file opposition to the return or averments therein (except the request for hearing); provided, the court in its discretion may make such order or orders as appear appropriate prior to opposition by The State Bar. Failure to file a written return to the order to show cause may be deemed a consent to a determination on the merits based upon the record of conviction. For purposes of this rule, a judgment of conviction is deemed final when the availability of appeal has been exhausted and the time for filing a petition for certiorari in the United States Supreme Court on direct review of the judgment of conviction has elapsed and no petition has been filed, or if filed the petition has been denied or the judgment of conviction has been affirmed. (Amended October 1, 1973.)

(c) [Reference]

The court may refer the proceeding, or any part thereof or issue therein, to The State Bar for hearing, report and recommendation. The State Bar shall file with the court its report and recommendation, with a transcript of the proceedings had in the reference. Notice of such filing, together with a copy of the report and recommendation, shall be mailed by The State Bar to the attorney or his counsel.

(d) [Review of Report and Recommendation]

Within 30 days after filing of the report and recommendation, the attorney may file with the court written objections thereto, with a supporting brief. Unless requested in writing at the time of filing of such objections and supporting brief, any oral argument before the court on the report and recommendation and the objections shall be deemed waived by the attorney. Within 30 days after service of the written objections, The State Bar may file a written statement in respect of all or any of the issues, with a supporting brief. Within 20 days after service of the statement, the attorney may file a reply thereto. (Amended October 1, 1973.)

(e) [Notices]

The clerk of the court shall mail a copy of the order of temporary suspension, of any order to show cause, of any order of reference and of the final order to the attorney or his counsel and to the State Bar at its San Francisco office. (Amended July 1, 1968.)

(f) [Form and Service of Documents]

All documents filed under this rule may be in typewritten form. Except as otherwise provided in paragraph (c), an original and ten legible copies of each document must be filed with proof of service of three copies upon the attorney or his counsel or the State Bar at its San Francisco office, as the case may be. (Amended July 1, 1968.)

(g) (Repealed July 1, 1968.)

RULE 952 REVIEW OF STATE BAR PROCEEDINGS

(a) [Review of Recommendation of Disbarment or Suspension]

A petition to the Supreme Court to review a decision of The State Bar recommending disbarment or suspension from practice of a member of The State Bar shall be filed within 60 days after the filing with the clerk of the Supreme Court a certified copy of the decision complained of. The petition shall be verified, shall be based on the record, shall specify the grounds relied on and shall be accompanied by petitioner's brief and proof of service of three copies of the petition and of the brief on The State

Bar. If a review is ordered by the Supreme Court, The State Bar shall serve and file a respondent's brief within 45 days after the filing of the order. Within 15 days after service of such brief the petitioner may file a reply brief, of which three copies shall have been served on The State Bar. (Amended July 1, 1968; October 1, 1973.)

(b) [Review of State Bar Recommendation to Set Aside Stay of Suspension]

A petition to the Supreme Court to review a recommendation of The State Bar that a stay of an order of suspension be set aside and that recommended discipline be imposed by the Court shall be filed within 15 days after written notice of the recommendation is mailed, postage prepaid, by The State Bar to the petitioner at his last known address appearing on the records of The State Bar. The petition shall be verified, shall specify the grounds relied upon and shall be accompanied by petitioner's brief and proof of service on The State Bar of three copies of the petition and brief. Within 15 days after service of the petition, The State Bar may serve and file an answer. Within 5 days after service of such answer, the petitioner may serve and file a reply. (Adopted October 1, 1973.)

(c) [Review of Other Decisions]

A petition to the Supreme Court to review any other action of the Board of Governors of The State Bar, or of any board or committee appointed by it and authorized to make a determination pursuant to the provisions of the State Bar Act, shall be filed witnin 60 days after written notice of the action complained of is mailed, postage prepaid, to the petitioner, addressed to him at his last known address appearing on the records of The State Bar. The petition shall be verified, shall specify the grounds relied on and shall be accompanied by the petitioner's brief and proof of service on The State Bar of three copies of the petition and brief. Within 10 days after service of the petition, The State Bar may serve and file an answer and brief. Within 5 days after service of the answer the petitioner may serve and file a reply. If a review is ordered by the Supreme Court, The State Bar, witnin 45 days after the filing of the order, may serve and file a supplemental brief. Within 15 days after service of such brief the petitioner may file a reply brief, of which three copies shall have been served on The State Bar. (Amended July 1, 1968; October 1, 1973 and renumbered from rule 59(b).)

(d) [Application for Readminssion or Reinstatement]

Applications for readmission or reinstatement shall be filed in the first instance with The State Bar. Applicants for readmission or reinstatement shall (1) pass the Professional Responsibility Examination required of applicants for admission, (2) establish their rehabilitation and present moral qualifications for readmission, and (3) establish present ability and learning in the general law. The State Bar may require applicants who fail to make the affirmative showing of sufficient present learning in the general law to demonstrate such learning by passing one of the General Examinations required of applicants for admission. (Renumbered from rule 59(c) October 1, 1973; amended January 1, 1976.)

(e) [Service on State Bar]

Any petition or other matter to be served on or filed with The State Bar under this rule shall be served on or filed with The State Bar at its San Francisco office. (Adopted July 1, 1968; renumbered from rule 59(d) October 1, 1973.)

RULE 955 DUTIES OF DISBARRED, RESIGNED OR SUSPENDED ATTORNEYS

(a) [Disbarment, Suspension and Resignation]

The Supreme Court may include in an order disbarring or suspending an attorney or accepting his resignation a direction that the attorney shall, within such time limit as the Court may prescribe, (1) notify all clients being represented in pending matters and any co-counsel of his disbarment, suspension or resignation and his consequent disqualification to act as an attorney after the effective date of his disbarment, suspension or resignation, and, in the absence of co-counsel, also notify the clients to seek legal advice elsewhere, calling attention to any urgency in seeking the substitution of another attorney or attorneys in his place, (2) deliver to all clients being represented in pending matters any papers or other property to which the clients are entitled, or notify the clients and any co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property, (3) refund any part of any fees paid in advance that have not been earned, and (4) notify opposing counsel in pending litigation or, in the absence of counsel, the adverse parties of his disbarment, suspension or resignation and his consequent disqualification to act as an attorney after the effective date of his disbarment, suspension or resignation, and file a copy of the notice with the court, agency or tribunal before which the litigation is pending for inclusion in the respective file or files.

(b) [Notices to Clients, Co-Counsel, Opposing Counsel and Adverse Parties]

All notices required by an order of the Supreme Court pursuant to this rule shall be given by registered or certified mail, return receipt requested, and shall contain an address where communications may thereafter be directed to the disbarred, suspended or resigned attorney.

(c) [Filing Proof of Compliance]

Within such time limit as the Court may prescribe after the effective date of the disbarment or suspension order or the order accepting the resignation, the disbarred, suspended, or resigned attorney shall file with the Clerk of the Supreme Court, with proof of service of a copy on The State Bar at its San Francisco office, an affidavit showing that he has fully complied with those provisions of the order entered pursuant to this rule. Such affidavit shall also set forth an address where communications may thereafter be directed to the disbarred, suspended, or resigned attorney.

(d) [Required Records]

A disbarred, suspended or resigned attorney shall keep and maintain records of the various steps taken by him under the disbarment or suspension order or the order accepting his resignation so that, upon any subsequent proceeding instituted by or against him, proof of compliance with the order will be available for receipt in evidence.

(e) [Sanctions for Failure to Comply]

A disbarred or resigned attorney's wilful failure to comply with the provisions of this rule constitutes a ground for denying his application for reinstatement or readmission. A suspended attorney's wilful failure to comply with the provisions of this rule constitutes a cause for his disbarment or suspension and for revocation of any probation then pending. Additionally, the Supreme Court may punish such wilful failure by exercise of its contempt power. (Adopted April 4, 1973.)

RULE 956 STATE BAR CONDITIONS TO REPROVALS

(a) [Attachment of Conditions to Reprovals]

The State Bar may attach conditions, effective for a reasonable time, to a public or private reproval administered upon a member of the State Bar. Conditions so attached shall be based upon a finding by the State Bar that protection of the public and the interests of the attorney will be served thereby. The State Bar when administering the reproval shall give notice to the attorney that failure to comply with the conditions may be punishable.

(b) [Sanctions for Failure to Comply]

An attorney's failure to comply with conditions attached to a public or private reproval may constitute cause for a separate proceeding for wilful breach of rule 9-101, Rules of Professional Conduct. (Adopted November 18, 1983.)

RULE 957 LAW SCHOOL STUDY IN SCHOOLS OTHER THAN THOSE ACCREDITED BY THE EXAMINING COMMITTEE

(a) A person who seeks to be certified to the Supreme Court for admission in and licensed to practice law in accordance with section 6060(e)(3) of the Business and Professions Code shall receive credit for

(1) study in a law school in the United States other than one accredited by the examining committee established by the Board of Governors of the State Bar pursuant to section 6046 of said code only if the law school satisfies the requirements of paragraph (b) or paragraph (c) of this rule; or

(2) instruction in law from a correspondence school only if the correspondence school requires 864 hours of preparation and study per year for four years and satisfies the requirements of paragraph (d) of this rule; or

(3) study in a law school outside the United States other than one accredited by the examining committee established by the Board of Governors of the State Bar pursuant to section 6046 of said code only if the examining committee is satisfied that the academic program of such law school is substantially equivalent to that of a law school qualified under paragraph (b) of this rule.

(b) A law school in this state that is not accredited by the examining committee, must

(1) be authorized to confer professional degrees by the laws of this state,

(2) maintain a regular course of instruction in law, with a specified curriculum and regularly scheduled class sessions,

(3) require classroom attendance of its students for a minimum of 270 hours a year for a least four years, and further require regular attendance of each student at not less than 80 percent of the regularly scheduled class hours in each course in which such student was enrolled and maintain attendance records adequate to determine each student's compliance with such requirements,

(4) maintain, in a fixed location, physical facilities capable of accommodating the classes scheduled for that location,

(5) have an adequate faculty of instuctors in law, provided that the faculty will prima facie be deemed adequate if at least 80 percent of the instruction in each academic period is by persons who possess one or more of the following qualifications:

(i) admission to the general practice of the law in any jurisdiction in the United States,

(ii) judge of a United States court or a court of record in any jurisdiction in the United States, or

(iii) graduation from a law school accredited by the examining committee,

(6) own and maintain a library consisting of not less than the following sets of books, all of which shall be current and complete:

(i) the published reports of the decisions of California courts, with advance sheets and citator,

(ii) a digest or encyclopedia of California law,

(iii) an annotated set of the California codes,

(iv) a current, standard text or treatise for each course or subject in the curriculum of the school for which such a text or treatise is available,

(7) establish and maintain standards for academic achievement, advancement in good standing and graduation and provide for periodic testing of all students to determine the quality of their performance in relation to such standards, and

(8) register with the examining committee, and maintain such records (available for inspection by the examining committee) and file with the examining committee such reports, notices and certifications, as may be required by the rules of the examining committee.

(c) A law school in the United States, that is outside the state of California and is not accredited by the examining committee must

(1) be authorized to confer professional degrees by the law of the state in which it is located,

(2) comply with subparagraphs (2), (3), (4), (5), (7), and (8) of paragraph (b) of this rule, and

(3) own and maintain a library that is comparable in content to that specified in subparagraph (6) of paragraph (b) of this rule.

(d) It is the duty of a correspondence law school to register with the examining committee and file such reports, notices and certifications as may be required by the rules of the examining committee concerning any person whose mailing address is in the state of California or whose application to, contract with, or correspondence with or from the law school indicates that the instruction by correspondence is for the purpose or with the intent of qualifying that person for admission to practice law in California.

(e) The examining committee may make such inspection of law schools not accredited by the committee or correspondence schools as may be necessary or proper to effectuate the provisions of section 6060 of the Business and Professions Code and of this rule and of the rules of the examining committee.

(f) This rule shall not apply to any person who, on the effective date of the rule, had commenced the study of law in a manner authorized by section 6060(e) of the Business and Professions Code and registered as a law student prior to January 1, 1976 (as provided in section 6060(d) of the Business and Professions Code) and otherwise satisfies the requirements of section 6060(e) of the Business and Professions Code; provided that after January 1, 1976 credit shall be given such person for any study in an unaccredited law school or by correspondence only if the school complies with the requirements of paragraph (b)(8) or paragraph (d) of this rule, whichever is applicable, and permits inspection as provided in paragraph (e) of this rule. (Adopted October 8, 1975; amended April 2, 1984.)

RULE 960 RESIGNATIONS OF MEMBERS OF THE STATE BAR WITH DISCIPLINARY CHARGES PENDING

(a) General Provisions

A member of the State Bar against whom disciplinary charges are pending may tender a written resignation from membership in the State Bar and relinquishment of the right to practice law. The written resignation shall be signed and dated by the member at the time it is tendered and shall be tendered to the Office of the Clerk, State Bar Court, 1230 W. Third Street, Los Angeles, California 90017. The resignation shall be substantially in the form specified in subdivision (b) of this rule. In submitting a resignation under this rule, a member of the State Bar shall agree to be transferred to inactive membership in the State Bar effective upon the filing of the resignation by the State Bar. Within 30 days after filing of the resignation, the member shall perform the acts specified in rule 955(a)(1) through (4) and (b) of these rules and within 40 days after filing of the resignation, the member shall file with the Office of the Clerk, State Bar Court, at the above address, the proof of compliance set forth in rule 955(c) of these rules. No resignation shall become effective unless and until accepted by the Supreme Court after consideration and recommendation by the Board of Governors of the State Bar.

(b) Form of Resignation

The member's written resignation shall be in substantially the following form:

"I [name of member], against whom charges are pending, hereby resign as a member of the State Bar of California and relinquish all right to practice law in the State of California and agree that in the event that this resignation is accepted and I later file a petition for reinstatement, that the State Bar will consider in connection therewith all disciplinary matters and proceedings against me at the time this resignation is accepted, in addition to other appropriate matters. I further agree that upon the filing of this resignation by the Office of the Clerk, State Bar Court, that I will be transferred to inactive membership of the State Bar. Upon such transfer, I acknowledge that I will be ineligible to practice law or to advertise or hold myself out as practicing or as entitled to practice law. I further agree that within 30 days of the filing of the resignation by the Office of the Clerk, State Bar Court, I shall perform the acts specified in rules 955(a)-(b), California Rules of Court, and within 40 days of the date of filing of this resignation by the Office of the Clerk, State Bar Court, I shall notify that Office as specified in rule 955(c), California Rules of Court."

(c) Consideration of Resignation by State Bar Board of Governors and Supreme Court; Grounds for Rejection of Resignation.

Upon receipt of a member's resignation, tendered in conformity with the provisions of subdivision (b) of this rule, the Office of the Clerk, State Bar Court, shall promptly file the resignation. The Board of Governors of the State Bar shall thereafter consider the member's resignation and recommend to the Supreme Court whether the resignation should be accepted and; if so, whether testimony should be perpetuated. The Office of the Clerk, State Bar Court, shall transmit to the Clerk of the Supreme Court, three certified copies of the Board's recommendation together with the member's resignation; when, by the terms of the Board's recommendation, the resignation should be transmitted to the Supreme Court. The Supreme Court shall make such order as to the member's resignation as it deems appropriate. The Supreme Court may decline to accept the resignation upon report by the Board of Governors that perpetuation of necessary testimony is not complete, that after transfer to inactive status, the member has practiced law or has advertised or held himself or herself out as entitled to practice law; that the member has failed to perform the acts specified by rule 955(a)-(b) of these rules; that the member has failed to provide proof of compliance as specified in rule 955(c) or these rules; that the Supreme Court has filed an order of disbarment as to the member or upon such other evidence as may show that acceptance of the resignation of the member will reasonably be inconsistent with the need to protect the public, the courts or the legal profession. (Adopted December 14, 1984.)

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DIVISION IV

General Rules Applicable to All Courts

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RULE 983 COUNSEL PRO HAC VICE

(a) [Eligibility]

A person who is not a member of The State Bar of California but who is a member in good standing of and eligible to practice before the bar of any United States court or of the highest court in any state, territory or insular possession of the United States, and who has been retained to appear in a particular cause pending in a court of this state, may in the discretion of such court be permitted upon written application to appear as counsel pro hac vice, provided that an active member of The State Bar of California is associated as attorney of record. No person is eligible to appear as counsel pro hac vice pursuant to this rule if (1) he is a resident of the State of California, or (2) he is regularly employed in the State of California, or (3) he is regularly engaged in substantial business, professional, or other activities in the State of California. Absent special circumstances, repeated appearances by any person pursuant to this rule shall be a cause for denial of an application.

(b) [Application; Notice of Hearing]

A person desiring to appear as counsel pro hac vice in a superior, municipal or justice court shall file with the court a verified application together with proof of service by mail in accordance with section 1013a of the Code of Civil Procedure of a copy of the application and of the notice of hearing of the application upon all parties who have appeared in the cause and upon The State Bar of California at its San Francisco office. The notice of hearing shall be given at least 10 days before the time designated for the hearing unless the court has prescribed a shorter period.

An application to appear as counsel pro hac vice in the Supreme Court or a Court of Appeal shall be made as provided in Rule 41, with proof of service upon all parties who have appeared in the cause and upon the State Bar of California at its San Francisco office.

The application shall state:

(1) the applicant's residence and office address;

(2) the court or courts to which he has been admitted to practice and the date of such admission;

(3) that he is a member in good standing in such court or courts;

(4) that he is not currently suspended or disbarred in any court;

(5) the title of court and cause in which he has filed an application to appear as counsel pro hac vice in this state in the preceding two years, the date of each application, and whether or not it was granted; and

(6) the name, address and telephone number of the active member of the State Bar of California who is attorney of record. (Amended October 3, 1973.)

(c) [Contempt and Other Court Sanctions; Discipline]

A person permitted to appear as counsel pro hac vice pursuant to this rule shall be subject to the jurisdiction of the courts of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a member of the State Bar of California. He shall familiarize himself and comply with the standards of professional conduct required of members of the State Bar of California and shall be subject to the disciplinary jurisdiction of the State Bar with respect to any of his acts occurring in the course of such appearance. Article 5, Chapter 4, Division III of the California Business and Professions Code and the Rules of Procedure of the State Bar shall govern in any investigation or proceeding conducted by The State Bar under this rule.

(d) This rule does not preclude the Supreme Court or a Court of Appeal from permitting argument in a particular case from a person who is not a member of the State Bar, but who is licensed to practice in another jurisdiction and who possesses special expertise in the particular field affected by the proceeding. (Adopted September 13, 1972.)

[PUBLISHERS NOTE: Unless otherwise indicated, statutes are effective on January 1 following enactment.]

CIVIL CODE

§43.95. Immunity from Liability for Referrals by Professional Society

(a) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any professional society or any nonprofit corporation authorized by such society to operate a referral service, or their agents, employees, or members, for referring any member of the public to any professional member of such society or service, or for acts of negligence or conduct constituting unprofessional conduct committed by a professional to whom a member of the public was referred, so long as any of the foregoing persons or entities has acted without malice, and the referral was made at no cost added to the initial referral fee as part of a public service referral system organized under the auspices of the professional society. Further, there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any professional society for providing a telephone information library available for use by the general public without charge, nor against any nonprofit corporation authorized by such society for providing a telephone information library available for use by the general public without charge. "Professional society" includes legal, psychological, architectural, dental, dietetic, accounting, optometric, podiatric, pharmaceutic, chiropractic, and engineering organizations having as members at least a majority of the eligible persons or licentiates in the area served by the particular society, or organizations with referral services which have been authorized by the State Bar of California and operated in accordance with its Minimum Standards for a Lawyer Referral Service in California, and organizations which have been established to provide free assistance or representation to needy patients or clients.

(b) This section shall not apply whenever the professional society, while making a referral to a professional member of such society, fails to disclose the nature of any disciplinary action of which it has actual knowledge taken by a state licensing agency against that professional member. However, there shall be no duty to disclose a disciplinary action in either of the following cases:

(1) Where a disciplinary proceeding results in no disciplinary action being taken against the professional to whom a member of the public was referred; or

(2) Where a period of three years has elapsed since the professional to whom a member of the public was referred has satisfied any terms, conditions, or sanctions imposed upon such professional as disciplinary action; except that if the professional is an attorney, there shall be no time limit on the duty to disclose. (Added by Stats. 1978, ch. 1297. Amended by Stats. 1980, chs. 439, 862; Stats. 1983, ch. 289.)

§225m. Unethical for Attorney to Represent Both Prospective Adopting Parents and Natural Parents Without Written Consent of Both Parties

Notwithstanding any other provision of law, it shall be unethical for an attorney to undertake the representation of both the prospective adopting parents and the natural parents of a child in any negotiations or proceedings in connection with an adoption unless a written consent is obtained from both parties.

The provisions of this section are not applicable to stepparent adoptions or an adoption in which an organization licensed by the State Department of Health to find homes for children and place children for adoption, joins in the petition for adoption.

Upon the petition of any party, the court may appoint an attorney to represent the natural parent or parents of a child in negotiations or proceedings in connection with the child's adoption. (Added by Stats. 1977, ch. 718.)

§2924c. Reinstatement After Default in Payment--Notice

(a) (1) Whenever all or a portion of the principal sum of any obligation secured by a deed of trust or mortgage on real property hereafter executed has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of default in payment of interest or of any installment of principal, or by reason of failure of trustor or mortgagor to pay, in accordance with the terms of such obligation or of such deed of trust or mortgage, taxes, assessments, premiums for insurance or advances made by beneficiary or mortgagee in accordance with the terms of such obligation or of such deed of trust or mortgage, the trustor or mortgagor or his successor in interest in the mortgaged or trust property or any part thereof, or any beneficiary under a subordinate deed of trust or any other person having a subordinate lien or encumbrance of record thereon, at any time within three months of the recording of the notice of default under such deed of trust or mortgage, if the power of sale therein is to be exercised, or, otherwise at any time prior to entry of the decree of foreclosure, may pay to the beneficiary or the mortgagee or their successors in interest, respectively, the entire amount then due under the terms of such deed of trust or mortgage and the obligation secured thereby (including reasonable costs and expenses, subject to the provisions of subdivision (c) of this section, which are actually incurred in enforcing the terms of such obligation, deed of trust or mortgage, and trustee's or attorney's fees, subject to the provisions of subdivision (d) of this section), other than such portion of principal as would not then be due had no default occurred, and thereby cure the default theretofore existing, and thereupon, all proceedings theretofore had or instituted shall be dismissed or discontinued and the obligation and deed of trust or mortgage shall be reinstated and shall be and remain in force and effect, the same as if no such acceleration had occurred. The provisions of this section shall not apply to bonds or other evidences of indebtedness authorized or permitted to be issued by the Commissioner of Corporations or made by a public utility subject to the provisions of the Public Utilities Code.

(2) If the trustor, mortgagor, or other person authorized to cure the default pursuant to this subdivision does cure the default, that person may request the beneficiary or the mortgagee or their successors in interest to cause to be executed and recorded a notice of rescission which rescinds the declaration of default and demand for sale and upon receipt of a written request the beneficiary or

mortgagee or their successors in interest shall cause to be executed and recorded a notice of rescission. The request to execute and record a notice of rescission shall be directed to the person whose name and address is set forth in the notice required by subdivision (b). The beneficiary, or the mortgagee or their successors in interest, shall cause the notice of rescission to be recorded within 30 days of the receipt of the written request.

No charge, except for the recording fee, shall be made for the execution and recordation of the notice which rescinds the declaration of default and demand for sale.

(b) (1) The notice of any default described in this section, recorded pursuant to Section 2924, and mailed to any person pursuant to Section 2924b, shall begin with the following statement, printed or typed thereon:

"IMPORTANT NOTICE [14-point boldface type if printed or in capital letters if typed]

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, [14-point boldface type if printed or in capital letters if typed] and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within three months from the date this notice of default was recorded. This amount is _____ as of _____ (Date), and will increase until your account becomes current. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay the amount stated above. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the end of the three-month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; (2) establish a schedule of payments in order to cure your default; or both (1) and (2). (Last sentence only operative July 1, 1985.)

After three months from the date of recordation of this document (which date of recordation appears hereon), unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

_____
(Name of beneficiary or mortgagee)

_____
(Mailing address)

_____
(Telephone)

If you have any questions, you should contact a lawyer or the government agency which may have insured your loan.

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. [14-point boldface type if printed or in capital letters if typed]"

Unless otherwise specified, the notice, if printed, shall appear in at least 12-point boldface type.

If the obligation secured by the deed of trust or mortgage is a contract or agreement described in paragraph (1) or paragraph (4) of subdivision (a) of Section 1632, the notice required herein shall be in Spanish if the trustor requested a Spanish language translation of the contract or agreement pursuant to Section 1632. If the obligation secured by the deed of trust or mortgage is contained in a home improvement contract, as defined in Sections 7151.2 and 7159 of the Business and Professions Code, which is subject to the provisions of Title 2 (commencing with Section 1801), the seller shall specify on the contract whether or not the contract was principally negotiated in Spanish and if the contract was principally negotiated in Spanish, the notice required herein shall be in Spanish. No assignee of such contract or person authorized to record the notice of default shall incur any obligation or liability for failing to mail a notice in Spanish unless Spanish is specified in the contract or such assignee or person has actual knowledge that the secured obligation was principally negotiated in Spanish. Unless specified in writing to the contrary, a copy of the notice required by subdivision (3) of Section 2924b shall be in English.

(2) Any failure to comply with the provisions of this subdivision shall not affect the validity of a sale in favor of a bona fide purchaser or the rights of an encumbrancer for value and without notice.

(c) Costs and expenses which may be charged pursuant to Section 2924 to 2924i, inclusive, shall be limited to the costs incurred for recording, mailing, publishing, and posting notices required by Section 2924 to 2924i, inclusive, postponement upon written request of the trustor pursuant to Section 2924g made to either the beneficiary or trustee not to exceed fifty dollars ($50) per postponement and a fee for a trustee's sale guarantee or, in the event of judicial foreclosure, a litigation guarantee.

(d) Trustee's or attorney's fees which may be charged pursuant to subdivision (a), or until the notice of sale is deposited in the mail to the trustor as provided in Section 2924b, if the sale is by power of sale contained in the deed of trust or mortgage, or, otherwise at any time prior to the decree of foreclosure, are hereby authorized to be in an amount which does not exceed one hundred fifty dollars ($150) with respect to any portion of the unpaid principal sum secured which is fifty thousand dollars ($50,000) or less, plus one-half of 1 percent of the unpaid principal sum secured exceeding fifty thousand dollars ($50,000) up to and including one hundred fifty thousand dollars ($150,000), plus one-quarter of 1 percent of any portion of the unpaid principal sum secured exceeding one hundred fifty thousand dollars ($150,000) up to and including five hundred

thousand dollars ($500,000), plus one-eighth of 1 percent of any portion of the unpaid principal sum secured exceeding five hundred thousand dollars ($500,000). Any charge for trustee's or attorney's fees authorized by this subdivision shall be conclusively presumed to be lawful and valid where such charge does not exceed the amounts authorized herein. (Added by Stats. 1933, ch. 642; reenacted by Stats. 1935, ch. 650, without change. Amended by Stats. 1949, ch. 1057; Stats. 1951, ch. 417, Stats. 1957, chs. 40, 362; Stats. 1973, ch. 817, operative July 1, 1974; Stats. 1974, ch. 308, effective May 21, 1974, operative July 1, 1974; Stats. 1979, ch. 6[illegible], effective September 14, 1979, ch. 1016; Stats. 1980, chs. 423, 1380; Stats 1981, ch. 427; Stats. 1983, chs. 912, 1217; Stats. 1984, chs. 919, 1730, §1.5, ops., operative July 1, 1985.)

§2924d. Payment of Costs and Expenses—Payment of Trustee's and Attorney's Fees—Prohibition Against Rebate or Kickback

(a) Commencing with the date that the notice of sale is deposited in the mail, as provided in Section 2924b, and until the property is sold pursuant to the power of sale contained in the mortgage or deed of trust, a beneficiary, trustee, mortgagee, or his or her agent or successor in interest, may demand and receive from a trustor, mortgager, or his or her agent or successor in interest, or any beneficiary under a subordinate deed of trust, or any other person having a subordinate lien or encumbrance of record those reasonable costs and expenses, to the extent allowed by subdivision (e) of Section 2924c, which are actually incurred in enforcing the terms of the obligation and trustee's or attorney's fees which are hereby authorized to be in an amount which does not exceed three hundred dollars ($300) with respect to any portion of the unpaid principal sum secured which is fifty thousand dollars ($50,000) or less, plus 1 percent of any portion of the unpaid principal sum secured exceeding fifty thousand dollars ($50,000) up to and including one hundred fifty thousand dollars ($150,000), plus one-half of 1 percent of any portion of the unpaid principal sum secured exceeding one hundred fifty thousand dollars ($150,000) up to and including five hundred thousand dollars ($500,000), plus one-quarter of 1 percent of any portion of the unpaid principal sum secured exceeding five hundred thousand dollars ($500,000). Any charge for trustee's or attorney's fees authorized by this subdivision shall be conclusively presumed to be lawful and valid where such charge does not exceed the amounts authorized herein. Any charge for trustee's or attorney's fees made pursuant to the provisions of this subdivision shall be in lieu of and not in addition to those charges authorized by subdivision (d) of Section 2924c.

(b) Upon the sale of property pursuant to a power of sale, a trustee, or his or her agent or successor in interest, may demand and receive from a beneficiary, or his or her agent or successor in interest, or may deduct from the proceeds of the sale, those reasonable costs and expenses, to the extent allowed by subdivision (e) of Section 2924c, which are actually incurred in enforcing the terms of the obligation and trustee's or attorney's fees which are hereby authorized to be in an amount which does not exceed three hundred dollars ($300) or one and one-third percent of the unpaid principal sum secured, whichever is greater. Any charge for trustee's or attorney's fees authorized by this subdivision shall be conclusively presumed to be lawful and valid where such charge does not exceed the amount authorized herein. Any charges for trustee's or attorney's fees made pursuant to the provisions of this subdivision shall be in lieu of and not in addition to those charges authorized by subdivision (c) of this section and subdivision (d) of Section 2924c.

(c) (1) No person shall pay or offer to pay or collect any rebate or kickback for the referral of business involving the performance of any act required by this article.

(2) Any person who violates this subdivision shall be liable to the trustor for three times the amount of any rebate or kickback, plus reasonable attorney's fees and costs, in addition to any other remedies provided by law.

(3) No violation of this subdivision shall affect the validity of a sale in favor of a bona fide purchaser or the rights of an encumbrancer for value without notice.

(d) It shall not be unlawful for a trustee to pay or offer to pay a fee to an agent or subagent of the trustee for work performed by the agent or subagent in discharging the trustee's obligations under the terms of the mortgage or deed of trust.

(e) When a court issues a decree of foreclosure, it shall have discretion to award attorney's fees, costs, and expenses as are reasonable, if provided for in the note, deed of trust, or mortgage, pursuant to Section 580d of the Code of Civil Procedure. (Added by Stats. 1983, ch. 1217. Amended by Stats. 1984, ch. 1730.)

§2957. Disclosures on Purchase Money Liens on Residential Property—Definitions

The following definitions shall apply for the purposes of this article:

(a) "Arranger of credit" means:

(1) A person, other than a party to the credit transaction (except as provided in paragraph (2)), who is involved in developing or negotiating credit terms, participates in the completion of the credit documents, and directly or indirectly receives compensation for arrangement of the credit or from any transaction or transfer of the real property which is facilitated by that extension of credit. As used in this paragraph, "arranger of credit" does not apply to an attorney who is representing one of the parties to the credit transaction.

(2) A party to the transaction who is either a real estate licensee, licensed under provisions of Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code, or is an attorney licensed under Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code if neither party to the transaction is represented by an agent who is a real estate licensee. In any transaction in which disclosure is required solely by the provisions of this paragraph, the obligations of this article shall apply only to a real estate licensee or attorney who is a party to the transaction, and not to any other party.

(3) An arranger of credit does not include a person acting in the capacity as an escrow in the transaction.

(4) Persons described in paragraph (2) who are acting in the capacity as an escrowholder in the transaction shall nevertheless be deemed arrangers of credit when such persons act on behalf of a party to the transaction or an agent of such party in the development or negotiation of credit terms. Neither the completion of credit documents in accordance with instructions of a party or his or her agent nor the furnishing of information regarding credit terms to a party or his or her agent shall be considered to be the development or negotiation of credit terms.

(b) "Credit" means the right granted by a vendor to a purchaser to purchase property and to defer payment therefore.

The credit involved must be subject to a finance charge or payable by written agreement in more than four installments, whether providing for payment of principal and interest, or interest only, nor including a downpayment.

(c) "Credit documents" are those documents which contain the binding credit terms, and include a note or a contract of sale if the contract spells out terms upon which a vendor agrees to provide financing for a purchaser.

(d) "Purchase" includes acquisition of equitable title by a real property sales contract as defined in Section 2985, or lease with an option to purchase, where the facts demonstrate an intent to transfer equitable title.

(e) "Security documents" include a mortgage, deed of trust, real property sales contract as defined in Section 2985, or lease with an option to purchase, where the facts demonstrate an intent to transfer equitable title.

(f) "Balloon payment note" means a note under which the purchaser is obligated to pay at maturity a balloon payment which is a scheduled payment which is more than twice the amount of the smallest regularly scheduled payment.

(g) "All inclusive trust deed" is an instrument which secures indebtedness owed by the trustor to the beneficiary, which indebtedness includes a debt or debts owed by that beneficiary to the beneficiary of another security document secured by the same property which is senior in priority. (Added by Stats. 1982, ch. 968, operative July 1, 1983. Amended by Stats. 1983, ch. 1213.)

§2963. Information Required to be Disclosed

The disclosures required to both purchaser and vendor by this article are:

(a) An identification of the note or other credit documents or security documents and of the property which is the security for the transaction.

(b) A description of the terms of the promissory note or other credit documents or a copy of the note or other credit documents.

(c) Insofar as available, the principal terms and conditions of each recorded encumbrance which constitutes a lien upon the property which is or will be senior to the financing being arranged, including the original balance, the current balance, the periodic payment, any balloon payment, the interest rate (and any provisions with respect to variations in the interest rate), the maturity date, and whether or not there is any current default in payment on that encumbrance.

(d) A warning that, if refinancing would be required as a result of lack of full amortization under the terms of any existing or proposed loans, such refinancing might be difficult or impossible in the conventional mortgage marketplace.

(e) If negative amortization is possible as a result of any variable or adjustable rate financing being arranged, a clear disclosure of this fact and an explanation of its potential effect.

(f) In the event that the financing involves an all inclusive trust deed, the disclosure shall indicate whether the credit or security documents specify who is liable for payment or responsible for defense in the case of an attempted acceleration by a lender or other obligee under a prior encumbrance, and whether or not the credit or security documents specify the responsibilities and rights of the parties in the event of a loan prepayment respecting a prior encumbrance which may result in a requirement for refinancing, a prepayment penalty, or a prepayment discount and, if such specification occurs, a recital of the provisions which apply.

(g) If the financing being arranged or any of the financing represented by a prior encumbrance could result in a balloon payment, or in a right in the lender or other obligee under such financing to require a prepayment of the principal balance at or after a stipulated date, or upon the occurrence of a stipulated event, a disclosure of the date and amount of any balloon payment or the amount which would be due upon the exercise of such right by the lender or obligee, and a statement that there is no assurance that new financing or loan extension will be available at the time of such occurrence.

(h) If the financing being arranged involves an all inclusive trust deed or real property sales contract, a disclosure of the party to whom payments will be made and who will be responsible for remitting these funds to payees under prior encumbrances and vendors under this transaction and a warning that, if that person is not a neutral third party, the parties may wish to agree to have a neutral third party designated for those purposes.

(i) A disclosure on the identity, occupation, employment, income, and credit data about the prospective purchaser, as represented to the arranger by the prospective purchaser; or, specifically, that no representation as to the credit-worthiness of the specific prospective purchaser is made by the arranger. A warning should also be expressed that Section 580b of the Code of Civil Procedure may limit any recovery by the vendor to the net proceeds of the sale of the security property in the event of foreclosure.

(j) A statement that loss payee clauses have been added to property insurance protecting the vendor, or that instructions have been or will be directed to the escrowholder, if any, in the transaction or the appropriate insurance carriers for addition of such loss payee clauses, or a statement that, if such provisions have not been made, that the vendor should consider protecting himself or herself by securing such clauses.

(k) A statement that a request for notice of default under Section 2924b has been recorded, or that, if it has not been recorded, the vendor should consider recording a request for notice of default.

(l) That a policy of title insurance has been obtained or will be obtained and be furnished to the vendor and purchaser, insuring the respective interests of the vendor and purchaser, or that the vendor and purchaser individually should consider obtaining a policy of title insurance.

(m) That a tax service has been arranged to report to the vendor whether property taxes have been paid on the property, and who will be responsible for the continued retention and compensation of tax service; or that the vendor should otherwise assure for himself that the taxes on the property have been paid.

(n) A disclosure whether the security documents on the financing being arranged have been or will be recorded pursuant to Section 27280 of the Government Code, or a statement that the security of the vendor may be subject to intervening liens or judgments which may occur after the note is executed and before any resort to security occurs if the security documents are not recorded.

(o) If the purchaser is to receive any cash from the proceeds of the transaction, a statement of that fact, the amount, the source of the funds, and the purpose of the disbursement as represented by the purchaser. (Added by Stats. 1982, ch. 968; operative July 1, 1983. Amended by Stats. 1983, ch. 1217.)

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§118. (Repealed by Stats. 1978 ch. 723, operative June 30, 1980.)

§119. (Repealed by Stats. 1978 ch. 723, operative June 30, 1980.)

§285.2 Withdrawal When Public Funding Reduced

If a reduction in public funding for legal service materially impairs a legal service agency attorney's ability to represent an indigent client, the court, on its own motion or on the motion of either the client or attorney, shall permit the withdrawal of such attorney upon a showing that all of the following apply:

(a) There are not adequate public funds to continue the effective representation of the indigent client.

(b) A good faith effort was made to find alternate representation for such client.

(c) All reasonable steps to reduce the legal prejudice to the client have been taken.

A showing of indigency of the client, in and of itself, will not be deemed sufficient cause to deny the application for withdrawal. (Added by Stats. 1983, ch. 279.)

§285.3 Withdrawal Pursuant to §285.2--When Tolling Required

The court, upon the granting of a motion for withdrawal pursuant to Section 285.2, may toll the running of any statute of limitations, filing requirement, statute providing for mandatory dismissal, notice of appeal, or discovery requirement, for a period not to exceed 90 days, on the court's own motion or on motion of any party or attorney, when the court finds that tolling is required to avoid legal prejudice caused by the withdrawal of the legal service agency attorney. (Added by Stats. 1983, ch. 279.)

§285.4 Appointment Pursuant to §285.2--No Compensation

The court, upon the granting of a motion for withdrawal pursuant to Section 285.2, may appoint any member of the bar or any law firm or professional law corporation to represent the indigent client without compensation, upon a showing of good cause. Nothing herein shall preclude the appointed attorney from recovering any attorneys' fees and costs to which the client may be entitled by law. In determining the existence of good cause, the court may consider, but is not limited to, the following factors:

(a) The probable merit of the client's claim.

(b) The client's financial ability to pay for legal services.

(c) The availability of alternative legal representation.

(d) The need for legal representation to avoid irreparable legal prejudice to the indigent client.

(e) The ability of appointed counsel to effectively represent the indigent client.

(f) Present and recent pro bono work of the appointed attorney, law firm or private law corporation.

(g) The ability of the indigent client to represent himself.

(h) The workload of the appointed attorney. (Added by Stats. 1983, ch. 279.)

§364. Ninety Days Prior Notice of Intention to Commence Action--Definitions

(a) No action based upon the health care provider's professional negligence may be commenced unless the defendant has been given at least 90 days' prior notice of the intention to commence the action.

(b) No particular form of notice is required, but it shall notify the defendant of the legal basis of the claim and the type of loss sustained, including with specificity the nature of the injuries suffered.

(c) The notice may be served in the manner prescribed in Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

(d) If the notice is served within 90 days of the expiration of the applicable statute of limitations, the time for the commencement of the action shall be extended 90 days from the service of the notice.

(e) The provisions of this section shall not be applicable with respect to any defendant whose name is unknown to the plaintiff at the time of filing the complaint and who is identified therein by a fictitious name, as provided in Section 474.

(f) For the purposes of this section:

(1) "Health care provider" means any person licensed or certified pursuant to Division 2

(commencing with Section 500) of the Business and Professions Code, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code; and any clinic, health dispensary, or health facility, licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. "Health care provider" includes the legal representatives of a health care provider;

(2) "Professional negligence" means negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital. (Added by Stats. 1975, 2nd Ex. Sess., ch. 1. Amended by Stats. 1975, 2nd Ex. Sess., ch. 2, effective September 24, 1975 operative December 1, 1975.)

§365. Failure to Comply with Provisions

Failure to comply with this chapter shall not invalidate any proceedings of any court of this state, nor shall it affect the jurisdiction of the court to render a judgment therein. However, failure to comply with such provisions by any attorney at law shall be grounds for professional discipline and the State Bar of California shall investigate and take appropriate action in any such cases brought to its attention. (Added by Stats. 1975, 2nd Ex. Sess., ch. 1.)

§411.30 Action for Damages Arising out of Professional Negligence Accompanied by Certificate—Physician, Surgeon, Dentist, Podiatrist, or Chiropractor

(a) In any action for damages arising out of the professional negligence of a person holding a valid physician's and surgeon's certificate issued pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, or of a person holding a valid dentist's license issued pursuant to Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code, or of a person holding a valid podiatrist's certificate issued pursuant to Article 22 (commencing with Section 2460) of Chapter 5 of Division 2 of the Business and Professions Code, or of a person licensed pursuant to the Chiropractic Act, on or before the date of service of the complaint on any defendant, the plaintiff's attorney shall file the certificate specified in subdivision (b).

(b) A certificate shall be executed by the attorney for the plaintiff declaring one of the following:

(1) That the attorney has reviewed the facts of the case, that the attorney has consulted with at least one physician and surgeon, dentist, podiatrist, or chiropractor who is licensed to practice and practices in this state or any other state or teaches at an accredited college or university and who the attorney reasonably believes is knowledgeable in the relevant issues involved in the particular action, and that the attorney has concluded on the basis of such review and consultation that there is reasonable and meritorious cause for the filing of such action.

(2) That the attorney was unable to obtain the consultation required by paragraph (1) because a statute of limitations, including the provisions of Article 2 (commencing with Section 583.210) of Chapter 1.5 of Title 8, would impair the action and that the certificate required by paragraph (1) could not be obtained before the impairment of the action. If a certificate is executed pursuant to this paragraph, the certificate required by paragraph (1) shall be filed within 60 days after service of the complaint.

(3) That the attorney was unable to obtain the consultation required by paragraph (1) because the attorney had made three separate good faith attempts with three separate physicians and surgeons, dentists, podiatrists, or chiropractors to obtain such consultation and none of those contacted would agree to such a consultation.

(c) Where a certificate is required pursuant to this section, only one such certificate shall be filed notwithstanding that multiple defendants have been named in the complaint or may be named at a later time.

(d) Where the attorney intends to rely solely on the doctrine of "res ipsa loquitur", as defined in Section 646 of the Evidence Code, or exclusively on a failure to inform of the consequences of a procedure, or both, this section shall be inapplicable. The attorney shall certify upon filing of the complaint that the attorney is solely relying on the doctrines of "res ipsa loquitur" or failure to inform of the consequences of a medical procedure or both, and for that reason is not filing a certificate required by this section.

(e) If a request by the plaintiff for the defendant's records has been made pursuant to Section 1158 of the Evidence Code, and if the defendant has failed to produce such records within the time limit specified by that section, the time for filing the certificate of merit shall be extended for the period by which the time for furnishing records set forth in Section 1158 of the Evidence Code is exceeded by the defendant to a maximum of 60 days after which the requirement for the certificate is voided.

(f) For purposes of this section, and subject to Evidence Code Section 912, an attorney who submits a certificate as required by paragraph (1) or (2) of subdivision (b) has a privilege to refuse to disclose the identity of the physician or surgeon, dentist, podiatrist, or chiropractor consulted and the contents of such consultation. Such privilege shall also be held by the physician or surgeon, dentist, podiatrist or chiropractor so consulted, provided when the attorney makes a claim under paragraph (3) of subdivision (b) that he was unable to obtain the required consultation with the physician and surgeon, dentist, podiatrist, or chiropractor, the court may require the attorney to divulge the names of physicians and surgeons, dentists, podiatrists, or chiropractors, refusing such consultation.

(g) A violation of the provisions of this section may constitute unprofessional conduct and be grounds for discipline against the attorney.

(h) The failure to file a certificate required by this section shall be grounds for a demurrer pursuant to Section 430.10.

(i) The provisions of this section shall not be applicable

to a plaintiff who is not represented by an attorney.

(j) This section shall remain in effect until January 1, 1987, and on that date is repealed unless a later enacted statute deletes or extends that date. (Added by Stats. 1978, ch. 1165. Amended by Stats. 1979, ch. 988; Stats. 1982, ch. 1040; Stats. 1983, ch. 429; Stats. 1984, ch. 1705.)

§411.35 Action for Damages Arising out of Professional Negligence Accompanied by Certificate—Architect, Engineer, or Land Surveyor

(a) In every action including a cross-complaint for damages or indemnity arising out of the professional negligence of a person holding a valid architect's certificate issued pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, or of a person holding a valid registration as a professional engineer issued pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, or a person holding a valid land surveyor's license issued pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code on or before the date of service of the complaint on any defendant, the plaintiff's attorney shall file the certificate specified by subdivision (b).

(b) A certificate shall be executed by the attorney for the plaintiff or cross-complainant declaring one of the following:

(1) That the attorney has reviewed the facts of the case, that the attorney has consulted with at least one architect, professional engineer, or land surveyor who is licensed to practice and practices in this state or any other state or who teaches at an accredited college or university and is licensed to practice in this state or any other state, in the same discipline as the defendant or cross-defendant and who the attorney reasonably believes is knowledgeable in the relevant issues involved in the particular action, and that the attorney has concluded on the basis of such review and consultation that there is reasonable and meritorious cause for the filing of such action. The person consulted may not be a party to the litigation.

(2) That the attorney was unable to obtain the consultation required by paragraph (1) because a statute of limitations would impair the action and that the certificate required by paragraph (1) could not be obtained before the impairment of the action. If a certificate is executed pursuant to this paragraph, the certificate required by paragraph (1) shall be filed within 60 days after filing the complaint.

(3) That the attorney was unable to obtain the consultation required by paragraph (1) because the attorney had made three separate good faith attempts with three separate architects, professional engineers, or land surveyors to obtain such consultation and none of those contacted would agree to such a consultation.

(c) Where a certificate is required pursuant to this section, only one certificate shall be filed notwithstanding that multiple defendants have been named in the complaint or may be named at a later time.

(d) Where the attorney intends to rely solely on the doctrine of "res ipsa loquitur," as defined in Section 646 of the Evidence Code, or exclusively on a failure to inform of the consequences of a procedure, or both, this section shall be inapplicable. The attorney shall certify upon filing of the complaint that the attorney is solely relying on the doctrines of "res ipsa loquitur" or failure to inform of the consequences of a procedure or both, and for that reason is not filing a certificate required by this section.

(e) For purposes of this section, and subject to Section 912 of the Evidence Code, an attorney who submits a certificate as required by paragraph (1) or (2) of subdivision (b) has a privilege to refuse to disclose the identity of the architect, professional engineer, or land surveyor consulted and the contents of such consultation. The privilege shall also be held by the architect, professional engineer, or land surveyor so consulted, provided when the attorney makes a claim under paragraph (3) of subdivision (b) that he was unable to obtain the required consultation with the architect, professional engineer, or land surveyor, the court may require the attorney to divulge the names of architects, professional engineers, or land surveyors refusing such consultation.

(f) A violation of the provisions of this section may constitute unprofessional conduct and be grounds for discipline against the attorney, except that the failure to file the certificate required by paragraph (1) of subdivision (b), within 60 days after filing the complaint and certificate provided for by paragraph (2) of subdivision (b), shall not be grounds for discipline against the attorney.

(g) The failure to file a certificate required by this section shall be rounds [sic] for a demurrer pursuant to Section 430.10, or a motion to strike pursuant to Section 435.

(h) This section shall be operative until January 1, 1987, and on that date is repealed. (Added by Stats. 1979, ch. 973. Amended by Stats. 1983, ch. 414.)

§1141.18 Arbitrators—Qualifications; Compensation; Method of Selection; Disqualification

(a) Arbitrators shall be retired judges or members of the State Bar, and shall sit individually. A judge may also serve as an arbitrator without compensation. People who are not attorneys may serve as arbitrators upon the stipulation of all parties.

(b) The Judicial Council rules shall provide for the compensation, if any, of arbitrators, except that no compensation shall be paid prior to the filing of the award by the arbitrator, or prior to the settlement of the case by the parties. Compensation for arbitrators shall, unless waived in whole or in part, be one hundred fifty dollars ($150) per case, or one hundred fifty dollars ($150) per day, whichever is greater, except that the board of supervisors of a city and county may set a higher level of compensation for that county or city and county.

(c) The board of governors of the State Bar shall provide by rule for the method of selection of arbitrators after consulting with administrative committees established pursuant to Rule 1603 of the Judicial Arbitration Rules for Civil Cases and with county bar associations in counties where there are no administrative committees. These rules shall provide for specialized panels and shall become

operative upon approval of the Judicial Council.

(d) Any party may request the disqualification of the arbitrator selected for his case on the grounds and by the procedures specified in Section 170 or Section 170.6 within five days of the naming of the arbitrator. (Added by Stats. 1978, ch. 743, operative July 1, 1979. Amended by Stats. 1981, ch. 1110.)

§1518. When Fiduciary Property Escheates to State

(a) All tangible personal property located in this state and, subject to Section 1510, all intangible personal property, and the income or increment on such tangible or intangible property, held in a fiduciary capacity for the benefit of another person escheats to this state if after it becomes payable or distributable, the owner has not, within a period of seven years, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the fiduciary.

(b) Funds in an individual retirement account or a retirement plan for self-employed individuals or similar account or plan established pursuant to the internal revenue laws of the United States or of this state are not payable or distributable within the meaning of subdivision (a) unless, under the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

(c) For the purpose of this section, when a person holds property as an agent for a business association, he is deemed to hold such property in a fiduciary capacity for the business association alone, unless the agreement between him and the business association clearly provides the contrary. For the purposes of this chapter, if a person holds property in a fiduciary capacity for a business association alone, he is the holder of the property only insofar as the interest of the business association in such property is concerned and the association is deemed to be the holder of the property insofar as the interest of any other person in the property is concerned.

(Formerly §1506, Added by Stats. 1959, ch. 1809. Amended by Stats. 1961, ch. 1904; Renumbered §1518 and Amended by Stats. 1968, ch. 356, operative January 1, 1969; Stats. 1976, ch. 49; Stats. 1982, ch. 786.)

§1985.3 Subpoenaing Consumers' Personal Records

(a) For purposes of this section, the following definitions apply:

(1) "Personal records" means the original or any copy of books, documents or other writings pertaining to a consumer and which are maintained by any "witness" which is a physician, hospital, state or national bank, state or federally chartered savings and loan association, state or federal credit union, trust company, security brokerage firm, insurance company, underwritten title company, attorney, accountant, institution of the Farm Credit System, as specified in section 2002 of Title 12 of the United States Code, or telephone corporation which is a public utility, as defined in section 216 of the Public Utilities Code.

(2) "Consumer" means any individual, partnership of five or fewer persons, association, or trust which has transacted business with, or has used the services of, the witness or for whom the witness has acted as agent or fiduciary.

(3) "Subpoenaing party" means the person or persons causing a subpoena duces tecum to be issued or served in connection with any civil action or proceeding pursuant to this code, but shall not include the state or local agencies described in section 7465 of the Government Code, or any entity provided for under Article VI of the California Constitution in any proceeding maintained before an adjudicative body of that entity pursuant to the provisions of Chapter 4 (commencing with section 6000) of Division 3 of the Business and Professions Code.

(b) The date specified in a subpoena duces tecum for the production of personal records shall not be less than 15 days from the date the subpoena is issued. Prior to the date called for in the subpoena duces tecum for the production of personal records, the subpoenaing party shall serve or cause to be served on the consumer whose records are being sought a copy of the subpoena duces tecum, of the affidavit supporting the issuance of the subpoena, and of the notice described in subdivision (e). This service shall be made both:

(1) To the consumer personally, or at his or her last known address, or in accordance with Chapter 5 (comencing with Section 1010) of Title 14 of Part 3, or, if he or she is a party, to his or her attorney of record.

(2) Not less than 10 days prior to the date for production specified in the subpoena duces tecum, plus the additional time provided by section 1013 if service is by mail.

(c) Prior to the production of the records, the subpoenaing party shall do either of the following:

(1) Serve or cause to be served upon the witness a proof of personal service or of service by mail attesting to compliance with subdivision (b).

(2) Furnish the witness a written authorization to release the records signed by the consumer or by his or her attorney of record. The witness may presume that any attorney purporting to sign the authorization on behalf of the consumer acted with the consent of the consumer.

(d) A subpoena duces tecum for the production of personal records shall be served in sufficient time to allow the witness a reasonable time to locate and produce the records or copies thereof.

Except as to records subpoenaed for a criminal proceeding or records subpoenaed during trial, a subpoena duces tecum served upon a witness with records in more than one location shall be served no less than 10 days prior to the date specified for production, unless good cause is shown pursuant to subdivision (g).

(e) Every copy of the subpoena duces tecum and affidavit served on a consumer or his or her attorney in

accordance with subdivison (b) shall be accompanied by a notice, in a typeface designed to call attention to the notice, indicating that (1) records about the consumer are being sought from the witness named on the subpoena; (2) if the consumer objects to the witness furnishing the records to the party seeking the records, the consumer must file papers with the court prior to the date specified for production on the subpoena; and (3) if the party who is seeking the records will not agree in writing to cancel or limit the subpoena, an attorney should be consulted about the consumer's interest in protecting his or her rights of privacy. If a notice of taking of deposition is also served, that other notice may be set forth in a single document with the notice required by this subdivision.

(f) Any consumer whose personal records are sought by a subpoena duces tecum may, prior to the date for production, bring a motion under Section 1987.1 to quash or modify the subpoena duces tecum. Notice of the bringing of that motion shall be given to the witness prior to production. No witness shall be required to produce personal records after receipt of notice that such a motion has been brought, except upon order of the court in which the action is pending or by agreement of the parties, witnesses, and consumers affected.

(g) Upon good cause shown and provided that the rights of witnesses and consumers are preserved, a subpoenaing party shall be entitled to obtain an order shortening the time for service of a subpoena duces tecum or waiving the requirements of subdivision (b) where due diligence by the subpoenaing party has been shown.

(h) Nothing contained in this section shall be construed to apply to any subpoena duces tecum which does not request the records of any particular consumer or consumers and which requires a custodian of records to delete all information which would in any way identify any consumer whose records are to be produced.

(i) The provisions of this section shall not apply to proceedings conducted under Division 1 (commencing with Section 50), Division 4 (commencing with Section 3200), Division 4.5 (commencing with Section 6100), or Division 4.7 (commencing with Section 6200) of the Labor Code.

(j) Failure to comply with this section shall be sufficient basis for the witness to refuse to produce the personal records sought by a subpoena duces tecum. (Added by Stats. 1980, ch. 976, operative July 1, 1981. Amended by Stats. 1981, ch. 227, effective July 20, 1981; Stats. 1981, ch. 1014; Stats. 1982, ch. 666; Stats. 1984, ch. 603.)

§ 1985.4 Subpoenas: Consumer Records

The procedures set forth in Section 1985.3 are applicable to a subpoena duces tecum for records pertaining to a party to any civil action or proceeding which are otherwise exempt from public disclosure under subdivision (c) of Section 6254 of the Government Code which are maintained by a state or local agency as defined in Section 6252 of the Government Code. For the purposes of this section, "witness" means a state or local agency as defined in Section 6252 of the Government Code and "consumer" means any employee of any state or local agency as defined in Section 6252 of the Government Code. Nothing in this section shall pertain to personnel records as defined in Section 832.8 of the Penal Code. (Added by Stats. 1984, ch. 437.)

CORPORATIONS CODE

§10830. Formation; Requirements; Supervision

A nonprofit corporation may be formed under Part 3 (commencing with Section 7110) of this division for the purposes of administering a system or systems of defraying the cost of professional services of attorneys, but any such corporation may not engage directly or indirectly in the performance of the corporate purposes or objects unless all of the following requirements are met:

(a) The attorneys furnishing professional services pursuant to such system or systems are acting in compliance with the Rules of Professional Conduct of the State Bar of California concerning such system or systems.

(b) Membership in the corporation and an opportunity to render professional services upon a uniform basis are available to all active members of the State Bar.

(c) Voting by proxy and cumulative voting are prohibited.

(d) A certificate is issued to the corporation by the State Bar of California, finding compliance with the requirements of subdivisions (a), (b) and (c).

Any such corporation shall be subject to supervision by the State Bar of California and shall also be subject to Part 3 (commencing with Section 7110) of this division except as to matters specifically otherwise provided for in this article. (Added by Stats. 1978, ch. 1305, operative January 1, 1980.)

EDUCATION CODE

§94360. Disclosure Statements

Any law school that is not accredited by the examining committee of the State Bar shall provide every student with a disclosure statement, subsequent to the payment of any application fee but prior to the payment of any registration fee, containing the following information:

(a) The school is not accredited. However, in addition, if the school has been approved by other agencies, that fact may be so stated.

(b) Where the school has not been in operation for 10 years, the assets and liabilities of the school. However, if the school has had prior affiliation with another school that has been in operation more than 10 years, has been under the control of another school that has been in operation more than 10 years, or has been a successor to a school in operation more than 10 years, the requirements of this subdivision shall not be applicable.

(c) The number and percentage of students who have taken and who have passed the first-year law student's examination and the final bar examination in the previous five years, or since the establishment of the school, whichever is less, which will include only those students who have been certified by the school to take the examination. This subdivision shall not apply to correspondence schools.

(d) The number of legal volumes in the library. This subdivision shall not apply to correspondence schools.

(e) The educational background, qualifications and experience of the faculty, to include whether or not the faculty members and administrators (e.g., the dean) are members of the California State Bar.

(f) The ratio of faculty to students for the previous five years or since the establishment of the school, whichever is less. This subdivision shall not apply to correspondence schools.

(g) Whether or not the school has applied for accreditation, and if so, the date of application and whether or not that application has been withdrawn, is currently pending, or has been finally denied. The school need only disclose information relating to applications made in the previous five years.

(h) That the education provided by the school may not satisfy requirements of other states for the practice of law. Applicants should inquire regarding such requirements, if any, to the state in which they may wish to practice.

The disclosure statement required by this section shall be signed by each student, who will receive as a receipt a copy of his signed disclosure statement. If any school does not comply with these requirements, it shall make a full refund of all fees paid by students. (Added by Stats. 1977, ch. 36, operative April 30, 1977.)

§94361. Unaccredited Law Schools

A law school not accredited by the examining committee of the State Bar may refer to itself as a university or part of a university, and if it so refers to itself, shall state whether or not the law school is associated with an undergraduate school. (Added by Stats. 1977, ch. 36, operative April 30, 1977.)

§94362. Duties of Superintendent of Public Instruction and Attorney General

(a) The Superintendent of Public Instruction and the Attorney General shall take cognizance of the fact that both have definite duties and responsibilities under the provisions of this chapter.

(b) The Superintendent of Public Instruction shall report any information concerning possible violations of this chapter to the Attorney General.

(c) The Attorney General shall make such investigations as are necessary to determine whether or not there has been compliance with the provisions of this chapter. (Added by Stats. 1977, ch. 36, operative April 30, 1977.)

§94363. Powers of Attorney General

The Attorney General is hereby authorized to take such actions as are necessary, including the obtaining of injunctive relief, to enforce the provisions of this chapter. (Added by Stats. 1977, ch. 36, operative April 30, 1977.)

EVIDENCE CODE

§703.5. Competency to Testify

No person presiding at any judicial or quasi-judicial proceeding shall be competent to testify, in any subsequent civil proceeding, as to any statement or conduct occurring at the prior proceeding, except as to a statement or conduct that could (a) give rise to civil or criminal contempt, (b) constitute a crime, (c) be the subject of investigation by the State Bar or Commission on Judicial Performance, or (d) give rise to disqualification proceedings under subdivision (5) of Section 170 of the Code of Civil Procedure. (Added by Stats. 1979, ch. 205. Amended by Stats. 1980, ch. 290.)

§915. Disclosure of Privileged Information in Ruling on Claim of Privilege

(a) Subject to subdivision (b), the presiding officer may not require disclosure of information claimed to be privileged under this division in order to rule on the claim of privilege; provided, however, that in any hearing conducted pursuant to subdivision (c) of Section 1524 of the Penal Code in which a claim of privilege is made and the court determines that there is no other feasible means to rule on the validity of such claim other than to require disclosure, the court shall proceed in accordance with subdivision (b).

(b) When a court is ruling on a claim of privilege under Article 9 (commencing with Section 1040) of Chapter 4 (official information and identity of informer) or under Section 1060 (trade secret) and is unable to do so without requiring disclosure of the information claimed to be privileged, the court may require the person from whom disclosure is sought or the person authorized to claim the privilege, or both, to disclose the information in chambers out of the presence and hearing of all persons except the person authorized to claim the privilege and such other persons as the person authorized to claim the privilege is willing to have present. If the judge determines that the information is privileged, neither he nor any other person may ever disclose, without the consent of a person authorized to permit disclosure, what was disclosed in the course of the proceedings in chambers. (Added by Stats. 1965, ch. 299, operative January 1, 1967. Amended by Stats. 1979, ch. 1034.)

§1563. Witness Fees

(a) This article shall not be interpreted to require tender or payment of more than one witness fee and one mileage fee or other charge unless there is an agreement to the contrary.

(b) All reasonable costs incurred in a civil proceeding by any witness which is not a party with respect to the production of all or any part of business records the production of which is requested pursuant to a subpoena duces tecum may be charged against the party serving the subpoena duces tecum.

(1) "Reasonable costs," as used in this section, shall mean ten cents ($.10) per page for standard reproduction of documents of a size of 8-1/2 x 14 inches or less, and actual costs for reproduction of oversize documents or documents the reproduction of which require special processing, necessarily done in responding to the subpoena together with additional reasonable clerical costs incurred in locating and making the records available. The clerical costs may be billed at the rate of ten dollars ($10) per hour per person, computed on the basis of two dollars and fifty cents ($2.50) per quarter hour or fraction thereof, and actual costs, if any, charged to the witness by a

third person for retrieval and return of records held by such a third person.

(2) The requesting party shall not be required to pay those costs or any estimate thereof prior to the time such records are available for delivery pursuant to the subpoena, but the witness may demand payment of costs pursuant to this section simultaneous with actual delivery of the subpoenaed records, and until such time as payment is made, is under no obligation to deliver the records.

(3) The witness shall submit an itemized statement for such costs to the requesting party setting forth the reproduction and clerical costs incurred by the witness. Upon demand by the requesting party, the witness shall furnish a statement setting forth the actions taken by the witness in justification of such costs.

(4) The requesting party may petition the court in which the action is pending to recover from the witness all or a part of the costs paid to the witness, or to reduce all or a part of the costs charged by the witness, pursuant to this subdivision, on the grounds that such costs were excessive. Upon the filing of the petition the court shall issue an order to show cause and from the time the order is served on the witness the court has jurisdiction over the witness. The court may hear testimony on the order to show cause and if it finds that the costs demanded and collected, or charged but not collected, exceed the amount authorized by this subdivision, it shall order the witness to remit to the requesting party, or reduce its charge to the requesting party by an amount equal to, the amount of the excess. In the event that the court finds the costs excessive and charged in bad faith by the witness, the court shall order the witness to remit the full amount of the costs demanded and collected, or excuse the requesting party from any payment of costs charged but not collected, and the court shall also order the witness to pay the requesting party the amount of the reasonable expenses incurred in obtaining the order including attorney's fees. If the court finds the costs were not excessive, the court shall order the requesting party to pay the witness the amount of the reasonable expenses incurred in defending the petition, including attorney's fees.

(5) If a subpoena is served to compel the production of business records and is subsequently withdrawn, or is quashed, modified or limited on a motion made other than by the witness, the witness shall be entitled to reimbursement pursuant to paragraph (1) for all costs incurred in compliance with the subpoena to the time that the requesting party has notified the witness that the subpoena has been withdrawn or quashed, modified or limited. In the event the subpoena is withdrawn or quashed, if those costs are not paid within 30 days after demand therefor, the witness may file a motion in the court in which the action is pending for an order requiring payment, and the court shall award the payment of expenses and attorney's fees in the manner set forth in paragraph (4).

(6) Where the personal attendance of the custodian of such records or other qualified witness is not required, the sole fees for complying with such subpoena shall be those provided for in this subdivision, except that where no photocopying or reproduction is performed by the custodian of records or other qualified witness the sole fee for making such records available shall not exceed twelve dollars ($12).

(c) When the personal attendance of the custodian of a record or other qualified witness is required pursuant to Section 1564, in a civil proceeding, he or she shall be entitled to the same witness fees and mileage permitted in a case where the subpoena requires the witness to attend and testify before a court in which the action or proceeding is pending and to any additional costs incurred as provided by subdivision (b). (Added by Stats. 1965, ch. 299, operative January 1, 1967. Amended by Stats. 1972, ch. 396; Stats. 1981, ch. 1014; Stats. 1982, ch. 452.)

GOVERNMENT CODE

§6261. Inspection of State Agencies Expenditures and Disbursements.

Notwithstanding Section 6252, an itemized statement of the total expenditures and disbursements of any agency provided for in Article VI of the California Constitution shall be open for inspection. (Added by Stats. 1975, ch. 1246.)

§10307. Assistance of Bar Governors

The Board of Governors of the State Bar shall assist the [Law Revision] commission in any manner the commission may request within the scope of its powers or duties. (Added by Stats. 1953, ch. 1445.)

§11140. Policy of State

It is the policy of the State of California that the composition of state boards and commissions shall be broadly reflective of the general public including ethnic minorities and women. (Added by Stats. 1975, ch. 997.)

§11141. Nomination for Appointments; Compliance with Policy

In making appointments to state boards and commissions, the Governor and every other appointing authority shall be responsible for nominating a variety of persons of different backgrounds, abilities, interests, and opinions in compliance with the policy expressed in this article. It is not the intent of the Legislature that formulas or specific ratios be utilized in complying with this article. (Added by Stats. 1975, ch. 977.)

§12011.5. Judicial Vacancies--State Bar Evaluation of Candidates

(a) In the event of a vacancy in a judicial office to be filled by appointment of the Governor or in the event that a declaration of candidacy is not filed by a judge and the Governor is required under subdivision (d) of Section 16 of Article VI of the Constitution to nominate a candidate, the Governor shall first submit to a designated agency of the State Bar of California the names of all potential appointees or nominees for such judicial office for evaluation of their judicial qualifications.

(b) The membership of the designated agency of the State Bar responsible for evaluation of judicial candidates

shall consist of attorney members and public members with the ratio of public members to attorney members determined, to the extent practical, by the ratio established in Sections 6013, 6013.4, and 6013.5, inclusive, of the Business and Professions Code. It is the intent of this subdivision that the designated agency of the State Bar responsible for evaluation of judicial candidates shall be broadly representative of the ethnic, sexual, and racial diversity of the population of California and composed in accordance with Sections 11140 and 11141 of the Government Code. The further intent of this subdivision is to establish a selection process for membership on the designated agency of the State Bar responsible for evaluation of judicial candidates under which no member of that agency shall provide inappropriate, multiple representation for purposes of this subdivision.

(c) Upon receipt from the Governor of the names of candidates for judicial office and their completed personal data questionnaires, the State Bar shall employ appropriate confidential procedures to evaluate and determine the qualifications of each candidate with regard to his or her ability to discharge the judicial duties of the office to which the appointment or nomination shall be made. Within 90 days of submission by the Governor of the name of a potential appointee for judicial office, the State Bar shall report in confidence to the Governor its recommendation whether the candidate is exceptionally well-qualified, well-qualified, qualified, or not qualified and the reasons therefor, and may report, in confidence, such other information as the State Bar deems pertinent to the qualifications of the candidate.

(d) In determining the qualifications of a candidate for judicial office, the State Bar shall consider, among other appropriate factors, his or her industry, judicial temperament, honesty, objectivity, community respect, integrity, health, ability, and legal experience.

(e) The State Bar shall establish and promulgate rules and procedures regarding the investigation of the qualifications of candiates for judicial office by the designated agency. These rules and procedures shall establish appropriate, confidential methods for disclosing to the candidate the subject matter of substantial and credible adverse allegations received regarding the candidate's health, physical or mental condition, or moral turpitude which, unless rebutted, would be determinative of the candidate's unsuitability for judicial office. No provision of this section shall be construed as requiring that any rule or procedure be adopted which permits the disclosure to the candidate of information from which the candidate may infer the source, and no information shall either be disclosed to the candidate nor be obtainable by any process which would jeopardize the confidentiality of communications from persons whose opinion has been sought on the candidate's qualifications.

(f) All communications, written, verbal or otherwise, of and to the Governor, the Governor's authorized agents or employees, including, but not limited to, the Governor's Legal Affairs Secretary and Appointments Secretary, or of and to the State Bar in furtherance of the purposes of this section are absolutely privileged from disclosure and confidential, and any communication made in the discretion of the Governor or the State Bar with a candidate or person providing information in furtherance of the purposes of this section shall not constitute a waiver of the privilege or a breach of confidentiality.

(g) When the Governor has appointed a person to a trial court who has been found not qualified by the designated agency, the State Bar may make public this fact after due notice to the appointee of its intention to do so, but no such notice or disclosure shall constitute a waiver of privilege or breach of confidentiality with respect to communications of or to the State Bar concerning the qualifications of the appointee.

(h) When the Governor has nominated or appointed a person to the Supreme Court or court of appeal in accordance with subdivision (d) of Section 16 of Article VI of the State Constitution, the Commission on Judicial Appointments may invite, or the State Bar's governing board or its designated agency may submit to the commission its recommendation, and the reasons therefor, but no such disclosure shall constitute a waiver of privilege or breach of confidentiality with respect to communications of or to the State Bar concerning the qualifications of the nominee or appointee.

(i) No person or entity shall be liable for any injury caused by any act or failure to act, be it negligent, intentional, discretionary, or otherwise, in the furtherance of the purposes of this section, including, but not limited to, providing or receiving any information, making any recommendations, and giving any reasons therefor. As used in this section, the term "State Bar" means its governing board and members thereof, the designated agency of the State Bar and members thereof, and employees and agents of the State Bar.

(j) At any time prior to the receipt of the report from the State Bar specified in subdivision (c) the Governor may withdraw the name of any person submitted to the State Bar for evaluation pursuant to this section.

(k) No candidate for judicial office may be appointed until the State Bar has reported to the Governor pursuant to this section, or until 90 days have elapsed after submission of the candidate's name to the State Bar, whichever occurs earlier. The requirement of this subdivision shall not apply to any vacancy in judicial office occurring within the 90 days preceding the expiration of the Governor's term of office, provided, however, that with respect to those vacancies and with respect to nominations pursuant to subdivision (d) of Section 16 of Article VI of the Constitution, the Governor shall be required to submit any candidate's name to the State Bar in order to provide it an opportunity, if time permits, to make an evaluation.

(l) Nothing in this section shall be construed as imposing an additional requirement for an appointment or nomination to judicial office, nor shall anything in this section be construed as adding any additional qualifications for the office of a judge.

(m) The Board of Governors of the State Bar shall not conduct or participate in, or authorize any committee, agency, employee, or commission of the State Bar to conduct or participate in, any evaluation, review, or report on the qualifications, integrity, diligence, or judicial ability of any specific justice of a court provided for in Section 2 or 3 of Article VI of the California Constitution without prior review and statutory authorization by the Legislature, except an evaluation, review or report on potential judicial appointees or nominees as authorized by this section.

The provisions of this subdivision shall not be construed to prohibit a member of the State Bar from conducting or participating in such an evaluation, review, or report in his or her individual capacity.

(n) If any provision of this section other than a provision relating to or providing for confidentiality or privilege from disclosure of any communication or matter, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this section to the extent it can be given effect, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this section are severable. If any other act of the Legislature conflicts with the provisions of this section, this section shall prevail. (Added by Stats. 1979, ch. 534. Amended by Stats. 1984, ch. 16.)

§82011. Code Reviewing Body

"Code reviewing body" means all of the following:

(a) The commission, with respect to the Conflict of Interest Code of a state agency other than an agency in the judicial branch of government, or any local government agency with jurisdiction in more than one county.

(b) The board of supervisors, with respect to the Conflict of Interest Code of any county agency other than the board of supervisors, or any agency of the judicial branch of government, and of any local government agency, other than a city agency, with jurisdiction wholly within the county.

(c) The city council, with respect to the Conflict of Interest Code of any city agency other than the city council.

(d) The Attorney General, with respect to the Conflict of Interest Code of the commission.

(e) The Supreme Court or its designee, with respect to the Conflict of Interest Code of the members of the Judicial Council, Commission on Judicial Performance, and Board of Governors of the State Bar of California.

(f) The Board of Governors of the State Bar of California with respect to the Conflict of Interest Code of the State Bar of California.

(g) The Supreme Court, the Court of Appeal, the Superior Court, the Municipal Court, with respect to the Conflict of Interest Code of any agency of the judicial branch of government subject to the immediate administrative supervision of that court.

(h) The Judicial Council of California, with respect to the Conflict of Interest Code of any state agency within the judicial branch of government not included under subdivisions (e), (f), and (g). (Added by initiative measure adopted June 4, 1974. Amended by Stats. 1980, ch. 779; Stats 1984, ch 727, effective July 1, 1985.)

§82019. Designated Employee

"Designated employee" means any officer, employee, member or consultant of any agency whose position with the agency:

(a) Is exempt from the state civil service system by virtue of subdivision (a), (c), (d), (e), (f), (g), or (m) of Section 4 of Article VII of the Constitution, unless the position is elective or solely secretarial, clerical or manual;

(b) Is elective, other than an elective state office; or

(c) Is designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest.

(d) Is involved as a state employee at other than a clerical or ministerial level in the functions of negotiating or signing any contract awarded through competitive bidding, in making decisions in conjunction with the competitive bidding process, or in negotiating, signing, or making decisions on contracts executed pursuant to Section 10122 of the Public Contract Code.

"Designated employee" does not include an elected state officer of any unsalaried member of any board or commission which serves a solely advisory function and also does not include any unsalaried member of a nonregulating committee, section, commission or other such entity established by the State Bar of California. (Added by initiative measure adopted June 4, 1974. Amended by Stats. 1974, ch 674; Stats. 1983, ch. 1108, effective September 28, 1983; Stats. 1984, ch. 727, effective July 1, 1985.)

§82041. Local Government Agency

"Local government agency" means a county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing. (Added by initiative measure adopted June 4, 1974. Amended Stats. 1984, ch. 727, effective July 1, 1985.)

§82048. Public Official

"Public official" means every member, officer, employee or consultant of a state or local government agency, but does not include judges and court commissioners in the judicial branch of government. "Public official" also does not include members of the Board of Governors and designated employees of the State Bar of California, members of the Judicial Council, and members of the Commission on Judicial Performance, provided that they are subject to the provisions of Article 2.5 (commencing with Section 6035) of Chapter 4 of Division 3 of the Business and Professions Code as provided in Section 6038 of that article. (Added by initiative measure adopted June 4, 1974. Amended by Stats. 1984, ch. 727; effective July 1, 1985.)

§82049. State Agency

"State agency" means every state office, department, division, bureau, board and commission, and the Legislature. (Added by initiative measure adopted June 4, 1974. Amended by Stats. 1984, ch. 727, effective July 1, 1985.)

§87200. Applicability of Article

This article is applicable to elected state officers, judges and commissioners of courts of the judicial branch of government, members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development

Commission, members of the Fair Political Practices Commission, members of the California Coastal Commission, members of planning commissions, members of the board of supervisors, district attorneys and chief administrative officers of counties, mayors, city managers, chief administrative officers and members of city councils of cities, and to candidates for any of these offices at any election. (Added by initiative measure adopted June 4, 1974. Amended by Stats. 1974, ch. 499, effective September 5, 1975, ch. 797, effective September 16, 1975, operative September 5, 1975: Stats 1984, ch. 727, effective July 1, 1985.)

§87311.5. Applicability of Administrative Procedure Act: Local Procedures

(a) Notwithstanding the provisions of Section 87311, the review of the Conflict of Interest Code of an agency in the judicial branch of government shall not be subject to the provisions of the Administrative Procedure Act. The review and preparation of Conflict of Interest Codes by these agencies shall be carried out under procedures which guarantee to officers, employees, members, and consultants of the agency and to residents of the jurisdiction adequate notice and a fair opportunity to present their views.

(b) Conflict of Interest Codes of the Judicial Council, the Commission on Judicial Performance, and the Board of Governors and designated employees of the State Bar of California shall not be subject to the provisions of subdivision (c) of Section 87302. (Added by initiative measure adopted June 4, 1974. Amended by Stats. 1984, ch. 727, effective July 1, 1985.)

PENAL CODE

§936.5. Special Counsel and Special Investigators—Superior Court Judge May Employ

(a) When requested to do so by the grand jury of any county, the presiding judge of the superior court may employ special counsel and special investigators, whose duty it shall be to investigate and present the evidence of the investigation to the grand jury.

(b) Prior to the appointment, the presiding judge shall conduct an evidentiary hearing and find that a conflict exists that would prevent the local district attorney, the county counsel, and the Attorney General from performing such investigation. Notice of the hearing shall be given to each of them unless he or she is a subject of the investigation. The finding of the presiding judge may be appealed by the district attorney, the county counsel, or the Attorney General. The order shall be stayed pending the appeal made under this section.

(c) The authority to appoint is contingent upon the certification by the auditor-comptroller of the county, that the grand jury has funds appropriated to it sufficient to compensate the special counsel and investigator for services rendered pursuant to the court order. In the absence of a certification the court has no authority to appoint. In the event the county board of supervisors or a member thereof is under investigation, the county has an obligation to appropriate the necessary funds. (Added by Stats. 1980, ch. 290.)

§1524. Search Warrants—Grounds for Issuance

(a) A search warrant may be issued upon any of the following grounds:

(1) When the property was stolen or embezzled.

(2) When the property or things were used as the means of committing a felony.

(3) When the property or things are in the possession of any person with the intent to use it as a means of committing a public offense, or in the possession of another to whom he or she may have delivered it for the purpose of concealing it or preventing its being discovered.

(4) When the property or things to be seized consist of any item or constitutes any evidence which tends to show a felony has been committed, or tends to show that a particular person has committed a felony.

(5) When the property or things to be seized consist of evidence which tends to show that sexual exploitation of a child, in violation of section 311.3, has occurred or is occurring.

(b) The property or things described in subdivision (a) may be taken on the warrant from any place, or from any person in whose possession it may be.

(c) Notwithstanding subdivision (a) or (b), no search warrant shall issue for any documentary evidence in the possession or under the control of any person, who is a lawyer as defined in Section 950 of the Evidence Code, a physician as defined in Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of the Evidence Code, or a clergyman as defined in Section 1030 of the Evidence Code, and who is not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which a warrant is requested unless the following procedure has been complied with:

(1) At the time of the issuance of the warrant the court shall appoint a special master in accordance with subdivision (d) to accompany the person who will serve the warrant. Upon service of the warrant, the special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested. If the party, in the judgment of the special master, fails to provide the items requested, the special master shall conduct a search for the items in the areas indicated in the search warrant.

(2) If the party who has been served states that an item or items should not be disclosed, they shall be sealed by the special master and taken to court for a hearing.

At the hearing the party searched shall be entitled to raise any issues which may be raised pursuant to Section 1538.5 as well as a claim that the item or items are privileged, as provided by law. Any such hearing shall be held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make any motions or present any evidence. The hearing shall be held within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case the matter shall be heard

at the earliest possible time.

(3) Any such warrant must, whenever practicable, be served during normal business hours. In addition, any such warrant must be served upon a party who appears to have possession or control of the items sought. If after reasonable efforts, the party serving the warrant is unable to locate any such person, the special master shall seal and return to the court for determination by the court any item which appears to be privileged as provided by law.

(d) As used in this section, a "special master" is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys which is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity which caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. In selecting the special master the court shall make every reasonable effort to insure that the person selected has no relationship with any of the parties involved in the pending matter. Any information obtained by the special master shall be confidential and shall not be divulged except in direct response to inquiry by the court.

In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not available and would not be available within a reasonable period of time, the magistrate may direct the party seeking the order to conduct the search in the manner described in this section in lieu of the special master.

(e) Any search conducted pursuant to this section by a special master may be conducted in such a manner as to permit the party serving the warrant or his or her designee to accompany the special master as he or she conducts his search. However, that party or his or her designee shall not participate in the search nor shall he or she examine any of the items being searched by the special master except upon agreement of the party upon whom the warrant has been served.

(f) As used in this section "documentary evidence" includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films or papers of any type or description.

(g) No warrant shall issue for any item or items described in Section 1070 of the Evidence Code. (Enacted 1872. Amended by Stats. 1899, p. 87; Stats. 1957, ch. 1884; Stats. 1978, ch. 1054; Stats. 1979, ch. 1034; Stats. 1980, ch. 441; Stats. 1982, ch. 438.)

§1525. Issuance--Necessity for Probable Cause

A search warrant cannot be issued but upon probable cause, ported by affidavit, naming or describing the person, and rticularly describing the property and the place to be searched.

The application shall specify when applicable, that the place to be searched is in the possession or under the control of an attorney, physician, psychotherapist or clergyman. (Enacted 1872. Amended by Stats. 1979, ch. 1034.)

§13825. Report to Legislature on Bail and Release Legislation

On or after January 1, 1984, and prior to December 31, 1985, in consultation with the State Bar of California and the Judicial Council, the Office of Criminal Justice Planning shall prepare and submit to the Legislature a report summarizing the experience of the public agencies impacted by Assembly Bill No. 2 of the 1979-80 Regular Session of the Legislature. Such report shall include, but not be limited to, information on the failure to appear rates for the different modes of release of criminal defendants authorized by Assembly Bill No. 2, the impact of the bill on jail populations, and the financial impact.

The Office of Criminal Justice Planning is specifically authorized and encouraged to seek the assistance of an organization or organizations which may be able to utilize funding sources other than the state to prepare this report for the Office of Criminal Justice Planning. (Added by Stats. 1979, ch. 873, effective January 1, 1981, effective until December 31, 1985.)

REVENUE AND TAXATION CODE

23734d. Unrelated Trade or Business; Lawyer Referral Service

In determining the unrelated business taxable income of an organization for any taxable year, there shall be excluded all income of an organization described in Section 23701d or Section 23701e which is derived from the operation of a lawyer referral service in conformance with the Minimum Standards for a Lawyer Referral Service promulgated by the State Bar of California. (Added by Stats. 1980, ch. 439.)

SUPREME COURT ORDER PURSUANT TO STATUTES 1981, CHAPTER 789

The court having considered in bank the draft order proposed by the Board of Governors of the State Bar of California, it is hereby ordered pursuant to Business and Professions Code section 6212, subdivision (a) (Stats. 1981, ch. 789) that members of the State Bar, law firms or law corporations of which they are members are authorized to establish interest-bearing trust accounts with a bank, savings and loan, or other financial institution regulated by a federal or state agency, which can accept such deposits, pay interest thereon, and insure such deposits by an agency of the federal government, and if such depository should have a notice of withdrawal requirement, the required notice does not exceed 30 days. (Supreme Court order, December 31, 1982.)

MINIMUM STANDARDS FOR A LAWYER REFERRAL SERVICE IN CALIFORNIA

(Effective May 14, 1976,
Amended August 21, 1982, August 13, 1983)

POLICY OF THE STATE BAR

§1.1 It is the policy of the State Bar of California that every community be served by a Lawyer Referral Service (hereinafter referred to as "Service"). Where the size of the community or the number of lawyers serving it make the establishment of a separate Service impractical, the State Bar encourages the establishment of a regional Service embracing two or more such communities.

§1.2 The purpose of the Service are:

(a) to provide a way in which any person may be referred to a lawyer who is able to render and is interested in rendering needed legal services;

(b) to provide information about lawyers and availability of legal services which will aid in the selection of a lawyer;

(c) to inform the public when and where to seek legal services;

(d) to provide general and legal information needed by the public; and

(e) to improve the quality of legal services available to the public.

AUTHORITY TO OPERATE A SERVICE

§2.1 A Service may be established, sponsored, and supervised or operated in accord with the Minimum Standards of the State Bar of California.

Authorization to establish and operate a Service shall be granted only to a bar association that meets the requirements specified in article VI, section 4, subdivision A (1), (3), (4), (5), (6), (8) and (9) of the Rules and Regulations of the State Bar, or to a legal aid plan or program for the furnishing of services to indigents or to a nonprofit organization formed for charitable or other public purposes which furnishes legal services to persons only in respect of their civic or political or constitutional rights and not otherwise in furtherance of such charitable or other public purposes of such organization. Such authorization shall be considered on the basis of a written application which contains an adequate showing that the proposed Service will conform to these Minimum Standards.

Only services determined to have met these Standards shall be authorized to publish that they are approved by the State Bar of California.

§2.2 Authority to operate a Service may be withdrawn or made subject to such conditions as determined in proceedings pursuant to Chapter 12 of the Rules of Procedure of the State Bar of California.

SUPERVISION BY THE LAWYER REFERRAL COMMITTEE

§3.1 The Service shall be supervised in its establishment and operation by a committee or board of directors (hereinafter referred to as a "Committee") having authority to make decisions necessary to the conduct of the Service. If the Service's sponsor(s) so elects, such decisions are subject to review or modifications by the Service's sponsor(s).

§3.2 Members of the Committee shall be appointed by the sponsor(s) and may include nonlawyers. At least 50% of the Committee members must be active members of the State Bar of California.

§3.3 The Committee shall meet at least quarterly. At least annually, the Committee shall review the operating records kept by the Service pursuant to section 9.1 of these Standards, supplemented by a sampling of information as to whether appointments have been kept, whether the client was satisfied with the lawyer's handling of the case and whether the fee was within the client's means. Based on its review, the Committee shall make such alterations in the operation of the Service as it deems necessary.

§3.4 Where two or more Services operate within the same county, their respective Lawyer Referral Committees shall seek to make cooperative arrangements in order to improve their collective capability for serving the public. Consideration should particularly be given to joint efforts for providing emergency services.

ELIGIBILITY AND APPROVAL OF PANEL ATTORNEYS

§4.1 Membership on any panel operated by the Service shall be open to all active members of the State Bar of California who regularly practice and maintain an office in the area served, except that the Service may impose additional requirements of experience or special education and training with respect to "special qualifications" panels established and operated in conformity with section 5.2 of these Standards, provided that the number of years an attorney has been admitted to practice shall not be the sole criterion or qualification for "special qualifications" panels. Membership on a panel may not be made contingent upon membership in a sponsoring association; however, a separate charge may be made to nonmembers of the sponsoring association to reimburse the association for services rendered by it to the Service.

§4.2 Each applicant for panel membership shall agree in writing to abide by all rules and regulations of the Service which shall include the requirement that each panel member submit any fee dispute arising between such member and a client referred by the Service, if the client so elects, to binding arbitration by a Fee Arbitration Committee or other body established or approved by the sponsor.

§4.3 Each Service shall establish a uniform procedure for review of refusals to admit to, and decisions to suspend or remove from, membership on any panel. In every case where a Service refused to admit an attorney to a panel or suspends or expels an attorney from a panel, the Service must give the attorney a written statement of the reasons for its decision and offer the attorney a meaningful opportunity to be heard in his or her defense.

§4.4 Every panel member shall be provided by the Service with a copy of the Minimum Standards for a Lawyer Referral Service in California that are then in effect at the time they become a member of the Service. Additionally, the Service shall continue to provide every panel member with copies of all changes that the Board of Governors thereafter may make to said Minimum Standards.

ORGANIZATION OF PANELS

§5.1 Each Service shall establish such number and variety of panels as the Lawyer Referral Committee determines will best enable the Service to make referrals that are responsive to individual client needs (see §1.2 of these Standards).

§5.2 Each Service is encouraged to establish "special qualifications" panels representing different fields of law and limited to attorneys found to be experienced or to have special education or training in the respective fields, provided that the number of years an attorney has been admitted to practice shall not be the sole criterion or qualification for "special qualifications" panels, and provided further that an attorney who is certified by the California Board of Legal Specialization as a specialist in a particular field shall be qualified for membership on the panel for such field by virtue of his or her certification. For each "special qualifications" panel, the Lawyer Referral Committee shall establish and file with the State Bar standards and procedures for:

(a) determining the qualifications for membership on the panel;

(b) reviewing the qualifications of a member to remain on or to be removed from the panel; and

(c) appealing decisions to suspend or remove a member from the panel (see §4.3 of these Standards).

§5.3 Each Service is encouraged to establish other separate panels including, but not limited to: a free-service-to-indigents panel, a reduced-fee panel, an inmate assistance panel, a legal services for the aged panel, or an attorney-to-attorney consultation panel.

REFERRAL PROCEDURES

§6.1 The Lawyer Referral Committee shall establish procedures assuring that each referral is made by the Service in a fair and impartial manner to a member of the appropriate panel. To the extent feasible, such procedures shall be designed to respond to all circumstances of the client, including the type and degree of difficulty of the legal problem presented, geographical convenience, language needs and the ability to pay for desired services.

§6.2 No referral shall be made on the basis of race, sex, age, religion or national origin.

§6.3 No referral shall be made by the referrer to himself or herself, his or her associates or employees.

PUBLICITY

§7.1 Each Service shall develop and maintain an active publicity program through communications media designed to inform the general public in the area served of the existence, purpose and advantages of the Service. Each Service should also make specific arrangements for receiving referrals from legal aid programs, criminal justice agencies, hospitals, jails, employers, and other appropriate public and private agencies and institutions in the area served.

§7.2 The form and content of all publicity shall be dignified and shall not be misleading. In particular, any Service operating with special qualifications panels pursuant to section 5.2 of these Standards may publicize that it will make referrals to attorneys "experienced" in particular substantive areas, but shall not use such terms as "specialist" or "special qualifications" that may be confused with specialty certification conferred by the California Board of Legal Specialization unless such panels contain only the names of certified specialists. All advertising shall identify the sponsor(s) of the Service.

§7.3 No publicity about the Service shall identify the attorneys participating in it, except that this shall not prohibit a participating attorney from acting as a spokesperson for the Service if authorized by the Lawyer Referral Committee.

OPERATING FEES AND USE OF PROCEEDS

§8.1 A Lawyer Referral Service may require that:

(a) each panel member pay to the Service a registration fee, "referral" fee (computed on a percentage basis or otherwise), or other like participating fee, or any two or more of such fees, as a condition to panel memberships; and

(b) each applicant pay a registration fee, initial consultation fee, or other like referral fee, or any two or more of such fees, as a condition to referral;

provided, however, that no Service may require any fee which is, or any combination of fees which are, either in conflict with statutory or other legal provisions for the award of attorney fees or unreasonable, whether those fees be required of applicants, panel members or both. The primary criterion for determining whether a Service has failed to comply with this provision shall be whether the fee or combination of fees in question increases an applicant's cost for legal services beyond that which he or she would normally pay, or decreases the quantity or quality of services which he or she would otherwise receive, absent involvement of the Service.

§8.2 The proceeds derived from the operation of the Service may be used only for the following:

(a) payment of the actual expenses of operating, conducting, promoting and developing the Service, including expenditures for capital purposes for the Service, as determined on a reasonable accounting basis and with provision for reasonable reserves;

(b) support of activities or programs

(i) for the furnishing of legal services to persons and entities financially unable to pay for all or part of such services or conducted by a legal aid plan or program for the furnishing of services to indigents or by a nonprofit organization formed for charitable or other public purposes which furnishes legal services to persons only in respect of their civic or political or constitutional rights and not otherwise in furtherance of such charitable or other public purposes or such organization, or

(ii) designed to educate members of the public with respect to the law, the judicial system, the legal profession, or the need, manner of obtaining and availability of legal services, or

(iii) designed to advance the science of jurisprudence, improve the administration of justice,

or aid in relations between the bar and the public; or

(c) support of other activities in the public interest.

In no event shall proceeds from the Service be used to defray the costs of operating the sponsoring association (other than those properly apportionable as expenses for the purposes described in subsection (a), (b) and (c) hereof) or be used solely for the benefit of the members of such association or members of the State Bar.

RECORDS AND REPORTS

§9.1 Each Service shall maintain records of its operation including at least the following information:

(a) the name, address and pertinent qualifications of each panel member, and the number and types of matters referred to such panel members;

(b) the name, address and type of matter presented by each client referred, the name of the panel member to whom the referral was made, the date the referral was made and the date the case was resolved or otherwise closed as reported by the panel member;

(c) the total fee charged as shall be reported by the panel member in the event such member is required to pay a forwarding fee to the Service.

§9.2 The Committee of each Service shall annually file with the State Bar, on a form to be supplied by it, a report on the activities of the Service and of the Committee. Such report shall include at least the following:

(a) statistics derived from the operating records required by section 9.1 hereof and what, if any, alterations have been made in the conduct of the Service by the Committee pursuant to section 3.3 hereof;

(b) a detailed accounting of all income to the Service (and sources thereof), all expenses related to the operations or promotion of the Service, the amount of current reserves held by the Service, and the specific disposition over the past two years of any reserves and/or surpluses derived from the Service.

Failure to file the annual report by the specific deadline without a showing of good cause to the Board of Governors shall result in the immediate withdrawal of State Bar authority to sponsor, supervise and operate a Lawyer Referral Service. (Amended August 13, 1983.)

EXHIBIT D

Assembly Bill No. 1275

CHAPTER 453

An act to amend Sections 6007, 6028, 6049, 6050, 6051, 6052, 6068, 6086.5, 6086.6, 6100, 6102, 6180, 6180.2, 6180.3, 6180.5, and 6180.11 of, to add Sections 6002.1 and 6051.1 to, and to repeal and add Section 6049.1 of, the Business and Professions Code, relating to the State Bar of California.

[Approved by Governor August 31, 1985. Filed with Secretary of State September 3, 1985.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1275, Calderon. State Bar of California.

Existing law, the State Bar Act, authorizes the Board of Governors of the State Bar of California to establish one or more committees, known as disciplinary boards, to act in its stead in the determination of disciplinary and reinstatement proceedings. Two of the members of any such board are required to be public members, who are appointed by the Governor. The rules of procedure adopted by the board of governors establish the State Bar Court, organized as specified, which is responsible, among other things, for disciplinary and reinstatement proceedings.

This bill would amend the State Bar Act to, among other things, make various changes in the procedures for discipline of attorneys, including specifying that these proceedings are under the jurisdiction of the State Bar Court rather than disciplinary boards; providing that the board of governors may order the involuntary inactive enrollment of an attorney upon the finding that the attorney's conduct poses an imminent threat of harm to the attorney's clients or to the public; and providing for an expedited disciplinary proceeding where a member of the State Bar has been found culpable of professional misconduct in another jurisdiction.

The people of the State of California do enact as follows:

SECTION 1. Section 6002.1 is added to the Business and Professions Code, to read:

6002.1. (a) A member of the State Bar shall maintain on the official membership records of the State Bar the member's current office or other address for State Bar purposes. Within 10 days after any change therein, the member shall file a change of address with the membership records office of the State Bar.

(b) Every former member of the State Bar who has been ordered by the Supreme Court to comply with Rule 955 of the California Rules of Court shall maintain on the official membership records of the State Bar the former member's current address and within 10

days after any change therein, shall file a change of address with the membership records office of the State Bar until such time as the former member is no longer subject to the order.

(c) The notice initiating a proceeding conducted under this chapter may be served upon the member or former member of the State Bar to whom it is directed by certified mail, return receipt requested, addressed to the member or former member at the latest address shown on the official membership records of the State Bar. The service is complete at the time of the mailing but any prescribed period of notice and any right or duty to do any act or make any response within any prescribed period or on a date certain after the notice is served by mail shall be extended five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. A member of the State Bar or former member may waive the requirements of this subdivision and may, with the written consent of another member of the State Bar, designate that other member to receive service of any notice or papers in any proceeding conducted under this chapter.

SEC. 2. Section 6007 of the Business and Professions Code is amended to read:

6007. (a) When a member requires involuntary treatment pursuant to Article 6 (commencing with Section 5300) of Chapter 2 of Division 5 of, or Part 2 (commencing with Section 6250) of Division 6 of the Welfare and Institutions Code, or when under an order pursuant to Section 3051, 3106.5, or 3152 of the Welfare and Institutions Code he or she has been placed in or returned to inpatient status at the California Rehabilitation Center or its branches, or when he or she has been determined insane or mentally incompetent and is confined for treatment or placed on outpatient status pursuant to the Penal Code, or on account of his or her mental condition a guardian or conservator, for his or her estate or person or both, has been appointed, the board of governors or an officer of the State Bar shall enroll the member as an inactive member.

The clerk of the appropriate court concerned in any of the above proceedings shall immediately transmit to the board a certified copy of any determination, order, or adjudication for involuntary treatment or confinement or for the appointment of a guardian or conservator.

The clerk of the appropriate court concerned shall also transmit to the State Bar a certified copy of any notice of certification for intensive treatment filed with the court pursuant to Article 4 (commencing with Section 5250) of Chapter 2 of Division 5 of the Welfare and Institutions Code.

The State Bar of California may procure a certified copy of any determination, order, adjudication, appointment, or notice when the clerk concerned has failed to transmit one or when the proceeding

was had in a court other than a court of this state.

In the case of an enrollment pursuant to this subdivision, the State Bar shall terminate the enrollment when the member has had the fact of his or her restoration to capacity judicially determined, upon the member's release from inpatient status at the California Rehabilitation Center or its branches pursuant to Section 3053, 3109, or 3151 of the Welfare and Institutions Code, or upon the member's unconditional release from the medical facility pursuant to Section 5304 or 5305 of the Welfare and Institutions Code; and on payment of all fees required.

When a member is placed in, returned to, or released from inpatient status at the California Rehabilitation Center or its branches, or discharged from the narcotics treatment program, the Director of Corrections or his or her designee shall transmit to the State Bar a certified notice attesting to that fact.

(b) The board shall also enroll a member of the State Bar as an inactive member in each of the following cases:

(1) A member asserts a claim of insanity or mental incompetence in any pending action or proceeding, alleging his or her inability to understand the nature of the action or proceeding or inability to assist counsel in representation of the member.

(2) The court makes an order assuming jurisdiction over the member's law practice, pursuant to Section 6180.5 or 6190.3.

(3) After notice and opportunity to be heard before the board or a committee, the board finds that the member, because of mental infirmity or illness, or because of the habitual use of intoxicants or drugs, is (i) unable or habitually fails to perform his or her duties or undertakings competently, or (ii) unable to practice law without danger to the interests of his or her clients and the public. No proceeding pursuant to this paragraph shall be instituted unless the board or a committee finds, after preliminary investigation, or during the course of a disciplinary proceeding, that probable cause exists therefor.

In the case of an enrollment pursuant to this subdivision, the board shall terminate the enrollment upon proof that the facts found as to the member's disability no longer exist and on payment of all fees required.

(c) (1) The board may order the involuntary inactive enrollment of an attorney upon a finding that the attorney's conduct poses an imminent threat of harm to the attorney's clients or to the public.

(2) In order to find that the attorney's conduct poses an imminent threat of harm to the attorney's clients or the public, each of the following factors shall be found, based on all the available evidence, including affidavits:

(A) The attorney has caused or is causing irreparable harm to the attorney's clients or the public.

(B) There is a substantial likelihood that the harm will reoccur or continue.

(C) If disciplinary proceedings are pending, there is a substantial likelihood that a significant sanction will be imposed on the attorney at the conclusion of the proceedings.

(D) The balance of interests, as between the attorney on the one hand and the attorney's clients and the public on the other hand, favors an involuntary inactive enrollment.

(E) The public interest would be served by an involuntary inactive enrollment.

(3) The board shall formulate and adopt rules of procedure to implement this subdivision.

In the case of an enrollment pursuant to this subdivision, the board shall terminate the involuntary inactive enrollment upon proof that the attorney's conduct no longer poses an imminent threat of harm to the attorney's clients or the public.

(d) The pendency or determination of a proceeding or investigation provided for by this section shall not abate or terminate a disciplinary investigation or proceeding except as required by the facts and law in a particular case.

(e) No membership fees shall accrue against the member during the period he or she is enrolled as an inactive member pursuant to this section.

SEC. 3. Section 6028 of the Business and Professions Code is amended to read:

6028. (a) The board may make appropriations and disbursements from the funds of the State Bar to pay all necessary expenses for effectuating the purposes of this chapter.

(b) Except as provided in subdivision (c), no member of the board shall receive any other compensation than his or her necessary expenses connected with the performance of his or her duties as a member of the board.

(c) Public members of the board appointed pursuant to the provisions of Section 6013.5, public members of the examining committee appointed pursuant to Section 6046.5, and public members of the State Bar Court appointed pursuant to Section 6086.6 shall receive, out of funds appropriated by the board for this purpose, fifty dollars ($50) per day for each day actually spent in the discharge of official duties, but in no event shall this payment exceed five hundred dollars ($500) per month. In addition, these public members shall receive, out of funds appropriated by the board, necessary expenses connected with the performance of their duties.

SEC. 4. Section 6049 of the Business and Professions Code is amended to read:

6049. (a) In the conduct of investigations and upon the trial and hearing of all matters, the board and any committee having jurisdiction, including the examining committee, may do all of the following:

(1) Take and hear evidence pertaining to the proceeding.

(2) Administer oaths and affirmations.

(3) Compel, by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the proceeding.

(b) In the conduct of investigations, the chief trial counsel or his or her designee, may compel, by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the investigation.

SEC. 5. Section 6049.1 of the Business and Professions Code is repealed.

SEC. 6. Section 6049.1 is added to the Business and Professions Code, to read:

6049.1. (a) In any disciplinary proceeding under this chapter, a certified copy of a final order made by any court of record or any body authorized by law or by rule of court to conduct disciplinary proceedings against attorneys, of the United States or of any state or territory of the United States or of the District of Columbia, determining that a member of the State Bar committed professional misconduct in such other jurisdiction shall be conclusive evidence that the member is culpable of professional misconduct in this state, subject only to the exceptions set forth in subdivision (b).

(b) The board may provide by rule for procedures for the conduct of an expedited disciplinary proceeding against a member of the State Bar upon receipt by the State Bar of a certified copy of a final order determining that the member has been found culpable of professional misconduct in a proceeding in another jurisdiction conducted as specified in subdivision (a). The issues in the expedited proceeding shall be limited to the following:

(1) The degree of discipline to impose.

(2) Whether, as a matter of law, the member's culpability determined in the proceeding in the other jurisdiction would not warrant the imposition of discipline in the State of California under the laws or rules binding upon members of the State Bar at the time the member committed misconduct in such other jurisdiction, as determined by the proceedings specified in subdivision (a).

(3) Whether the proceedings of the other jurisdiction lacked fundamental constitutional protection.

The member of the State Bar subject to the proceeding under this section shall bear the burden of establishing that the issues in paragraphs (2) and (3) do not warrant the imposition of discipline in this state.

(c) In proceedings conducted under subdivision (b), the parties need not be afforded an opportunity for discovery unless the State Bar Court department or panel having jurisdiction so orders upon a showing of good cause.

(d) In any proceedings conducted under this chapter, a duly certified copy of any portion of the record of disciplinary proceedings of another jurisdiction conducted as specified in subdivision (a) may be received in evidence.

(e) This section shall not prohibit the institution of proceedings under Section 6044, 6101, or 6102, as may be appropriate, concerning any member of the State Bar based upon the member's conduct in another jurisdiction, whether or not licensed as an attorney in the other jurisdiction.

SEC. 7. Section 6050 of the Business and Professions Code is amended to read:

6050. Whenever any person subpoenaed to appear and give testimony or to produce books, papers or documents refuses to appear or testify before the subpoenaing body, or to answer any pertinent or proper questions, or to produce such books, papers or documents, he or she is in contempt of the subpoenaing body.

SEC. 8. Section 6051 of the Business and Professions Code is amended to read:

6051. The chairman or presiding officer of the board or the committee having jurisdiction or the chief trial counsel shall report the fact that a person under subpoena is in contempt of the subpoenaing body to the superior court in and for the county in which the proceeding, investigation or other matter is being conducted and thereupon the court may issue an attachment in the form usual in the superior court, directed to the sheriff of the county, commanding the sheriff to attach the person and immediately bring him or her before the court.

On the return of the attachment, and the production of the person attached, the superior court has jurisdiction of the matter, and the person charged may purge himself or herself of the contempt in the same way, and the same proceedings shall be had, and the same penalties may be imposed, and the same punishment inflicted, as in the case of a witness subpoenaed to appear and give evidence on the trial of a civil cause before a superior court.

In lieu of the procedure specified above, the court may enter an order directing the person alleged to be in contempt to appear before the court at a specified time and place and then and there show cause why he or she has not attended or testified or produced the writings as required. A copy of the order shall be served upon that person. If it appears to the court that the subpoena was regularly issued and no good cause is shown for the refusal to appear or testify or produce the writings, the court shall enter an order that the person appear, testify, or produce writings, as the case may be. Upon failure to obey the order, the person shall be dealt with as for contempt of court.

A proceeding pursuant to this section shall be entitled "In the Matter of (state name), Alleged Contemnor re State Bar (proceeding, investigation or matter) No. (insert number)."

SEC. 9. Section 6051.1 is added to the Business and Professions Code, to read:

6051.1. A motion to quash a subpoena issued pursuant to Section 6049 shall be brought in the State Bar Court.

SEC. 10. Section 6052 of the Business and Professions Code is amended to read:

6052. Any member of the board, or of any committee or unit or section thereof, having jurisdiction, or the chief trial counsel or his or her designee may administer oaths and issue any subpoena pursuant to Section 6049.

Depositions may be taken and used as provided in the rules of procedure adopted by the board pursuant to this chapter.

SEC. 11. Section 6068 of the Business and Professions Code is amended to read:

6068. It is the duty of an attorney to do all of the following:

(a) To support the Constitution and laws of the United States and of this state.

(b) To maintain the respect due to the courts of justice and judicial officers.

(c) To counsel or maintain such actions, proceedings, or defenses only as appear to him or her legal or just, except the defense of a person charged with a public offense.

(d) To employ, for the purpose of maintaining the causes confided to him or her such means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

(e) To maintain inviolate the confidence, and at every peril to himself to preserve the secrets, of his or her client.

(f) To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charged.

(g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.

(h) Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed.

(i) To cooperate and participate in any State Bar investigation or other State Bar proceeding pending against the attorney. However, this subdivision shall not be construed to deprive an attorney of any constitutional or statutory privileges.

SEC. 12. Section 6086.5 of the Business and Professions Code is amended to read:

6086.5. The board of governors may establish one or more committees, known as the State Bar Court, to act in its place and stead in the determination of disciplinary and reinstatement proceedings and proceedings pursuant to subdivisions (b) and (c) of Section 6007 to the extent provided by rules adopted by the board of governors. In these proceedings the State Bar Court may exercise the powers and authority vested in the board of governors by this chapter, except as limited by rules of the board of governors.

For the purposes of Sections 6007, 6043, 6049, 6049.2, 6050, 6051,

6052, 6077 (excluding the first sentence), 6078, 6080, 6081, and 6082, "board" includes the State Bar Court.

Nothing in this section shall authorize the State Bar Court to adopt rules of professional conduct or rules of procedure.

SEC. 13. Section 6086.6 of the Business and Professions Code is amended to read:

6086.6. Two members of the Review Department of the State Bar Court appointed pursuant to Section 6086.5 shall consist of public members who have never been members of the State Bar or admitted to practice before any court in the United States. The nonattorney members shall be appointed by the Governor and shall serve for a term of four years except that for the initial term after enactment of this section, the first nonattorney appointed shall serve for two years and the other for four years.

SEC. 14. Section 6100 of the Business and Professions Code is amended to read:

6100. For any of the causes provided in this article, arising after an attorney's admission to practice, he or she may be disbarred or suspended by the Supreme Court. Nothing in this article limits the inherent power of the Supreme Court to discipline, including to summarily disbar, any attorney.

SEC. 15. Section 6102 of the Business and Professions Code is amended to read:

6102. (a) Upon the receipt of the certified copy of the record of conviction, if it appears therefrom that the crime of which the attorney was convicted involved or that there is probable cause to believe that it involved moral turpitude or is a felony under the laws of California or of the United States, the Supreme Court shall suspend the attorney until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal, or has otherwise become final, and until the further order of the court. Upon its own motion or upon good cause shown the court may decline to impose, or may set aside, the suspension when it appears to be in the interest of justice to do so, with due regard being given to maintaining the integrity of and confidence in the profession.

(b) For the purposes of this section, a crime is a felony under the law of California if it is declared to be so specifically or by subdivision (a) of Section 17 of the Penal Code, unless it is charged as a misdemeanor pursuant to paragraph (4) or (5) of subdivision (b) of Section 17 of the Penal Code, irrespective of whether in a particular case the crime may be considered a misdemeanor as a result of postconviction proceedings, including proceedings resulting in punishment or probation set forth in paragraph (1) or (3) of subdivision (b) of Section 17 of the Penal Code.

(c) After the judgment of conviction of an offense specified in subdivision (a) has become final or, irrespective of any subsequent order under Section 1203.4 of the Penal Code, an order granting

probation has been made suspending the imposition of sentence, the Supreme Court shall summarily disbar the attorney if the conviction is a felony under the laws of California or of the United States which meets both of the following criteria:

(1) An element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement.

(2) The offense was committed in the course of the practice of law or in any manner such that a client of the attorney was a victim.

(d) Except as provided in subdivision (c), if after adequate notice and opportunity to be heard (which hearing shall not be had until the judgment of conviction has become final or, irrespective of any subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence), the court finds that the crime of which the attorney was convicted, or the circumstances of its commission, involved moral turpitude, it shall enter an order disbarring the attorney or suspending him or her from practice for a limited time, according to the gravity of the crime and the circumstances of the case; otherwise it shall dismiss the proceedings. In determining the extent of the discipline to be imposed in a proceeding pursuant to this article any prior discipline imposed upon the attorney may be considered.

(e) The court may refer the proceedings or any part thereof or issue therein, including the nature or extent of discipline, to the State Bar for hearing, report, and recommendation.

(f) The record of the proceedings resulting in the conviction, including a transcript of the testimony therein, may be received in evidence.

(g) The Supreme Court shall prescribe rules for the practice and procedure in proceedings had pursuant to this section and Section 6101.

(h) The other provisions of this article providing a procedure for the disbarment or suspension of an attorney do not apply to proceedings pursuant to this section and Section 6101, unless expressly made applicable.

SEC. 16. Section 6180 of the Business and Professions Code is amended to read:

6180. When an attorney engaged in law practice in this state dies, resigns, becomes an inactive member of the State Bar, is disbarred, or is suspended from the active practice of law and is required by the order of suspension to give notice of the suspension, notice of cessation of law practice shall be given and the courts of this state shall have jurisdiction, as provided in this article.

SEC. 17. Section 6180.2 of the Business and Professions Code is amended to read:

6180.2. Notwithstanding the giving of notice pursuant to Section 6180.1, the superior court on its own motion, or a client of the attorney, the State Bar, or an interested person or entity may make application to the superior court for the county where the attorney

maintains or more recently has maintained his or her principal office for the practice of law or where he or she resides, for assumption by the court of jurisdiction over the law practice to the extent provided in this article.

SEC. 18. Section 6180.3 of the Business and Professions Code is amended to read:

6180.3. The application shall be verified, and shall state facts supporting the occurrence of one or more of the events stated in Section 6180 and either of the following:

(a) Belief that supervision of the court is warranted because the attorney has left an unfinished client matter for which no other active member of the State Bar has, with the consent of the client, agreed to assume responsibility.

(b) Belief that the interests of one or more clients of the attorney or of one or more other interested persons or entities will be prejudiced if the proceeding herein provided is not maintained.

SEC. 19. Section 6180.5 of the Business and Professions Code is amended to read:

6180.5. If the court finds that one or more of the events stated in Section 6180 has occurred, and (a) that supervision of the courts is warranted because the affected attorney has left an unfinished client matter for which no other active member of the State Bar has with consent of the client agreed to assume responsibility or (b) that the interest of one or more of the clients of the attorney or one or more other interested persons or entities will be prejudiced if the proceeding herein provided is not maintained, it may make an order assuming jurisdiction over the attorney's practice pursuant to this article. If the person to whom the order to show cause is directed does not appear the court may make its order upon the verified application or such proof as it may require. Thereupon the court shall appoint one or more active members of the State Bar to act under its direction and may order such appointed attorneys to do one or more of the following:

(1) Examine the files and records of the law practice, and obtain information as to any pending matters which may require attention.

(2) Notify persons and entities who appear to be clients of the attorney of the occurrence of the event or events stated in Section 6180 and inform them that it may be to their best interest to obtain other legal counsel.

(3) Apply for an extension of time pending employment of such other counsel by the client.

(4) With the consent of the client, file notices, motions and pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained.

(5) Give notice to appropriate persons and entities who may be affected, other than clients, of the occurrence of such event or events.

(6) Arrange for the surrender or delivery of clients' papers or

property.

(7) Do such other acts as the court may direct to carry out the purposes of this article.

The court shall have jurisdiction over the files and records and law practice of the affected attorney for the limited purposes of this section, and may make all orders necessary or appropriate to exercise this jurisdiction.

SEC. 20. Section 6180.11 of the Business and Professions Code is amended to read:

6180.11. No person or entity shall incur any liability by reason of the institution or maintenance of the proceeding. No person shall incur any liability for any act done or omitted to be done pursuant to order of the court under this article. No person or entity shall be liable for failure to apply for court jurisdiction under this article. Nothing in this section shall affect any obligation otherwise existing between the affected attorney and any other person or entity.

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ASSEMBLY SUBCOMMITTEE ON ADMINISTRATION OF JUSTICE
LLOYD G. CONNELLY, Chairperson

AB 1275 (Calderon), Chapter 453, Statutes of 1985
(Effective January 1, 1986)

SUBJECT: AB 1275 makes various changes in the procedures for discipline of attorneys for professional misconduct.

DIGEST

All persons admitted and licensed to practice law in California are members of the State Bar. The State Bar Board of Governors (Board) has power to discipline members for a willful breach of any of its Rules of Professional Conduct. The Board may establish committees, known as disciplinary boards, to act in its place and stead in the determination of disciplinary and reinstatement proceedings. The rules of procedure adopted by the Board establish the State Bar Court, which is responsible for, among other things, disciplinary and reinstatement proceedings.

AB 1275 makes the following changes in the procedures for discipline of attorneys for professional misconduct:

1. Provides address requirements of members and former members (disbarred, resigned, or suspended attorneys) to maintain on the State Bar's official membership records their current office or other address for State Bar purposes. A change of address must be filed within ten days after the change.

   (Under former law, a member was not required by statute to keep the State Bar informed of his or her current address.)

2. Provides for the service of certain process in State Bar regulatory matters.

   a) Specifies that the notice initiating a regulatory proceeding may be served by certified mail, return receipt requested, addressed to the member or former member at the latest address shown on the State Bar's official membership records. (Formerly, such service was available only for copies of an application to a superior court that it take jurisdiction of an attorney's law practice. The State Bar's practice was to attempt service of charges related to a regulatory proceeding by either personal delivery or publication.)

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b) Establishes time frames for any prescribed period of notice and any right or duty to do any act or make any response.

c) Permits a member or former member to waive the requirements of service of process and to designate another member to receive service.

3. Authorizes the Board to order the involuntary inactive enrollment of an attorney when the attorney's conduct poses an imminent threat of harm to the attorney's clients or to the public.

(Mandatory inactive enrollment for members who are mentally incapacitated or fail to perform their professional duties because of a disability due to the habitual use of intoxicants or drugs would be retained under AB 1275.)

a) Specifies five factors, each of which must be found, in order to show that the attorney's conduct poses an imminent threat of harm; i.e., (i) actual irreparable harm; (ii) substantial likelihood as to reoccurrence of the harm; (iii) likelihood of a significant sanction to be imposed by a disciplinary hearing; (iv) enrollment is favored by a balance of interests between the attorney on one hand and his or her clients and the public on the other hand; (v) public interest is served by enrollment.

b) Requires termination of involuntary inactive enrollment upon proof that the attorney's conduct no longer poses an imminent threat of harm to the attorney's client or the public.

4. Provides statutory recognition of the State Bar Court as the adjudicative body for matters related to attorney regulation.

5. Authorizes the issuance of investigatory subpoenas by the State Bar chief trial counsel to compel the attendance of witnesses and the production of documents pertaining to the investigation of a member's professional conduct.

(Formerly the State Bar Office of Trial Counsel had no authority to issue its own subpoenas, although the Board itself had such authority.)

a) Provides that a refusal to comply with an investigatory subpoena would constitute contempt, and authorizes the chief trial counsel to seek contempt proceedings and sanctions directly to the superior court.

b) Requires all motions to quash investigatory subpoenas to be brought in the State Bar Court.

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c) Authorizes the chief trial counsel or his or her designee to administer oaths to those persons responding to investigatory subpoenas.

6. Repeals law which provides that the duly authenticated record of attorney disciplinary proceedings in another state or jurisdiction is admissible in evidence in a State Bar disciplinary proceeding against the same person and is "prima facie evidence of the facts, matters, and things set forth therein."

Permits instead that the certified final order of a court or other body determining that a member committed professional misconduct in another jurisdiction would be conclusive evidence of the member's culpability, unless ameliorated in an expedited disciplinary proceeding.

a) Authorizes the Board to adopt procedural rules for conducting an expedited disciplinary proceeding against a member upon the State Bar's receipt of the order. The member would have the burden of establishing that, as a matter of law, the culpability would not have warranted imposition of discipline in California at the time the misconduct was committed or that the proceedings of the other jurisdiction lacked fundamental constitutional protection.

b) Provides that the issue of the degree of discipline to impose on the member would be decided independently in the expedited proceeding.

c) Makes no provision for discovery in the expedited proceeding unless the State Bar Court department or panel so orders upon a showing of good cause.

d) Authorizes the admissibility in evidence of the certified copy of the record of disciplinary proceedings of another jurisdiction in the expedited proceeding.

e) Makes the expedited proceeding an alternative to regular formal disciplinary proceedings.

7. Specifies an attorney's duty to cooperate and participate in any State Bar investigation or other State Bar proceeding pending against him or her. However, this requirement would not be construed to deprive the attorney of any constitutional or statutory privileges.

8. Clarifies that the inherent power of the California Supreme Court to discipline an attorney is not limited by this measure.

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9. Provides for (i) the immediate suspension of an attorney convicted of a felony under California or federal law and (ii) his or her subsequent summary disbarment when an element of the offense involved the specific intent to deceive or steal and the offense was committed in the course of the practice of law or made a client a victim.

   Upon its own motion or upon good cause shown, the court may decline to impose, or may set aside, an interim suspension when it appears to be in the interest of justice to do so, giving due regard to maintaining the integrity of and confidence in the legal profession.

   For purposes of this measure, a crime is a felony under California law if it is declared to be so specifically or by Penal Code Section 17 (a) [crime which is punishable with death or by imprisonment in the state prison], unless it is charged as a misdemeanor pursuant to Penal Code Section 17 (b) (4) or (5), and even if it is subsequently considered to be a misdemeanor as a result of post-conviction proceedings.

   (Formerly, interim suspension and subsequent disbarment were available only for attorneys convicted of a crime involving moral turpitude.)

10. Makes several changes relative to the application of the superior court to assume jurisdiction of an attorney's law practice.

   a) Authorizes the superior court, upon its own motion, to assume jurisdiction of an attorney's law practice when the attorney has disappeared, died, resigned, become inactive, or been suspended or disbarred. (Formerly, since the superior court was not an "interested party or entity," it did not have the statutory authority to assume jurisdiction of the attorney's law practice.)

   b) Clarifies that only one hearing is to be held on an application for the superior court to assume jurisdiction of an attorney's practice and the hearing is to be limited to the issues of proof that the attorney has died, resigned, become inactive, been disbarred or suspended and that the attorney has unfinished client matters or the interests of the attorney's clients or other interested persons will be prejudiced.

   c) Clarifies that, once a finding is made that court supervision is warranted because of unfinished client matters or that the interest of the attorney's clients or other interested persons will be prejudiced, then the superior court may issue an order assuming jurisdiction of an attorney's law practice. (Formerly, both findings were required before the superior court could issue such an order.)

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11. Provides absolute immunity to any person or entity who provides information regarding an attorney's abandonment of a case.

    (Formerly, the immunity from liability was not given for willful acts or omissions.)

12. Makes technical changes.

FISCAL EFFECT

None

COMMENTS

1. The purpose of AB 1275, sponsored by the State Bar of California, is to enact procedural provisions to improve, expedite, and streamline the State Bar's lawyer disciplinary function. AB 1275 seeks to foster better public protection and further the integrity of the legal profession by addressing the problems of inordinate delays and "lack of teeth" in disciplinary action taken by the State Bar.

2. According to the sponsor of AB 1275, "[a]t the end of 1984, there were 95,057 members of the State Bar. Each day, the membership records department of the State Bar receives numerous inquiries from courts of record of the State, members of the public, public offices and other members of the State Bar as to the public information contained on the State Bar's membership records. A substantial number of these inquiries pertain to the member's current address. The address requirement . . . in sections 6002.1(a) and (b) would provide added assistance to the public, the courts and the legal professior."

3. AB 1275 permits service on the member of the State Bar (or former member) of the notice initiating a proceeding conducted under the State Bar Act by certified mail, return receipt requested, directed to the member at the latest address shown on the State Bar's official membership records. (Once the member of the State Bar appeared in the State Bar proceeding (in person or in writing), service of later papers would be by first class mail addressed to the member at the address on the State Bar's official membership records. The member or former member could waive the formalities of . . . section 6002.1(c). With written consent of another member of the State Bar, the member could designate that other member to accept service.

   The sponsor claims that the "changes would provide fair procedures of notice of a State Bar proceeding to members of the State Bar via certified mail, return receipt requested, while expediting State Bar proceedings and reducing their cost by expressly authorizing certified mail service of the initiating papers in State Bar regulatory matters (in lieu of personal

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service or service by publication). Service would be effective at the time of mailing but any response would be extended by the amount of time now afforded by section 1013, Code of Civil Procedure."

4. AB 1275, by its involuntary inactive enrollment provision, is intended to close the "loophole" wherein a member of the State Bar of California now is allowed to continue to practice law although his conduct poses a substantial and imminent threat of harm to the public or to the attorney's clients.

   The sponsor points out, moreover, that the "new Business and Professions Code section will be implemented through Rules of Procedure which will afford the subject attorney ample opportunity to file objections and to be heard. The attorney will be furnished a copy of the application for involuntary inactive enrollment promptly and the attorney will have the opportunity to present any defense or explanation before a Hearing Panel with review by Review Department of the State Bar Court. The attorney is also given fifteen days in which to file a petition of objection with the Supreme Court. Additionally, rules have been and will be promulgated which, in effect, put members of the State Bar on notice that specific forms of conduct will subject them to involuntary inactive enrollment. Such conduct includes: being charged with a felony or misdemeanor involving moral turpitude such as murder, forgery, perjury, intentional fraud, extortion, bribery, obstruction of justice; multiple complaints by clients, judges or other attorneys that clients' interests are not being adequately represented in compliance with Rule of Professional Conduct 6-101; unlawful solicitation of employment or false, deceptive and/or repeated noncompliance with Rule of Professional Conduct 8-101, or evidence that the attorney has repeatedly refused to return clients' files upon request."

5. The sponsor notes that "a member of the State Bar who is the subject of a disciplinary investigation or proceeding (currently) is free to disregard State Bar inquiries regarding allegations of the member's misconduct. (AB 1275) seeks to impress upon the member the importance of a State Bar investigation or proceeding by placing an affirmative duty of cooperation upon the subject member. A member would no longer be given the option of effectively impeding the function of the disciplinary process by simply ignoring investigatory inquiries directed at the member. The new statute would serve as notice that the member is required to cooperate with the State Bar while further emphasizing the gravity of the inquiry.

   "Past experience of the Office of Trial Counsel shows that a significant amount of time and money is saved when a member responds to its initial inquiry, as opposed to when a member initially ignores all attempts at communication during the investigatory stage. This then requires formal proceedings to be initiated, frequently resulting in dismissal when the member finally comes forward with exculpatory material which was available to the member from the outset of the investigation. Accordingly, not only

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is the public perception of the disciplinary process enhanced when the State Bar articulates this duty, but it benefits the profession by prompting timely responses which lead to either prompt dismissals or prompt pursuit."

6. AB 1275 broadens the basis for placing convicted attorneys on interim suspension from those crimes which involve or probably involve moral turpitude (the former standard) to include also all crimes which are felonies under California or federal law. Crimes charged as felonies under California law would remain felonies for the purposes of interim suspension and subsequent summary disbarment even if subsequently considered to be a misdemeanor as a result of sentencing or other post conviction proceedings.

   AB 1275 also authorizes the Supreme Court to decline to impose an interim suspension when it appears to be in the interest of justice to do so, with due regard being given to maintaining the integrity of and confidence in the profession.

   Finally, this bill requires the Supreme Court to disbar attorneys convicted of felonies, upon finality of conviction, when the felony:

   a) involves specific intent to deceive, defraud, steal, or make or suborn a false statement and

   b) was committed in the course of the practice of law or in any manner such that a client of the attorney was the victim.

7. According to the sponsor, the purpose of B&P Code Section 6180.11 is "to encourage any person or entity with knowledge of an attorney's abandonment of a case due to disappearance, death, resignation, inactive status, suspension or disbarment to come forward with that information so that the clients may be protected and the courts and the State Bar may be notified. Should an attorney reappear the prejudice to him/her in having a case transferred to the Superior Court's jurisdiction is much less than that of a client who had been abandoned for whatever reason in the interim. Absolute immunity for persons with information in this instance is justified to protect the public and maintain the integrity of the profession."

Support	Opposition
State Bar of California	Unknown

L. Young
324-7593

RULES OF PROCEDURE
OF THE
THE STATE BAR OF CALIFORNIA

(Rules effective July 31, 1979
with subsequent revisions.)

JUNE 1985

Published by the Office of the Secretary of the State Bar of California.

PREAMBLE

These Rules of Procedure of the State Bar of California are promulgated by the Board of Governors of the State Bar in order to facilitate and govern proceedings conducted by the State Bar through the State Bar Court and otherwise.

These Rules are organized as follows:

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[PUBLISHER'S NOTE:

On June 1, 1984 the Board of Governors amended the Rules of Procedure effective September 1, 1984 applying to:

(a) Investigation matters where no request for assignment of the matter to an investigation referee had been received by the Office of the State Bar Court prior to September 1, 1984; and

(b) Formal proceedings in which either the date of the settlement conference is initially set on or after September 1, 1984 or the first date of formal hearing is initially set on or after December 1, 1984.

The amended rules are: 407, 408, 415, 507, 508, 509, 510, 511, 512, 554.1 and 558.

The Rules of Procedure in effect immediately prior to September 1, 1984 apply to all investigation matters and formal proceedings not listed in (a) and (b), above.]

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DIVISION I
TITLE AND DEFINITION

RULE 1. TITLE.

These rules shall be known and may be cited as the Rules of Procedure of the State Bar.

RULE 2. DEFINITIONS.

As used in these rules:

2.1 "Board of Governors" is the board of governors of the State Bar.

2.2 "Board of Governors Committee" is the committee on adjudication and discipline of the board of governors.

2.3 "Chief Trial Counsel" is the chief trial counsel of the State Bar.

2.4 "Conviction proceeding" is a proceeding before the State Bar initiated by an order of reference from the Supreme Court pursuant to Sections 6101, 6102 of the Business and Professions Code and Rule 951, California Rules of Court.

2.5 "County" is a county or city and county.

2.6 "Customer" is a customer within the meaning of Section 7465 of the Government Code.

2.7 "Director" is the director of the administrative office of the State Bar Court.

2.8 "Discovery Review Referee" is the referee or referees designated by the Presiding Referee to conduct reviews of discovery matters.

2.9 "District" is a district defined by the State Bar Act.

2.10 "Examiner" is the counsel for the State Bar in any proceeding provided for under these rules.

2.11 "Executive Committee" is a committee of the State Bar Court.

2.12 "Financial institution" is a financial institution within the meaning of Section 7465(a) of the Government Code.

2.13 "Financial records" are those defined by Section 7465(b) of the Government Code, including copies of and information contained in such records.

2.14 "General Counsel" is the general counsel of the State Bar.

2.15 "Hearing Department" is a department of the State Bar Court which conducts formal proceedings and make findings of fact, decisions or recommendations.

2.16 "Hearing Panel" is a panel composed of one or more referees of the hearing department.

2.17 "Investigation Department" is a department of the State Bar Court which acts upon complaints, conducts investigations and determines whether to issue notices to show cause in disciplinary matters.

2.18 "Investigation Referee" is a referee of the investigation department.

2.19 "Member" is a member, or former member of the State Bar or an attorney admitted pro hac vice pursuant to Rule 983, California Rules of Court.

2.20 "Party" is the member or the examiner in a formal proceeding.

2.21 "Presiding referee" is the presiding officer of the Executive Committee.

2.22 "Probation Revocation Proceeding" is a formal proceeding to determine whether a recommendation should be made to the Supreme Court that probationary terms of an order of suspension be set aside.

2.23 "Reasonable cause" is such a state of facts and circumstances as would lead a person of ordinary care and prudence to believe, or to entertain a strong suspicion that something is true.

2.24 "Referee" is a referee of the State Bar Court.

2.25 "Request for reasons" is a written request by a member, pursuant to Section 7473(d) of the Government Code, for the reasons for the State Bar's examination of the member's trust fund financial records.

2.26 "Review Department" is a department of the State Bar Court which reviews determinations of the Hearing Department.

2.27 "Rule 955 Proceeding" is a formal proceeding to determine whether a report and recommendation for sanctions should be made to the Supreme Court concerning a member's failure to comply with Rule 955, California Rules of Court.

2.28 "Section 6007 Proceeding" is a proceeding concerning the status of a member of the State Bar as authorized by Section 6007(b) of the Business and Professions Code and includes both a proceeding against the member, and a proceeding by the member.

2.29 "State Bar" is the State Bar of California.

2.30 "State Bar Court" is the single disciplinary and adjudicative board established by the Board of Governors pursuant to Section 6086.5 of the Business and Professions Code.

2.31 "State Bar Proceeding" is a proceeding before the State Bar authorized by Section 6075 and following of the Business and Professions Code.

2.32 "Subpoena" is a subpoena or a subpoena duces tecum.

2.33 "Supreme Court" is the Supreme Court of California.

2.34 "Trust Fund Financial Records" are financial records within the meaning of subparagraph (13) of this rule that pertains to trust funds which a member must maintain in accordance with the Rules of Professional Conduct.

DIVISION II
THE STATE BAR COURT

CHAPTER 1
GENERAL PROVISIONS

RULE 100. STATE BAR COURT.

The State Bar Court consists of members of the State Bar and non-lawyers appointed by the Board of Governors, and two non-lawyers appointed by the Governor. The foregoing shall be officers of the State Bar Court and shall be known as referees.

From time to time, the Board of Governors may make additional appointments and may leave unfilled vacancies in such additional membership. The term of office of those persons appointed by the Board of Governors shall be terms as prescribed by the Board of Governors, but such persons shall serve at the pleasure of the Board of Governors. (Operative January 16, 1982.)

RULE 101. DEPARTMENTS.

The State Bar Court is organized into the following departments:

(a) The Investigation Department, consisting of referees who are members of the State Bar.

(b) The Hearing Department, consisting of referees, not more than one-third of whom may be non-lawyers.

(c) The Review Department, consisting of fifteen referees. Two of these referees shall be non-lawyers appointed by the Governor pursuant to Section 6086.6 of the Business and Professions Code. A maximum of three other referees may be non-lawyers appointed by the Board of Governors.

(d) The Probation Department, consisting of referees.

(e) Such other departments within the foregoing departments as may be created by the Board of Governors or the Executive Committee from time to time, consisting of referees appointed by the presiding referee.

The investigation department, hearing department, probation department and review department shall each be headed by a referee known as an assistant presiding referee, who is a member of the State Bar appointed by the Board of Governors. (Operative January 16, 1982.)

RULE 102. INVESTIGATION DEPARTMENT.

The investigation department shall perform all investigative functions required by these rules, except such part as is within the jurisdiction of the Board of Governors and the Department of Trial Counsel.

RULE 103. HEARING DEPARTMENT.

The hearing department shall perform all functions in formal proceedings required by these rules, except review functions and such part as is within the jurisdiction of the Board of Governors.

RULE 103.1 PROBATION DEPARTMENT.

The probation department shall supervise members placed on probation by orders of the Supreme Court in accordance with such orders and the provisions of these rules. (Operative January 16, 1982.)

RULE 104. REFEREE'S ASSIGNMENTS.

A referee may serve in more than one department but a referee shall not serve in another department with respect to a matter upon which the referee has previously served.

RULE 105. OATH.

Every member of the State Bar Court and every person appointed to serve in a similar capacity shall take an oath of office.

RULE 106. NON-COMPENSATION: EXCEPTION.

Except as provided in the State Bar Act, a referee described in Rule 101 and an examiner who is not an employee of the State Bar shall not receive compensation for services.

RULE 107. DISPOSITION OF PENDING MATTERS.

Notwithstanding a change of personnel in the State Bar Court, or the expiration of the term for which a member thereof is appointed, unless ordered by the Board of Governors, the member may continue to act in the disposition of a matter which was pending but incomplete when such change of personnel or termination or expiration of office occurred.

RULE 108. QUORUM.

When action is to be taken by a panel or department composed of more than one member, a majority of the members constitutes a quorum.

RULE 109. TRANSITIONAL PROVISIONS RE THE STATE BAR COURT.

The effective date of these rules is July 31, 1979 and shall apply as follows:

(a) to all investigations;

(b) to all formal proceedings and other matters commenced on or after that date;

(c) to any formal proceeding initiated by notice to show cause or by notice of time and place of hearing, when the notice to show cause has not been issued or the notice of time and place of hearing has not been sent, and no appearance has been made on that date;

(d) to subsequent proceedings in a formal proceeding pending on that date not included in (c):

(i) when no evidence has been introduced,

(ii) when the director determines that no prehearing acts have taken place that would require retention of the proceeding under determination under rules in effect immediately prior to that date, and

(iii) when the director in his or her discretion orders a transfer for formal hearing and determination under such amendments;

(e) to subsequent proceedings in a formal proceeding pending on that date, not included in (c) or (d), when the Board of Governors committee determines that a transfer for formal hearing and determination under such amendments would result in an earlier determination of the matter and that no substantial rights would be prejudiced and, in its discretion, orders such transfer; and

(f) to the review of a hearing panel's decision where the decision or a request for review of the decision is filed on or after that date.

Service of a notice to show cause or other initial notice commenced before, but not complete, on that date may be completed or made as provided in these rules or as provided in prior rules.

CHAPTER 2
EXECUTIVE COMMITTEE

RULE 110. COMPOSITION.

The Executive Committee of the State Bar Court shall consist of the presiding referee, the four assistant presiding referees, the two non-lawyer referees appointed by the Governor pursuant to Section 6086.6 of the Business and Professions Code and, four lawyer referees and one non-lawyer referee each appointed by the presiding referee. (Operative January 16, 1982.)

RULE 111. FUNCTIONS.

The executive committee:

(1) Shall be responsible for the administrative processing of all proceedings, except as to those parts within the jurisdiction of the Board of Governors;

(2) May issue policy memoranda or rules of practice for the conduct of all proceedings within the jurisdiction of the State Bar Court as to matters not expressly covered by these rules, including, but not limited to, calendaring, extensions of time, continuances, entry of and relief from default for non-appearance, approval of agreements for stipulated facts and discipline, discovery motions and objections, and forms of process, notices, decisions and recommendations;

(3) May provide formal programs for the information and training of newly appointed referees and cause to be prepared and distributed information as to State Bar procedures for members of the legal profession or of the public, or both;

(4) Shall make statistical and other reports to the Board of Governors;

(5) May create departments pursuant to Rule 101;

(6) May conduct studies and make plans and recommendations for the effective discharge of the duties of the State Bar Court.

RULE 112. MAJORITY VOTE OR CONCURRENCE.

Meetings of the executive committee shall be held at such times and places as are prescribed by the executive committee or the presiding referee. Action of the executive committee may be taken (1) at a meeting or (2) by a written poll of the membership (if such a poll has been authorized by the executive committee or the presiding referee).

A majority of the members of the executive committee then in office shall constitute a quorum for the transaction of business at a meeting and the act of a majority of the members present at such a meeting shall constitute the action of the executive committee. The concurring vote of a majority of the members of the executive committee then in office shall constitute action by the executive committee in a written poll.

CHAPTER 3
PRESIDING REFEREE

RULE 113. DUTIES.

The presiding referee shall:

(a) Preside at meetings of the executive committee;

(b) Appoint such (standing or special) committees of the State Bar Court as may be advisable, to assist the State Bar Court, the executive committee and the presiding referee in the proper performance of their respective duties;

(c) Exercise general direction over and supervision of staff attaches assigned to the State Bar Court;

(d) Provide for and supervise calendar management, and the assignment and calendaring, of all matters within the jurisdiction of the State Bar Court;

(e) Provide for and supervise the assignment of referees to departments and panels;

(f) Represent the State Bar Court in State Bar budgetary matters.

RULE 114. REFEREE ASSISTANCE.

The presiding referee shall be assisted in the performance of the duties of the office by the assistant presiding referees. An assistant presiding referee designated by the presiding referee shall act in place of the presiding referee if the presiding referee is absent or is unable to act.

RULE 115. STAFF ASSISTANCE.

The State Bar Court, the presiding referee, the assistant presiding referees, the departments, and the panels of the

hearing department shall have assigned to them administrative and clerical personnel necessary to carry out their respective duties.

DIVISION III
GENERAL PROVISIONS

CHAPTER 1
ADDRESS REQUIREMENTS OF MEMBERS AND FORMER MEMBERS

RULE 201. MEMBER'S ADDRESS.

A member shall maintain on the members' registration records of the State Bar the member's current office or other address for State Bar purposes. Within ten (10) days after any change therein, the member shall file a change of address with the State Bar.

RULE 202. FORMER MEMBER'S ADDRESS.

A former member who has been ordered by the Supreme Court to comply with Rule 955, California Rules of Court, shall maintain with the State Bar a business or other address and, within ten (10) days after any change therein, shall file a change of address with the State Bar, until such time former member is no longer subject to such order. Unless the former member files a new address, the last address shown by the members' registration records of the State Bar may be deemed his current address.

CHAPTER 2
STATE BAR EXAMINERS

RULE 210. STATE BAR EXAMINERS.

The chief trial counsel may appoint an examiner or co-examiner from among the members of the State Bar, or may assign a staff attorney to act as examiner or co-examiner in an investigation, formal proceeding or other matter. An examiner shall serve at the pleasure of, and perform such duties as the chief trial counsel shall direct.

CHAPTER 3
CONFIDENTIALITY OF STATE BAR COURT RECORDS AND PROCEEDINGS

RULE 220. INVESTIGATIONS AND FORMAL PROCEEDINGS.

Except as otherwise provided in these rules, investigation of complaints and other investigations, and formal proceedings, provided for in these rules shall not be public.

RULE 221. CONFIDENTIALITY OF INFORMATION.

Except when ordered by the Board of Governors or as provided by Rules 223 through 228, no information concerning the pendency or status of an investigation or formal proceeding shall be given unless and until a recommendation of public reproval, suspension or disbarment is filed with the Clerk of the State Bar Court, except to members of the Board of Governors, members of the Judicial Nominees Evaluation Commission as to matters concerning nominees, referees of the State Bar Court or other entity hearing, reviewing or otherwise acting in the matter, the presiding referee, the assistant presiding referees, the executive committee, officers of the State Bar and their assistants, the executive director, the director, the general counsel, the member, the member's counsel, the examiner and the Department of Trial Counsel. (Operative September 1, 1980.)

RULE 222. ADVISING COMPLAINANT.

Upon request, the State Bar may advise the complainant of the status of an investigation or formal proceeding. Except for communications regarding public hearing proceedings, in written communications, the name of the member shall not appear unless and until a recommendation of public reproval, suspension or disbarment is filed with the Clerk of the State Bar Court. (Operative July 1, 1981.)

RULE 223. RECORDS.

The files and records of all investigations and formal proceedings are the property of the State Bar and are confidential and no information concerning them and the matters to which they relate shall be given to any person, except upon prior order of the Board of Governors or as in these rules provided.

RULE 224. PUBLIC ANNOUNCEMENT.

When, in the judgment of the president of the State Bar, an investigation or formal proceeding concerns a subject matter which has become generally disseminated to the public and in which confidence in the legal profession, the administration of justice, or the State Bar when acting as an arm of the Supreme Court, may be jeopardized by strict adherence to the principles of confidentiality, the president of the State Bar, with the concurrence of two vice-presidents of the State Bar, may issue one or more public announcements confirming the fact of an investigation or proceeding, clarifying the procedural aspects and current status, and defending the right of the member to a fair hearing. If the president, for any reason, declines to exercise the authority provided him by this rule, or disqualifies himself from acting under this rule, he shall designate a vice-president to act in his behalf. (Operative January 16, 1982.)

RULE 225. PUBLIC HEARING.

(a) (i) The hearings of the following formal proceedings shall be public hearings: Conviction proceedings, probation revocation proceedings, Rule 955 proceedings, and reinstatement proceedings. (Operative July 1, 1981.)

(ii) The hearings of all other formal proceedings shall be public only on order of the Board of Governors or when requested by the member. When such order or request is made it shall apply to any hearings before the hearing panel, any review conducted by the

review department, and any hearing before the Board of Governors. Such order or request shall be made no later than twenty (20) days before the first scheduled day of the hearing before the hearing panel or the review department, as the case may be. (Operative July 1, 1981.)

(b) The hearing before the review department shall be public in any proceedings wherein recommendation for public reproval, suspension, or disbarment is made by a hearing panel or referee. (Operative September 1, 1980.)

(c) (i) Upon filing of recommendation with the Clerk of the State Bar Court by a hearing panel or referee for public reproval, suspension or disbarment the formal pleadings, transcripts, exhibits, decision pursuant to Rule 560, statements and applications pursuant to Rule 562, findings, conclusions and recommendation shall be available for public inspection, but copies thereof shall be made only at the expense of the person requesting the same. (Operative September 1, 1980.)

(ii) Any formal pleadings, transcripts, exhibits, decision pursuant to Rule 560, statements and applications pursuant to Rule 562, findings, conclusions and recommendation, reproval, dismissal or other decision resulting from public hearings and the record thereof shall be available for public inspection, but copies thereof shall be made only at the expense of the person requesting the same. (Operative September 1, 1980.)

(iii) During the course of any hearing or conference, no photographing, recording for broadcasting, or broadcasting of proceedings, shall be permitted. (Operative September 1, 1980.)

(d) The president of the State Bar of California, or the executive director or the director may give information concerning the pendency and status of such public hearing or the formal proceeding to which it pertains, and explain these rules or other procedures of the State Bar. (Operative September 1, 1980.)

(e) Notwithstanding any public hearing or disclosure permitted by these rules, all aspects of the deliberations of referees of the State Bar Court are confidential. (Operative September 1, 1980.)

RULE 226. INFORMATION AVAILABLE TO MEMBER.

At the time of notice to the member of the member's opportunity to appear at an investigation hearing or after such notice, the member, upon request, is entitled to be informed of the nature of the alleged offense or other matter which is the subject of the investigation, if the member was not previously given such information. In a formal proceeding, the member and the member's counsel are entitled to inspect, at reasonable times, the formal pleadings and other papers described in Rule 225(c)(ii).

RULE 227. COOPERATION WITH OTHER AGENCIES.

When an investigation or formal proceeding concerns alleged misconduct which may subject a member to criminal prosecution for a serious crime, or disciplinary charges in another jurisdiction, chief trial counsel, with the concurrence of the chairperson of the Committee on Adjudication and Discipline of the Board or upon direction of the Committee on Adjudication and Discipline of the Board, may disclose, in confidence, information not otherwise public under this Chapter to the appropriate agency responsible for criminal or disciplinary enforcement and/or exchange such information with such agency during the course of a joint investigation. As used in this rule, "serious crime" means any felony and any lesser crime a necessary element of which as determined by the statutory or common law definition of the crime involves improper conduct of an attorney, including, but not limited to, interference with the administration of justice, running and capping, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft or an attempt or a conspiracy or solicitation of another to commit a "serious crime".

RULE 228. STATE BAR COURT ACCESS TO DISCIPLINARY RECORDS DURING CONSIDERATION OF CLIENT SECURITY FUND APPLICATION.

The review department, any hearing panel, and any referee of the hearing department, during consideration of a client security fund application, may have access to State Bar disciplinary files and records, if any, pertaining to the alleged loss notwithstanding the provisions of Rules 221 and 223 of these rules. Any information or documents obtained from said files or records shall be used solely for the purpose of determining the validity of the application.

CHAPTER 4
DISQUALIFICATION

RULE 230. REFEREES.

If challenged, no referee shall act in any investigation, formal proceeding, or probation assignment, if: (1) the referee would be disqualified as a judge upon any of the grounds specified in subdivisions 1, 2, 3, and 4 of Section 170 of the Code of Civil Procedure, or if (2) the referee or firm with which the referee is affiliated, is, or represents, a party to pending litigation with the respondent, the law firm with which the respondent is affiliated, or a party represented by the respondent or the law firm with which the respondent is affiliated. Any challenge shall be made promptly after assignment of the referee to the matter is first known to the person making the challenge or to his or her counsel, and in any event before the commencement of the investigation hearing or the introduction of evidence in a formal proceeding, of the commencement of any review conducted by the review department, as the case may be. A challenge may also be made, in like manner, to a referee on the ground of actual bias or prejudice of the referee, but such challenge must be supported by a verified showing of the occasion and manner in which the referee exhibited such individual bias or prejudice. The challenged referee shall be afforded a reasonable opportunity to serve and file a reply to the challenge. A referee assigned to a particular matter may recuse himself or herself. Where grounds for a challenge have been established, the referee shall recuse himself or herself. If the referee is not recused, any party may file a motion for recusal with the presiding referee within ten (10) days after the denial of the challenge and the presiding referee shall act on the motion within five (5) days after receipt of the motion. (Operative January 16, 1982.)

RULE 231. DISQUALIFICATION OF CERTAIN PERSONS.

Members or former members of the Board of Governors, the Committee of Bar Examiners, referees of a disciplinary board or the State Bar Court, and former employees of the State Bar shall not represent any party to any matter before the State Bar Court during their term of office and until at least one annual meeting of the State Bar shall have been held after expiration of the term for which he or she was appointed or elected, or employed. In no event shall the member, referee, or former employee act in any matter in which he or she previously participated. This rule includes membership on a committee, panel or board or in a department of the State Bar Court provided for by former rules, as well as by these rules. For good cause, the committee of the Board of Governors may waive compliance with this rule.

CHAPTER 5
SERVICE AND FILING OF PAPERS

RULE 240. SIZE; PLACE OF FILING.

All papers, except exhibits, shall be on letter-size (8-1/2 by 11 inches) numbered paper, and, except as otherwise specifically provided, shall be filed in quadruplicate with the Office of the State Bar Court Clerk's Office, 1230 West Third Street, Los Angeles, California 90017.

RULE 241. SERVICE OF LATER PAPERS.

Each paper filed subsequent to the paper initiating a formal proceeding shall be accompanied by proof of service of a copy thereof upon the member's counsel of record, or upon the member if not represented by counsel, and upon the examiner, in the manner provided for in the Code of Civil Procedure.

RULE 242. PROOF OF SERVICE.

Proof of service may be made as provided in the Code of Civil Procedure.

RULE 243. SERVICE OF PROCESS.

A notice to show cause or a notice of hearing may be served upon the member as provided in the Code of Civil Procedure for service of a summons and complaint in a civil action. (Amended October 15, 1983.)

CHAPTER 6
VENUE

RULE 250. GENERAL RULES.

Hearings before the State Bar Court shall be held:

(a) In the County of San Diego if (1) the member maintains or maintained his or her principal office for the practice of law, or (2) the member resides or resided or (3) the alleged offense was committed in the county of Imperial or San Diego;

(b) In the County of Los Angeles if (1) the member maintains or maintained his or her principal office for the practice of law, or (2) the member resides or resided or (3) the alleged offense was committed in the county of Inyo, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara or Ventura;

(c) In the City and County of San Francisco if (1) the member maintains or maintained his or her principal office for the practice of law, or (2) the member resides or resided or (3) the alleged offense was committed in any other county of the State.

RULE 251. TRANSFERS.

For good cause, and either upon timely application of the member or the examiner, or upon his own motion, the presiding referee, may transfer an investigation or formal proceeding to another county.

RULE 252. CERTAIN HEARINGS EXCEPTED.

The review conducted by the review department and hearings on motions, applications and other matters not involving the presentation of evidence at an investigation hearing, or at a formal hearing may be held in a county other than the county in which the investigation or formal proceeding is pending, as may be provided by Rules of Practice of the State Bar Court or by calendars established by the presiding referee.

CHAPTER 7
CONSOLIDATION AND TRANSFER

RULE 261. INVESTIGATIONS.

An investigation may be ordered transferred from one investigation referee to another investigation referee by the director or by the Assistant Presiding Referee, Investigation Department. When two or more investigations involve the same member, or the same member and another member or members, the director or the Assistant Presiding Referee, Investigation Department may order them consolidated, if no substantial rights will be prejudiced.

RULE 262. FORMAL AND PROBATION PROCEEDINGS.

A formal proceeding or a probation monitoring assignment may be ordered transferred from one hearing panel to another, or from one probation monitor referee to another, as the case may be, by the presiding referee or by the assistant presiding referee. When two or more formal proceedings involve the same member, or the same member and another member or members, the presiding referee or the assistant presiding referee, Hearing Department may order them consolidated, if no substantial rights will be prejudiced. (Operative January 16, 1982.)

CHAPTER 8
TRANSCRIPTS

RULE 270. INVESTIGATION.

The whole or any part of an investigation hearing, or other

proceedings in an investigation may be recorded, reported and transcribed only as follows:

(a) A recording may be made by electronic equipment and methods approved by the Board of Governors on request of the respondent, the Department of Trial Counsel, or on order of the investigation referee;

(b) Reporting by a certified shorthand reporter may be made on request of the member or the Department of Trial Counsel provided that the party requesting same shall advance the fees of the reporter;

(c) Transcription of the recording or of a reporter's notes shall be permitted only if a notice to show cause is issued and a respondent or the Department of Trial Counsel requests. The party requesting same shall advance the cost thereof. If no notice to show cause is issued, then only if such is ordered by the Board of Governors as provided in Rule 223.

RULE 271. FORMAL PROCEEDINGS.

(a) All hearings in formal proceedings shall be reported in shorthand or shall be recorded by electronic equipment and methods approved by the board of governors. In all trial or trial-type hearings an original and two copies of a transcript shall be prepared at State Bar expense:

(1) when a recommendation is made to the Supreme Court for discipline or other affirmative action,

(2) in all reinstatement proceedings,

(3) in all conviction proceedings,

(4) in all rule 955 proceedings.

(b) In instances other than those listed above,

(1) the committee of the Board of Governors, a hearing panel, the review department and, as to proceedings pending in the Supreme Court, general counsel, may order a transcript at State Bar expense, with approval of the director;

(2) the member may arrange through the State Bar for a full or partial transcript at the member's expense, for the use of the member or of the member's counsel in the formal proceeding.

(3) chief trial counsel may obtain a full or partial transcript for his or her own use or for the use of the examiner.

(c) A transcript prepared at State Bar expense shall be available, upon request, for use by the member or the member's counsel. A transcript prepared at the member's expense shall be available, upon request, for use by the examiner.

RULE 272. PERPETUATION OF TESTIMONY.

When the perpetuation of testimony is ordered pursuant to Chapter 9 of Division IV (commencing with Rule 650) an original and one copy shall be prepared at State Bar expense. Upon request, and at the member's expense, a copy shall be furnished the member.

CHAPTER 9
SUBPOENAS AND DISCOVERY

RULE 300. APPLICATION FOR SUBPOENA.

An application for a subpoena directed to a financial institution requesting financial or trust financial records shall be in the form of an affidavit or declaration under penalty of perjury and shall:

(a) Describe the requested financial records or trust financial records of a member with particularity;

(b) Show that the financial records or trust financial records of a member sought are consistent with the scope and requirements of the proceeding giving rise to the request; and

(c) In the case of trust financial records of a member, show that there is reasonable cause to believe that the records sought pertain to trust funds which a member must maintain in accordance with the Rules of Professional Conduct. A showing that the financial records sought pertain to accounts that are labelled "trust account", "client's funds account" or words of similar import shall, in itself, be deemed to constitute such reasonable cause. (Operative April 1, 1980.)

RULE 301. ISSUANCE OF SUBPOENA - TRUST FUNDS FINANCIAL RECORDS.

The referee or hearing panel shall not issue the requested subpoena for trust fund financial records unless it determines that each of the conditions prescribed in Government Code, §7470(a)(1) have been met. Even if these conditions have been met, the hearing panel may nonetheless, in the exercise of its discretion, decline to issue the requested subpoena. Any subpoena issued pursuant to this rule shall:

(a) Describe the requested trust fund financial records with particularity;

(b) Have attached thereto a copy of the member's authorization;

(c) Contain or have attached thereto a statement by the referee or hearing panel that:

(1) There is reasonable cause to believe that the financial records sought pertain to trust funds which the member must maintain in accordance with the Rules of Professional Conduct; and

(2) The trust fund financial records sought are consistent with the scope and requirements of the proceeding giving rise to the subpoena. (Operative April 1, 1980.)

RULE 302. NOTICE TO MEMBER - TRUST FUND FINANCIAL RECORDS.

If any trust fund financial records of a member are received by the State Bar, or any referee, hearing panel, examiner, officer, employee or duly authorized agent thereof, in response to a subpoena from a financial institution within thirty days of such receipt the State Bar staff attorney or examiner who represents

the State Bar in the proceeding in which the subpoena was issued shall mail to the member at the member's last known address:

(a) A description with particularity of the financial records actually received; and

(b) Notice of the member's right to file with the State Bar within fifteen days of the date of mailing of the notice, a written request as to the reason or reasons for the State Bar's examination of the member's trust fund financial records.

This rule shall not apply and the State Bar staff attorney or examiner need not give written notice where financial records received have been introduced in evidence in the presence of the member or his counsel in less than 30 days from receipt or have been inspected in conferences or negotiations wherein the member or his counsel were present. (Operative April 1, 1980.)

RULE 303. RESPONSE TO MEMBER'S WRITTEN REQUEST FOR REASONS - TRUST FUND FINANCIAL RECORDS.

If a member files a written request for reasons with the State Bar within the time prescribed in Rule 302, the State Bar staff attorney or examiner who represents the State Bar in the proceeding in which the subpoena was issued shall give the member in writing the reason or reasons for the State Bar's examination of the member's trust fund financial records. If a member files a written request for reasons with the State Bar, but not within the time prescribed in Rule 302, the Board or hearing panel may, in its discretion, give the member in writing the reason or reasons for the State Bar's examination of the member's trust fund financial records, but it shall not be under any obligation to do so. (Operative April 1, 1980.)

RULE 304. SPECIFIC RULES APPLICABLE TO MEMBER'S NON-TRUST FUND FINANCIAL RECORDS OR FOR NON-MEMBERS FINANCIAL RECORDS.

Rules 305-309 are applicable to subpoenas directed to a financial institution seeking financial records that are not trust fund financial records or subpoenas directed to a financial institution seeking a non-member's financial records. (Operative April 1, 1980.)

RULE 305. ISSUANCE OF SUBPOENA.

The referee or hearing panel shall not issue the requested subpoena unless it determines that each of the conditions prescribed in Government Code, Section 7470(a)(2) have been met. Even if these conditions have been met, the referee or hearing panel may nonetheless, in the exercise of discretion, decline to issue the requested subpoena.

Any subpoena issued pursuant to this rule shall:

(a) Include the name of the State Bar and the address of the State Bar office responsible for the administrative processing of the matter;

(b) Describe the requested financial records with particularity;

(c) Contain or have attached thereto a statement by the referee or hearing panel that the financial records sought are consistent with the scope and requirements of the proceeding giving rise to the subpoena. (Operative April 1, 1980.)

RULE 306. SERVICE ON CUSTOMER.

A copy of any subpoena issued pursuant to Rule 305 shall be served on the member or non-member customer whose financial records are sought. Such service shall be made pursuant to Chapter 4 (commencing with Section 413.10) of Title V of Part 2 of the Code of Civil Procedure, except that service may be made by an employee of the State Bar. If the subpoena was requested by the member, the member shall bear the responsibility and cost of (1) serving a copy of the subpoena on the customer and (2) filing proof of such service with the State Bar. (Operative April 1, 1980.)

RULE 307. MOTION TO QUASH.

Within 10 days of service, the customer whose financial records are sought by a subpoena issued pursuant to Rule 305 may file a motion to quash the subpoena with the referee or hearing panel having issued it. The motion shall be in writing and shall set forth with particularity the reasons why the subpoena should be quashed. Any facts stated in support of said motion shall be presented in the form of affidavits or declarations under penalty of perjury. (Operative April 1, 1980.)

RULE 308. HEARING ON MOTION TO QUASH.

The referee or hearing panel having jurisdiction shall hold a hearing on the motion to quash not less than three (3) days and no more than ten (10) days following the filing of the motion. For good cause, the referee or hearing panel may shorten or extend the time for hearing. (Operative April 1, 1980.)

RULE 309. REVIEW OF DECISION ON MOTION TO QUASH.

Upon written notice the decision of the referee or hearing panel on the motion to quash, the customer may seek review by the California Supreme Court pursuant to the provisions of subdivision (c) of Rule 952 of the California Rules of Court. (Operative April 1, 1980.)

RULE 310. RULES APPLICABLE TO SUBPOENAS OTHER THAN FOR THE PURPOSE OF OBTAINING FINANCIAL RECORDS.

The provisions of Rule 311-314 apply to all subpoenas issued by any referee or hearing panel, other than subpoenas directed to financial institutions for the purpose of obtaining financial records. (Operative April 1, 1980.)

RULE 311. SERVICE.

A copy of any subpoena within the meaning of this Chapter shall be served on the person or entity subpoenaed, pursuant to Chapter 4 (commencing with Section 413.10) of Title V of Part 2 of the Code of Civil Procedure, except that service may be made by an employee of the State Bar. If the subpoena was requested by a member, the member shall bear the responsibility and cost of (1) serving a copy of the subpoena on the person or entity subpoenaed and (2) filing proof of such service with the State Bar. (Operative April 1, 1980.)

RULE 312. MOTION TO QUASH.

Within ten (10) days of service, the person or entity subpoenaed may file a motion to quash the subpoena with the referee or hearing panel having jurisdiction over the proceeding. In the case of a subpoena directed to a person or entity other than the member who is the subject of the proceeding, (a) the member or (b) the State Bar staff attorney or examiner who represents the State Bar in the proceeding, may file a motion to quash the subpoena with the referee or hearing panel having jurisdiction over the proceeding no less than three (3) days prior to the date set for the return of the subpoena. For good cause, the referee or hearing panel having jurisdiction over the proceeding may shorten or extend the time for filing a motion to quash it. The motion shall be in writing and shall set forth with particularity the reasons why the subpoena should be quashed. Any facts stated in support of said motion shall be presented in the form of affidavits or declarations under penalty of perjury. (Operative April 1, 1980.)

RULE 313. HEARING ON MOTION TO QUASH.

The referee or hearing panel having jurisdiction shall hold a hearing on the motion to quash not less than three (3) days and no more than ten (10) days following the filing of the motion. For good cause, the referee or hearing panel may shorten or extend the time for hearing. (Operative April 1, 1980.)

RULE 314. REVIEW OF DECISION OF REFEREE OR HEARING PANEL ON MOTION TO QUASH.

Upon written notice of the decision of the referee or hearing panel on the motion to quash, the member or other person or entity who filed the motion or the State Bar staff attorney or examiner who represents the State Bar in the proceeding with regard to which the subpoena was issued may seek review by the California Supreme Court pursuant to the provisions of subdivision (c) of Rule 952 of the California Rules of Court. (Operative April 1, 1980.)

RULE 315. DISCOVERY IN FORMAL PROCEEDINGS.

The Civil Discovery Act (commencing with Section 2016 of the Code of Civil Procedure), as amended from time to time, and as limited or adopted by these rules, applies in a formal proceeding.

The State Bar, as an entity represented by the examiner, is deemed the plaintiff and the member or petitioner is deemed the defendant. The functions of the trial court in discovery shall be performed by the hearing panel.

RULE 316. TIME PERIOD FOR DISCOVERY.

To avoid unnecessary delay, each party shall complete formal discovery within ninety (90) days after service of the notice to show cause. For good cause, reasonable extensions of time may be granted.

RULE 317. CONDITIONS PRECEDENT TO FORMAL DISCOVERY.

Except by leave, formal discovery shall not be initiated until (i) more than ten (10) days after service of the notice to show cause, or other notice initiating the formal proceeding, and (ii) the parties, where practicable, have first conferred to endeavor to agree upon matters which will be the subject of voluntary disclosure, and to limit areas in dispute in formal discovery.

RULE 318. DEPOSITIONS.

Deposition expenses shall be borne by the party taking the deposition, except for any copy ordered by the opposing party. The examiner shall obtain authority from the chief trial counsel to incur deposition expenses. Upon request, the examiner of the State Bar will furnish the names and addresses of persons connected with the State Bar who have knowledge of the particular formal proceeding, or control or custody of State Bar records in the proceeding. Unless otherwise ordered by the Board of Governors, no deposition may be taken of a member of the Board of Governors, a member of a former disciplinary board, a referee of the State Bar Court, the director, or of any other person exercising quasi judicial duties, concerning the deliberations, determinations or rulings of such entity or person. Except as otherwise stipulated, attendance of the deponent and the production of books, papers or things, shall be compelled by subpoena, and, in the case of the production of books, records or things, upon the filing of an affidavit or a declaration under penalty of perjury describing them with reasonable certainty and showing good cause for their production.

RULE 319. INTERROGATORIES AND REQUESTS FOR ADMISSIONS.

(a) Interrogatories, requests for admissions, and responses thereto shall be filed with the State Bar and shall be served upon the member's counsel of record, or upon the member if not represented by counsel, and upon the examiner.

(b) Each set of written interrogatories and each set of written requests for admissions shall be numbered consecutively by the propounding party and in the first paragraph immediately below the title of the case shall show: (i) the identity of the propounding party, (ii) the set number, and (iii) the identity of each party who is directed to answer. Each question or request in a set shall be numbered consecutively.

(c) In each set of responses to written interrogatories or requests for admissions, the first paragraph immediately below the title of the case shall show: (i) the identity of the responding party, (ii) the identity of the propounding party, and (iii) the set number of that party's interrogatories or requests being responded to. If the response is a supplemental response, the first paragraph shall also include the words "supplemental response." Each answer, objection or response shall be identified by the same number and shall appear in the same order as the corresponding question or request but the question or request need not be repeated in the responding document.

RULE 320. OTHER STATE BAR RECORDS.

When discovery is sought of records, writings or other information in possession of the State Bar generally, as distinguished from records, writings or information relating solely to the particular proceeding, the executive director and the general counsel shall be promptly notified. If deemed advisable, a claim of privilege and confidentiality, or for a

protective order may be separately asserted on behalf of the State Bar.

RULE 321. SANCTIONS.

The following provisions of the Civil Discovery Act are inapplicable: Provisions for the imposition of monetary costs or sanctions; provisions for striking out a pleading or for dismissal of the proceeding or for rendering a judgment by default against the disobedient party and provisions for the arrest of a party. The following orders may be made: That certain facts or matters be deemed established in accordance with the claim of the party obtaining the order; that the disobedient party shall not be allowed to support or oppose designated claims or defenses or introduce in evidence documents or items, or testimony of the physical or mental condition of the person sought to be examined, and that further proceedings be stayed until the order is obeyed.

RULE 322. CONTEMPT PROCEEDING.

The procedure provided in Section 2034(a) of the Code of Civil Procedure shall be followed upon the refusal of a party or other deponent (i) to obey a subpoena for attendance at a deposition or to be sworn as a witness at a deposition; (ii) to answer any question propounded during the taking of the deposition, or (iii) to produce at a deposition any books, documents or things under his control pursuant to a subpoena duces tecum. Thereafter, unless a petition for discovery review is timely filed, the panel, or referee supervising discovery, may determine that such person is in contempt, with or without prior issuance of an order for compliance, as the circumstances may warrant. Upon request of the examiner, the member, or the referee, the panel or referee shall report such alleged contempt to the superior court as provided in Section 6051 of the Business and Professions Code. The party seeking enforcement by contempt shall prepare and file with the State Bar a proposed form of report of alleged contempt and all legal documents, including transcript and memoranda, needed or desirable to present the contempt matter to the superior court. If the documents are approved as to form by general counsel, the party seeking enforcement, alone or with general counsel, shall prosecute the proceeding in the superior court on behalf of the panel or referee.

RULE 323. OTHER DEPOSITIONS; AUTHORITY.

In an investigation, and in a formal proceeding when a deposition may not be taken pursuant to Rule 318, the investigation referee or the principal referee may order that the testimony of a material witness who cannot be reasonably produced at an investigation hearing or formal hearing be taken by deposition. The procedure for taking the deposition shall conform, as nearly as may be, to the procedure for depositions authorized by Rule 318.

RULE 324. DISCOVERY REVIEW.

Within ten (10) days after mailing of notice of a discovery ruling by a panel, or referee, an aggrieved party may serve and file with the State Bar a verified petition for review of the ruling by the discovery review referee. Within ten (10) days after service of the petition, the opposing party may serve and file an opposition. The discovery review referee shall act upon the petition within twenty (20) days after expiration of the time for filing opposition, unless, for good cause, he orders the time within which to act extended for an additional period of twenty (20) days. Upon notice that a party is seeking review by the Supreme Court, the discovery review referee may stay the formal hearing.

CHAPTER 10
STAYS

RULE 350. HOLDING FORMAL PROCEEDING OR INVESTIGATION IN ABEYANCE.

(a) As used in this rule, "pending litigation" means civil litigation to which the member is, or becomes, a party, and a criminal action in which the member is, or becomes, a defendant, either of which involves the subject matter of the investigation or formal proceeding.

(b) Upon written motion of the member, examiner, or a State Bar staff attorney, for good cause shown, an assistant presiding referee or a hearing panel designated by the presiding referee may order the matter before it stayed for such time, and upon such terms, as it deems proper because of pending litigation. Any application for a stay shall be made by written motion to the presiding referee who may refer the motion to an assistant presiding referee or to the hearing panel. Action in staying a matter shall be promptly reported by the assistant presiding referee or hearing panel to the presiding referee. A grant or denial of the motion by the assistant presiding referee or hearing panel may be appealed to the presiding referee by application for review mailed to or filed within ten (10) days after notice of such ruling.

(c) Upon a showing of unusual circumstances, a hearing panel, upon written motion of the member or the examiner, or on its own motion may temporarily withhold its decision, because of pending litigation. Objections may be served and filed within five (5) days after service of the motion.

(d) The acquittal of the member in a criminal action shall not of itself excuse an investigation referee from undertaking or completing an investigation, or a hearing panel from undertaking or completing a formal proceeding.

(e) In determining a motion pursuant to this rule, the presiding or assistant presiding referee or hearing panel shall consider all relevant factors, including the following: (1) the need for disposing of the matter before it at the earliest practicable time; (2) the extent to which the issues in the pending litigation are the same or substantially the same as those before it; (3) the extent to which the matter before it would probably be delayed by awaiting the trial or an appeal in pending civil litigation; (4) the extent to which the matter before it would probably be expedited by awaiting the member's plea or the judgment in the criminal action; (5) the extent to which the matter before it would be aided, as to the determination of a material issue, by awaiting evidence to be adduced in the pending litigation; (6) the extent to which evidence may be unavailable in the State Bar proceeding because of any delay occasioned by withholding further action; (7) the extent to which witnesses or documents may be unavailable in the State Bar proceeding because of concurrent discovery or trial proceedings in the pending litigation; (8) the extent to which the member or a complainant may be prejudiced in the pending litigation by withholding or failing to withhold

further action. (Operative November 17, 1979.)

RULE 351. MEMBER'S INCAPACITY.

No investigation or formal proceeding for alleged misconduct shall be initiated or conducted against a member who has been judicially declared to be of unsound mind or, on account of mental condition, incapable of managing his or her affairs until a judicial determination has been made to the contrary.

RULE 352. MILITARY SERVICE.

Except at the request of the member or upon order of the presiding referee, when the member is in military service, as that term is defined in the Soldiers and Sailors Civil Relief Act of 1940, as amended, (i) no notice to show cause shall issue, and (ii) no formal hearing shall be held or further proceedings taken on a notice to show cause previously issued. This rule does not preclude a decision by a hearing panel when a formal proceeding has been submitted for decision prior to the member's entry into military service.

CHAPTER 11
STIPULATION AND TERMINATIONS

RULE 401. STIPULATIONS AND ADMISSIONS DISPENSING WITH PROOF; POLICY: DUTY OF PARTIES TO CONFER

Stipulations and admissions dispensing with proof or of facts not in dispute are encouraged. It is the duty of the examiner, whenever practicable, to confer prior to the formal hearing with the member's counsel or with the member, if not represented by counsel, to endeavor to arrive at such stipulations or admissions. Such stipulations or admissions shall bind the parties, unless the hearing panel, for good cause, rejects, or relieves the parties from, such binding effect.

RULE 402. EXAMINER'S DUTY.

As to matters on which the State Bar has the burden of proof, it is the duty of the examiner to bring before the hearing panel sufficient evidence, whether in the form of stipulated facts or otherwise, to give the hearing panel an adequate basis for its determinations, including, if culpability is found, appropriate discipline.

RULE 405. TERMINATION BY STIPULATION AS TO FACTS AND DISPOSITION.

Any investigation or formal hearing or settlement conference may be the subject of a stipulation as to facts or disposition or both, subject to the provisions of Rules 406-408. (Amended July 24, 1982.)

RULE 406. TERMINATION BY STIPULATION AS TO FACTS AND DISCIPLINE - CONTENTS OF AND APPROVAL BY PARTIES AND COUNSEL.

The proposed stipulation as to facts and discipline shall set forth each of the following:

(i) stipulations as to proposed discipline are not binding upon the Supreme Court,

(ii) the pending investigations or formal proceedings involved,

(iii) a statement of acts or omissions of the member which are admitted by the member and acknowledged by the member as cause or causes for discipline,

(iv) a statement of mitigating circumstances, if any,

(v) the discipline to be imposed or action to be taken with respect to the member, and

(vi) the disposition to be made of other pending investigations or formal proceedings not involved in (iii), (iv) and (v).

The stipulation shall be approved by counsel of record for the member prior to approval by the member. Prior to approval by the examiner, the stipulation shall be approved by the chief trial counsel of the State Bar.

[NEW] RULE 407. TERMINATION BY STIPULATION AS TO FACTS AND DISPOSITION—HEARING AND ACTION THEREON BY HEARING PANEL, OR SETTLEMENT CONFERENCE REFEREE.

(a) If the stipulation as to facts and disposition is entered into at the investigation stage, the review department shall review the stipulation as provided for in Rule 450(b).

(b) If the stipulation as to facts and disposition is entered into at the formal hearing stage, the hearing panel or settlement conference referee shall examine into the facts or indicated facts, the fairness of the stipulation as to facts and as to disposition, and the effect of the stipulation upon the matters which are or may be client security fund matters or serious offenses. The hearing panel or settlement conference referee may order the approval of the proposed stipulation or its approval with modifications to the stipulation accepted by the parties. Thereafter, the review department shall review the order approving the stipulation as provided in Rule 450(b).

(c) In cases of adoption of the stipulation by the review department, if suspension or disbarment is provided for, the stipulation, the order approving the stipulation, if required, the action of the review department and the formal record in any formal proceeding upon which discipline is based shall be filed with the Clerk of the Supreme Court. The record need not include a reporter's transcript unless required by the Supreme Court. (Amended June 1, 1984, effective September 1, 1984, see publisher's note, page 1, for those cases which fall under this rule.)

RULE 407. TERMINATION BY STIPULATION AS TO FACTS AND DISPOSITION—HEARING AND ACTION THEREON BY HEARING PANEL, INVESTIGATION REFEREE OR SETTLEMENT CONFERENCE REFEREE.

(a) The hearing panel or investigation referee or settlement conference referee shall examine into the facts orindicated facts, the apparent fairness of the stipulations as to fact and as to disposition, and the effect of the stipulation upon

matters which are or may be Client Security Fund matters or serious offenses.

(b) The hearing panel or investigation referee or settlement conference referee may order the approval of the proposed stipulation or its approval with modifications to the stipulation accepted by the parties. Thereafter, the review department shall review the order approving the stipulation as provided for in Rule 450(b). In cases of adoption of the stipulation by the review department, if suspension or disbarment is provided for, the stipulation, the order approving the stipulation, the action of the review department and the formal record in any formal proceeding upon which discipline is based shall be filed with the Clerk of the Supreme Court. The record need not include a reporter's transcript unless required by the Supreme Court. (Amended July 24, 1982. See publisher's note, page 1, for those cases which fall under this rule.)

[NEW] RULE 408. TERMINATION BY STIPULATION AS TO FACTS AND DISPOSITION — BINDING EFFECT: REJECTION OF.

(a) Once adopted by the review department, a stipulation as to facts and disposition shall bind the parties in the proceeding or investigation. Once approved, the stipulation may not be withdrawn or modified without the written approval, upon good cause shown and notice duly given, of the referee or hearing panel having approved the stipulation or, of the presiding referee. Any request for a withdrawal or modification of the stipulation must be served and filed within fifteen (15) days of service of the order approving the stipulation.

(b) If the settlement conference referee or hearing panel having jurisdiction over the proceeding, or the review department rejects a stipulation as to facts and disposition, the parties shall be relieved of all effects of the stipulation and the proceeding or investigation shall resume. Rejection of a stipulation as to facts and disposition does not bar approval of a subsequent stipulation in the same case, but the parties shall first disclose to the settlement conference referee, the hearing panel, or the review department, as the case may be, the circumstances and nature of any rejected stipulation in the same proceeding or investigation. (Amended June 1, 1984, effective September 1, 1984, see publisher's note, page 1, for those cases which fall under this rule.)

RULE 408. TERMINATION BY STIPULATION AS TO FACTS AND DISPOSITION — BINDING EFFECT; REJECTION OF.

(a) No stipulation as to facts and disposition shall be effective until approved by a referee or hearing panel having jurisdiction over the proceeding or investigation. The referee appointed to preside over a settlement conference shall be deemed to have such jurisdiction. Once approved by the referee or hearing panel, and adopted by the review department, a stipulation as to facts and disposition shall bind the parties in the proceeding or investigation. Once approved, the stipulation may not be withdrawn or modified without the written approval, upon good cause shown and notice duly given, of the referee or hearing panel having approved the stipulation or, of the presiding referee. Any request for a withdrawal or modification of the stipulation must be served and filed within fifteen (15) days of service of the the order approving the stipulation.

(b) If the investigation or settlement conference referee or hearing panel having jurisdiction over the proceeding or investigation or settlement conference, or the review department rejects a stipulation as to facts and disposition, the parties shall be relieved of all effects of the stipulation and the proceeding or investigation shall resume before another referee or hearing panel having jurisdiction. Rejection of a stipulation as to facts and disposition does not bar approval of a subsequent stipulation in the same case, but the parties shall first disclose to the referee or hearing panel the circumstances and nature of any rejected stipulation in the same proceeding or investigation. (Amended July 24, 1982. See publisher's note, page 1, for those cases which fall under this rule.)

RULE 410. DISMISSAL OF FORMAL PROCEEDING UPON MOTION OF EXAMINER

The hearing panel, prior to or after commencement of the introduction of evidence, may dismiss the charges, or particular charges, contained in the notice to show cause, upon motion of the examiner based upon unavailability or insufficiency of evidence. In a matter which is, or probably is, a Client Security Fund matter, or a serious offense, as defined in Rule 415, the panel shall inquire into the availability and sufficiency of evidence before ordering a dismissal. Any dismissal ordered under this Rule shall be reviewed by the review department under Rule 450(b) before becoming effective.

RULE 411. DISMISSAL OF FORMAL PROCEEDING UPON MOTION OF MEMBER.

If a motion to dismiss is granted by the hearing panel after weighing the evidence, the hearing panel shall so order and shall state the reason or reasons for its order, which will constitute an order of dismissal on the merits, when approved by the review department. A copy of the order of dismissal and reason or reasons therefor shall be served upon the parties and upon the presiding referee in the manner provided by law.

[NEW] RULE 415. TERMINATION BY ADMONITION.

When the subject matter of the investigation, or the charge in a formal proceeding, does not involve a matter which is, or probably is, a client security fund matter, or a serious offense, the Office of Trial Counsel or the hearing panel, as the case may be, may dispose of the matter before it by an admonition, formal or informal, to the member, if it concludes (a) the violation or violations were not intentional or occurred under mitigating circumstances, and (b) no pecuniary loss resulted. The fact of the admonition shall be communicated to the complainant, if any, but otherwise shall not be public. The giving of an admonition does not constitute imposition of discipline upon the member. No admonition imposed by a hearing panel shall be effective unless approved by the review department as provided in Rule 450(b). If within two years after the admonition, a formal proceeding is brought against the member, based upon other alleged misconduct, the investigation or formal proceeding terminated by admonition may be reopened, and may proceed without regard to the delay resulting from the admonition.

In the case of an admonition imposed by a hearing panel, upon written request of the member or examiner, filed with the State Bar within 15 days after mailing notice of the decision for the admonition, the admonition shall be set aside and the investigation or formal proceedings shall be resumed.

As used in this Rule "serious offense" is dishonest conduct for a dishonest act, as so defined, and conduct or acts constituting bribery, forgery, perjury, extortion, obstruction of justice, burglary or offenses related thereto, intentional fraud and intentional breach of a fiduciary relationship. (Amended June 1, 1984, effective September 1, 1984, see publisher's note, page 1, for those cases which fall under this rule.)

RULE 415. TERMINATION BY ADMONITION.

When the subject matter of the investigation, or the charge in a formal proceeding, does not involve a matter which is, or probably is, a Client Security Fund matter, or a serious offense, the investigation referee or the hearing panel, as the case may be, may dispose of the matter before it by an admonition, formal or informal, to the member, if it concludes (i) the violation or violations were not intentional or occurred under mitigating circumstances, and (ii) no pecuniary loss resulted. The fact of the admonition shall be communicated to the complainant, if any, but otherwise shall not be public. The giving of an admonition does not constitute imposition of discipline upon the member. No admonition imposed by a hearing panel shall be effective unless approved by the review department as provided in Rule 450(b). If within two years after the admonition, a formal proceeding is brought against the member, based on other alleged misconduct, the investigation or formal proceeding terminated by admonition may be reopened, and may proceed without regard to the delay resulting from the admonition.

Upon written request of the member or examiner, filed with the State Bar within fifteen (15) days after mailing notice of the decision for the admonition, the admonition shall be set aside and the investigation or formal proceeding shall be resumed.

As used in this rule "serious offense" is dishonest conduct or a dishonest act, as so defined, and conduct or acts constituting bribery, forgery, perjury, extortion, obstruction of justice, burglary or offenses related thereto, intentional fraud and intentional breach of a fiduciary relationship. (See publisher's note, page 1, for those cases which fall under this rule.)

CHAPTER 12
REVIEW

RULE 450. REQUEST FOR REVIEW.

(a) The review department shall act pursuant to rule 451 if either the member or the examiner serves and files with the Office of the Clerk, State Bar Court, within the following time limits, a written request for review which shall specify the grounds relied on for seeking review:

(i) Within fifteen (15) days after service of the hearing panel's decision if no written statement or application has been filed pursuant to rule 562, or

(ii) Within fifteen (15) days after service of notice of the action by the hearing panel on a written statement or application filed pursuant to rule 562.

(b) When no written request for review satisfying rule 450(a), above, has been filed within the foregoing time limits, the review department shall act as follows:

(i) The review department shall review, ex parte, the hearing panel's decision or order terminating matter and shall make such findings, orders or recommendations to the Supreme Court as it may deem proper in the circumstances. Notice of such action by the review department shall be given to the member and to the State Bar.

(ii) The review department may adopt the decision or order of the hearing panel in its entirety, or may modify or reject the decision.

(iii) If the decision or order of the hearing panel is not adopted in its entirety, the review department shall decide the case upon the record. The review department itself shall decide no case provided for in this subdivision (iii) without affording the parties an opportunity to present either oral or written argument before the review department. (Amended May 19, 1985, effective June 15, 1985.)

RULE 451. APPEARANCES BEFORE REVIEW DEPARTMENT; BRIEFS.

(a) Upon filing of a timely request for review, the member and the examiner shall be given an opportunity to be heard before the review department. For that purpose, the matter shall be placed upon the calendar of the review department for hearing. Written notice of the dates of the review department calendar at which the matter will be heard shall be mailed to the member and examiner at least thirty (30) days prior to the hearing, unless the parties agree to a shorter period of notice. Written notice of the specific time and place of hearing shall be mailed to the member and examiner at least ten (10) days prior to the hearing.

(b) No later than fifteen (15) days prior to the day of the review department hearing, the party seeking review (or the State Bar if the matter was set for hearing on the review department's own motion) shall file and serve any papers the party desires to be considered by the review department. No later than seven (7) days prior to the date of the review department hearing, the opposing party shall serve and file any papers desired to be considered by the review department. Papers submitted after the foregoing time will not be considered by the review department, absent a showing that the reporter's transcript or other necessary portion of the record was not available in time to reasonably permit earlier preparation and filing of those papers or a showing of other good cause.

(c) All papers submitted under this rule shall be on letter-size (8 1/2 by 11 inches), numbered paper. Papers shall be filed with the Office of the Clerk, State Bar Court, 1230 West Third Street, Los Angeles, CA 90017. Proof of service as set forth in rule 241, shall accompany the original. An original and one copy of each paper shall be filed with the office of the Clerk if the papers are filed seven (7) days or more prior to the date of the review department meeting. An original and eighteen (18) copies of each paper, three hole punched on the left margin shall be filed with the Office of the Clerk, State Bar Court if the paper is submitted less than seven (7) days prior to the date of the review department hearing. (Amended May 19, 1985, effective June 15, 1985.)

RULE 452. PROCEDURE AND SCOPE OF REVIEW BEFORE REVIEW DEPARTMENT; BINDING EFFECT OF REVIEW DEPARTMENT DECISION.

In matters pending before the review department, the decision of the hearing panel shall serve as a recommendation to the review department. The review department shall independently review the record and may render findings of facts, draw conclusions and adopt recommendations or take actions at variance with those of the hearing panel provided, however, findings of fact of the hearing panel on disputed issues of fact shall be entitled to great weight. The decision of the review department is not subject to further review before the State Bar unless the review department otherwise orders. Unless otherwise ordered by the review department, pleading and practice in matters before the review department shall conform, as far as possible, to these rules for pleading and practice before hearing panels. The review department shall hear and decide matters before it en banc. Eight (8) referees of the review department shall constitute a quorum. A majority vote of the referees of the review department present and voting shall be sufficient to take any action or arrive at any decision in any matter before the review department.

RULE 453. EXCEPTIONS.

This chapter shall not apply to proceedings which are subject to review by the Board of Governors.

DIVISION IV
PROVISIONS APPLICABLE TO VARIOUS PROCEEDINGS

CHAPTER 1
INVESTIGATIONS

RULE 501. APPLICABILITY OF CHAPTER.

This chapter applies only to original State Bar disciplinary proceedings, initiated by a complaint or by the State Bar.

RULE 502. PURPOSE.

The purpose of an investigation is to determine whether there is reasonable cause to believe that a member of the State Bar should be required to answer for conduct deemed to be a violation of the State Bar Act or the Rules of Professional Conduct.

RULE 503. COMPLAINT NOT REQUIRED.

An investigation may be commenced by the State Bar whether or not a complaint has been made to the State Bar.

RULE 504. PRESENTATION OF COMPLAINTS.

Complaints concerning the conduct of a member of the State Bar or requests for reimbursement from the Client Security Fund of the State Bar shall be presented to the State Bar at its San Francisco or Los Angeles offices to the Department of Trial Counsel. Complaints or requests may be written or oral, but the complainant or applicant may be required to present appropriate information on a form or forms supplied by the State Bar.

RULE 505. EFFECT OF COMPLAINT.

A complaint, notwithstanding its form or the designation of the person making the complaint as a complainant or complaining witness, is deemed a request for review, investigation or other appropriate action by the State Bar.

RULE 506. DUTY OF COMPLAINANT.

It is the duty of the person making a complaint, upon request, to supply additional information, the names and addresses of witnesses and all writings or other evidence in his or her possession concerning the matter, to testify at any investigation hearing or formal hearing in the matter, and otherwise to assist the State Bar in obtaining or securing evidence.

[NEW] RULE 507. EFFECT OF RESTITUTION OR SETTLEMENT: UNWILLINGNESS OF COMPLAINANT TO PROCEED.

Neither the unwillingness or neglect of the complainant, nor settlement, compromise or restitution excuses the Office of Trial Counsel or a hearing panel from undertaking or completing an investigation or a formal proceeding. (Amended June 1, 1984, effective September 1, 1984, see publisher's note, page 1, for those cases which fall under this rule.)

RULE 507. EFFECT OF RESTITUTION OR SETTLEMENT; UNWILLINGNESS OF COMPLAINANT TO PROCEED.

Neither the unwillingness or neglect of the complainant, nor settlement, compromise or restitution excuses the investigation department or referee or a hearing panel from undertaking or completing an investigation or a formal proceeding. (See publisher's note, page 1, for those cases which fall under this rule.)

[NEW] RULE 508. AUTHORITY TO TERMINATE MATTER.

If the examiner concludes (a) there is no legal ground for action by the State Bar, or (b) there is lack of sufficient proof to support a determination of reasonable cause for issuance of a notice to show cause, the examiner may terminate the matter and inform the complainant of such action. In other instances, the examiner may notify the member, orally or in writing, of the acts, transaction or matter under investigation, and fix a time within which the member may submit a written explanation. On the basis of information received from the member, or other information, the examiner may terminate the matter on either or both of the grounds stated above, and inform the complainant and the member of such action or where reasonable cause exists a notice to show cause may be issued. (Amended June 1, 1984, effective September 1, 1984, see publisher's note, page 1, for those cases which fall under this rule.)

RULE 508. AUTHORITY TO TERMINATE MATTER.

If the staff attorney concludes (i) there is no legal ground for action by the State Bar, or (ii) there is lack of sufficient proof

to support a determination of reasonable cause for issuance of a notice to show cause, the staff attorney may terminate the matter and inform the complainant of such action. In other instances, the staff attorney may notify the member, orally or in writing, of the acts, transaction or matter under investigation, and fix a time within which the member may submit a written explanation. On the basis of information received from the member, or other information, the staff attorney may terminate the matter on either or both of the grounds stated above, and inform the complainant and the member of such action. (See publisher's note, page 1, for those cases which fall under this rule.)

[NEW] RULE 509. DETERMINATION AS TO REASONABLE CAUSE.

(a) If the matter has not been terminated pursuant to Rule 508, the Office of Trial Counsel through a notice to show cause committee consisting of chief trial counsel and the assistant chief trial counsels shall conduct a review and investigation to determine whether a notice to show cause shall issue.

(b) The member, whose conduct is being investigated, or his or her counsel, shall have the opportunity to deny or explain the acts, omissions, or alleged physical or mental condition which is the subject of investigation. If the examiner determines that reasonable cause to issue a notice to show cause does not exist, the examiner shall terminate the matter, with a brief statement of reasons. The member and complainant shall be informed of such action. (Amended June 1, 1984, effective September 1, 1984, see publisher's note, page 1, for those cases which fall under this rule.)

RULE 509. DETERMINATION AS TO REASONABLE CAUSE.

(a) If the matter has not been terminated pursuant to Rule 508, the referee shall conduct a review and investigation to determine whether a notice to show cause shall issue. The referee may, with or without an investigation hearing, issue a notice to show cause, or may terminate a matter on the same grounds and in the same manner as are provided in Rule 508 for staff attorneys.

(b) The member, whose conduct is being investigated, or his or her counsel, shall have the opportunity to deny or explain the acts, omissions, or alleged physical or mental condition which is the subject of investigation. If the referee determines that reasonable cause to issue a notice to show cause does not exist, the referee shall terminate the matter, with a brief statement of reasons. The member and complainant shall be informed of such action. (See publisher's note, page 1, for those cases which fall under this rule.)

(c) An investigation hearing may be ordered when, in the opinion of the investigation referee, it will materially contribute to the determination of whether reasonable cause to issue a notice to show cause exists. All investigation hearings shall be informal and the rules of evidence shall not apply. The absence of an investigation hearing shall not invalidate or otherwise prejudice any subsequent proceeding. (See publisher's note, page 1, for those cases which fall under this rule.)

[NEW] RULE 510. ISSUANCE OF NOTICE TO SHOW CAUSE.

The Office of Trial Counsel shall issue a notice to show cause to the member as to matters as to which reasonable cause has been determined to exist. The notice to show cause shall cite the statutes, rules or court orders alleged to have been violated, or to warrant the action proposed, and the particular acts or omissions, or other acts, constituting the alleged violation or violations, or the basis for the action proposed. (Amended June 1, 1984, effective September 1, 1984, see publisher's note, page 1, for those cases which fall under this rule.)

RULE 510. ISSUANCE OF NOTICE TO SHOW CAUSE.

The referee shall issue a notice to show cause to the member as to matters as to which reasonable cause has been determined to exist. The notice to show cause shall cite the statutes, rules or court orders alleged to have been violated, or to warrant the action proposed, and the particular acts or omissions, or other acts, constituting the alleged violation or violations, or the basis for the action proposed. (See publisher's note, page 1, for those cases which fall under this rule.)

[NEW] RULE 511. TERMINATION WITHOUT ORDERING FORMAL PROCEEDING.

Except as provided in Rule 512, the decision of an examiner that a formal proceeding shall not be instituted is a bar to further proceedings against the member based upon the same alleged facts. (Amended June 1, 1984, effective September 1, 1984, see publisher's note, page 1, for those cases which fall under this rule.)

RULE 511. TERMINATION WITHOUT ORDERING FORMAL PROCEEDING.

Except as provided in Rule 512, the decision of a staff attorney or of an investigation referee (with or without the holding of an investigation hearing) that a formal proceeding shall not be instituted is a bar to further proceedings against the member based upon the same alleged facts. (See publisher's note, page 1, for those cases which fall under this rule.)

[NEW] RULE 512. EXCEPTIONS.

The rule stated in Rule 511 does not apply if the decision of the examiner is expressly stated to be without prejudice to further proceedings; or if in the case of a decision by an examiner, the chief trial counsel determines within two years of such determination that further investigation should be conducted; or if further proceedings are ordered by the Board of Governors Committee or the Board of Governors; upon request. A request for further proceedings may be made by a complainant or by chief trial counsel, after a decision of an examiner described in Rules 415 or 511. Such request shall be filed with the State Bar within three months after the mailing of notice of the decision to the complainant; provided, for good cause, the Board of Governors Committee may act upon a complainant's or chief trial counsel's request for further proceedings if it is filed not later than two years after such mailing. Except in the case of a request for further proceedings against a member of the Board of Governors, all requests for further proceedings shall be acted upon by the Board of Governors Committee; provided that if the Board of Governors Committee denies the request and a

member of the Board of Governors Committee asks that the request be considered by the Board of Governors, the request shall be acted upon by the Board of Governors instead of the Board of Govenors Committee. If a request is made for further proceedings against a member of the Board of Governors, an ad hoc committee, consisting of the three most recent past presidents of the State Bar willing and able to serve and, when available, the two most recent past public members of the Board of Governors willing and able to serve, shall act thereon in lieu of the Board of Governors Committee on Adjudication and Discipline. (Amended June 1, 1984, effective September 1, 1984, see publisher's note, page 1, for those cases which fall under this rule.)

RULE 512. EXCEPTIONS.

The rule stated in Rule 511 does not apply if the decision of the staff attorney or of the investigation referee is expressly stated to be without prejudice to further proceedings; or if in the case of a decision by a staff attorney, the chief trial counsel determines within two years of such determination that further investigation should be conducted; or if further proceedings are ordered by the Board of Governors Committee or the Board of Governors, upon request. A request for further proceedings may be made by a complainant or by chief trial counsel, after a decision of a staff attorney or an investigation referee described in Rule 511. Such request shall be filed with the State Bar within three months after the mailing of notice of the decision to the complainant; provided, for good cause, the Board of Governors Committee may act upon a complainant's or chief trial counsel's request for further proceedings if it is filed not later than two years after such mailing. Except in the case of a request for further proceedings against a member of the Board of Governors, all requests for further proceedings shall be acted upon by the Board of Governors Committee; provided that if the Board of Governors Committee denies the request and a member of the Board of Governors Committee asks that the request be considered by the Board of Governors, the request shall be acted upon by the Board of Governors instead of the Board of Governors Committee. If a request is made for further proceedings against a member of the Board of Governors, an ad hoc committee, consisting of the three most recent past presidents of the State Bar willing and able to serve and, when available, the two most recent past public members of the Board of Governors willing and able to serve, shall act thereon in lieu of the Board of Governors Committee on Adjudication and Discipline. (See publisher's note, page 1, for those cases which fall under this rule.)

RULE 513. TERMINATION BY ADMONITION.

Further proceedings from terminations pursuant to Rule 415 are governed exclusively by that rule and the provisions of Rules 511 and 512 shall not apply to such terminations.

RULE 530. APPLICATION FOR ORDER AUTHORIZING EXAMINATION, INVESTIGATION AND AUDIT.

An application for an order authorizing the Division of Trial Counsel to examine, investigate and audit the books and records of a member may be made to the Presiding Referee or his designee by a staff attorney or an examiner. Such application shall be in the form of an affidavit or declaration under penalty of perjury and shall state:

(A) Facts showing that there is reasonable cause to believe that the member has violated Rule 8-101 of the Rules of Professional Conduct;

(B) Facts showing (1) that the member has been given the opportunity to deny or explain the acts or omissions described in paragraph (A) of this rule and (2) that the member has been advised of the provisions of Rules 530-534 of these Rules of Procedure; and

(C) A description of the requested information, books and records to be produced and/or made available by the member and/or other persons for examination, investigation and audit. (Operative January 1, 1982.)

RULE 531. ORDER AUTHORIZING EXAMINATION, INVESTIGATION AND AUDIT.

Upon determining that there is reasonable cause to believe that a member has violated Rule 8-101 of the Rules of Professional Conduct and that a member has been given the opportunity to deny or explain such alleged acts or omissions and has been advised of the provisions of Rules 530-534 of these Rules of Procedure, the Presiding Referee or his designee may make an order authorizing the Division of Trial Counsel to examine, investigate and audit the books and records of the member in accordance with guidelines formulated and adopted by the Board of Governors of the State Bar. (See Guidelines, Appendix A.)

A. Any order made pursuant to this rule shall be in writing and shall state:

(1) That there is reasonable cause to believe that the member has violated Rule 8-101 of the Rules of Professional Conduct;

(2) That there is good cause for the issuance of subpoenas to compel the member and/or other persons to produce books and records and to provide other information consistent with the scope of the order for examination, investigation and audit;

(3) A description of the books and records to be produced and/or made available by the member and/or other persons for examination, investigation and audit; and

(4) That the member who is the subject of the examination, investigation and audit shall forthwith provide the Division of Trial Counsel with the names and addresses of the following persons:

(a) All attorneys who are law partners of the member and/or who were law partners of the member during the period covered by the order for examination, investigation and audit;

(b) All attorneys who are officers, directors or shareholders and/or who were officers, directors, or shareholders of any law corporations in which the member was an officer, director, shareholder or employee during the period covered by the order for examination, investigation and audit;

(c) All attorneys who are signatories on any bank accounts which are subject to examination, investigation and audit under the provisions of such order and/or who were signatories on such accounts during the period covered by the order for examination, investigation and audit.

B. A copy of the order shall be served upon the member who

is the subject of the examination, investigation and audit, and upon those persons described in paragraph A(4) of this rule who are known to the State Bar.

C. Service upon the persons designated in subsection (B) of this rule shall be made not less than 10 days if by personal service and 15 days if by mail, prior to the commencement of such examination, investigation and audit. Service may be accomplished by mail directed to each of the designated persons at his or her address of record. (Operative January 1, 1982.)

RULE 532. ISSUANCE OF SUBPOENAS.

Production of books, records and other information may be compelled by subpoena issued by an investigation referree pursuant to Rules 300-314 of these Rules of Procedure. The issuance of an order authorizing examination, investigation and audit shall constitute good cause for issuance of subpoenas consistent with the scope of such order. (Operative January 1, 1982.)

RULE 533. CONFIDENTIALITY.

The files and records pertaining to the examination, investigation and audit of a member's books and records are confidential and no information concerning them and the matters to which they pertain shall be disclosed to any person except for use in proceedings initiated by the State Bar pursuant to these Rules of Procedure. (Operative January 1, 1982.)

RULE 534. DETERMINATION OF NO VIOLATION - NOTICE TO MEMBER.

In the event that an examination, investigation and audit of a member's books and records reveals no violation of Rule 8-101 of the Rules of Professonal Conduct, the member shall be so advised in writing. (Operative January 1, 1982.)

CHAPTER 2
FORMAL PROCEEDINGS AND HEARINGS

RULE 550. NOTICE TO SHOW CAUSE.

Except as provided in Rule 551, a formal proceeding shall be commenced by the issuance of a notice to show cause directed to the member. The notice to show cause shall cite the statutes, rules, or court orders alleged to have been violated, or to afford the basis for the action proposed, and shall specify in concise terms the acts, omissions or facts which constitute the alleged violation or violations, or the basis for the action proposed. Informality in a notice to show cause shall be disregarded.

RULE 551. PARTICULAR PROCEEDINGS.

(a) A conviction, Rule 955 or any other proceeding referred to the State Bar by the Supreme Court is commenced before the State Bar by written notice to the member and to the examiner. The notice shall refer to the order of reference of the Supreme Court, the issue or issues referred to the State Bar, and the time and place of the hearing on such issue or issues before the hearing panel.

(b) A reinstatement proceeding, or a proceeding for transfer of the member to active status pursuant to Section 6007 is commenced by the filing with the State Bar of the member's petition and the payment of any required fee.

(c) A proceeding for perpetuation of testimony is commenced by order of the Board of Governors or of the president of the State Bar or the director.

RULE 552. ANSWER TO NOTICE TO SHOW CAUSE.

A written answer to the notice to show cause shall be filed by the member within twenty (20) days after service of the notice to show cause. The answer shall contain an address to which all further notices to the member in relation to the proceeding may be sent, an admission or denial or explanation of the allegations set forth in the notice to show cause, and such other matter by way of defense as may be relevant. In addition, the answer shall include any objections which the member may desire to make to the jurisdiction of the State Bar or of the hearing panel, or to the sufficiency of the allegations of the notice to show cause to charge misconduct or legal cause for other action proposed. Informality in the answer shall be disregarded. Demurrers, motions to strike and motions for further particulars are not allowed.

RULE 553. EXTENSION OF TIME OR FAILURE TO ANSWER.

Neither the extension of time for the member to answer nor the member's failure to answer excuses the member from appearing before the hearing panel at the time fixed for hearing by the notice to show cause or by order of the hearing panel or the presiding referee.

RULE 554. NOTICE OF HEARING, WHEN REQUIRED.

Notice of hearing shall be given in the notice to show cause, or by a notice of hearing served upon the parties by mail not less than thirty (30) days before the hearing date. If a hearing date is re-set, not less than twenty (20) days notice of the new date shall be given to the parties, orally or by mail, unless the parties were present when the new date was set, or have stipulated to such date.

[NEW] RULE 554.1. MOTION TO DISMISS NOTICE TO SHOW CAUSE FOR FAILURE TO STATE DISCIPLINABLE OFFENSE.

No later than ten (10) days prior to the pre-trial conference set by the State Bar Court, the respondent may file and serve a motion to dismiss the notice to show cause on the ground that it fails to state a disciplinable offense as a matter of law. Within ten (10) days after service, the State Bar Examiner may serve and file a reply to the motion. The motion shall be decided by the referee assigned to conduct the pre-trial conference. The ruling of the referee on said motion shall be final within the State Bar Court. (Adopted June 1, 1984, effective September 1, 1984, see publisher's note, page 1, for those cases which fall under this rule.)

RULE 555. EFFECT OF NON-APPEARANCE.

(a) If the member fails to appear, in person or by counsel, at a formal hearing, the hearing shall proceed on the merits, unless for good cause the hearing is continued.

(b) Non-appearance may be construed by the hearing panel as an admission by the member that the allegations of the notice to show cause are true, or that the member is subject to discipline, or to other action proposed in the document initiating the formal proceeding, if

(i) the member has actual notice of the hearing, and

(ii) evidence supports the notice to show cause or other action proposed.

(c) Non-appearance may also be construed by the hearing panel as the member's consent to subsequent ex parte communications, as may be necessary, between the hearing panel and the examier. (Amended March 31, 1984.)

RULE 556. RULES OF EVIDENCE GENERALLY APPLICABLE.

Subject to relevant decisions of the Supreme Court, the rules of evidence in civil cases in courts of record in this state shall be generally followed in a formal proceeding, but no error in admitting or excluding evidence shall invalidate a finding of fact, decision or determination, unless the error or errors complained of resulted in a denial of a fair hearing.

RULE 557. AMENDMENTS TO PLEADINGS, WHEN PERMITTED.

The hearing panel, upon application of a party or upon its own motion, at any time prior to its decision, may require or allow amendments to the pleadings. The notice to show cause may be amended to conform to proof, or to set forth additional facts constituting an additional alleged violation or violations, or an additional ground or grounds for the action proposed, whether occurring before or after the commencement of the formal hearing.

Unless the amendment of the notice to show cause is one to conform to proof, the member is entitled to a reasonable time to answer the amendment and prepare his defense thereto.

[NEW] RULE 558. HEARING PANEL, SIZE AND COMPOSITION; MASTER CALENDAR; COMPENSATED REFEREES.

(a) Except as provided in rule 558(a)(2) and (3), a hearing panel in the following matters shall consist of one referee who is a member of the State Bar:

(1) In a probation revocation or rule 955 proceeding,

(2) in a proceeding involving a law corporation conducted pursuant to Section 6169 of the Business and Professions Code unless the respondent or the State Bar has requested pursuant to procedure prescribed by the State Bar Court or the presiding referee, that the hearing panel be composed of three referees pursuant to rule 558(a)(3), and

(3) in any other formal proceeding heard by the State Bar Court unless, at the time of pre-trial conference or within 30 days in advance of the first day of formal hearing, whichever occurs earlier, either the examiner or the member or applicant elects to have the matter heard by a panel of three referees. Where timely elected, panels of three referees shall be assigned by the presiding referee or designee. Not more than one member of each three-member panel may be a nonlawyer. The presiding referee or designee shall assign one member of each three-member panel who is a member of the State Bar to serve as principal referee to act for the hearing panel in the making of rulings related to law or procedure, including but not limited to the admitting or excluding of evidence pursuant to the provisions of rule 556.

(b) The presiding referee or designee may institute one or more master calendar hearing systems in one or more cities and may assign formal proceedings to such a master calendar system for hearing.

(c) The board may appoint referees of the State Bar Court from among the members of the State Bar who may receive compensation for service not to exceed $100 per day for each day of service as State Bar Court referees. In addition, such compensated referees shall receive reimbursement for necessary expenses incurred, in the same manner as received by volunteer referees.

Not later than the time set for the election in rule 558(a)(3), either the examiner or the member or applicant may serve upon the opposing party and file with the presiding referee a motion for an order assigning the proceeding to a compensated referee for hearing. Such motion shall be based on a showing that the proceeding is so complex or that the trial is likely to be so lengthy that it cannot be heard by volunteer referees without a likelihood of undue delay or burden to the State Bar Court. Where no such motion is filed, a referee of the State Bar Court assigned to the pre-trial phase of the proceeding may file such a motion with the presiding referee. The presiding referee or designee shall rule on such motion after consultation with or briefing by the parties. The motion shall be granted if the presiding referee or designee determines that the proceeding is lengthy that it cannot be heard by volunteer referees without the likelihood of undue delay or burden to the State Bar Court. In assessing a motion under this section, the presiding referee or designee shall consider all relevant factors including the following:

(1) the number and complexity of the charges;

(2) the number and location of prospective witnesses;

(3) the potential need for discovery; and

(4) the complexity of the evidence likely to be adduced.

The decision of the presiding referee or designee to grant or deny a motion to assign the proceeding to a compensated referee shall be final within the State Bar Court, unless within ten (10) days after service of the ruling of the presiding referee or designee on a motion to assign a compensated referee, either the examiner or the member or applicant serves and files with the board committee a request for review of the ruling.

Upon order by the presiding referee or designee assigning the proceeding to a compensated referee for hearing, the name of said referee assigned will be promptly furnished the examiner and the member or applicant. Any challenge to said compensated referee shall be made pursuant to the provisions of rule 230. Such challenge shall be made promptly after assignment of the referee to the proceeding

and must be made prior to the introduction of any evidence in the formal proceeding. (Amended June 1, 1984, effective September 1, 1984, see publisher's note, page 1, for those cases which fall under this rule.)

RULE 558. HEARING PANEL, COMPOSITION OF; PRINCIPAL REFEREE.

Except as provided in Rule 559, a hearing panel is composed of three referees, not more than one of whom may be a nonlawyer. The presiding referee shall assign one of the referees who is a member of the State Bar to serve as principal referee. The principal referee shall act for the hearing panel in the making of rulings related to law or procedure, including but not limited to the admitting or excluding of evidence pursuant to the provisions of Rule 556. (See publisher's note, page 1, for those cases which fall under this rule.)

RULE 559. EXCEPTIONS.

The hearing panel shall consist of one referee who is a member of the State Bar

(a) in a probation revocation or Rule 955 proceeding, and

(b) in a proceeding involving a law corporation conducted pursuant to Section 6169 of the Business and Professions Code unless the respondent or the State Bar has requested, pursuant to procedure prescribed by the State Bar Court or the presiding referee, that the hearing panel be composed of three referees pursuant to rule 558, and

(c) in other formal proceedings when the parties, pursuant to procedure prescribed by the State Bar Court or the presiding referee, so stipulate. (Amended October 9, 1982, effective November 1, 1982. Repealed June 1, 1984, effective September 1, 1984, see publisher's note, page 1, for those cases which fall under this rule.)

RULE 560. DECISION.

When the parties have rested, the panel shall take the cause under submission. After submission of a cause, the panel's decision shall be served upon the parties and upon the presiding referee in the manner provided in Rules 240-243. The decision shall be in the form required by Rule 561.

RULE 561. FORM.

The hearing panel shall make its decision in writing which shall be served as provided by Rules 240-243. The decision shall contain a brief statement of the proceedings had, findings of fact, and the action taken, or recommended to be taken. Rulings upon motions or applications may be made by written order or by entry in the minutes of the hearing panel. Except for orders approving stipulation pursuant to Rules 405-408 and orders granting motions to dismiss pursuant to Rules 410-411, findings of fact are required in all cases, including dismissals.

RULE 562. STATEMENTS IN SUPPORT OF, OR REQUESTING RECONSIDERATION OF ACTION; APPLICATION FOR HEARING DE NOVO OR TO PRESENT ADDITIONAL EVIDENCE.

Within ten (10) days after service upon the party of the decision in proceedings which are subject to review by the Board of Governors, or in all other proceedings, of the decision, either party may serve and file a written statement in support of, or requesting reconsideration in whole or in part of the decision and, by separate document, an application for hearing de novo, or to present additional evidence. Such application shall be accompanied by an affidavit or affidavits or declarations under penalty of perjury stating the substance of any new evidence which the applicant desires to present the reasons why such evidence was not previously presented, and, if a hearing de novo is applied for, the legal grounds therefor. Within five (5) days after service of the application, the opposing party may serve and file objections thereto, which objections may be supported by affidavits or declarations under penalty of perjury. An original and three copies of a statement, application or opposition referred to in this rule shall be filed with the State Bar. Any application or statement provided for by this rule shall be presented to and decided by the hearing panel. The ruling of the hearing panel on any such application or statement shall be in writing and shall be served on the parties.

RULE 571. PRIOR RECORD OF DISCIPLINE, WHEN ADMISSIBLE.

The record, or the pertinent part of the record, in another formal disciplinary proceeding involving the same member is admissible in evidence (i) if discipline has been administered therein pursuant to a decision which has become final, or (ii) if a hearing panel, in a proceeding conducted pursuant to these rules, or the former disciplinary board, in a proceeding conducted pursuant to prior rules, recommended or ordered discipline by a decision which has not become final, in a proceeding of which the member had notice or in which the member appeared. Such evidence shall be received on the issue of appropriate discipline, if culpability be found. In cases specified in (ii), the hearing panel may make an alternative decision as to discipline, contingent upon any discipline in the other proceeding becoming final, or the hearing panel may state that its decision as to discipline is made independently of the other decision. The record is also admissible in evidence if, under the rules of relevancy and subject to Rule 556, it tends to prove any fact in issue in the pending proceeding, other than the degree of discipline.

RULE 572. PROCEEDINGS SUBSEQUENT TO DISCIPLINE.

Rule 571 applies, as nearly as may be, to admissibility of the record, or the pertinent part of the record, in a formal proceeding in which the member's probation has been revoked, or has been recommended for revocation, and to a formal proceeding in which a sanction has been imposed, or has been recommended to be imposed, under Rule 955.

RULE 573. INADMISSIBLE RECORDS.

Except as provided in Rules 406, 571, and 572 and probation revocation proceedings, records of complaints or formal charges against the member are inadmissible on behalf of the State Bar, provided, if the member introduces evidence that no complaints or charges have been made, then the records are admissible in rebuttal. (Operative January 16, 1982.)

RULE 574. ANOTHER MEMBER INVOLVED; DUTY OF PANEL.

If, during a formal proceeding, it appears to the hearing panel or to the Review Department upon review that another member may have committed acts of misconduct in the same matter or

transaction, it shall either file with the chief trial counsel a recommendation that an investigation be commenced of the conduct of the other member, or, in its decision, refer to any investigation or formal proceeding in which the other member has been or is involved, according to the facts. The formal proceeding shall continue without abatement.

RULE 575. HOW ADMINISTERED; PUBLIC AND PRIVATE REPROVAL. (Repealed effective November 18, 1983, now rule 615.)

RULE 575. REQUEST FOR WAIVER OF SUPREME COURT REVIEW.

After decision of a hearing panel recommending suspension of a member, if the member desires the order to become sooner effective, the member may file with the Clerk of the Supreme Court a written waiver of the right of review and request for entry of the recommended order. In cases deemed by the State Bar to be appropriate, the State Bar, by writing filed with the Clerk, may consent to the request. (Old rule 576 renumbered November 18, 1983.)

CHAPTER 3
CONVICTION PROCEEDINGS

RULE 601. RECORD.

The State Bar record includes all court orders and documents on file with the Clerk of the Supreme Court in the proceeding, whether or not introduced in evidence.

RULE 602. ISSUES.

The issue or issues before the hearing panel are those stated in the order of reference of the Supreme Court. The hearing panel may take into consideration evidence of facts not directly connected with the crime of which the member was convicted if the facts are material to the issues stated in the order of reference.

RULE 603. RULES INCORPORATED.

The following rules applicable in State Bar proceedings apply in a conviction proceeding: Rule 225 (public hearing), Rules 261-262 (consolidations or transfer), Rules 300-324 (discovery), Rule 323 (other depositions), Rule 351 (member's incapacity), Rule 352 (military service), Rule 401 (simplifying proof), Rules 405-408 (stipulated facts and discipline), Rules 571-572 (evidence--other disciplinary proceedings), Rule 574 (another member involved), Rule 575 (request for entry of suspension order). (Operative July 1, 1981.)

CHAPTER 4
PROBATION PROCEEDINGS

RULE 610. PROBATION.

This chapter applies to all proceedings following an order of the Supreme Court suspending a member, staying execution of all or part of the period of suspension, and placing the member on conditional probation. All such cases shall be referred to the Probation Department. The Probation Department may assign such cases to a probation monitor referee. (Operative January 16, 1982.)

RULE 611. DUTIES OF PROBATION MONITOR REFEREES.

It shall be the duty of a probation monitor referee to:

(a) Receive the order of the Supreme Court and the conditions of probation to which the order refers.

(b) Review with the respondent the conditions of probation and establish a manner and schedule of compliance and reports of compliance to the probation monitor.

(c) Report to the Probation Department, State Bar Court, 1230 W. Third Street, Los Angeles 90017, within 45 days of receipt of the Supreme Court order and the conditions of probation upon the manner and schedule of compliance and thereafter on a quarterly basis upon the progress of probation.

(d) Determine from time to time, after assessment of the relevant facts, the extent and degree of the probationer's compliance with the conditions of probation, and whether such compliance furthers the objectives of protection of the public and rehabilitation of the probationer.

(e) After assessment of the relevant facts, and making a determination that (1) a probationer has failed to comply with the conditions of probation, and (2) that revoking probation would further the objectives of the Order of Probation, issue a Notice to Show Cause why probation should not be revoked, and file the Notice with the Probation Department of the State Bar Court.

(f) After assessment of the relevant facts, and making a determination that (1) good cause exists, and (2) that termination of probation would further the objectives of the Order of Probation, after notice to the Department of Trial Counsel, recommend early termination of probation to the Review Department. (Operative January 16, 1982.)

RULE 612. PROBATION REVOCATION

The presiding referee, an assistant presiding referee, or a probation monitor referee, may issue a notice to show cause for a formal revocation proceeding, upon reasonable cause to believe conditions of probation have been violated.
(Operative January 16, 1982.)

RULE 613. RULES INCORPORATED

The following rules applicable in a State Bar proceeding apply in a probation revocation proceeding: Rule 225 (public hearing), Rules 300-324 (subpoenas and discovery), Rule 410 (dismissal upon motion of examiner), Rules 405-408 (stipulated facts and discipline), Rule 351 (member's incapacity), Rule 352 (military service), Rule 401 (simplifying proof), Rule 323 (other depositions), Rules 571-572, (evidence other disciplinary proceedings), Rule 575 (request for entry of suspension order). (Operative January 16, 1982.)

CHAPTER 5
PUBLIC AND PRIVATE REPROVALS

RULE 615. REPROVALS WITHOUT CONDITIONS.

A reproval shall be in the name of the State Bar and shall be in the form of a letter to the member signed by the presiding referee. It shall advise the member of the charge or charges of misconduct of which the member has been found guilty. In addition, the member may be required to appear before the presiding referee. No publicity shall be given to a private reproval, except the complainant and the examiner shall be advised. The fact that a member has been publicly reproved shall be published in California Lawyer and may otherwise be made public, with reasons therefor. (Adopted August 13, 1983, operative November 18, 1983.)

RULE 616. REPROVALS WITH CONDITIONS.

Conditions effective for a reasonable time may be attached to reprovals in the manner authorized by Rule 956, California Rules of Court. (Adopted August 13, 1983, operative November 18, 1983.)

RULE 617. ADMINISTRATION OF CONDITIONS ON REPROVALS.

When conditions are attached to reprovals, the provision of Rules 610-613 (Chapter 4, Division IV) shall govern monitoring, supervision and enforcement of the conditions except that proceedings upon violation of such conditions shall be governed by the provisions of Rules 550-575 (Chapter 2, Division IV). (Adopted August 13, 1983, operative November 18, 1983.)

CHAPTER 6
RULE 955 PROCEEDINGS

RULE 620. RECORD.

The State Bar record includes all court orders and documents on file with the Clerk of the Supreme Court in the proceeding, whether or not introduced in evidence.

RULE 621. ISSUES.

The issue or issues before the hearing panel are those stated in the order of reference of the Supreme Court.

RULE 622. RULES INCORPORATED.

The following rules applicable in State Bar proceedings apply in a Rule 955 proceeding: Rule 225 (public hearing), Rules 261-262 (consolidations or transfer), Rules 300-324 (discovery), Rule 323 (other depositions), Rule 351 (member's incapacity), Rule 352 (military service), Rule 401 (simplifying proof), Rules 405-408 (stipulated facts and discipline), Rules 571-572 (evidence—other disciplinary proceedings), Rule 574 (another member involved), Rule 575 (request for entry of suspension order). (Operative July 1, 1981.)

CHAPTER 7
PROCEEDINGS TO ASSUME JURISDICTION OVER INCAPACITATED ATTORNEY'S LAW PRACTICE

RULE 630. PROCEDURE.

Proceedings pursuant to Article 12 (commencing with Section 6190), Chapter 4, Division 3, Business and Professions Code, to determine whether there is probable cause to believe that the facts set forth in Section 6190 of that code have occurred and whether the interests of the clients or an interested person or entity will be prejudiced if the court proceeding provided for by Article 12 is not maintained, shall be conducted as nearly as may be in accordance with the procedures set forth in Rules 250(b), 271, 501-516. The investigation hearing shall be reported or recorded and, if probable cause is found, transcribed. As to those matters as to which probable cause has been determined to exist, the investigation referee shall make findings showing that the facts set forth in Section 6190 of the Business and Professions Code have occurred and that the interests of the clients or an interested person or entity will be prejudiced if the court proceeding provided for by Article 12 of the Code is not maintained. As to those matters as to which probable cause has been determined to exist, a client or interested person or entity may obtain a certified copy of the record of hearing and findings for the purpose of applying to the superior court pursuant to Article 12.

CHAPTER 8
PROCEEDINGS FOR INVOLUNTARY TRANSFER TO OR FOR RE-TRANSFER FROM INACTIVE ENROLLMENT

ARTICLE 1
TRANSFER OF MEMBER TO INACTIVE STATUS

RULE 640. GENERAL.

This article applies to complaints, investigations and formal proceedings which involve, or may involve, transfer of the member to inactive status under Section 6007(b), State Bar Act.

RULE 641. REPRESENTATION BY COUNSEL.

After issuance of a Notice to Show Cause why the member should not be transferred to inactive status, the member shall be represented by counsel. If the member is not so represented, the presiding referee shall appoint counsel without expense to the member. Failure or inability of the member to assist counsel shall not be a basis for abatement or continuance of proceedings under this article. (Amended February 26, 1983.)

RULE 642. NOTICE TO SHOW CAUSE.

(A) A formal proceeding shall not be initiated except by Notice to Show Cause issued by an investigation referee, or by the hearing panel in a formal disciplinary proceeding against the member, after a finding of probable cause. The member shall have the opportunity to deny or explain the acts, omissions, or alleged physical or mental condition which is the subject of investigation prior to the decision on probable cause and may then be represented by counsel.

(B) An investigation hearing may be ordered when, in the opinion of the investigation referee or hearing panel, it will materially contribute to the determination of whether probable cause exists. All investigation hearings shall be informal and the rules of evidence shall not apply. The absence of an investigation hearing shall not invalidate or otherwise prejudice any subsequent proceeding. The member may be represented by counsel at any investigation hearing ordered pursuant to this rule.

(C) Failure of the member to obey an order for physical or mental examination may constitute probable cause for issuance of a notice to show cause under this rule. (Amended February 26, 1983.)

RULE 643. RULES INCORPORATED.

The following rules applicable in State Bar proceedings apply to a formal proceeding: Rules 261-262 (consolidation of proceedings), Rules 300-324 (discovery), Rule 323 (other depositions), Rule 352 (military service), Rule 401 (simplifying proof), Rules 405-408 (re stipulation as to facts and disposition), Rule 410 (dismissal upon motion of examiner), Rule 575 (request for entry of order of transfer and waiver of right of review by Supreme Court). (Amended February 26, 1983.)

RULE 644. FAILURE TO COMPLY WITH ORDER FOR PHYSICAL OR EMOTIONAL EXAMINATION - BURDEN OF PROOF.

Upon failure without good cause of the member to obey an order of the hearing panel for physical or mental examination of the member, the existence of facts warranting transfer of the member to inactive status may be presumed. Such presumption shall be a "presumption affecting the burden of proof" as defined in Evidence Code sections 605 and 606. (Amended February 26, 1983.)

RULE 645. EFFECT ON DISCIPLINARY INVESTIGATION OR PROCEEDING.

The pendency of an investigation or formal proceeding pursuant to this article does not abate a disciplinary investigation or formal proceeding, unless the State Bar Court determines that the member, because of the disability or alleged disability, is unable to assist in the defense of the disciplinary investigation or formal proceeding. (Amended February 26, 1983.)

ARTICLE 2
PETITION FOR RE-TRANSFER TO ACTIVE STATUS

RULE 646. PETITION - REFERENCE TO HEARING PANEL.

A member who has been transferred to inactive status pursuant to this chapter may petition the State Bar to terminate such enrollment. The petition shall be verified, shall state the facts alleged to warrant the termination and such other information as the State Bar Court may prescribe.

If the petition is in proper form, it shall be referred to a hearing panel to conduct a formal proceeding. (Amended February 26, 1983.)

RULE 647. MEDICAL AND HOSPITAL RECORDS.

Upon request of the examiner, the member shall give such written consents as will enable the State Bar to examine, obtain copies of, and offer in evidence, if deemed desirable, medical, psycho-therapists', hospital and similar records reasonably relevant to the member's original physical or mental condition and the member's present physical or mental condition, according to the facts. (Amended February 26, 1983.)

RULE 648. RULES INCORPORATED.

The following rules applicable in State Bar proceedings apply in the formal proceeding: Rule 405-408 (re stipulation as to facts and disposition), Rules 401 (simplifying proof), Rules 300-324 (discovery), Rule 313 (other depositions).

RULE 649. DECISION.

In a formal proceeding provided for in Article 1, of Chapter 8 of this Division (commencing with Rule 640), the decision shall either (i) enroll the member as an inactive member if the hearing panel finds that the member, because of mental infirmity or illness, or because of addiction to intoxicants or drugs, is unable or habitually fails to perform his duties or undertakings competently, or is unable to practice law without danger to the interest of his clients and the public, or (ii) terminate the proceeding in the absence of such showing. In a formal proceeding provided for in Article 2 of Chapter 8 of this Division (commencing with Rule 646), the decision shall either (i) terminate the inactive enrollment if the hearing panel finds that the facts found as to the member's disability no longer exists, or (ii) deny the member's petition in the absence of such showing. A decision terminating enrollment as an inactive member is effective only on payment of all fees required.

CHAPTER 9
RESIGNATION - PERPETUATION OF TESTIMONY PROCEEDINGS

ARTICLE 1
NATURE AND PURPOSE

RULE 650. NATURE.

When a member against whom charges are pending submits a written relinquishment of the right to practice law and resignation as a member of the State Bar, a proceeding pursuant to this chapter for perpetuation of testimony may be ordered. Charges are pending when the member is the subject of a staff or committee investigation, or a formal proceeding or when the member is the subject of a criminal charge or investigation, or has been convicted of a felony or misdemeanor.

RULE 651. PURPOSE.

The proceeding is for the perpetuation of testimony pertaining to the conduct of the member which might subject the member to disciplinary proceedings, or to prosecution for the commission of a felony or misdemeanor, to make available to the State Bar evidence which is pertinent in any future inquiry into the member's conduct or qualifications to practice law.

ARTICLE 2
PROCEDURE

RULE 652. ORDER FOR PROCEEDING.

The Board of Governors or the president of the State Bar or the director may order the proceeding.

RULE 653. SUPERVISION.

The proceeding shall be under the direction of an investigation referee; or, if a formal proceeding is pending, of the principal referee of the hearing panel to which the matter is assigned. (Operative July 1, 1981.)

RULE 654. NOTICE TO MEMBER; CONSENT OR APPEARANCE.

Notice of the order for the proceeding shall be served upon the member in the manner required for service of a notice to show cause, unless the member consents to the proceeding or makes a voluntary appearance.

RULE 655. DEPOSITIONS.

Provisions of these rules and of the Code of Civil Procedure, relating to the taking of depositions and as pertinent to a proceeding to perpetuate testimony, may be followed.

RULE 656. WITNESSES.

The examiner shall designate the witnesses to testify. No person shall be called by the member to testify, except upon good cause shown to the referee. Leave shall be granted to the member to call a witness only when the witness is a person whose testimony should be taken in the interest of justice and when such action is consistent with the limited purpose of a proceeding pursuant to this chapter.

RULE 657. FILING REPORT AND TRANSCRIPT.

Upon completion of the proceeding, the referee shall file with the director its report and a transcript of the testimony, with exhibits or copies thereof. The report shall set forth the name of the member and the names of the persons who testified. Upon request, the member may obtain a copy of the transcript, at the member's expense.

RULE 658. PROCEEDINGS AS A FORMAL PROCEEDING; FUTURE USE OF EVIDENCE.

The proceeding is a formal proceeding for purposes of Division IV, Chapter 2 (commencing with Rule 550). Notwithstanding other provisions of these rules, the transcript of the testimony taken in the proceeding may be admitted in evidence in any future inquiry into the member's conduct or qualifications, subject to rules of relevancy and the order of the entity conducting such inquiry.

CHAPTER 10
REINSTATEMENT PROCEEDINGS

ARTICLE 1
PETITION FOR REINSTATEMENT

RULE 660. PETITION; REQUIREMENTS.

The petition for reinstatement shall be verified by the petitioner, shall be addressed to the State Bar Court and shall be filed, with five copies, in the Los Angeles office of the State Bar. The petition shall contain the information and agreement prescribed by the State Bar. Within ten (10) days after the filing of the petition, the petitioner shall furnish one or more sets of his or her fingerprints, taken in the office of, or under the direction or supervision of, the State Bar on record cards furnished by the State Bar.

RULE 661. FILING FEE; TRANSCRIPT EXPENSE.

The petition shall be accompanied by a filing fee of $200. If the reporting or recording expense, and the transcript expense with the usual number of copies, exceeds $100, the petitioner shall pay the amount of the excess to the State Bar prior to submission of the proceeding by the hearing panel. When the proceeding is reported, transcript expense and reporter's per diem shall be at the statutory rates applicable in court proceedings. When the proceedings are recorded, the charges shall be reasonable sums.

RULE 662. EARLIEST TIME FOR FILING PETITION.

No petition shall be filed within five years after the effective date of interim suspension or disbarment or resignation whichever first occurred, nor within two years next after an adverse decision upon a prior petition. Upon application and good cause shown, the committee of the Board of Governors, in its discretion, may shorten the time for filing the petition to a time less than five years but not less than three years, except that in the case of a petition following resignation with no charges pending, the time may be shortened to less than three years.

ARTICLE 2
FORMAL PROCEEDING BEFORE HEARING PANEL

RULE 663. REFERENCE TO DIVISION OF TRIAL COUNSEL.

If the petition is in proper form, it shall be referred to the Division of Trial Counsel for investigation. Notice of such referral shall be given in writing to the petitioner and to the examiner by the State Bar Court Clerk's Office. (Amended August 22, 1980.)

RULE 664. TIME PERIOD FOR INVESTIGATION - REFERRAL TO HEARING PANEL.

The Division of Trial Counsel shall investigate petitions referred to it pursuant to Rule 663 of these rules. The time period for such investigation shall be ninety (90) days from the date of service of notice of referral to the Division of Trial Counsel. For good cause, the investigation period may be

extended for a reasonable period of time by order of the Presiding Referee or his designee. Upon the expiration of the investigation period or upon the filing of a written stipulation of the parties that the petition be referred to a hearing panel, whichever first occurs, the State Bar Court Clerk's Office shall refer the petition to a hearing panel to conduct a formal proceeding. (Amended August 22, 1980.)

RULE 665. ADDITIONAL NOTICE; APPEARANCE OF OTHERS.

In addition to notice of hearing to the parties, notice of hearing shall be given to each of the persons required to be named by the petitioner in the petition, and to such other persons, groups, or entities as may be designated by the presiding referee, any members of the hearing panel, or chief trial counsel. Any such person, group or entity or any other interested person, group or entity may appear before the hearing panel in support of or in opposition to the petition. The committee of the Board of Governors may order publication of the fact that a petition for reinstatement has been filed with the State Bar identifying the petitioner and the petitioner's address(es), or of any notice of hearing or any determination on the petition (1) in an official publication of the State Bar; (2) in one or more legal newspapers for the geographic area or areas in which the petitioner resides or engages in any occupation; (3) in one or more legal newspapers for the geographic area or areas in which the act or acts giving rise to petitioner's disbarment or resignation occurred, or (4) as otherwise appropriate. (Renumbered August 22, 1980.)

RULE 666. RULES INCORPORATED.

The following rules applicable in State Bar proceedings apply in the formal proceeding: Rule 225 (public hearing), Rules 300-324 (discovery), Rule 323 (other depositions), Rule 401 (simplifying proof), Rules 405-408 (re stipulation as to facts and disposition). (Renumbered August 22, 1980.)

ARTICLE 3
DECISION BY HEARING PANEL

RULE 667. READMISSION OR REINSTATEMENT.

A decision recommending reinstatement or readmission must be based on the petitioner passing the Professional Responsibility Examination required of applicants for admission, and establishing to the satisfaction of a majority of the hearing panel (1) rehabilitation and present moral qualifications for readmission, and (2) present ability and learning in the general law. The hearing panel, in its discretion, may require the petitioner who fails to make an affirmative showing of sufficient present learning in the general law to demonstrate such learning by passing one of the general examinations (designated by the hearing panel and taken within two years thereafter) prescribed by the Rules Regulating Admission to Practice Law in California. If petitioner has not passed the Professional Responsibility Examination by the conclusion of the hearings, the hearing panel, in its discretion, may permit the petitioner a period of up to two years thereafter within which to pass the examination. A petitioner taking an examination shall pay the reasonable fee fixed therefor. (Renumbered August 22, 1980.)

RULE 668. ISSUES.

The issues before the hearing panel are those stated in Rule 667 and the hearing panel shall adopt separate findings of fact with respect to each. (Renumbered August 22, 1980.)

RULE 669. FAVORABLE RECOMMENDATION; FILING WITH SUPREME COURT.

A certified copy of a decision recommending reinstatement of the petitioner, together with the transcript, shall be filed by the director with the Clerk of the Supreme Court when, under the terms of the decision, the petitioner is entitled to reinstatement. (Renumbered August 22, 1980.)

CHAPTER 11
CLIENT SECURITY FUND PROCEEDINGS

RULE 670. SCOPE.

This part applies to proceedings conducted upon applications for reimbursement from the Client Security Fund of the State Bar established pursuant to Section 6140.5, Business and Professions Code and "Resolution Establishing a Client Security Fund" adopted by the Board of Governors on June 17, 1971. Such proceedings are non-adversary proceedings. The provisions of this part shall prevail over any conflicting provisions of said resolution.

RULE 671. DEFINITIONS.

A. The "fund" is the Client Security Fund of the State Bar of California.

B. The term "lawyer" as used in these rules means an active member of the State Bar of California domiciled in California at the time of the act or omission which is the basis of the application to the fund. The act or omission complained of need not have taken place within the State of California in order for an application to the fund to be made or to be granted.

C. The words "dishonest conduct" or "dishonest act" as used herein mean wrongful acts committed by a lawyer in the manner of defalcation or embezzlement of money; or the wrongful taking or conversion of money, property or other things of value; or refusal to refund unearned fees received in advance where the lawyer performed no services or such an insignificant portion of the services that the refusal constitutes a wrongful taking or conversion of money; or borrowing money from a client without intention or reasonable ability or reasonably anticipated ability to repay it. (Amended July 24, 1982; August 13, 1983, effective September 1, 1983.)

D. "Reimbursable losses" are those losses of money, property or other things of value which meet all of the following tests:

1. The loss was caused by the dishonest conduct of a lawyer when

(a) acting as a lawyer, or

(b) acting in a fiduciary capacity customary to the practice of law, such as administrator, executor, trustee of an express trust, guardian or conservator; or

(c) acting as an escrow holder or other fiduciary, having been designated as such by a client in the matter in which the loss arose or having been so appointed or selected as a result of a client-attorney relationship.

2. The loss was that of money, property or other things of value which came into the hands of the lawyer by reason of having acted in the capacity described in paragraph D 1 of this rule.

3. The dishonest conduct occurred on or after March 4, 1972 (the effective date of Section 6140.5 of the Business and Professions Code).

4. The following shall not be an applicant:

(a) The spouse or other close relative, partner, associate or employer or employee of the lawyer, or

(b) an insurer, surety, or bonding agency or company which seeks reimbursement for payment made under an insurance or surety contract or bond covering the risk involved in the lawyer's dishonest conduct, or

(c) any business entity controlled by (1) the lawyer, (2) any person described in paragraph (a) hereof, or (3) any entity either described in paragraph (b) hereof or in turn controlled by the lawyer or a person or entity described in paragraphs (a) or (b) hereof, or

(d) a governmental entity or agency.

5. The loss, or reimbursable portion thereof was not covered by any insurance or by any fidelity or similar bond or fund, whether of the lawyer or the applicant or otherwise.

6. Either

(a) the lawyer

(i) has died or has been adjudicated mentally incompetent;

(ii) has been disciplined, or has voluntarily resigned from the practice of law in California;

(iii) has become a judgment debtor of the applicant or has been adjudicated guilty of a crime, which judgment or judgments shall have been predicated upon dishonest conduct while acting as specified in paragraph D 1 of this rule and which judgment or judgments remain unsatisfied in whole or in part; or

(b) The review department in its discretion waives the requirements of the foregoing provisions of this subsection 6.

RULE 672. APPLICATIONS FOR REIMBURSEMENT.

A. The Executive Committee shall prepare or approve a form of application for reimbursement.

B. The form shall be executed under penalty of perjury as set forth in Section 2015.5 of the Code of Civil Procedure, or in compliance with Sections 2013 or 2014 of the Code of Civil Procedure, where applicable, and shall require, as minimum information:

1. The name and address of the lawyer.

2. The amount of the alleged loss.

3. The date or period of time during which the alleged loss was incurred.

4. The date upon which the alleged loss was discovered.

5. Name, address and telephone number of the applicant.

6. The general statement of facts relative to the application.

7. A statement that the applicant agrees to cooperate with the State Bar in reference to these proceedings, disciplinary proceedings or civil actions which may be brought in the name of the State Bar pursuant to a subrogation and assignment clause which shall also be contained within the application.

8. A statement that the applicant has read these rules and agrees to be bound by them.

9. A statement that the loss was not covered by any insurance, indemnity or bond, or if so covered the name and address of the insurance or bonding company, if known, and the extent of such coverage and the amount of payment, if any, made.

C. The form or application shall contain the following statement in bold type:

"THE STATE BAR OF CALIFORNIA HAS NO LEGAL RESPONSIBILITY FOR THE ACTS OF INDIVIDUAL LAWYERS. PAYMENTS FROM THE CLIENT SECURITY FUND SHALL BE MADE IN THE SOLE DISCRETION OF THE STATE BAR OF CALIFORNIA."

RULE 673. FILING OF APPLICATIONS AND PRELIMINARY CONSIDERATION.

A. An application for reimbursement shall be filed with the San Francisco or Los Angeles office of the State Bar. The chief trial counsel shall designate a State Bar staff attorney or attorneys to process such applications and to present such applications to hearing panels and to the review department.

B. Whenever the staff attorney reports that in his opinion a prima facie case for a reimbursable loss is not shown, such report shall be transmitted to the review department and if approved by a majority of the review department voting when a vote is taken, constitutes rejection of the application without the necessity of a hearing. Any such report shall state the reasons for the opinion and may rely on information outside the application, including further

information from the applicant, provided that such information is identified in the report.

C. In all other cases the application shall be referred as follows:

1. If a lawyer is deceased, disbarred or has resigned from the practice of law in California or has been disciplined as the result of conduct involved in the application and said discipline has become final:

(a) to a hearing panel or a hearing referee, if the application is for reimbursement of more than $5,000;

(b) if the application is for reimbursement of $5,000 or less, to an examiner appointed by Chief Trial Counsel for investigation and recommendation to the Review Department.

2. In other cases, to the Review Department which shall decide as to the disposition of the application. The Review Department may, by standing order or otherwise, refer some or all of such applications to the Hearing Department or to Department of Trial Counsel. (Amended May 1, 1982.)

D. Applications for reimbursement referred for hearing shall be heard by the Hearing Department and may be heard by either a hearing panel or a single referee.

E. An applicant may, upon written notice to the State Bar, withdraw his application for reimbursement from the fund at any stage of the processing of said application.

RULE 674. AUTHORITY OF HEARING PANELS, REFEREES AND THE REVIEW DEPARTMENT.

Upon consideration of applications for reimbursement, the review department, any hearing panel or any referee of the hearing department may:

(a) Take and hear evidence pertaining to the application.

(b) Administer oaths and affirmations.

(c) Compel, by subpoena, the attendance of witnesses and the production of books, papers and documents pertaining to the application. Any subpoena duces tecum may provide that the books, papers or other documents be produced at an administrative office of the State Bar in care of the director or his or her delegates.

RULE 675. TRANSFERS AND CONSOLIDATIONS.

(a) A proceeding on an application may be ordered transferred from one hearing panel or referee to another by the presiding referee.

(b) When two or more applications involve the same member or the same member and another member or members or when an application involves a member who is the respondent in a pending disciplinary proceeding, the presiding referee may order the applications, or the application(s) and the disciplinary proceeding, consolidated for hearing before the same hearing panel or referee, if no substantial rights will be prejudiced.

RULE 676. EVIDENCE.

(a) In the case of an application or applications consolidated for hearing with a pending disciplinary proceeding, the provisions of Rule 556 (rules of evidence) shall govern the consolidated proceeding.

(b) In all other cases, the proceedings had upon the applications need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in court proceedings. The applicant shall have the duty to supply relevant evidence to support the application.

RULE 677. WHEN TESTIMONY IS TO BE REPORTED AND TRANSCRIBED.

Hearings at which testimony is presented before a hearing panel or the review department may be recorded by a certified shorthand reporter or by electronic equipment and methods approved by the Board of Governors as directed by the review department or otherwise. A transcript of all or a portion of such proceedings shall be prepared upon direction of the review department, the hearing panel, referee of the hearing department, the director or his or her designee. An original and two copies of any such transcript shall accompany any report filed pursuant to Rule 678(B) if payment of more than $5,000 is recommended. (Amended May 1, 1982.)

RULE 678. CONSIDERATION BY HEARING PANEL OR REFEREE OF THE HEARING DEPARTMENT.

A. Upon receipt of an application the hearing panel or referee shall conduct such investigation and hold such hearings as said hearing panel or referee determines necessary to establish whether the application should be granted.

B. At the conclusion of its consideration of the application the hearing panel or referee shall promptly make and transmit to the appropriate office of the State Bar a report consisting of a brief statement of the proceedings had, clear and concise findings of fact, a brief statement of conclusions based thereon and such recommendations as said hearing panel or referee determines to be warranted thereby.

RULE 679. LAWYERS' OPPORTUNITY TO BE HEARD.

Prior to any payment from the fund being ordered by the review department or any recommendation being made for such payment by any hearing panel referee of the hearing department, the lawyer or his personal representative, guardian or conservator shall be given reasonable notice and reasonable opportunity to be heard and present evidence upon the issues involved in the proceedings.

RULE 680. CONSIDERATION BY THE REVIEW DEPARTMENT.

A. The review department shall review all reports filed by hearing panels or referees pursuant to Rule 678(B), shall have the authority specified in Rule 681 and shall perform

other functions as provided in these rules or required by the Board of Governors. Meetings of and hearings conducted by the review department on applications may be held at such place and at such time as may be fixed by the review department or the assistant presiding referee of the review department.

B. All reports filed by hearing panels and hearing referees pursuant to Rule 678(B) are advisory only and shall be placed upon the calendar of the review department for consideration and decision. Written notice that the report has been placed upon said calendar and a copy of said report shall be sent by the Division of State Bar Courts to the lawyer or his personal representative, guardian or conservator and to the Department of Trial Counsel. The notice shall be mailed at least twenty (20) days prior to the meeting at which the review department will consider the application.

C. Before the review department directs that any payment be made from the fund with respect to any application, the lawyer or his personal representative, guardian or conservator shall be given an opportunity to file a written statement with the review department in support of or in opposition to the report of the hearing panel or referee or an application for the presentation of additional evidence, which statement or application must (1) be filed within ten (10) days after mailing of the notice and report and (2) conform to Rule 561 of these rules as to form and content.

D. The review department may on its own motion refer, recall or re-refer an application for reimbursement to the same or another hearing panel or referee for (1) hearing de novo or (2) to take additional evidence and submit a revised report based thereon.

RULE 681. DECISION BY THE REVIEW DEPARTMENT.

A. The review department has the sole and final authority to determine whether and to what extent any application for reimbursement shall be granted and shall determine the order, manner (which may be in installments), and amount of payment of each application. The review department may, but is not required to, postpone consideration of any application until after any disciplinary action or any court proceeding pending or contemplated has been completed.

B. Before the review department directs that payment from the fund be made it must find that a reimbursable loss as defined in these rules has been established and the extent of said loss.

C. No payments from the fund shall be made which exceed the sum of $25,000 to any and all claimants suffering pecuniary loss in any one transaction, matter or proceeding as the result of the dishonest act or acts of any one or more lawyers, firms or lawyers or law corporations occurring on or before December 31, 1981. Payment for such losses occurring on or after January 1, 1982 may be made up to, but may not exceed, the sum of $50,000. (Amended May 1, 1982.)

D. No payments from the fund shall be made for interest on, or damages resulting from, any reimbursable loss.

E. Action of the review department may be taken (1) at a meeting or (2) by a poll of referees of the review department if such poll has been authorized by the review department or the assistant presiding referee of the review department. The concurring vote of a majority of the referees of the review department then in office shall constitute action by the review department in a duly authorized poll of its membership. In other cases, the vote of a majority of the referees of the review department present and voting when a vote is taken shall constitute action by the review department.

RULE 682. PAYMENTS AT DISCRETION OF STATE BAR.

All payments from the fund shall be a matter of grace and not of right and shall be in the sole discretion of the State Bar of California. No client or member of the public shall have any right in the fund as a third party beneficiary or otherwise.

RULE 683. ASSIGNMENT OF APPLICANT'S RIGHTS AND SUBROGATION.

Payments on approved applications shall be made from the fund only upon condition that the State Bar of California receives, in consideration for any payment from the fund, a pro tanto assignment from the applicant of the applicant's right against the lawyer involved, or his personal representative, his estate or assigns. The collection of the aforementioned assignment shall be handled by the office of the general counsel of the State Bar under the supervision of the Board of Governors or in such other manner as may from time to time be directed by the Board of Governors. In order to effect collection of said assignment, general counsel may disclose such information concerning the application and the consideration thereof by the State Bar as in general counsel's discretion is necessary and general counsel may disclose matters otherwise confidential under these rules as deemed required by general counsel in filing or responding to any pleading or contention. Upon commencement of an action by the State Bar of California, pursuant to its subrogation rights, it shall give written notice thereof to the applicant at his last known address.

RULE 684. APPLICANT MAY BE ADVISED.

The applicant may be advised of the status of the State Bar's consideration of his application and shall be advised of the final determination of the State Bar upon the same. In written communications to the applicant the lawyer's name shall not appear unless and until the review department has directed that a payment be made to the applicant from the fund.

RULE 685. REJECTION OF APPLICATION. FINALITY.

Rejection by the review department of all or part of the amount requested by the applicant in an application is final and no further consideration shall be given by the State Bar to said application or another based upon the same alleged facts. However, the review department, a hearing panel or a referee may allow the applicant or attorney involved a continuance in order to obtain additional evidence, or they may provide advice to the applicant on points that they consider require additional evidence or explanation.

RULE 686. NO ATTORNEY'S FEE TO BE CHARGED.

No attorney shall be compensated from any source for prosecuting an application against the fund.

RULE 687. CONFIDENTIAL NATURE OF PROCEEDINGS AND RECORDS.

A. The review department, any hearing panel, and any referee of the hearing department, during consideration of an application, may have access to State Bar disciplinary files and records, if any, pertaining to the alleged loss notwithstanding the provisions of Rules 221 and 223 of these rules. Any information or documents obtained from said files or records shall be used solely for the purpose of determining the validity of the application, or, in the case of an application consolidated for hearing with a pending disciplinary proceeding, solely for the purposes of determining the validity of the application and the issues in the disciplinary proceeding, but otherwise shall constitute confidential information as provided in said Rules 221 and 223.

B. The files and records pertaining to all applications for reimbursement from the fund and all investigations or proceedings conducted in connection therewith are the property of the State Bar and are confidential and no information concerning them and the matters to which they relate shall be given to any person except upon order of the Board of Governors or as in these rules provided.

C. Unless otherwise ordered by the Board of Governors, the proceedings conducted before the review department and any hearing panel and any referee of the review department shall not be public and Rules 224 and 225 of these rules shall not be applicable.

D. Upon the written request of all applicants named in an application, the review department at its discretion may authorize release of the following information to third persons: (1) the caption of said application, (2) the date said application was filed, and (3) the amount applied for in said application.

E. Upon order of the review department directing payment from the fund, the order, the application for reimbursement, the formal pleadings, transcripts, exhibits, findings, conclusions and recommendations in the client security fund proceeding shall be available for public inspection, but copies thereof shall be made only at the expense of the person requesting the same. (Amended May 1, 1982.)

RULE 688. OTHER RULES.

Except where otherwise specifically provided in this part, Rules 105-108, 210, 230, inclusive, of these rules shall be applicable to proceedings pursuant to this part; and in such cases, the reference to "member" shall apply to the lawyer, the reference to "investigation referee" or "hearing panel" shall apply to a hearing panel or referee of the hearing department or to the review department, and the reference to "investigations" and "formal proceedings" shall apply to investigations and hearings conducted pursuant to this part.

CHAPTER 12.
FEE ARBITRATION PROCEEDINGS

NOTE: Arbitration is conducted by the State Bar of California only where there is no approved local procedures for arbitration. Arbitration conducted pursuant to these rules is applicable on to those services which were rendered on or after January 1, 1979.

ARTICLE 1.
MANDATORY ARBITRATION ALTERNATIVES

RULE 690. MANDATORY ARBITRATION FOR ATTORNEYS.

Arbitration under Business and Professions Code §§6200-6206 is voluntary for a client and mandatory for an attorney if commenced by a client.

RULE 691. NOTICE.

Except as to an action filed in small claims court, the attorney must, prior to or at the time of service of summons in an action against the client for the recovery of fees for professional services rendered, serve upon the client a written "Notice of Client's Right to Arbitrate", in the form appended to these rules. Failure to give this notice shall be a ground for dismissal of the action. (Amended December 18, 1982, effective January 1, 1983.)

RULE 692. STAY OF PROCEEDINGS.

If an attorney, or the attorney's assignee commences a fee collection action in any court, other than small claims court, the client may seek to stay the action by filing a request for arbitration on the approved State Bar form with the court, with proof of service on the attorney or the attorney's assignee and the State Bar of California.

RULE 693. WAIVER OF RIGHT TO REQUEST OR MAINTAIN ARBITRATION.

A client's right to request or maintain arbitration is waived if:

(a) the client answers a complaint in a civil action before filing a request for arbitration, provided notice of the right to arbitrate was given pursuant to Rule 691;

(b) the client commences an action or files any pleading seeking judicial resolution of a fee dispute or seeking affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct; or

(c) the client fails to request arbitration, pursuant to Rule 700, within thirty (30) days after receipt of the Notice of Client's Right to Arbitrate.

(Amended December 18, 1982, effective January 1, 1983.)

ARTICLE 2.
DISPUTES SUBJECT TO ARBITRATION

RULE 695. FEES FOR PROFESSIONAL SERVICES.

Disputes concerning fees charged for professional services by an attorney are subject to arbitration under these rules, except for:

(a) disputes where the attorney is also admitted to practice in another state, and he maintains no office in the State of California, and no material portion of the services were rendered in the State of California;

(b) disputes where the client seeks affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct; or

(c) disputes where the fee to be paid by the client or on his behalf has been determined pursuant to statute or court order.

RULE 696. DETERMINATION OF JURISDICTION.

Each arbitration panel shall have the authority to determine jurisdiction and shall decline to act if there is a determination that it lacks jurisdiction. In any instance where jurisdiction is declined, the chair of the panel shall promptly notify the parties and the assistant presiding hearing referee of the State Bar.

RULE 697. VENUE.

Except as upon order of the Presiding Referee or the Assistant Presiding Referee, Hearing Department, following notice and for good cause shown, a fee dispute will be heard in the county of residence of the client at the time the legal services commenced.

ARTICLE 3.
INITIATION OF PROCEEDINGS

RULE 700. REQUEST FOR ARBITRATION.

Arbitration is initiated by filing with the State Bar of California a written "Request For Arbitration" on the approved State Bar form, showing service thereof on the other party and paying the appropriate filing fee as established by the State Bar.

RULE 701. BINDING ARBITRATION.

If both parties agree in writing that arbitration shall be binding, no appeal from the award, except that provided for in Code of Civil Procedure §1285 is allowed.

RULE 702. IN FORMA PAUPERIS.

Any party requesting arbitration who does not have the money to pay the filing fee may apply for a waiver of the fee on the State Bar form.

RULE 703. REPLY.

(a) Any reply to a Request for Arbitration must be filed within twenty (20) days of the service of the request.

(b) If the attorney seeks arbitration, arbitration shall proceed only if the client files and serves written consent within twenty (20) days of service of the request.

(c) All Consents and Replies shall be on the approved State Bar forms and filed with the State Bar with copies served on the opposing party.

RULE 704. HEARING.

The hearing shall commence within forty-five (45) days after service of the "Notice of Appointment of Panel", unless there has been a disqualification or allowed challenge, in which case there shall be a fifteen (15) day extension. Upon stipulation or application to the chair of the panel the matter may be continued for good cause shown except in the instance where the continuance is for thirty (30) days or more in which case the continuance must be approved by the assistant presiding hearing referee. The panel shall serve written notice of hearing on each party and the State Bar, within ten (10) days of its appointment and at least fifteen (15) days prior to the hearing date. Appearance by a party at a scheduled hearing shall constitute waiver by said party of any deficiency with respect to the giving of notice of hearing. Notwithstanding failure of either party to attend, the hearing shall proceed as scheduled and a decision made on the basis of evidence. If neither party attends, the panel may terminate the arbitration by making an award that neither party is entitled to any relief.

RULE 705. AWARD.

(a) The panel shall make its award within fifteen (15) days of the close of the hearing.

(b) The award shall be in writing. It shall include a determination of all the questions submitted to the panel, the decision of which is necessary in order to determine the controversy.

(c) The award shall be signed by the arbitrators concurring therein.

(d) Whenever there are two or more arbitrators, a majority vote shall be sufficient for all decisions of the arbitrators, including the award.

(e) The award may include an allocation of the filing fee and the fee paid by the client for filing a stay with the court.

(f) The panel shall forward the original and four copies of the signed award to the State Bar, which shall serve a copy of the award by mail on each party. The panel shall return all exhibits and documents to the parties who submitted them.

ARTICLE 4.
PANELS

RULE 710. APPOINTMENT OF PANEL.

For each dispute a panel shall be appointed by the assistant presiding hearing referee from the State Bar pool of arbitrators. A panel shall consist of (1) arbitrator for disputes involving less than $3,000.00 and three (3) arbitrators for disputes involving $3,000.00 or more, one of whom shall be designated as chair by the assistant presiding hearing referee. If a fee dispute involves $3,000.00 or more, the parties may agree to have the matter heard by a single arbitrator. Any vacancy, by way of disqualification or inability to serve, shall be filled by

the assistant presiding hearing referee. (Operative July 1, 1982; Amended April 3, 1982.)

RULE 711. NOTICE OF APPOINTMENT OF PANEL.

The panel shall be appointed and a notice identifying the Panel shall be served on the parties within twenty (20) days of the filing by the client of the Request or the Consent to Arbitrate.

RULE 712. CHALLENGE-DISQUALIFICATION OF ARBITRATOR(S).

An arbitrator who for any reason may not be impartial shall disqualify him or herself. Each party may disqualify one arbitrator without cause and shall have unlimited challenges for cause. Any disqualification or challenge of an arbitrator shall be ineffective unless made in writing and served on the State Bar and the other party within fifteen (15) days of the service of the "Notice of Appointment of Panel" or substitute arbitrator(s) if there is a disqualification or allowed challenge. The challenge or disqualification shall be heard and decided by the panel in the case of a three member panel and by another referee or the assistant presiding hearing referee in the case of a single arbitrator.

ARTICLE 5.
THE HEARING

RULE 715. SUBPOENAS.

Any panel member shall, for good cause shown, issue subpoenas and/or subpoenas duces tecum at the request of a party.

RULE 716. RIGHT TO COUNSEL.

Either party, at his own expense, may be represented by an attorney.

RULE 717. EVIDENCE.

Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule to the contrary.

RULE 718. OATHS.

Testimony of the witnesses shall be given under oath, to be administered by the panel.

RULE 719. WAIVER OF PERSONAL APPEARANCE.

(a) Any party who lives 150 miles or more from the site of the hearing may waive personal appearance and submit to the panel testimony and exhibits by written declaration under penalty of perjury.

(b) For good cause shown the panel may waive personal appearance at the hearing.

(c) Stipulations and admissions dispensing with formal proof or of facts not in dispute are encouraged.

(d) Submission of testimony pursuant to this rule by written declaration constitutes an appearance.

RULE 720. MANNER OF PROOF.

The parties shall present their proof in a manner determined by the panel.

RULE 721. TRANSCRIPTS.

Any party may provide for the attendance of a certified shorthand reporter at that party's expense. Every party to the arbitration shall be entitled to a copy of said reporter's transcript of the testimony upon written request and payment of the expense thereof.

RULE 722. INTERPRETER.

Any party may provide for the attendance of a person to interpret at that party's expense.

RULE 723. ADJOURNMENT.

The Panel may adjourn from time to time as is necessary in its discretion or for good cause shown at the request of either party.

ARTICLE 6.
GENERAL

RULE 730. DEATH OR INCOMPETENCY OF A PARTY.

In the event of death or incompetency of a party prior to the close of the hearing, the personal representative of the deceased party or the guardian or conservator of the incompetent may be substituted.

RULE 731. CONFIDENTIALITY.

(a) All hearings shall be closed to the public except for witnesses while testifying.

(b) The panel upon request of the client may permit members of the client's immediate family to be present.

RULE 732. SERVICE.

Unless otherwise specifically stated in these rules, service shall be by personal delivery or by deposit in the United States mail, postage paid, addressed to the person on whom it is to be served, at his or her office address as last given, on any document which has been filed in the arbitration and served on the party making service by mail; otherwise at his or her place of residence. The service is complete at the time of deposit. The time for performing any act shall commence on the date service is complete and shall not be extended by reason of service by mail.

RULE 733. STATE BAR.

Whenever these rules indicate that a copy of any form or other matter be sent to the State Bar, the item should be addressed as follows:

Office of the State Bar Court
State Bar of California
555 Franklin Street
San Francisco, CA 94102
(Amended December 18, 1982, effective January 1, 1983.)

CHAPTER 13
LAWYER REFERRAL SERVICE PROCEEDINGS
(Adopted March 26, 1983)

ARTICLE 1.
COMPLAINT AND INVESTIGATION PROCEDURES.

RULE 750. INITIATING COMPLAINT.

Complaints as to the conduct of a Lawyer Referral Service ("Service") shall be submitted to the State Bar at its San Francisco office in the Department of Legal Services.

RULE 751. FORM OF COMPLAINT.

The complaint shall be a written statement, which shall set forth in a clear and concise manner, the particular acts or omissions which constitute the basis for the complaint. Upon the request of the State Bar, the complainant shall be required to present further information, relevant to the complaint, on a form provided by the State Bar. An investigation may be commenced whether or not a complaint has been made to the State Bar.

RULE 752. INVESTIGATION.

If the complaint properly alleges a violation of Minimum Standards, the Board Committee on Legal Services may refer the complaint to the Office of Trial Counsel for investigation. The Service, if requested, by Office of Trial Counsel must submit a written response within 30 days. If, after such investigation, the Office of Trial Counsel determines that reasonable cause to issue a notice to show cause does not exist, the matter shall be dismissed and the complainant and the Service informed of such action.

RULE 753. DETERMINATION OF REASONABLE CAUSE AND ISSUANCE OF NOTICE TO SHOW CAUSE.

The procedures to determine whether reasonable cause exists for the issuance of a notice to show cause directed to a Service and the procedures for issuance of said notice to show cause shall be conducted where appropriate in accordance with the procedures set forth in rule 509-511 of the Rules of Procedure of the State Bar. As to rules 509-511, the term "Member" shall refer, where appropriate, to the Service.

ARTICLE 2.
FORMAL PROCEEDINGS.

RULE 754. RULES INCORPORATED.

Except as otherwise provided in this Article 2, formal proceedings to determine whether the State Bar shall withdraw the authority of a Service to operate shall be conducted in accordance with the procedures set forth in the following provisions of the Rules of Procedure of the State Bar:

Rules 110-115	(State Bar Court),
Rule 210	(State Bar Examiners),
Rules 220-228	(Confidentiality of State Bar Court Recorder and Proceedings),
Rules 230-231	(Disqualification),
Rules 240-243	(Service and Filing of Papers),
Rules 250-252	(Venue),
Rules 261-262	(Consolidation and Transfer),
Rules 270-272	(Transcripts),
Rules 300-324	(Subpoenas and Discovery),
Rule 350	(Stays),
Rules 401-411	(Stipulations and Terminations),
Rules 450-453	(Review),
Rule 508	(Authority to Terminate Matter),
Rule 512	(Request for Further Proceedings), and
Rules 552-574	(Formal Proceedings and Hearing).

As to the Rules of Procedure incorporated by reference in this Chapter, the term "Member" shall refer, where appropriate, to the Service.

In formal proceedings conducted under this Chapter, the State Bar shall be represented by an Examiner selected pursuant to the provisions of Rule 210 of these Rules.

The authority of a Service to operate shall be withdrawn only upon a finding supported by clear and convincing evidence of a wilfull violation of one or more provisions of Minimum Standards for a Lawyer Referral Service in California.

RULE 755. FINDINGS.

Within thirty (30) days after the submission of the matter, the Hearing Panel shall file its written findings of fact, decision and recommended sanctions as may be provided for by the Minimum Standards, if any.

RULE 756. FINALITY OF HEARING PANEL DECISION; REVIEW BY REVIEW DEPARTMENT.

The decision of the Hearing Panel or of any referee approving a stipulation as to facts and disposition shall become the final decision of the State Bar as to whether any action shall be taken against a Service; unless a timely request for review is filed and served pursuant to the provisions of rule 450 of these Rules. In case a timely request for review is filed, the action of the Review Department of the State Bar Court shall become the final action of the State Bar.

CHAPTER 14.
LEGAL SERVICES TRUST FUND PROCEEDINGS.
(Amended August 13, 1983)

RULE 775. SCOPE.

This chapter (rules 775-783) applies to hearings required by Business and Professions Code Section 6224 and the Rules Regulating Interest-Bearing Trust Fund Accounts For the Provision of Legal Services to Indigent Persons (hereinafter "Trust Fund Rules").

RULE 776. HEARINGS AS A FORMAL PROCEEDING.

A hearing conducted pursuant to rule 775 shall constitute a formal proceeding and be governed, insofar as practicable, by rules 550-575.

RULE 777. APPEARANCES BY COUNSEL.

In proceedings conducted pursuant to these rules, the Client Trust Fund Commission established pursuant to rule 4 of the Trust Fund Rules (hereinafter "Commission") and an applicant or recipient shall be represented by their respective counsel. The Commission's counsel (hereinafter referred to as an "examiner") shall be selected as determined by the Board of Governors.

RULE 778. AUTHORITY OF REFEREES.

In the conduct of proceedings upon a denial of an initial application, or application for renewal of, or termination of funding, the referee(s) having jurisdiction may (1) take and hear evidence pertaining to the proceeding, (2) administer oaths and affirmations; and (3) compel, by subpoena, the attendance of witnesses and the production of books, papers and documents pertaining to the proceeding. Depositions may be taken and used in the same manner as in civil cases. Whenever any person subpoenaed to appear and give testimony or to produce relevant books, papers, or documents refused to appear or testify before the referee(s), or to answer any pertinent and proper question, or to produce such books, papers, or documents, he or she is in contempt. Upon request of a party, the referee(s) shall report such alleged contempt to the superior court as provided in Section 6051 of the Business and Professions Code. The party seeking enforcement by contempt shall prepare and file with the State Bar pursuant to rule 240 a proposed form of alleged contempt and all legal documents, including transcript and memoranda, needed or desirable to present the contempt matter to the superior court. If the documents are approved as to form by general counsel of the State Bar, the party seeking enforcement, alone or with general counsel, shall prosecute the proceeding in the superior court on behalf of the referee(s).

RULE 779. NOTICE OF HEARING; PUBLIC HEARING.

An applicant or recipient entitled to a hearing shall receive no less than forty-five (45) days' advance written notice of the date, time and place of the hearing, the reason(s) for the denial or termination of funding, and the applicant's or recipient's rights under these rules. The hearing shall be held in the same county as the applicant's or recipient's principal office. The notice of hearing, the hearing before the referee, and the decision of the referee shall be public. Any copy of the record of hearing shall be made at the expense of the party or person requesting the same. Within the meaning of these rules, a "party" means the Commission, applicant or recipient.

RULE 780. SERVICE OF DECISION.

The decision of the Hearing Department in form provided by these rules shall be served by mail on the applicant or recipient and the examiner within 30 days after the conclusion of the hearing.

RULE 781. REVIEW OF HEARING DEPARTMENT DECISION.

A decision of the Hearing Department shall be final as to the State Bar and subject to review by the Supreme Court in accordance with the procedure prescribed in rule 952(c) of the California Rules of Court if:

1. No application or request under rule 562 has been timely filed; and

2. Either (a) the decision is not adverse to the applicant or recipient; or (b) the decision is adverse to the applicant or recipient, but no request for review has been timely filed by the applicant or recipient as provided for in rule 782.

All other decisions of the Hearing Department shall not be final as to the State Bar and shall be reviewed by the Review Department pursuant to rule 782.

As used in this chapter (rules 775-783), a decision "adverse to an applicant or recipient" is any decision in which an applicant whose initial application for an allocation has been denied, whose existing funding has been terminated during an allocation year, or whose application for renewal of an annual allocation has been denied or not renewed.

RULE 782. REVIEW BY REVIEW DEPARTMENT.

Within 15 days after service of the Hearing Department's decision or within 15 days after service of notice of ruling on an application under rule 562 of these rules, the applicant or recipient may serve and file with the Office of the Clerk of the State Bar Court a request for review. If such a request is timely filed or if a decision of the Hearing Department is not final as to the State Bar pursuant to rule 781, the decision of the Hearing Department shall be reviewed by the Review Department pursuant to the provisions of rules 451-452 of these rules. The decision of the Review Department pursuant to this rule shall be final as to the State Bar and subject to review by the Supreme Court in accordance with the procedure prescribed in rule 952(c) of the California Rules of Court.

RULE 783. RULES INCORPORATED.

Rules 1 through 453 and 550 through 574 and 615 shall apply as nearly as may be practicable in proceedings pursuant to this chapter (rules 775-783), to the extent not inconsistent with the provisions of this chapter and with the exception of the following rules: rules 261 and 270 (investigations), rule 272 (perpetuation of testimony), rules 350-352 (pertaining to stays), rules 501-513 (procedures applicable to investigations), rule 554 (notice of hearing), and rules 571-575 and 615 (specific rules re discipline). In such incorporated rules, the reference to

"member" shall apply to an applicant or recipient, the reference to "formal proceedings" or to "formal hearings" shall apply to proceedings and hearings conducted pursuant to this chapter (rules 775-783), and the reference to "notice to show cause" means the notice of hearing on denial or termination of funding.

GUIDELINES ADOPTED PURSUANT TO RULE 531, RULES OF PROCEDURE

(As adopted by the Board of Governors December 19, 1981, operative January 1, 1982.)

1. Rule 531 Order Required

The auditor may not commence an audit pursuant to Rules 530, 534, Rules of Procedure of the State Bar, until and unless the auditor has received fully conformed copies of:

(a) The Rule 531 order authorizing the audit;
(b) The Rule 530 application for such order; and
(c) Proof of Service of the order upon those persons described in paragraph A(4) of Rule 531, who are known to the State Bar.

2. Confidentiality

Pursuant to Rule 533, Rules of Procedure, all files and records pertaining to reasonable cause investigative audits are confidential and no information concerning them and the matters to which they pertain may be disclosed to any person except for use in proceedings initiated by the State Bar pursuant to the Rules of Procedure.

(a) All inquiries, questions and problems regarding the application of Rule 533 confidentiality are to be refered by the auditor to the supervising attorney.

(b) If the attorney who is the subject of the audit wishes to authorize an employee or some other person, other than counsel for the respondent attorney, to respond to the auditor's requests for information and/or to assist the auditor in conducting the investigative audit, such authorization must be in writing and the writing must be dated and signed by the attorney who is the subject of the audit. The auditor shall obtain such written authorization before proceeding to work with the authorized agent of the attorney who is the subject of the audit.

(c) Neither the auditor nor any other employee or agent of the Division of Trial Counsel may contact non-complaining clients of the attorney with respect to whom a Rule 531 order has been issued without first obtaining written permision from a three person subcommittee of the Board of Governors Committee on Adjudication and Discipline.

3. Production of Books and Records

(a) Notwithstanding any offer or agreement of the respondent to the contrary, neither the auditor nor any other employee or agent of the Division of Trial Counsel shall take any original books or records of the respondent or firm of which he is a member from the custody of the respondent or firm of which he is a member during the course of an investigative audit. In the event that extended use of certain books and records is required by the auditor, the auditor may, with the approval of the supervising attorney, make arrangements for duplication of such records.

(b) The auditor shall not, under any circumstances, examine confidential client files regarding legal matters handled by the attorney who is the subject of the investigative audit. In the event that information needed by the auditor is contained in such a confidential client file, the auditor shall request that the information be removed from such file by the attorney who is the subject of the investigative audit or by that attorney's authorized agent, and that such information be produced, for examination by the auditor, in its segregated form.

(c) A true copy of the Rule 531 order must be attached to any and all applications for issuance of subpoenas duces tecum, pursuant to Rule 532.

4. Failure/Refusal to Produce Books and Records

If any person fails or refuses to comply with a subpoena issued pursuant to Rule 532, the auditor shall report such failure/refusal to the supervising attorney forthwith. If the failure/refusal to comply with such a subpoena is based upon an expressed claim of privilege, the auditor shall immediately desist from attempting to obtain production of such books and records and shall refer the matter to the supervising attorney for determination of what, if any, further actions will be taken by the Division of Trial Counsel to compel compliance with such subpoena.

5. Instructions Regarding Accounting Procedures/Practices

The auditor shall not instruct the attorney who is the subject of an investigative audit, or any of the attorney's employees or agents, regarding accounting procedures and/or practices of that attorney.

(a) In the event an audit discloses errors and/or improprieties in the accounting procedures/practices employed by an attorney, the auditor may, with the consent of the supervising attorney, recommend to the respondent that the respondent consult with a private accountant regarding such apparent errors or improprieties.

(b) In the event that an investigative audit reveals no violation of Rule 8-101 of the Rules of Professional Conduct, the notification required by Rule 534 of the Rules of Procedure shall be given by the supervising attorney and not by the auditor.

RECENT AMENDMENT TO THE RULES OF PROCEDURE

RULE 225. PUBLIC HEARING.

(a) (i) The hearings of the following formal proceedings shall be public hearings: Original disciplinary proceedings, conviction proceedings, probation revocation proceedings, Rule 955 proceedings, and reinstatement proceedings.

(ii) The hearings of all other formal proceedings shall be public only on order of the Board of Governors or when requested by the member. When such order or request is made it shall apply to any hearings before the hearing panel, any review conducted by the review department, and any hearing before the Board of Governors. Such order or request shall be made no later than twenty (20) days before the first scheduled day of the hearing before the hearing panel or the review department, as the case may be.

(b) (i) Any formal pleadings, transcripts, exhibits, decision pursuant to Rule 560, statements and applications pursuant to Rule 562, findings, conclusions and recommendation, reproval, dismissal or other decision resulting from public hearings and the record thereof shall be available for public inspection, but copies thereof shall be made only at the expense of the person requesting the same.

(ii) During the course of any hearing or conference, no photographing, recording for broadcasting, or broadcasting of proceedings, shall be permitted.

(c) (i) Upon a written tender of resignation and relinquishment of the right to practice law by a member of the State Bar that has been signed, dated and filed pursuant to Rule 960, California Rules of Court, the fact of the tender of a written resignation, as well as the member's transfer to inactive status, shall be public upon filing with the Office of the Clerk, State Bar Court, 1230 W. Third Street, Los Angeles, CA 90017.

(ii) The State Bar may disclose to the public the fact that a member has tendered a written resignation which has been filed pursuant to Rule 960, California Rules of Court, a description of each of the acts or omissions being investigated or the charges being prosecuted, the procedural aspects of such an investigation or proceeding, the current status of the investigation or proceeding and a statement defending the right of the member to a fair hearing. If a perpetuation proceeding is ordered by the Board of Governors pursuant to Rule 650, Rules of Procedure of the State Bar, the record of the perpetuation proceeding shall be public. A copy of the written resignation and the record of the perpetuation proceeding, if applicable, shall be available for public inspection at the Office of the Clerk, State Bar Court, 1230 W. Third Street, Los Angeles, CA 90017.

(d) The president of the State Bar of California, or the executive director or the director may give information concerning the pendency and status of such public hearing or the formal proceeding to which it pertains, and explain these rules or other procedures of the State Bar.

(e) Notwithstanding any public hearing or disclosure permitted by these rules, all aspects of the deliberations of referees of the State Bar Court are confidential. (Operative September 1, 1980; Amended August 17, 1985 effective September 16, 1985 [PUBLISHER'S NOTE: The Amended rules shall apply to all applicable formal proceedings filed on or after September 16, 1985 and all applicable pending formal proceedings in which the first day of hearing is held on or after September 16, 1985.].)

RECENT AMENDMENT TO THE RULES OF PROCEDURE

[NEW] RULE 558. HEARING PANEL, SIZE AND COMPOSITION; MASTER CALENDAR; COMPENSATED REFEREES.

(a) Except as provided in rule 558(a)(2) and (3), a hearing panel in the following matters shall consist of one referee who is a member of the State Bar:

(1) In a probation revocation or rule 955 proceeding,

(2) in a proceeding involving a law corporation conducted pursuant to Section 6169 of the Business and Professions Code unless the respondent or the State Bar has requested pursuant to procedure prescribed by the State Bar Court or the presiding referee, that the hearing panel be composed of three referees pursuant to rule 558(a)(3), and

(3) in any other formal proceeding heard by the State Bar Court unless, at the time of pre-trial conference or within 30 days in advance of the first day of formal hearing, whichever occurs earlier, either the examiner or the member or applicant elects to have the matter heard by a panel of three referees. Where timely elected, panels of three referees shall be assigned by the presiding referee or designee. Not more than one member of each three-member panel may be a nonlawyer. The presiding referee or designee shall assign one member of each three-member panel who is a member of the State Bar to serve as principal referee to act for the hearing panel in the making of rulings related to law or procedure, including but not limited to the admitting or excluding of evidence pursuant to the provisions of rule 556.

(b) The presiding referee or designee may institute one or more master calendar hearing systems in one or more cities and may assign formal proceedings to such a master calendar system for hearing.

(c) The board may appoint referees of the State Bar Court from among the members of the State Bar who may receive compensation for service not to exceed $100 per day for each day of service as State Bar Court referees. In addition, such compensated referees shall receive reimbursement for necessary expenses incurred, in the same manner as received by volunteer referees.

Notwithstanding an election pursuant to rule 558(a)(3) to have the matter heard by a panel of three referees, either the examiner or the member or applicant may serve upon the opposing party and file with the presiding referee a motion for an order assigning the proceeding to a single compensated referee for hearing.

A motion to have the matter heard by a single compensated referee shall be made not later than the time set for the election in rule 558(a)(3). Such motion shall be based on a showing that the proceeding is so complex or that the trial is likely to be so lengthy that it cannot be heard by volunteer referees without a likelihood of undue delay or burden to the State Bar Court. Where no such motion is filed, a referee of the State Bar Court assigned to the pre-trial phase of the proceeding may file such a motion with the presiding referee. The presiding referee or designee shall rule on

such motion after consultation with or briefing by the parties. The motion shall be granted if the presiding referee or designee determines that the proceeding is lengthy that it cannot be heard by volunteer referees without the likelihood of undue delay or burden to the State Bar Court. In assessing a motion under this section, the presiding referee or designee shall consider all relevant factors including the following:

(1) the number and complexity of the charges;

(2) the number and location of prospective witnesses;

(3) the potential need for discovery; and

(4) the complexity of the evidence likely to be adduced.

The decision of the presiding referee or designee to grant or deny a motion to assign the proceeding to a single compensated referee shall be final within the State Bar Court, unless within ten (10) days after service of the ruling of the presiding referee or designee on a motion to assign a compensated referee, either the examiner or the member or applicant serves and files with the board committee a request for review of the ruling.

Upon order by the presiding referee or designee assigning the proceeding to a single compensated referee for hearing, the name of said referee assigned will be promptly furnished the examiner and the member or applicant. Any challenge to said compensated referee shall be made pursuant to the provisions of rule 230. Such challenge shall be made promptly after assignment of the referee to the proceeding and must be made prior to the introduction of any evidence in the formal proceeding. (Amended June 1, 1984, effective September 1, 1984, see publisher's note, page 1, for those cases which fall under this rule; August 17, 1985.)

RECENT AMENDMENT TO THE RULES OF PROCEDURE

RULE 602. ISSUES.

The issue or issues before the hearing panel are those stated in the order of reference of the Supreme Court. The hearing panel may take into consideration evidence of facts not directly connected with the crime of which the member was convicted if the facts are material to the issues stated in the order of reference.

If the Supreme Court order of reference permits a member to elect or to object to the issue or issues to be the subject of hearing, a written election or objection shall be filed and served by the member within thirty (30) days after service of the notice of time and place of hearing. (Amended September 16, 1985.)

RULE 630. PROCEDURE.

(a) Proceedings pursuant to Article 12 (commencing with Section 6190), Chapter 4, Division 3, Business and Professions Code, to determine whether there is probable cause to believe that the facts set forth in Section 6190 of that code have occurred and whether the interests of the clients or an interested person or entity will be prejudiced if the court proceeding provided for by Article 12 is not maintained, shall be conducted as nearly as may be in accordance with the procedures set forth in Rules 250, 271, 501-516 as amended. The hearing shall be reported or recorded and, if probable cause is found, transcribed. As to those matters as to which probable cause has been determined to exist, the referee shall make findings showing that the facts set forth in Section 6190 of the Business and Professions Code have occurred and that the interests of the clients or an interested person or entity will be prejudiced if the court proceeding provided for by Article 12 of the Code is not maintained. As to those matters as to which probable cause has been determined to exist, a client or interested person or entity may obtain a certified copy of the record of hearing and findings for the purpose of applying to the superior court pursuant to Article 12.

(b) Upon a determination by the Office of Trial Counsel that there is probable cause to believe that the facts set forth in Section 6190 exist and a proceeding under that section is initiated, the Office of Trial Counsel may publish in a newspaper of general circulation most likely to give actual notice or through an official press release or in any other manner which would best give actual notice to the incapacitated attorney's clients that the attorney probably has abandoned his or her practice. (Amended Aguust 17, 1985 effective September 16, 1985 [PUBLISHER'S NOTE: The amended rules shall apply to all applicable formal proceedings filed on or after September 16, 1985 and all applicable pending formal proceedings in which the first day of hearing is held on or after September 16, 1985.].)

EXHIBIT F

COMPARISON OF PROCEDURAL RULES GOVERNING STATE BAR ATTORNEY DISCIPLINARY PROCEEDINGS WITH THOSE GOVERNING DISCIPLINARY PROCEEDINGS IN OTHER PROFESSIONS

Prepared by

The State Bar of California

August 1985

INTRODUCTION

This study compares the procedures used by the State Bar of California (hereinafter "State Bar") to discipline attorneys with those used by the agencies in the Department of Consumer Affairs (hereinafter "Department") to discipline members of other professions in California.

Sources of Procedural Law

The procedures used in either case result from a confluence of constitutional, statutory and administrative law.

In the case of State Bar disciplinary proceedings, the primary sources of procedural law are the State Bar Act (Bus. & Prof. Code, §§ 6000, et seq.), the Rules of Procedure of the State Bar of California (hereinafter "SB Rules Proc."), the Rules of Practice of the State Bar Court (hereinafter "SB Ct. Rules Prac.") and the California Rules of Court.

In the case of disciplinary proceedings brought by agencies within the Department, the primary sources of procedural law are the Administrative Procedure Act (Gov. Code, §§ 11370, et seq.) [hereinafter "APA"], the rules and regulations adopted by each particular agency which are published in the California Administrative Code, and the Code of Civil Procedure.

Format of Study

This study is presented in two parts and two appendixes.

The first part is a table comparing the time allowed for disciplinary proceedings under the two procedural schemes.

The second part is a detailed comparison of a number of key points of the two procedural schemes. They are as follows:

Structure

Notice to Show Cause / Accusation

Service of Process

Response to Notice to Show Cause / Accusation

Hearing Date

Venue

Amendments to Pleadings

Discovery

Compelling Discovery

Settlement Conference

Hearing Panel

Hearing and Decision

Reconsideration

Review of Hearing Decision

Judicial Review

For the reader not familiar with the procedural rules governing State Bar attorney disciplinary proceedings, the first appendix is a copy of the Rules of Procedure of the State Bar of California, and the second appendix is a copy of the Rules of Practice of the State Bar Court.

PART 1

TIME COMPARISON

COMPARISON OF TIME* ALLOWED FOR PROCEEDINGS UNDER
STATE BAR RULES WITH ADMINISTRATIVE PROCEDURES ACT

PRE-HEARING STAGE

STATE BAR	APA
1) Answer to NSC: 20 days after service (SB Rules Proc., rule 552)	1) Notice of Defense: 15 days after service
2) Discovery: 90 days after service (SB Rules Proc., rule 316)	
3) Settlement Conference: 90 days after service (SB Rules Prac., rules E.2(a) and (e))	
4) Notification of Hearing Date: 30 days before (SB Rules Proc., rule 554)	4) Notification of Hearing Date: 10 days before (Gov. Code, § 11509)
5) Hearing Date is Set: 60 days after settlement conference (SB Ct. Rules Prac., rule E.2(e))	5) Hearing Date is Set: 3-6 months after service**
CUMULATIVE ELAPSED TIME: Approximately 5 months	CUMULATIVE ELAPSED TIME: Approximately 3-6 months

* Unless otherwise noted, all times are maximum permissible times without extensions for good cause.
** Average time.

COMPARISON OF TIME* ALLOWED FOR PROCEEDINGS UNDER
STATE BAR RULES WITH ADMINISTRATIVE PROCEDURES ACT

HEARING STAGE

STATE BAR	APA
) Length of Hearing: 1 day**	6) Length of Hearing: 2-14 days**
) Hearing Decision: 30 days after hearing (SB Ct. Rules Prac., rule C.4)	7) Proposed Decision: 30 days after hearing (Gov. Code, § 11517(b))
JMULATIVE ELAPSED TIME: Approximately 6 months	CUMULATIVE ELAPSED TIME: Approximately 4-7.5 months

Unless otherwise noted, all times are maximum permissible times without extensions for good cause.
Average time.

COMPARISON OF TIME* ALLOWED FOR PROCEEDINGS UNDER
STATE BAR RULES WITH ADMINISTRATIVE PROCEDURES ACT

REVIEW STAGE

STATE BAR	APA
8) Request for Review: 15 days after decision (SB Rules Proc., rule 450 (a))	8) Agency Review: 100 days after decision (Gov. Code, § 11517(d))
9) Review Decision: 2.6 months after decision**	9) Agency Decision: 100 days after submission (Gov. Code, § 11517(d))
CUMULATIVE ELAPSED TIME: Approximately 8.6 months	CUMULATIVE ELAPSED TIME: Approximately 10.7-14.2 months
	10) Request for Reconsideration: 30 days (Gov. Code, § 11521(a))
11) Time to Effectuate Decision or Obtain Transcripts and Prepare Record for Filing with Supreme Court: 3.3 months**	11) Decision Becomes Effective: 30 days after delivered or mailed (Gov. Code, § 11519(a))
CUMULATIVE ELAPSED TIME: Approximately 11.9 months	CUMULATIVE ELAPSED TIME: Approximately 11.7-15.2 months
12) Supreme Court Effectuation: 3 months** (Required only for suspension or disbarment)	
CUMULATIVE ELAPSED TIME: Approximately 14.9 months	

* Unless otherwise noted, all times are maximum permissible times without extensions for good cause.
** Average time.

COMPARISON OF TIME* ALLOWED FOR PROCEEDINGS UNDER
STATE BAR RULES WITH ADMINISTRATIVE PROCEDURES ACT

LITIGATION STAGE

STATE BAR	APA
.3) Petition to Supreme Court: 60 days after filing (Bus. & Prof. Code, § 6083(a))	13) Petition to Superior Court: 30 days (Gov. Code, § 11523)
4) State Bar Response: 45 days (Cal. Rules of Court, rule 952(a))	
5) Petitioner's Reply: 15 days (Cal. Rules of Court, rule 952(a))	
	16) Preparation of Record: 30 days after request (Gov. Code, § 11523)
	17) Superior Court Decision: 2-3 months**
	18) Appeal to Court of Appeals: 1-3 years**
9) Supreme Court Decision: 2-5 months**	19) Appeal to Supreme Court: 1-3 years**
JMULATIVE ELAPSED TIME: Approximately 17.9-20.9 months	CUMULATIVE ELAPSED TIME: Approximately 39.7-92.2 month

Unless otherwise noted, all times are maximum permissible times without extensions for good cause.
Average time.

PART 2

PROCEDURE COMPARISON

STRUCTURE

The structures through which disciplinary proceedings are conducted by the State Bar and the agencies within the Department of Consumer Affairs are different.

State Bar

The State Bar is a public corporation in the judicial branch of State government. Ca Const., art. VI, § 9. As the Supreme Court has said, the State Bar was created "as an administrative arm of this court for the purpose of assisting in matters of admission and discipline of attorneys." Emslie v. State Bar (1974) 11 Cal.3d 210, 224.

In assisting the Supreme Court in disciplinary matters, the State Bar receives and investigates complaints, prosecutes those complaints deemed meritorious, and conducts the hearing and review (adjudication) of such complaints. In order to ensure due process, the function of investigating and prosecuting complaints is bifurcated within the State Bar from the function of adjudicating complaints. The former function is performed by the State Bar's Office of Trial Counsel; the latter by the independent State Bar Court.

The Office of Trial Counsel consists of professional staff employed by the State Bar. In a few complex cases, the office enlists the volunteer services of private or public attorneys to assist in its work.

The State Bar Court is a unified, statewide court created by the State Bar to discharge its adjudicative responsibilities in disciplinary and other attorney-regulatory matters. It is organized into three departments: Hearing, Review and Probation. The Hearing Department sits on a master calendar basis in panels of one or three referees. The Review Department is composed of fifteen referees and sits en banc ten times a year.

The State Bar Court consists entirely of volunteers -- both attorneys and non-attorneys -- appointed primarily by the State Bar's Board of Governors. Two of the fifteen members of the State Bar Court Review Department are public members (non-attorneys) appointed by the Governor. Bus. & Prof. Code, § 6086.6.

Throughout the disciplinary process, the State Bar's actions are reviewable by the Supreme Court. Bus. & Prof. Code, § 6082; Cal. Rules Ct., rule 952. And while the State Bar can reprove an attorney (Bus. & Prof. Code, § 6078), only the Supreme Court can suspend or disbar an attorney (Bus. & Prof. Code, §§ 6078 and 6100).

Thus, the parts of the State Bar's disciplinary structure are as follows:

Investigation	State Bar Office of Trial Counsel
Prosecution	State Bar Office of Trial Counsel
Hearing	State Bar Court (Hearing Department)
Review	State Bar Court (Review Department)
Judicial Review	Supreme Court

Administrative Procedure Act

The professional regulatory boards within the Department of Consumer Affairs are agencies in the executive branch of State government.

Each agency receives and investigates complaints, and prosecutes those complaints deemed meritorious. These functions are performed by professional staff employed by each agency.

Under the APA the hearing normally is conducted by a professional hearing officer from the independent Office of Administrative Hearings (hereinafter "OAH") which is also in the executive branch of State government. Although the agency is authorized to conduct the hearing itself, with an OAH hearing officer presiding, this procedure is seldom used.

OAH hearingofficers must be attorneys; no public, nonattorney member are involved.

Even though the hearing normally is conducted by the OAH, the decision must be reviewed and adopted -- or made -- by the agency. Thus, the OAH does not decide the matter, but rather assists the agency in making its own decision. As a practical matter, agencies adopt OAH decisions in the vast majority of cases.

Unlike the State Bar, the agency itself has the power to suspend or revoke the professional's license.

The agency's decision is reviewable in the California courts under administrative mandamus. Code Civ. Proc., § 1094.5.

Thus, the parts of the Department's disciplinary structure are as follows:

Investigation	Agency
Prosecution	Agency
Hearing	OAH (sometimes Agency)
Review and Decision	Agency
Judicial Review	Superior Courts
Further Judicial Review	Courts of Appeal
further Judicial Review	Supreme Court

NOTICE TO SHOW CAUSE / ACCUSATION

The State Bar's "notice to show cause" is similar to the APA's "accusation." Both serve to initiate formal hearing proceedings and to identify the basis of the charges against the respondent.

State Bar Rules

The State Bar's notice to show cause cites the statutes, rules or court orders alleged to have been violated or to afford the basis for the action proposed, and specifies in concise terms the acts, ommissions or facts which constitute the alleged violation(s) or the basis for the action proposed. SB Rules Proc., rule 550.

There is no requirement that the notice to show cause be verified.

Administrative Procedures Act

The APA's accusation is of a written statement of the charges which sets forth in ordinary concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It specifies the statutes and rules which the respondent is alleged to have violated, but cannot consist merely of charges phrased in the language of such statutes and rules. Gov. Code, § 11503.

Although the statute provides that the accusation must be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held (Gov. Code, § 11503, this requirement is often superfluous because the official handling the investigation endorses the accusation, thereby rendering verification unnecessary.

State Bar Rules

The State Bar's notice to show cause currently may be served as provided in the Code of Civil Procedure for service of summons and complaint in a civil action. (The State Bar is sponsoring legislation [AB 1275 (Calderon)] which would require members to maintain with the State Bar their current office or other address for State Bar purposes and would permit the State Bar to serve a notice to show cause by certified mail, return receipt requested, addressed to the latest address shown on the official membership records of the State Bar.)

Administrative Procedures Act

Under the APA accusations may be served by any means selected by the agency. Gov. Code, § 11505 (c). The accusation must include or be accompanied by (1) a statement that the respondent may request a hearing by filing a notice of defense as provided in Gov. Code, § 11506 within 15 days after service upon him of the accusation and that failure to do so will constitute a waiver of his rights to a hearing, and (2) copies of Gov. Code, §§ 11507.5, 11507.6, 11507.7, the provisions governing discovery in the administrative proceedings. Finally, the accusation must contain a form entitled "Notice of Defense" which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a request for hearing and notice of defense under Gov. Code, § 11506. Gov. Code, § 11505 (a).

RESPONSE TO NOTICE TO SHOW CAUSE / ACCUSATION

State Bar Rules

Under the Rules of Procedure of the State Bar, the time to answer a notice to show cause is 20 days, and is mandatory. SB Rules Proc., rule 552. The answer to the notice to show cause is to contain admissions, denials or explanations of the allegations set forth in notice to show cause, as well as defenses that may be relevant. The respondent may also object in the answer to the jurisdiction of the State Bar or hearing panel or to the sufficiency of the allegations of the notice to show cause.

Administrative Procedures Act

Under the APA the respondent waives all rights to a hearing if the notice of defense is not returned; but the agency may, in its discretion, still grant a hearing. Gov. Code, § 11506 (a) (1-6). A respondent may object to the accusation on the ground that it does not state acts or omissions upon which the agency may proceed; object to the form of the accusation on the ground that it is so indefinite or uncertain that he cannot identify the transaction or prepare his defense; admit the accusation in whole or part; present new material by way of defense; object to the accusation upon the ground that, under the circumstances, compliance with the requirements of the regulation would result in a material violation of another regulation enacted by another department affecting substantial rights. Gov. Code, § 11506 (a) (1-6). The respondent may file a statement by way of mitigation even if a notice of defense is not filed. Gov. Code, § 11506 (d).

If a notice of defense is filed it must be filed within 15 days after service of the accusation. A form notice of defense is enclosed with the accusation for use by the accused. A timely return of a notice of defense serves as a specific denial of all parts of the accusation not expressly admitted. Gov. Code, § 11506.

HEARING DATE

State Bar Rules

The Rules of Procedure of the State Bar provide that the State Bar must notify the respondent of the hearing date, either in the notice to show cause or with a notice of hearing served at least 30 days before the hearing date. SB Rules of Proc., rule 554.

Administrative Procedures Act

The APA provides that the agency must notify the respondent of the hearing date at least ten days prior to the hearing date. The hearing shall not be earlier than the time allowed for the filing of the notice of defense. SB Rules of Proc., rule 554.

State Bar Rules

Venue for State Bar attorney disciplinary proceedings is governed by where the respondent maintains his or her principal law office, where the respondent resides or where the alleged offense was committed.

Venue used to be on a county-by-county basis until January 1, 1985 when legislation repealing the county venue statue became effective. The State Bar sponsored this legislation in order to permit expediting attorney disciplinary proceedings by holding earnings on a master calendar basis in only three locations: Los Angeles, San Francisco, and San Diego. SB Rules Proc., rule 250.

Administrative Procedures Act

Venue for the APA is governed by the state appellate district in which the alleged transaction occurred and the respondent resides. Gov. Code, § 11508. If the violative transaction occurred or the respondent resides in the first appellate district, the hearing is held in San Francisco. Second and fourth district cases are heard in Los Angeles; and third and fifth district cases are held in Sacramento County. If the transaction occurs in a district where the respondent does not reside, the agency may select a county appropriate for either district. Gov. Code, § 11508.

AMENDMENTS TO PLEADINGS

Both the State Bar and the APA allow amendments to pleadings.

State Bar Rules

The State Bar permits amendments at any time prior to the decision of the hearing panel. Except where the amendment to a notice to show cause is one to conform to proof, the State Bar grants a member reasonable time to answer the amendment and prepare a defense thereto.

Administrative Procedures Act

The APA authorizes amendments to the accusation any time before the matter is submitted for decision. Gov. Code, § 11507. The APA deems the new charges in the amended accusation controverted, and the respondent is not entitled to file new pleadings unless he is permitted to do so in the discretion of agency. However, objection to the amended accusation may be made orally and is noted in the record. Moreover, a respondent must be afforded a reasonable opportunity to prepare his defense to the amended accusation. Gov. Code, § 11507.

State Bar Rules

The State Bar requires that each party complete discovery within 90 days after service of the notice to show cause except that reasonable extensions of time may be granted upon showing of good cause. SB Rules of Proc., rule 316. Discovery may not be initiated until ten days after service of the notice to show cause and only after the parties have first conferred for voluntary disclosure and to limit formal discovery to only disputed areas.

The Civil Discovery Act (commencing with § 2016 of the Code of Civil Procedure), as amended from time to time and as limited or adopted by State Bar, applies in all State Bar formal proceedings. SB Rules of Proc., rule 315. The State Bar hearing panel acts as a trial court in deciding whether specific evidence is discoverable. Ten days after a hearing panel decision on a discovery matter, the aggrieved party may file and serve a verified petition for review of the decision. The opposing party then has ten days to respond to the petition. The referee makes a final decision within 20 days, and his or her decision is subject review by the State Bar Court Review Department.

The State Bar permits depositions, requests for admissions, and interrogatories. However, under State Bar rules the technical details for submitting interrogatories and requests for admissions are specifically set out. SB Rules of Proc., rule 319. The State Bar allows for subpoenas for depositions. The State Bar rules regarding depositions are concerned with who may or may not be deposed. SB Rules of Proc., rule 318.

Administrative Procedures Act

The provisions of the APA govern exclusively the method and scope of discovery. See Gov. Code, §11507.5. Section 11507.6 of the Government Code provides that after initiation of a proceeding, and upon written request made prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after such service of an additional pleading, a party is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to those intended to be called to testify at the hearing, and (2) inspect and make a copy of the writings or things enumerated in the statute which are in the possession or custody or under the control of the other party. However, no discovery is permitted of any writing or thing that is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product. Gov. Code, § 11507.6.

Depositions under the APA are discretionary. On verified petition of any party, an agency may order that the testimony of any material witness residing within or without the State be taken by deposition in the manner prescribed by law for deposition in civil actions. Gov. Code, § 11511

Both the State Bar's rules and the APA contain procedures to compel discovery.

State Bar Rules

The State Bar's rule in "contempt proceedings" is applicable when a party or deponent refuses to obey a subpoena or a subpoena duces tecum, or to answer questions asked during a deposition. The hearing panel may determine that the individual is in contempt and, without prior notification to the individual, report such action to the superior court. Bus. and Prof. Code, § 6051. The examiner, member or referee may request that an individual not complying with the above requests be held in contempt. Refusal to comply with discovery results in certain matters being deemed admitted. Failure to comply with the court order compelling discovery may result in contempt proceedings.

Administrative Procedures Act

Under the APA any party claiming his request for discovery has not been complied with may serve and file a verified petition to compel discovery in the superior court for the county in which the administrative hearing will be held, naming as respondent the party refusing or failing to comply with the request. The petition must state facts showing the respondent party failed or refused to comply with the request, a description of the matters sought to be discovered, the reason or reasons why such matter is discoverable, and the ground(s) of respondent's refusal so far as known to petitioner. Gov. Code, § 11507.7(a).

The petition is served upon respondent party and filed within 15 days after the respondent party first evidenced his failure or refusal to comply with the request for discovery or within 30 days after request was made and the party has failed to reply to the request, whichever period is longer. However, no petition may be filed within 15 days of the date set for commencement of the administrative hearing except upon order of the court after motion and notice of good cause shown. In acting upon such motion, the court considers the necessity and reasons for such discovery, the diligence or lack of diligence of the moving party, whether the granting of the motion will delay the commencement of the administrative hearing on the date set, and the possible prejudice of such action to any party. Gov. Code, § 11507.7(b).

If from a reading of the petition the court is satisfied that the petition sets forth good cause for relief, the court issues an order to show cause directed to the respondent party; otherwise the court will enter an order denying the petition. The order to show cause is served upon the respondent and his attorney by personal delivery or certified mail and must be returned no earlier than ten days from its issuance nor later than 30 days after the filing of the petition. The respondent party has the right to serve and file a written answer or other response to the petition and order to show cause. Gov. Code, § 11507.7(d).

The court may in its discretion order the administrative proceeding stayed during the pendency of the proceeding to compel discovery and, if necessary, for a reasonable time thereafter to afford the parties time to comply with the court order. Gov. Code, § 11507.7(d).

Where a party asserts that the matter sought to be discovered is privileged or otherwise not discoverable, the court may order lodged with it such matters as are provided in subdivision (b) of section 915 of the Evidence Code for resolution in accordance with the provisions thereof. Gov. Code, § 11507.7(e). The court decides the case on the matters examined by the court in camera, the papers filed by the parties, and such oral argument and additional evidence as the court may allow. Gov. Code, § 11507.7(e).

Unless otherwise stipulated by the parties, the court must file its order denying or granting the petition no later than 30 days after the filing of the petition. However, the court may on its own motion for good cause extend such time an additional 30 days. The order of the court is in writing and sets forth the matters which the petitioner is entitled to discover. A copy of the order is served by mail by the clerk upon the parties. Where the court's order grants further discovery, the order does not become effective until ten days after the date the order is served by the clerk. Where the order denies relief to the petitioning party, the order is effective on the date it is served by the clerk. Gov. Code, § 11507.7(g).

The order of the superior court is final and not subject to review by appeal. However, a party may within 15 days after the service of the superior court's order serve and file in the court of appeal a petition for a writ of mandamus to compel the superior court to set aside or to modify its order. Where such review is sought from an order granting discovery, the order of the trial court and the administrative proceeding is stayed upon the filing of the petition for writ of mandamus; provided, however, the court of appeal may dissolve or modify the stay thereafter if the court finds that it is in the

public interest to do so. Where such review is sought from denial of discovery, neither the trial court's order nor the administrative proceeding shall be stayed by the court of appeal except upon a clear showing of probable error. Gov. Code, § 11507.7(h).

Finally, the superior court may award court costs and reasonable attorney fees to the opposing party as sanctions. The superior court may also compel obedience to its orders by contempt proceedings. Gov. Code, § 11507.7(i).

State Bar

The respondent in a State Bar attorney disciplinary proceeding is notified of the date, time and place of a mandatory settlement conference when the notice to show cause is served. The settlement conference is held approximately 90 days after service of the notice to show cause (coinciding with the end of the discovery period) and is to be attended by all parties and counsel to the proceeding. SB Ct. Rules Prac., rule E.2.(a).

The State Bar Court referee presiding over the mandatory settlement conference may request either party to submit and serve on the opposing party, not later than 10 days before the conference, a written statement containing a concise summary of the material facts, the factual and legal contentions in dispute and the authorities supporting legal propositions important to resolution of the matter. SB Ct. Rules Prac., rule E.2.(c).

At least 10 days before the settlement conference, the parties must meet or confer, in person or by telephone, to discuss the prospects for settlement and the related factual and legal issues. SB Ct. Rules Prac., rule E.2.(d).

If the parties reach a stipulation, they must submit it in writing to the settlement conference referee within 15 days after the conference. SB Ct. Rules Prac., rule E.2.(e).

If the parties do not reach a stipulation, no reference may be had at the formal hearing to any settlement discussion or any admissions made during the settlement conference. SB Ct. Rules Prac., rule E.2.(f). But the parties must advise the settlement conference referee of the status of discovery, their best estimates of when any remaining discovery will be completed and their estimates of the length of trial. The first date of formal hearing is set within 60 days of the mandatory settlement conference. SB Ct. Rules Prac., rule E.2.(e).

Administrative Procedures Act

The APA does not contain any provisions for settlement conferences -- neither mandatory nor voluntary.

State Bar Rules

Under the State Bar Act, referees are volunteers, and selected from the State Bar membership and the public at large. A single referee hears a case unless either party requests a three member panel. The hearing panel, after hearing the case, must submit a written decision within 30 days of submission of the case. SB Rules of Proc., rule 558.

Administrative Procedures Act

APA hearings are conducted by a single hearing officer on the staff of the Office of Administrative Hearings. Gov. Code, § 11502. Each hearing officer must have been admitted to the practice of law for at least five years proceeding his appointment and meet any other qualification established by the state personnel board. Gov. Code, § 11502.

Every hearing in a contested case must be presided over by a hearing officer. The agency may determine whether the hearing officer is to hear the case alone or whether the agency is to hear the case with the hearing officer. Gov. Code, § 11512(a).

When the agency itself hears the case, the hearing officer must preside, rule on the admission and exclusion of evidence, and advise the agency on matters of law. The agency must exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the hearing

officer. When the hearing officer alone hears the case he must exercise all powers relating to the conduct of the hearing. Gov. Code, § 11512(b).

The proceedings at the hearing must be reported by a phonographic reporter unless all the parties agree that the proceedings be reported electronically. Gov. Code, § 11512(d).

Under the APA, a hearing officer or agency member must voluntarily disqualify himself and withdraw from any case in which he cannot accord a fair or impartial hearing or consideration. Any party may request a disqualification of any hearing officer or agency member by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds on which it is claimed that a fair and impartial hearing cannot be accorded. Where the request concerns an agency member, the issue is to be determined by the other members of the agency. When the request concerns the hearing officer, the issue is to be determined by the agency, if it hears the case with the hearing officer; otherwise the issue is to be determined by the hearing officer. Gov. Code, § 11512(c). However, no agency member may withdraw voluntarily or be subject to disqualification if this disqualification would prevent the existence of a quorum qualified to act in the particular case. Gov. Code, § 11512(c).

Administrative Procedures Act

Under the APA, oral evidence at the hearing must be taken only on oath or affirmation. Gov. Code, § 11513(a).

Each party has the right to call and examine witnesses, to introduce exhibits, to cross examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination, to impeach any witness regardless of which party first called him to testify, and to rebut the evidence against him. If respondent does not testify on his own behalf he may be called and examined as if under cross examination. Gov. Code, § 11513(b).

The hearing need not be conducted according to the technical rules relating to evidence and witnesses. Any relevant evidence is admitted if it meets the following standard: if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but is not sufficient in itself to support a finding unless it would be admissible over objection in civil action. The rules of evidence are effective to the extent that they are otherwise required by statute to be recognized at the hearing. And finally, irrelevant and unduly repetitious evidence is excludable. Gov. Code, § 11513(c).

The APA provides that before the hearing has commenced, the agency or the hearing officer must issue subpoenas and subpoenas duces tecum at the request of any party at attendance for production of documents at the hearing. Compliance with the provisions of section 1985 of the Code of Civil Procedure is a condition precedent to the issuance of a subpoena duces tecum. After the hearing has commenced, the agency hearing a case, or a hearing officer sitting alone, may issue subpoenas and subpoenas duces tecum. Gov. Code, § 11510(a).

The APA provides that if a contested case is heard before an agency, a hearing officer who presided at the hearing must be present during the consideration of the case and, if requested, must assist and advise the agency. No member of the agency who did not hear the evidence may vote on the decision. Gov. Code, § 11517(a).

If a contested case is heard by a hearing officer alone, the officer shall prepare within 30 days after the case is submitted a proposed decision that may be adopted later as the decision in the case. The agency may adopt the proposed decision in its entirety, or may reduce the proposed penalty and adopt the balance of the proposed decision. Gov. Code, § 11517(b).

Thirty days after the receipt of the proposed hearing officer's decision, a copy shall be filed by the agency as public record and a copy shall be served by the agency on each party and its attorney. Gov. Code, § 15117(b).

If the hearing officer's proposed decision is not adopted, the agency itself may decide the case upon the record including the transcript, with or without taking additional evidence, or may refer the case to the same hearing

officer to take additional evidence. By stipulation of the parties, the agency may decide the case upon the record without including the transcript. If the case is referred back to a hearing officer, the officer, 30 days after hearing, prepares a new proposed decision upon the additional evidence and the transcript and other papers which are part of the record of the prior hearing. A copy of the new proposed decision is furnishesd to each party and the party's attorney as before. If the agency elects to decide the case itself instead of adopting the proposed decision, the agency cannot decide it without affording the parties the opportunity to present either oral or written argument before the agency itself. If additional oral evidence is introduced before the agency, no agency member may vote unless he heard the additional oral evidence. Gov. Code, § 11517(c).

The decision proposed by the hearing officer is deemed adopted by the agency 100 days after delivery to the agency by the Office of Administrative Hearings, unless within that time the agency commences proceedings to decide the case by itself, or the agency refers the case to the hearing officer to take additional evidence. Gov. Code, § 11517(d).

In a case where the agency itself has first heard the case, the agency shall issue its decision within 100 days of submission of the case. In a case where the agency has ordered a transcript of the proceedings, the 100 day period shall begin upon delivery of the transcript. If the agency finds that further delay is required by special circumstances, it shall issue an order delaying the decision for no more than 30 days and specifiying the reasons therefore. Gov. Code, § 11517(d). The decision of the agency is immediately filed as a public record, and a copy served by the agency on each party and the parties attorney. Gov. Code, § 11517(e).

The APA provides that the decision becomes effective 30 days after it is delivered or mailed to a respondent unless reconsideration is ordered within that time or a stay of execution is granted. Gov. Code, § 11519(a). However, the effective date may be sooner if ordered by the agency. Gov. Code, § 11519(a).

State Bar Rules

State Bar rules provide that within ten days after service of the hearing panel's decision, either party may serve and file a written statement requesting reconsideration, a hearing de novo or a motion to present additional evidence. These requests are presented to and decided by the hearing panel. Once a request is presented to the hearing panel the opposing party must respond within five days.

Administrative Procedures Act

The APA provides that an agency may reconsider all or part of a case on its own motion or on petition of any party. Gov. Code, § 11521(a). The power of an agency to order reconsideration expires 30 days after delivery or mailing of the decision to the respondent, or the date set by the agency when the agency has ordered an earlier effective date or at the termination of any stay of execution not exceeding 30 days which the agency may grant to apply for reconsideration. If no action is taken by the agency by the end of any of these periods, reconsideration is deemed denied.

If reconsideration is granted, the case may be reconsidered by the agency itself on all the pertinent parts of the record and such additional evidence and argument as may be permitted, or the case may be assigned to a hearing officer. Gov. Code, §11521(b).

State Bar Rules

The State Bar Court Review Department, which hears and decides cases en banc, reviews all hearing panel decisions. A majority of present and voting referees can take any action on any matter before the review department. Eight members are required to form a quorum and the review department may review complete decisions, requests or denials of requests for de novo hearings, reconsiderations, or submissions of additional evidence. The deadline is 15 days after service on the respondent of the hearing panel decision. A timely request for review allows the respondent the opportunity to address the review department personally.

Under the State Bar Act, when no written record for review is filed, the review department reviews the hearing panel's decision ex parte. The review department may adopt the hearing panel's decision based on the record. If the hearing panel's decision is not accepted in its entirety, the review department must decide the case on the record. When this occurs, the review department must allow the parties an opportunity to submit oral or written evidence before the department.

The review department uses the hearing panel's decision only as a recommendation, but findings of fact are accorded great weight. The review department reviews every hearing panel decision.

Administrative Procedures Act

Under the APA, the agency reviews every proposed recommendation from hearing officers, but rarely examines the record as a whole. In many agencies, there is a hierarchy of authorities for appellate review of the lower administrative authorities by their superiors. However, the APA itself does not provide for such review.

State Bar Rules

The decision of the State Bar Court Review Department may be appealed to the Supreme Court where the court makes its own decision based upon an independent review of the record.

Administrative Procedures Act

Under the APA judicial review of an agency's decision may be had by the filing of a petition for writ of mandate in accordance with the provisions of the Code of Civil Procedure, subject however to any statutes relating to the particular agency. Except as otherwise provided by the APA, the petition for writ of mandate must be filed within 30 days after the last day on which reconsideration can be ordered. The right to petition for writ of mandate is not affected by the failure to seek reconsideration before the agency. Complete records of the administrative proceedings, or such parts as are designated by the petitioner, must be prepared by the agency and delivered to the petitioner, within 30 days after a request, and upon payment of the fee for the transcript and the costs of preparation of the record and its certification. The complete record includes the pleadings, all notices and orders issued by the agency, any proposed decision by a hearing officer, the final decision, a transcript of all proceedings, exhibits admitted or rejected, the written evidence and any of the papers in the case. Where the petitioner, within 10 days after the last day on which reconsideration can be ordered, requests the agency to prepare all or any part of the record, the

time within which a petition for writ of mandate may be filed is extended until 30 days after the delivery of the record. The agency may file with the court the original of any document in the record in lieu of a copy thereof. Gov. Code, § 11523.

RULES OF PRACTICE
OF
THE STATE BAR COURT

NOVEMBER 1984

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I
GENERAL

RULE A.1. APPLICATION.

These Rules of Practice, adopted by the Executive Committee of the State Bar Court of The State Bar of California, apply to formal proceedings before the State Bar of California and supplement the Rules of Procedure of the State Bar of California, as amended January 1, 1980. They shall be known and may be cited as Rules of Practice of the State Bar Court.

RULE A.2. DEFINITIONS.

Unless the context otherwise requires,

(a) The definitions and limitations of Rule 2, Rules of Procedure, apply.

(b) "Court" means the State Bar Court provided for by Rule 100, Rules of Procedure.

(c) "Motion" includes, but is not limited to, a written notice of motion.

(d) "Presiding referee" includes an acting or assistant presiding referee.

(e) "Proceeding" means a formal proceeding within the jurisdiction of the State Bar Court, and includes a formal State Bar proceeding, a conviction proceeding, a formal probation revocation proceeding, a formal Section 6007 proceeding, a formal Rule 955 proceeding and a reinstatement proceeding.

(f) "Principal Referee" means the lawyer referee member of the State Bar Court hearing panel to which a particular proceeding, motion, issue or matter is assigned by the office of the presiding referee, or if there are two or more lawyer referees on such panel, then the referee so designated by the department.

(g) "Written" and "writing" include typewriting and other means of duplication equivalent in legibility to typewriting.

RULE A.3. PAPERS OF PARTY.

1. FORMAT OF FIRST PAGE

The first page of formal papers filed by a party subsequent to the paper initiating the proceeding before the State Bar, including, but not limited to, answer, motion, application, opposition, objection, law memorandum, shall be in the following form:

(a) In the space commencing with line 1, to the left of the center of the page, the name, office address of, or, if none, the residence address, and telephone number of the attorney for the party on whose behalf the paper is presented, or of the party, if the party appears in person, provided, the name, office address and telephone number of the attorney printed on the page shall suffice. For this purpose, the examiner is deemed to represent the State Bar.

(b) The space between lines 1 and 7 to the right of the center of the page shall be left blank.

(c) On or below line 8, on a separate line, the words "The State Bar Court"; on the next line, "Of the State Bar of California"; on the next line, the particular district, division or geographical area, and, on the following lines, to the left, the caption of the particular proceeding; and to the right thereof, the case number.

(d) Beneath the number described in (c), the nature of the particular paper.

This rule does not apply to printed or other forms supplied or approved by the State Bar.

2. ORIGINAL PAPER

At least one of the papers required to be filed in quadruplicate pursuant to Rule 240, Rules of Procedure, shall bear an original handwritten signature, as distinguished from a photocopied, typewritten or other duplicated signature, which paper shall be the original of the quadruplicate documents filed.

II
DEPARTMENT OF PRESIDING REFEREE

RULE B.1. GENERAL FUNCTIONS.

The Department of Presiding Referee is composed of the presiding referee, assistant presiding referees, administrative assistants and other State Bar Court staff. Every proceeding within the jurisdiction of the court is deemed initially assigned to the department. The department is responsible for the administrative processing of such proceedings and for calendar management and control. Subject to specific provisions of the Rules of Procedure and of these rules, (i) all such proceedings and pre-trial matters arising therein, shall be assigned to a panel, or a referee, and (ii) the referees shall be assigned to regular or ad hoc panels, or both, by or under the direction of the presiding referee. A notice to show cause or other document initiating the proceeding may include a designation of a regular or ad hoc hearing panel designated by the department. In other instances, the department shall assign the proceeding to such a panel, as promptly as the business and calendars of the court permit. Pre-trial motions or matters may be assigned by the department to a designated referee for determination.

RULE B.2. REASSIGNMENT—CHANGE IN PERSONNEL.

The department may reassign a proceeding or matter and make change in the personnel of a panel.

III
PRINCIPAL REFEREE—PRE-TRIAL AND OTHER DUTIES

RULE C.1. DUTIES IN GENERAL.

After assignment of a proceeding to a hearing panel for formal hearing and later proceedings, the principal referee is responsible for the expeditious conduct of the proceeding and shall preside over the proceeding or matter. In all matters relating to calendar management and control, the principal referee and the panel shall cooperate with, and be subject to the directions of the presiding disciplinary referee.

RULE C.2. PRE-TRIAL MOTIONS.

Except as provided by Rules E.1., F.1, 2, and 3, Rules of Practice, and Rules 230, 251 and 350, Rules of Procedure, or otherwise directed by the presiding referee, all pre-trial motions and matters shall be determined by the principal referee, provided, with the approval of the presiding referee, the principal referee may direct that a matter be determined by the hearing panel.

RULE C.3. PRE-TRIAL CONFERENCES.

Either party may request and a referee may require one or more pre-trial conferences to be held in a particular proceeding for the purposes set forth in Rules 401-402, Rules of Procedure, to simplify and expedite discovery, if any, to estimate the readiness of the parties for trial and the length of trial, and to resolve matters which may unnecessarily delay the proceeding. Said pre-trial conferences may be held at a time and place designated by the referee or the Office of the Clerk, State Bar Court, and need not be held in the county in which the proceeding is pending. (Amended January, 1982; October 10, 1984, effective October 15, 1984.)

[Editors Note: On December 2, 1981, the Executive Committee of the State Bar Court adopted a Manual of Pretrial Procedures. It is available from the Court Clerk's office in Los Angeles.]

RULE C.4. TIME LIMITS FOR DECISION

Within 30 days of the submission of the matter by the parties, the panel shall file its decision in writing with the State Bar Court. The decision may be drafted by either the principal referee or any other attorney-member of the panel.

If a decision has not been received by the Clerk's Office within 30 days of submission it is within the discretion of the Executive Committee to require the panel to appear before it or a subcommittee thereof and explain the delay in submission. If a matter has been under submission more than sixty (60) days, no further assignments shall be made to the members of the panel. If a decision has not been received within 120 days after submission, the Executive Committee in its discretion may recommend to the Board of Governors that the members of the panel be relieved of their commission.

The Presiding Referee, or his or her designee, for good cause shown may relieve the panel from the requirements of this rule.

IV
MOTIONS GENERALLY

RULE D.1. GENERAL.

A formal motion shall generally be in the form followed in courts of record in this state in civil cases, except that it shall not contain notice of a time and place of hearing. The referee or panel determining the motion may require or permit oral argument at a designated time and place. Unless otherwise required by the presiding referee, the principal referee or the panel, applications of a routine nature may be made informally by letter, identifying the proceeding.

RULE D.2. DENIAL OF MOTION WITHOUT PREJUDICE.

Except as to discovery or other matters which require prompt determination, a motion may be denied without prejudice to its renewal on the same or supplemental papers.

RULE D.3. CONDITIONS.

Upon the granting of a motion, reasonable conditions may be imposed.

V
SETTLEMENT CONFERENCES

RULE E.1. GENERAL.

A settlement conference calendar shall be established and maintained by the Department of Presiding Referee. The purpose of the settlement conference shall be to pursue whether the parties to a formal disciplinary proceeding or a proceeding for the transfer to or re-transfer from inactive status can proceed by way of stipulation as to facts and a just disposition, to the end that the proceeding may be expedited and the resources of the parties and State Bar Court conserved.

RULE E.2. MANDATORY SETTLEMENT CONFERENCE CALENDAR.

(a) When a notice to show cause or a notice of time and place of hearing is served on the parties to a formal disciplinary proceeding or a formal proceeding to transfer a member to or from the inactive status the parties shall be notified of the date, time, and place of a mandatory settlement conference. The settlement conference shall be fixed approximately 90 days from the anticipated date of service of either the notice to show cause or notice of time and place of hearing. The settlement conference shall be attended by all parties and counsel to the proceeding unless, for good cause shown, the date of the conference is continued or the parties are relieved of the conference pursuant to the procedure set forth in subsection (d) of this rule.

(b) The Presiding Referee shall assign referees from any department of the State Bar Court to act as settlement referees. Unless otherwise stipulated by the parties, no settlement conference referee may participate in the pretrial conference or in the formal hearing of the same matter in which the referee acted as settlement conference referee.

(c) The settlement conference referee may request either party to submit to the referee and to serve upon the opposing party not later than 10 days before the conference a written statement containing a concise statement of the material facts of the matter and the factual and legal contentions in dispute including citations of authority supporting legal propositions important to resolution of the matter.

(d) At least 10 days before the date of settlement conference, the respondent and State Bar Examiner shall meet or confer in person or by telephone to discuss the prospects for settlement and factual and legal issues related thereto. For good cause shown, supported by affidavit or declaration under penalty of perjury, either party may move the settlement conference referee for an order dispensing with or continuing the settlement conference. Such motion must be filed at least seven days before the date of settlement conference. Upon the settlement conference referee's own motion, for good cause shown, the settlement conference referee may continue the settlement conference not to exceed a total

of 30 days to a fixed date or dispense with the conference. Good cause for dispensing with a settlement conference shall include proof that the respondent was not personally served with the notice to show cause or notice of time and place of settlement conference hearing or other clear and convincing evidence showing that, at the time set for the settlement conference, the respondent is regularly outside the State of California or the whereabouts of the respondent are unknown.

(e) If the parties reach a stipulation as to facts or facts and disposition at the settlement conference, except for good cause shown, the parties shall submit the stipulation(s) in writing to the settlement conference referee within 15 days after the conference. Should the parties not reach a stipulation as to facts and disposition at the settlement conference, the parties shall be prepared to advise the settlement conference referee of the status of discovery, and the best estimates of when discovery would be completed and the estimated length of trial. The first date of formal hearing will be fixed by the Office of the Clerk, State Bar Court at a date no later than 60 days after the settlement conference date.

(f) If the case is not settled at the settlement conference, no reference shall thereafter be made at the formal hearing to any settlement discussion had under this rule or any admissions made during the settlement conference.

(g) The presiding referee or designee may make any order relating to a settlement conference and may transfer a matter from one settlement conference referee to another. (Amended October 10, 1984, effective October 15, 1984.)

RULE E.3. VOLUNTARY SETTLEMENT CONFERENCES.

When a notice to show cause or a notice of time and place of hearing is served on the parties to a formal proceeding which is not subject to the provisions of Rule E.2(a), the parties shall be notified of the first date of formal hearing. Upon joint request of the respondent and State Bar examiner, a settlement conference may be calendared before a settlement conference referee upon a date mutually agreed to and chosen by the parties, consistent with the calendar maintained by the settlement conference referees. No such settlement conferences will be scheduled later than 45 days prior to the date fixed for the first date of formal hearing. The provisions of subdivisions (b), (e), (f) and (g) of Rule E.2 shall apply to voluntary settlement conferences conducted pursuant to this rule. If a settlement is reached, the provisions of subdivision (e) of Rule E.2 shall apply. If a settlement is not reached, the parties will not be relieved of the first date of formal hearing previously fixed, absent exceptional good cause.

(Adopted by the Executive Committee, State Bar Court, September 29, 1983, effective October 1, 1983 to all Notices to Show Cause or Notices of Time and Place of Hearing Filed on or after that date)

VI
TRIAL CALENDAR—CONTINUANCES

RULE F.1. GENERAL.

All formal hearings shall be scheduled for trial at a time and place fixed or approved by or under the direction of the presiding referee.

RULE F.2. CALENDAR ASSISTANCE.

Each party shall cooperate with the Department of Presiding Referee and principal referee in matters affecting the trial calendar, including, but not limited to, the following: (i) prompt notice of a stipulation, or intended stipulation, for hearing before a single referee, as authorized by Rule 559(b), Rules of Procedure, or of a motion or intended motion to terminate the proceeding as authorized by Rules 405-411, Rules of Procedure, or for change of venue, or to hold the proceeding in abeyance, or to disqualify a panel member, or for a continuance of the trial date; (ii) prompt response to inquiries as to estimated trial time, and of any change therein caused by later developments.

RULE F.3. POSTPONEMENT OF TRIAL DATE.

Continuances of the trial date are not favored. Any request for continuance prior to the date of the first hearing, whether by a party or a referee, shall be made by motion directed to, and shall be determined by, the Assistant Presiding Referee of the Hearing Department, if available, or by the Presiding Referee or a referee designated by the Presiding Referee. The application for such continuance shall be supported by a verified statement of the reasons for the requested continuance, in sufficient factual detail to show good cause. If the facts relied upon are not ascertained until a date less than 5 days before the scheduled trial date, they shall be brought to the attention of the Assistant Presiding Referee of the Hearing Department or the referee acting in his or her stead immediately upon ascertainment by an oral motion, supported, if required, by written verified showing, at the time set for the commencement of the trial.

RULE F.4. CONTINUANCE AFTER COMMENCEMENT OF TRIAL.

If the hearing is not completed on the scheduled date or dates, it shall be continued by the hearing panel to a date or dates within the next 40 days. If an acceptable date cannot be fixed within such 40 day period, or, if a written verified showing is made of good cause for a longer continuance, the hearing panel may continue the hearing to a date or dates beyond 40 days, provided that notice thereof and the reasons for such longer continuance shall be given to the Department of Presiding Referee.

RULE F.5. CONDITIONS.

An order of continuance of trial may include reasonable conditions imposed upon a party, or the parties.

VII
APPLICATION FOR EXTENSION OF TIME

RULE G.1. TO WHOM MADE.

An application for extension of time to answer shall be made to the principal referee, or, if none, to the Assistant Presiding Referee of the Hearing Department or to the presiding referee or a referee designated by the presiding referee. Other applications for extension of time shall be made to the presiding referee, referee or hearing panel having authority to determine the particular matter. If an extension is granted, the applicant shall serve, or ascertain that there will be served upon or mailed to the opposing party, a copy of the order extending time.

RULE G.2. LATE PAPERS.

It is within the discretion of the presiding referee, referee or panel determining a matter to receive and consider a paper presented after expiration of the prescribed time.

VIII
MOTION TO SET ASIDE DEFAULT

RULE H.1. CONTENTS.

A motion to set aside a default which has been entered shall be determined by the hearing panel which ordered the default entered, or, if by reason of change in personnel the panel cannot be re-constituted, by the presiding referee or a referee or panel designated by the presiding referee. The motion shall be supported by a written verified showing of (i) the approximate date on which the applicant first learned of the entry of the default or subsequent proceedings; (ii) the general nature of the evidence, if any, which applicant proposes to offer, if the default is set aside; (iii) the reasons for setting aside the default; and (iv) any conditions to which the applicant will consent if the default is set aside.

RULE H.2. CONDITIONS.

An order setting aside a default may impose reasonable conditions upon the party seeking such relief.

IX
ORDER FOR CHANGE OF COUNSEL FOR MEMBERS

RULE I.1. PROCEDURE.

Change of counsel for the member in a formal proceeding shall be effected in the manner provided in civil cases. When an order to effect such change is required it shall be entered in accordance with this rule.

No order is required when the member discharges or changes his counsel, or consents to withdrawal of his counsel, except as provided herein. An order authorizing change of counsel is required if (1) the member's counsel wishes to withdraw without consent of the member and (2) counsel appointed by the State Bar to represent the member is sought to be relieved, removed or changed. Such order shall be determined by the principal referee upon application or the filing of a motion requesting such change. In determining whether to order a change of counsel the principal referee shall consider all relevant factors, including the following:

1. Whether the substitution would cause unreasonable delay in the hearing, or undue hardship to witnesses, or cause witnesses to become unavailable;

2. Whether the motion was made in good faith, and not for delay;

3. Whether pursuant to Rule 2-111 (A) (2) of the Rules of Professional Conduct, counsel has taken reasonable steps to avoid foreseeable prejudice to the rights of the member, including giving due notice to the member, allowing time for employment or appointment of other counsel, delivering to the member all papers and property to which the member is entitled, and complying with applicable laws and rules;

4. Whether such withdrawal is otherwise required or permitted by Rule 2-111 of the Rules of Professional Conduct.

If counsel appointed to represent the member is relieved of the obligation to represent the member by the granting of the application or motion and the grounds for said appointment still obtain, another counsel shall be appointed forthwith to represent the member by or pursuant to the authority of the Presiding Referee.

X
OTHER DISCIPLINARY RECORD

RULE J.1. INTRODUCTION

(a) The admissible record in another formal disciplinary proceeding as defined in Rule 571, Rules of Procedure, when applying only to the issue of appropriate discipline, shall not be displayed or disclosed to a hearing panel unless and until the panel finds culpability. At least thirty (30) days prior to the date set for formal hearing the Examiner shall furnish the member by personal service or by mail, postage prepaid, with a copy of a prior record of discipline proposed to be submitted to the hearing panel, together with a notice that the prior record will not be disclosed to the hearing panel unless and until there is a finding of culpability. The member shall have fifteen (15) days from the date of personal service or mailing in which to file written objections to the form of the record. If objections are filed by the member, the Examiner shall have five (5) days thereafter to file additional information with respect to the record in the form of a written statement. Any objection by the member to the form of such prior record and any additional information presented by the Examiner shall be submitted to and decided by the Assistant Presiding Referee - Hearing Department. After resolution of the objections, if any, or, if no objections are filed, and following the panel's finding of culpability, the Examiner shall furnish any such prior record to the hearing panel for consideration as to appropriate discipline. The record shall be admitted into evidence as a State Bar exhibit numbered next in sequence for consideration by the hearing panel regarding the degree of discipline to be recommended or imposed.

(b) After a finding of culpability, a prior record not admitted into evidence pursuant to paragraph (a) above may be received at the hearing as a State Bar exhibit marked next in sequence for consideration by the hearing panel regarding the degree of discipline to be recommended or imposed, provided that, if such prior record is proposed to be submitted at the hearing, the member shall be given an opportunity at the hearing to present objections with respect to the form of the record, and if any such objection is made, the Examiner shall be entitled to present additional information at the hearing with respect thereto; and further provided that if such prior record is proposed to be submitted in evidence after conclusion of the hearing, the Examiner shall notify the hearing panel to that effect and, if the member has appeared in person or by counsel, the Examiner shall furnish the member with a copy of such prior record by personal service or by mail, postage prepaid. The member may file a written statement of objections to the form of such prior record. Such statement shall be filed within five (5) days after

mailing to or service on the member of a copy of the prior record. If objections are filed by the member, the Examiner shall have five (5) days thereafter to file additional information with respect to the record in the form of a written statement. Resolution of objections, if any, filed pursuant to this paragraph (b) shall be determined by the hearing panel. The provisions of this paragraph (b) with respect to objections by the member do not apply and shall be deemed waived by the member in a case where the member fails to appear at the hearing whether or not default has been entered pursuant to Rule 555, Rules of Procedure.

XI
REVIEW BY REVIEW DEPARTMENT OF ORDERS OR DECISIONS BASED ON STIPULATIONS

RULE K.1. REVIEW OF ORDERS APPROVING STIPULATIONS AS TO FACTS AND DISPOSITION—GENERALLY

The Review Department will not entertain the review of orders approving stipulations as to facts and disposition unless it appears from the face of the stipulation that all parties thereto have complied with each of the provisions of rules 405-408, Rules of Procedure of the State Bar.

RULE K.2. REVIEW OF DECISIONS OR ORDERS BASED ON STIPULATIONS AS TO FACTS ONLY—GENERALLY

The Review Department will not entertain review of decisions or orders based on stipulations only as to facts unless it appears from the face of the stipulation that all parties thereto have agreed to be bound by the stipulated facts regardless of the disposition or degree of discipline ultimately recommended or imposed.

RULE K.3. POLICY FOR REVIEW BY REVIEW DEPARTMENT OF ORDERS APPROVING STIPULATIONS AS TO FACTS AND DISPOSITION

It is the policy of the Review Department when reviewing ex parte stipulations as to facts and disposition (Rules 405-408 and 450(b), Rules of Procedure of the State Bar), to adopt orders approving stipulations as to facts and disposition unless it appears to the Review Department in an individual case:

A) that the stipulated facts do not constitute a disciplinable offense under the State Bar Act or Rules of Professional Conduct in cases where stipulated discipline or an admonition is recommended; or

B) that the stipulated disposition is disproportionate to that warranted by the stipulated facts; or

C) that the stipulated disposition fails to include a duty or provision normally recommended or imposed by the Review Department or Supreme Court in cases of the type under review and the stipulation in the case under review fails to show good cause for exclusion of the duty or provision; or the stipulated disposition includes a duty or provision appearing to the Review Department to be clearly inappropriate in light of the stipulation; or

D) that the record in the case under review reveals that the Rules of Procedure of the State Bar were not complied with in one or more important respects and that adoption of the order approving stipulation will result in specific prejudice to any party to the stipulation.

RULE K.4. POLICY TO BE FOLLOWED BY REVIEW DEPARTMENT WHEN IT DECLINES TO ADOPT ORDER APPROVING STIPULATION AS TO FACTS AND DISPOSITION

In cases where the Review Department, in reviewing a stipulation as to facts and disposition (rules 405-408 and 450(b), Rules of Procedure of the State Bar) declines to adopt the order approving stipulation as to facts and disposition it will adopt a resolution directing the Office of the Clerk, State Bar Court, to notify the parties that the Review Department intends, at a specified future meeting, to reject the order approving stipulation and stipulation as to facts and disposition for stated reasons; and, where appropriate, that the Review Department will direct that the parties be advised that the Department will entertain a modified stipulation, approved by the Investigation or Hearing Department referee(s) who approved the original order approving stipulation, responding to the stated concerns of the Review Department.

The Review Department will not entertain oral argument from the parties concerning stipulations as to facts and disposition or orders approving same.

XII
FORMS

RULE L.1. APPROVED FORMS.

The forms below are approved for use in proceedings subject to these rules. Form C is also approved for use in the investigation and perpetuation proceedings provided for by the Rules of Procedure.

Appendix A	Notice to Show Cause-State Bar Proceeding
Appendix A-1	Publication Form of the above notice
Appendix B	Notice of Time and Place of Hearing-Conviction Matter
Appendix C	Subpoena

COMMITTEE REPORT

OF

SUBCOMMITTEE ON EXPEDITING

THE DISCIPLINARY PROCESS

TO

THE STATE BAR OF CALIFORNIA

BOARD COMMITTEE ON

ADJUDICATION AND DISCIPLINE

March 27, 1984

I. INTRODUCTION

Mr. Philip M Schafer, Chair of the Board Committee on Adjudication and Discipline, gave this Committee a broad and challenging charge. That charge was to examine all procedural aspects of the disciplinary process and to seek out inefficiencies at every point from the time of reception of the complaint to its final disposition. A chart setting forth the steps in the disciplinary system as it currently operates is set forth as Appendix 1a. As a part of our analysis, we were asked to examine ways to reduce expenditures. In addition, however, we were to explore needed remedies which may involve additional expenditures.

The need for a comprehensive examination of inefficiencies in the disciplinary process is evident. We are dealing with an independent judicial system of major proportions within the State Bar organization. Like almost every other judicial system in our country, the disciplinary system has become overburdened. Inefficiencies in the disciplinary system, many of which are systemic, have resulted in delays which can no longer be countenanced. The processing time to move complaints through the State Bar disciplinary system parallels that encountered in other backlogged judicial systems. Even if the State Bar and the accused attorney (known as the Respondent) stipulate as to the facts and the discipline,

Respondent) stipulate as to the facts and the discipline, it can take virtually two years for discipline to be effectuated. If the matter is contested through the entire system, the average processing time is more than 40 months. (Appendix 1b).

Inefficiencies in disciplinary systems, both in California and throughout the country, have been the subject of substantial negative public comment. Chief Justice Warren Burger in February, 1984, in a speech to the American Bar Association, referred to the inefficiencies in the disciplinary process and the lack of public confidence in the system. He called for a comprehensive reexamination of disciplinary mechanisms. He noted that:

> "The alternative is that State legislatures may move independently if our profession does not act."

Recent developments demonstrate that Chief Justice Burger was not being unduly alarmist. In recent months we have seen a series of well-meaning but ill-founded proposals advanced in an attempt to restore public confidence in the disciplinary system. Among these are the following:

- Senator Robert Packwood of Oregon has introduced Senate Bill 1714. That proposed legislation would remove attorney discipline from the states and vest it in the Federal Trade Commission. Senator Packwood

cited "needed consumer protection." An amendment sponsored by Senator James A. McClure of Idaho would provide an exception from FTC regulation only in those states which have demonstrated an effective and efficient disciplinary system.

- In California, Assemblyman Lawrence Stirling has introduced Assembly Bill 3233. That proposed legislation would permit individual municipal or superior court judges to immediately suspend attorneys who, in the opinion of those judges, have been found guilty of moral turpitude crimes. For an outline of the current procedure respecting attorneys convicted of crimes, see Appendix lc.

- Certain judges within the Ninth Circuit Court of Appeals have proposed the establishment of a separate disciplinary system for attorneys appearing before courts within the Ninth Circuit. That movement is directly tied to perceived inefficiencies in the current system.

The current disciplinary system within California is beset by serious problems. At the same time, the Committee was pleased to note that some positive steps have already been taken to begin corrections. Some of these steps were taken prior to and independent of the formation of this Committee. Action by the Board of Governors to form a "backlog team" demonstrated recognition of a problem and the beginning of an interim solution. Aggressive actions by the current

administrators of the State Bar disciplinary system have demonstrated that much can be done to resolve inefficiencies which are not systemic. For example, both investigative and attorney resources are much better utilizied than in the past. During the tenure of this Committee, additional actions were taken. Those actions included establishment of a liaison with the Office of the District Attorney of Los Angeles County to study the procedures in that office and to adopt those procedures which appear appropriate.

Notwithstanding the positive steps which have been taken, unless fairly dramatic changes continue, the situation can only worsen. At the end of 1983, the State Bar had 80,047 active members. During that same year, 8,115 complaints were filed. (Appendix 2). It is anticipated that there will be a 4 % growth rate of attorneys each year through 1986 and that there will be, at a minimum, approximately one complaint for every 10 attorneys in the State of California. The Committee is convinced that the complaint ratio will likely increase. That proportional increase will occur because of the larger number of underemployed attorneys and more stringent rules governing attorney competence.

Despite the recent positive actions which have been taken, however, extremely serious problems remain. The Committee did an in-depth study of those problems.

The goal of the Committee's study was to find methods to streamline the system while still preserving the rights of accused attorneys. Because the disciplinary system represents a substantial part of the budget of the State Bar, the Committee was always mindful of cost factors. As a result of the Committee's examination, a number of recommendations have been formulated. It is the strong feeling of the Committee that, if those recommendations are adopted, and if a continual monitoring of the system takes place, the disciplinary system can work efficiently and effectively and the confidence of the public can be restored.

In summary, the Committee recommends:

1. STAFF LEVEL INVESTIGATION BACKLOG - ALLOCATION OF ADDITIONAL PERMANENT RESOURCES TO OFFICE OF TRIAL COUNSEL

2. NOTICE TO SHOW CAUSE BACKLOG - CONTINUED MONITORING OF RECENT IMPROVEMENTS

3. PRE-HEARING AND HEARING PROCEDURES

    A. AUTHORITY TO ISSUE NOTICE TO SHOW CAUSE BY STATE BAR STAFF

    B. ELIMINATION OF NEED FOR APPROVAL OF STIPULATIONS BY INVESTIGATION REFEREE

    C. AUTHORIZATION OF TRIAL COUNSEL TO ISSUE ADMONITIONS

    D. CREATION OF MASTER CALENDAR SYSTEM

E. USE OF ONE PERSON HEARING PANELS

F. USE OF COMPENSATED REFEREES IN COMPLEX CASES

G. CREATION OF SEPARATE POOL OF REFEREES TO HEAR FEE DISPUTE ARBITRATIONS

4. MISCELLANEOUS RECOMMENDATION

A. REVISION OF COMPUTER SYSTEM

B. AUTOMATIC SUSPENSION OF LAW CORPORATION CERTIFICATE OF REGISTRATION FOR FAILURE TO FILE ANNUAL REPORT

C. CERTAIN PAPERWORK AND PERSONNEL CHANGES

D. FORMATION OF STANDING SUBCOMMITTEE ON EXPEDITING THE DISCIPLINARY PROCESS

II. BACKGROUND

In order to fully understand the current problems which cause delay and the proposed solutions to those problems, it is necessary to have some appreciation for the history of the State Bar disciplinary system and the current operation of that system.

The State Bar disciplinary process has evolved since its creation in 1928. Until the early 1960's, the entire process centered around volunteers. It was only in the 1960's that a small number of employees was hired by the State Bar to screen disciplinary complaints. It was not until 1973 that full-time State Bar attorney employees were hired to try disciplinary cases. The current system has its genesis in a major revision of the Rules of Procedure which occurred in 1976. Further modifications were made in 1979 and the Office of the State Bar Court was created. A more complete history of the evolution of the State Bar disciplinary system is contained at Appendix 3. That history reflects an increasing reliance over past years on professional State Bar staff to keep pace with the burgeoning case-load.

The State Bar disciplinary structure is now composed of two major elements - the Office of Trial Counsel and the State Bar Court.

The Office of Trial Counsel consists of attorneys, investigators and support personnel employed by the State Bar. It screens all complaints against lawyers, dismisses those that are deemed to be unwarranted and investigates and presents evidence to the State Bar Court in support of charges of attorney misconduct. It appears as the State Bar's representative in hearings regarding charges of attorney misconduct.

The State Bar Court consists of a state-wide system of more than 500 volunteer attorney and non-attorney referees appointed by the Board of Governors (and, in two instances, appointed by the Governor of California).

The State Bar Court is divided into four departments: Investigation, Hearing, Review and Probation.

The State Bar Court Investigation Referees issue notices to show cause. The Notice to Show Cause is a formal charge in a disciplinary matter; thereafter, those charges are tried before a Hearing Department panel and a recommendation is made to the Review Department. If the recommendation is for disbarment or suspension, it is sent to the Supreme Court. The Probation Department monitors the activities of attorneys who have received discipline which includes specific terms of probation.

Procedurally, the current disciplinary system, in capsule form, is composed of six separate steps where the acts of an accused attorney are reviewed. Four of those steps are by persons independent of the Office of Trial Counsel:

a. A complaint is received and screened by the Office of Trial Counsel. Those complaints which are deemed to be "no merit" complaints or which belong elsewhere in the system are so designated and disposed of (Trial Counsel);

b. Those complaints as to which there may be some merit are assigned to investigators and the accused attorney (Respondent) is contacted in writing and is invited to submit his or her explanation of the allegation; (Trial Counsel)

c. Unless the matter is resolved satisfactorily as a result of the Respondent's explanation, the complaint is referred to an Investigation Referee of the State Bar Court for a determination as to whether or not there is reasonable cause to issue a Notice to Show Cause. As an alternative to issuing a Notice to Show Cause, the Referee may dismiss the matter or issue an admonition. The Referee may choose to hold a hearing but is not obligated to do so; (Independent of Trial Counsel)

d. The Notice to Show Cause is prepared and filed.

e. After appropriate discovery, the trial is scheduled before a hearing panel of the State Bar Court. That procedure now includes mandatory settlement conference procedures, a pretrial conference and a formal hearing before a three-member panel (or, in the alternative, disposition by stipulation); (Independent of Trial Counsel)

f. The disposition receives a mandatory review by the 15 member Review Department; (Independent of Trial Counsel)

g. In any case in which a recommendation involving either disbarment or a suspension has been approved by the Review Department, the recommendation is transmitted to the Supreme Court for final action. (Independent of Trial Counsel)

III. GENERAL SUMMARY OF THE COMMITTEE'S RECOMMENDATIONS

The Committee has made a series of recommendations which, taken in concert, should both alleviate the backlog problem and produce a leaner and more streamlined disciplinary system adequate to meet both current and projected needs. Those recommendations are set forth in detail in this report. Each recommendation is accompanied by a statement of the current problem and the proposed solution. Some of the recommendations will require changes in the Rules of Procedure. Such changes have been drafted and are contained in an appendix to this report.

The first recommendations have to do specifically with the current and projected backlog. When the Board of Governors assigned a backlog team to the Office of Trial Counsel it did so on a temporary basis, operating on the assumption that the backlog was a one-time occurrence. While the Committee is of the opinion that certain factors which caused the backlog are systemic and can be greatly alleviated by adoption of procedural recommendations made in this report, it is also the opinion of the Committee that, given the continuing increase in both attorneys and complaints, the temporary infusion of additional personnel to the Office of Trial Counsel must be made permanent.

Further, the Committee recommends that the additional permanent resources to be given to the Office of Trial Counsel be distributed, both by position and geography, in a way which is more in keeping with the needs of the Office of Trial Counsel. In short, the Committee strongly recommends that the Board permanently assign the funds now designated as support for the backlog team to the Office of Trial Counsel to create positions in the locations and levels which that office deems necessary to deal with its growing case-load.

The second series of recommendations deals with pre-hearing and hearing procedures. The Committee strongly recommends that the Office of Trial Counsel be given the authority to issue Notices to Show Cause without referring those matters to Investigation Referees. A series of internal reviews has been recommended to assure that elimination of the Investigation Referee does not diminish the Respondent's due process rights. The Committee also recommends that Trial Counsel be given the authority to enter into stipulations and issue admonitions without reference to Investigation Referees.

The Committee has proposed creation of a comprehensive Master Calendar System. This system, which is described in detail in the report, calls for Referees

to be assigned to court sessions rather than individual cases. The system will effectively utilize the time of Referees and will greatly increase efficiency and reduce delays.

The Committee also recommends that trials be held before one person hearing panels rather than three person hearing panels. Under the proposed recommendation, either Trial Counsel or the Respondent would have the right to elect a three person panel. Failure to do so would result in a hearing before a one person panel. Use of one person panels, in cases in which that option is chosen by the parties, can result in a dramatic time savings with no decrease in due process rights.

The Committee has carefully considered and debated what to do about extremely large and complex cases which inevitably arise. These cases, though few in number, are an extreme burden on the system. It is the recommendation of the Committee that such cases be heard by a group of compensated referees - typically retired judges - who have the time to commit substantial resources on a continuing basis. The proposed compensation is $100 per day. That figure will not pose a financial burden to the State Bar inasmuch as the costs typically associated with expenses of Referees in such complex cases frequently

exceed $100 per day. The Committee strongly feels that adoption of this recommendation is a high priority item. Complex and lengthy cases cause delays in the system far in excess of what would be anticipated by the absolute numbers of such cases. A system, such as the one proposed, must be developed to deal with such cases.

The Committee also recommends adoption of a separate pool of Referees to hear mandatory attorney fee dispute arbitrations. These matters are presently in the unitary State Bar Court system. While the Committee does not wish to interfere with that arrangement, it does feel that separation of disciplinary and fee dispute hearing panels would redound to the benefit of both procedures.

The Committee has undertaken an analysis of the potential time savings which would result from adoption of its recommendations. That analysis has produced rather dramatic and startling results. It is the opinion of the Committee that, if its recommendations are adopted, the average processing time of disciplinary complaints would be reduced by more than half.

Finally, the Committee has offered some miscellaneous observations and recommendations. In large part, these relate to matters which either were not strictly within the purview of this Committee or which

were matters which the Committee did not have time to fully explore. These recommendations and observations include the following:

- The Committee recommends a revised computer system to deal with the problems faced by the Office of Trial Counsel. While we recognize that recent modifications have been made and are willing to take a "wait and see" attitude, we have set forth in our recommendation what we believe to be the desired result of a computer system.

- The Committee has recommended automatic suspension of the Certificate of Registration of law corporations who fail to file an annual report. The current system, which is part of the unitary State Bar Court system, poses an undue burden on limited resources available.

- The Committee, in its report, calls attention to additional problems which have been identified, relating both to complaint processing and personnel matters. It is the feeling of the Committee that such matters, while perhaps beyond our purview, require immediate and ongoing attention.

It is the unanimous conclusion of the Committee that, in order to effectuate these recommendations and

prevent future problems within the disciplinary system, there is a need for a Standing Subcommittee on Expediting the Disciplinary Process. The structure of such a Standing Subcommittee is set forth in this report.

IV. GENERAL SUMMARY OF THE PROBLEMS WHICH CAUSE DELAY

When this Committee began its work, it was advised of the existence of a substantial "backlog". Indeed, existence of a backlog caused the Board of Governors to provide temporary additional assistance to the Office of Trial Counsel. That backlog was, in part, the impetus for creation of this Committee. As a result, the Committee, as its first order of business, undertook an analysis of the backlog problem. We wanted to determine whether or not that problem was a one-time occurrence or whether it had systemic origins and would continue into the future. That analysis produced two significant findings:

1. There were in fact two separate backlogs. One of those backlogs occurred after Investigation Referees ordered the issuance of Notices to Show Cause. In more than 200 cases, the files had been untouched for more than three months (and in some case, dramatically longer than three months). We concluded that this backlog was the result of a number of factors, most of which were personnel-related. For the most part, we did not view that backlog to be systemic or recurring in nature. There was, however, a second and more serious category of backlogs. That backlog occurred at a much earlier stage.

When this Committee began its work there were more than 2,306 complaints which had been pending at the staff investigation level. This backlog was viewed to be more serious because, we concluded, it was basically systemic in nature, resulted from inefficiencies which were built into the system and had the effect of producing delays in other phases of the process.

2. A second disturbing finding resulted from the efforts of the Committee, with the assistance of staff, to quantify the true backlog. We attempted to look, with some specificity, at precise stages where the delay was occurring. We discovered that that task was Herculean because of the antiquated data retrieval systems available to the State Bar. It is interesting to note that a report was presented to the Board of Governors dealing with discipline in 1973. The members of the Ad Hoc Committee presenting that report encountered much the same problem. They called for a thorough overhaul of record keeping. They concluded as follows:

> "At present the statistics only indicate delay. They are almost useless for anything else and are deceptive."

More than a decade has passed since issuance of that report. Our conclusions, however, as of late 1983, were much the same. That is particularly disturbing because of

the vast amount of money spent on computer resources in the intervening ten years. During the last three months, it appears that substantial efforts have been undertaken to provide meaningful computer reports to the staff of the Office of Trial Counsel and State Bar Court. More needs to be done and, in the opinion of Committee, can be done without substantial additional cost.

Because the Committee concluded that many of the delays and inefficiencies which caused the investigation backlog and related delays were systemic, the Committee began an intensive inquiry to pinpoint the procedural problems. Several were identified.

One of the single largest causes for delay in the system stems from inefficient and ineffective use of volunteer Referees. Those Referees are inserted into the system at an early point as Investigation Referees. In theory, those Investigation Referees provide a due process safeguard for Respondents. They are to review independently complaints which are considered by Trial Counsel to have merit before the issuance of a Notice to Show Cause. They are given authority to dispose of matters which in fact have no merit. We concluded, after exhaustive investigation and debate, that use of Investigation Referees was counterproductive. Adequate

safeguards are available without the use of such Investigation Referees. In fact, use of Investigation Referees provides minimal, if any, due process protection. Further, use of Investigation Referees adds more than five months to the average processing of a complaint.

We found substantial additional delays which existed during the trial procedure, which is initiated by issuance of a Notice to Show Cause. We concluded that current trial procedures add more than six months of unnecessary delay. The current calendar system is one of the prime reasons. Three person panels are appointed months in advance to hear a given matter. Almost inevitably, such scheduling tactics lead to frustration. Referees have calendar conflicts. Scheduled matters drop out of the system at the last moment and others cannot be substituted to utilize the Referees. Matters which are scheduled for one day almost inevitably carry over. This produces significant delays as all of the parties, including the three Referees, search for a date for a continued hearing. Finally, there are the inevitable "mega-cases." These such large-scale cases occur only a few times a year. However, they are a substantial threat to the current system. Scheduling problems of Referees in such cases are magnified.

In sum, the Committee concluded that identified and correctable systemic problems have the effect of virtually doubling the time which it should take to process a disciplinary matter.

EXHIBIT I

FOR YOUR INFORMATION
FROM STUART A. FORSYTH

AUG - 5 1985

REPORT TO THE COMMITTEE ON

ADMISSIONS AND DISCIPLINE

INVESTIGATIVE PROCESS OF THE

STATE BAR DISCIPLINARY SYSTEM

PRESENTED BY

SUBCOMMITTEE ON EXPEDITING

THE DISCIPLINARY PROCESS

July 19, 1985

REPORT TO THE COMMITTEE ON ADMISSIONS AND DISCIPLINE: INVESTIGATIVE PROCESS OF THE STATE BAR DISCIPLINARY SYSTEM

I. OVERVIEW

The Subcommittee on Expediting the Disciplinary Process was given the major task of examining the pre-notice disciplinary investigation process and recommending appropriate changes. Information concerning the background of this assignment and the Subcommittee's methodology are contained in Attachment 2 to this report.

Members of the Subcommittee performed substantial independent work. The Subcommittee also utilized the services of an expert consultant. That work is now concluded and the Subcommittee presents, by this report and attachments, its findings, and recommendations for action by the Committee.

A. Summary of Findings

In summary, the Subcommittee has found:

° A substantial and unacceptable backlog exists at the pre-notice investigation stage. This backlog is growing and, unless organizational changes are made, will continue to grow.

° The backlog results, in part, from a lack of sufficient investigative assets.

° Simply adding more investigative resources to the present structure will not, however, alleviate the problem. Nor will additional investigative resources, without organizational changes, assure that the backlog problem will not recur in the future.

° A major part of the problem is systemic and results from serious organizational, structural and procedural deficiencies in the current system.

° A substantial organizational overhaul of the investigative system will be required. Unless and until that is accomplished, the system will be unable to cope successfully and professionally with its mounting workload.

B. Summary of Recommendations

Detailed recommendations are contained in the balance of this report and Attachment 1. Major recommendations include:

° A thorough and complete realignment of the system.

° Creation of an Office of Investigation, separate from and co-equal to the Office of Trial Counsel and the Office of the State Bar Court. This Office would be headed by a Chief of Investigation who would be a non-lawyer, professional investigator and who would report directly to the Senior Executive for Programs.

° Centralization of the Investigative Process and all of its personnel in Los Angeles.

Additional recommendations deal with matters such as:

° Organization of functional investigative teams.

° A work flow system.

° Changes in procedures and assignment of priorities.

The recommendations, while sweeping in scope, are achievable. Some changes have already begun. Many of those changes are consistent with the recommendations contained in this report. Some changes which are in the process of being implemented do not, however, reflect the organizational changes recommended in this report.

Adoption of the recommendations is critically necessary and should be done immediately.

Implementation of the recommendations within six months from date of approval is a realistic goal.

II. THE BASIS FOR AND STRUCTURE OF THIS REPORT

The Subcommittee has devoted hundreds of hours to the examination of the Investigative Process.

Additionally, the Subcommittee has had the valuable pro-bono assistance of an expert consultant, Commander Mark Kroeker of the Los Angeles Police Department. Commander Kroeker's qualifications are set forth in Attachment 3 to this report. As that attachment demonstrates, he is a recognized expert in the investigative field. Commander Kroeker performed this work on a pro bono basis. While much of the work was done on an "on-duty" basis, Commander Kroeker devoted countless hours of personal time to this project. The State Bar is deeply in debt to Commander Kroeker for his valuable contribution. Likewise, the State Bar is indebted to Daryl Gates, Chief of Police of the Los Angeles Police Deparment, who approved of Commander Kroeker's assignment and made him available to the State Bar.

Commander Kroeker produced an exhaustive report to the Subcommittee and the State Bar Staff. That report, together with its recommendations, was thoroughly considered and debated. The Subcommittee unanimously adopted the Kroeker Report. That report is appended and forms the major part of this report.

III. FINDINGS OF THE SUBCOMMITTEE

The Subcommittee has concluded that the current investigative system is in need of major organizational

restructuring. The present system is staffed by a number of dedicated individuals who care about their work. However, they are operating within a system which inhibits successful accomplishment of their mission. While the system is constantly being modified, major observed problems with the current system include the following:

° Organization is diffused, leading to a lack of unity of command and poor communication flow;

° Investigative procedures are outdated and do not, as a result, optimize use of investigative assets;

° Existing assets are improperly deployed. Specifically, Los Angeles, which has a high number of pending complaints, suffers from a shortage of assets. At the same time, San Francisco is over-deployed with investigative and supervisory staff, in relation to the number of San Francisco based complaints;

° Prioritization of case assignments is ineffective and hampered by inadequate criteria;

° Policy restrictions, real or perceived, prevent meaningful use of discretion in closing case files which do not merit complete investigative work-up.

These and related findings do not constitute a condemnation of the current staff or supervision and no such implication should be drawn. The staff should be

commended for the input to this report and for their dedication. The problems are systemic. The staff has been laboring for far too long under an organizational structure which is inadequate to cope with the massive number of complaints received daily. They are faced with work overload and poor working conditions. When these problems have been addressed, it will be possible to evaluate case loads and personnel capability and competence.

IV. RECOMMENDATIONS OF THE SUBCOMMITTEE

The Subcommittee unanimously and strongly supports all of the recommendations contained in Attachment 1. The Subcommittee's position is based upon the separate and independent work of members of the Subcommittee, extensive meetings with Commander Kroeker, meetings with the staff and extensive consideration and debate of each of the recommendations in that report.

For that reason, the Kroeker Report is appended in its entirety. The report speaks eloquently for itself and, except for two items, will not be the subject of further comment here.

There are two recommendations which, however, do merit special attention in this Subcommittee Report.

These recommendations are commented upon here for two reasons. First, the recommendations are critically important. Without the organizational changes embodied in those recommendations, the balance of the recommendations will not be effective. Second, these recommendations deserve comment because of disagreement between the Subcommittee and staff.

It should be noted that the staff has accepted and endorsed the majority of the recommendations. They have, however, disagreed with two major recommendations which deal with the creation of an independent, co-equal investigative structure and centralization of the investigative function in one geographic location -- Los Angeles.

A. Creation of Office of Investigation

Attachment 1 recommends creation of a separate functional entity known as the Office of Investigation. That Office would have the following characteristics:

° It would be totally independent from the Office of Trial Counsel and the Office of State Bar Court.

° Organizationally, the Office of Investigation would be co-equal with the Office of Trial Counsel and Office of State Bar Court.

° It would be headed by a Chief of Investigation. This individual, who would be hired by

senior management of the State Bar, would be a non-lawyer, professional investigator. The Chief of Investigation would report directly to the Senior Executive for Programs.

The rationale for this organizational change is sound. In addition to professional investigative management and expertise, the creation of an independent Office of Investigation will permit the pin-pointing of accountability at all levels.

The Subcommittee has considered the position of staff on this issue. Staff, in brief, feels that the investigative process is an integral part of the prosecutorial function and therefore the chief investigator should be accountable to the chief prosecutor. We simply disagree. It is the strong and unanimous feeling of the Subcommittee that total independence of the two offices is the only way to remedy a serious organizational deficiency.

The Subcommittee does, therefore, have some concern about changes which, we understand, are in the process of being implemented. As we understand it, the Office of Trial Counsel is in the process of organizing an investigative unit. While that unit has some of the hallmarks of the proposed Office of Investigation, it does not separate the prosecutorial and investigative units to the degree necessary.

B. Centralization and Relocation of the Investigative Function

Attachment 1 recommends that the investigative function be centralized and be brought to Los Angeles. The arguments in favor of such a recommendation are compelling.

- Centralized supervision and management would promote uniformity and improve work quality;
- Workloads could be more effectively monitored;
- The type of investigations conducted lend themselves readily to telephone interviews and some correspondence. Personal interviews are rarely necessary or appropriate;
- More than two-thirds of the work load is in Los Angeles. And yet, (at least on paper) senior supervision is currently in San Francisco.

The staff has non-concurred with this recommendation. Staff feels that the geographic dispersal of cases requires a decentralized investigative function. The Subcommittee disagrees and has concluded that the staff concerns can be met by creation of a small satellite team in San Francisco.

The Subcommittee feels that a centralized investigative function would result in more rapid, higher quality and more cost-effective investigations.

For those reasons, the Subcommittee recommends that the Office of Investigation initially be centralized in Los Angeles. If, after a period of experience, the Chief of Investigation determines that some limited decentralization should take place, the Subcommittee would respect that determination.

V. IMPLEMENTATION OF RECOMMENDATIONS

Our recommendations are broad and sweeping. At the same time, they contain significant detail. We are aware that there are significant considerations involving budgetary, personnel, space and other matters. Implementation will not be easy. But these recommendation <u>can</u> be implemented and <u>must</u> be implemented if the system is to be successful. The situation is critical and the luxury of extended additional committee work is not possible.

We therefore recommend the following implementation steps:

- Approval of the major concepts by the Board of Governors at the earliest possible time.

° Hiring of the Chief of Investigation. This is a critical step and we advise that the services of an outside agency, familiar with the investigative field, be used. There are several such agencies. Hiring of the Chief of Investigation should be accomplished within 60 days of Board approval.

° The Chief of Investigation should be charged with implementation of the remaining recommendations. Commander Kroeker has volunteered to assist during the implementation phase. We strongly suggest that the Chief of Investigation utilize his services. Implementation of major recommendations should be accomplished within 120 days following the hiring of the Chief of Investigation. This timeframe is realistic if and only if the Chief of Investigation receives full budgetary, logistical and other support from the State Bar. Given the critical importance of the mission, we assume that such support will be forthcoming.

° Staff should be directed, in the interim, to take no actions inconsistent with these recommendations.

Robert E. Coyle
Edna R. S. Alvarez
Carolyn S. Anagnos
Don Mike Anthony
Orville A. Armstrong, Jr.
Ronald H. Carroll
Edward P. George, Jr.
James P. Hargarten
Kenneth C. Kocourek
Lisa B. Lench

EXHIBIT J

PROPOSED CONFERENCE REPORT NO. 1
SEPTEMBER 10, 1985

AMENDED IN ASSEMBLY JULY 18, 1985

AMENDED IN SENATE MAY 30, 1985

AMENDED IN SENATE MAY 16, 1985

AMENDED IN SENATE APRIL 29, 1985

SENATE BILL No. 405

Introduced by Senator ~~Boatwright~~ *Lockyer*
(Principal coauthor: Senator Presley)

February 13, 1985

An act to amend ~~Sections 6140, 6140.5, and 6141~~ *Section 6140.5* of, and to add Sections ~~6140.2 and 6140.3~~ *6086.1, 6140.1, 6140.2, and 6140.3* to, the Business and Professions Code, relating to the State Bar of California.

LEGISLATIVE COUNSEL'S DIGEST

SB 405, as amended, ~~Boatwright~~ *Lockyer*. State Bar of California: dues.

Existing law establishes a basic annual membership fee of $175 for active members of the State Bar who have been admitted for 3 years or longer for 1984 and $180 for 1985. It establishes a maximum basic annual membership fee of $105 for active members of the State Bar who have been admitted for less than 3 years for 1984 and $115 for 1985. The membership fee for active members admitted for less than one year is $100. This provision is effective until January 1, 1986. Existing law also authorizes the Board of Governors of the State Bar to increase the annual membership fee by an additional amount not exceeding $10, to be applied for the cost of land and buildings to be used to conduct the operations of the State Bar, as specified. This authorization is effective

only until December 31, 1985. Existing law also authorizes the board to increase the annual membership fee by an additional amount not to exceed $10 to be used for the establishment of the Client Security Fund.

This bill would increase the basic membership fee for active members of the State Bar who have been admitted to the practice of law for 3 years or longer to ~~a maximum of $210~~ *$205* for 1986 ~~and $220 for 1987~~. It also would increase the ~~maximum~~ basic membership fee for active members of the State Bar who have been admitted to practice less than 3 years to ~~$145~~ *$140*, for 1986, ~~and $155 for 1987,~~ and for members who have been admitted for less than one year to ~~$130~~ *$125*. ~~The effective date of the above provisions of existing law which establish the basic annual membership fee would be extended from January 1, 1986, until January 1, 1988.~~ *It also would increase the membership fee for inactive members to $35. A portion of the increase would be required to be expended on the disciplinary system. The bill would provide that, in 1986 and 1987, the State Bar shall submit its proposed annual budget to the appropriate fiscal committee of each house of the Legislature for review and recommendation.*

The bill also would authorize the State Bar to increase the annual membership fee for active members by not more than $15 for land and buildings ~~and delete the provisions that make the authorization for the fee for land and buildings effective only until December 31, 1985,; it also would increase the maximum annual membership fee for inactive members from $20 to $35~~ *in 1986.*

Further, the bill would authorize the State Bar to increase the annual membership fee for active and inactive members in 1986 ~~and 1987~~ by an additional amount, not to exceed $10, to be applied only to costs related to the disciplinary function of the State Bar. The bill would require the State Bar to ~~report~~ *submit reports* to the Judiciary Committees of the Senate and Assembly concerning procedural changes and improvements in the disciplinary system, as specified, by ~~March 31, 1987~~ *April 1, 1986, and June 1, 1986*, and would require the achievement, by December 31, 1987, of a specified reduction in the number of complaints within the inventory of the State Bar as of March 31, 1985. It also would require the State Bar

to set a specified goal with regard to the time required for the disposition of disciplinary complaints.

The bill would also provide that the fee authorized to be assessed for the Client Security Fund may be applied to the costs of the administration of the fund, as specified. It also would specify that the administration of the fund may be delegated to the State Bar Court rather than to a specified disciplinary board.

The bill also would provide that the hearings and records of original disciplinary proceedings in the State Bar Court shall be public, following a notice to show cause.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

~~SECTION 1. Section 6140 of the Business and Professions Code is amended to read:~~

~~6140. (a) The board shall fix the annual membership fee as follows:~~

~~(1) For active members who have been admitted to the practice of law in this state for three years or longer at a sum not exceeding two hundred ten dollars ($210) for 1986 and two hundred twenty dollars ($220) for 1987.~~

~~(2) For active members who have been admitted to the practice of law in this state for less than three years but more than one year preceding the first day of February of the year for which the fee is payable, at a sum not exceeding one hundred forty-five dollars ($145) for 1986 and one hundred fifty-five dollars ($155) for 1987.~~

~~(3) For active members who have been admitted to the practice of law in this state for less than one year preceding the first day of February of the year for which the fee is payable, at a sum not exceeding one hundred thirty dollars ($130).~~

~~(b) The annual membership fee for active members is payable on or before the first day of February of each year.~~

~~This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted~~

~~statute, which is chaptered before January 1, 1988, deletes or extends that date.~~

~~SEC. 2.~~

SECTION 1. Section 6086.1 is added to the Business and Professions Code, to read:

6086.1. Except as otherwise provided by law, hearings and records of original disciplinary proceedings in the State Bar Court shall be public, following a notice to show cause.

SEC. 2. Section 6140.1 is added to the Business and Professions Code, to read:

6140.1. (a) The board shall fix the annual membership fee for 1986 as follows:

(1) For active members who have been admitted to the practice of law in this state for three years or longer, at the sum of two hundred five dollars ($205).

(2) For active members who have been admitted to the practice of law in this state for less than three years but more than one year preceding the first day of February of the year for which the fee is payable, at the sum of one hundred forty dollars ($140).

(3) For active members who have been admitted to the practice of law in this state for less than one year preceding the first day of February of the year for which the fee is payable, at the sum of one hundred twenty-five dollars ($125).

(4) For inactive members, at the sum of thirty-five dollars ($35).

(b) Fifteen dollars ($15) of each fee received pursuant to paragraphs (1), (2), and (3) of subdivision (a) shall be expended on the disciplinary system, and ten dollars ($10) of each fee may be expended on general administrative costs. Ten dollars ($10) of each fee received pursuant to paragraph (4) of subdivision (a) shall be expended on the disciplinary system and five dollars ($5) of each fee may be expended on general administrative costs.

(c) In the years 1986 and 1987, the State Bar shall submit its proposed annual budget to the appropriate fiscal committee of each house of the Legislature for

review and recommendation. Nothing in this subdivision shall be construed as having any effect on the period of time for which the annual budget of the State Bar is applicable.

SEC. 3. Section 6140.2 is added to the Business and Professions Code, to read:

6140.2. (a) In ~~the years 1986 and 1987~~ *1986*, the board may increase the annual membership fee fixed by subdivision (a) of ~~Sections 6140 and 6141~~ *Section 6140.1* by an additional amount not to exceed ten dollars ($10). This additional amount may only be applied to costs related to the disciplinary function of the State Bar.

~~(b) On or before March 31, 1987, the State Bar shall report~~

(b) On or before April 1, 1986, and June 1, 1986, the State Bar shall submit reports to the Judiciary Committees of the California State Senate and Assembly the procedural changes and improvements which have been made in the State Bar disciplinary system and what effect these changes have had on the number of complaints pending ~~and~~, the time required to process these complaints, *and the progress made in reducing the backlog of complaints.*

(c) On or before December 31, 1987, the State Bar shall reduce by 80 percent the complaints within its inventory as of March 31, 1985, which have been received but have not resulted in dismissal, admonishment of the attorney involved, or filing of formal charges by State Bar Office of Trial Counsel. This reduction shall be accomplished by dismissal, admonishment of the attorney involved, or recommendation by the State Bar for disposition by the Supreme Court.

(d) The State Bar shall set as a goal by December 31, 1987, the improvement of its disciplinary system so that no more than six months will elapse from the receipt of complaints to the time of dismissal, admonishment of the attorney involved, or the filing of formal charges by the State Bar Office of Trial Counsel.

~~SEC. 3.~~

SEC. 4. Section 6140.3 is added to the Business and

Professions Code, to read:

6140.3. ~~The~~ *In 1986, the* board may increase the annual membership fee fixed by subdivision (a) of Section ~~6140~~ *6140.1* by an additional amount not exceeding fifteen dollars ($15). This additional amount may only be applied to the cost of land and buildings to be used to conduct the operations of the State Bar, including furniture, furnishings, equipment, architects' fees, construction and financing costs, landscaping, and other expenditures incident to the acquisition, construction, furnishing, and equipping of the land and buildings; the payment of interest on and the repayment of moneys borrowed for those purposes; and the reimbursement of the State Bar's treasury expended for those purposes.

~~SEC. 4.~~

SEC. 5. Section 6140.5 of the Business and Professions Code is amended to read:

6140.5. (a) The board may establish and administer a Client Security Fund to relieve or mitigate pecuniary losses caused by the dishonest conduct of the active members of the State Bar. Any payments from the fund shall be discretionary and shall be subject to such regulation and conditions as the board shall prescribe. The board may delegate the administration of the fund to the State Bar Court, or to any board or committee created by the board of governors.

(b) Commencing January 1, 1972, the board may increase the annual membership fees fixed by it pursuant to Section 6140 by an additional amount per active member not to exceed ten dollars ($10) in any year, the additional amount to be applied only for the purposes of the fund and the costs of its administration, including, but not limited to, the costs of processing, determining, defending, or insuring claims against the fund.

~~SEC. 5. Section 6141 of the Business and Professions Code is amended to read:~~

~~6141. (a) The board shall fix the annual membership fee for inactive members at a sum not exceeding thirty/five dollars ($35). The annual membership fee for~~

~~inactive members is payable on or before the first day of February of each year.~~

~~(b) An inactive member shall not be required to pay the annual membership fee for inactive members for any calendar year following the calendar year in which the member attains the age of 70 years.~~

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AMENDED IN ASSEMBLY JULY 18, 1985

AMENDED IN SENATE MAY 30, 1985

AMENDED IN SENATE MAY 16, 1985

AMENDED IN SENATE APRIL 29, 1985

SENATE BILL No. 405

Introduced by Senator Boatwright

February 13, 1985

An act to amend Sections 6140, *6140.5,* and 6141 of, and to add Sections 6140.2 and 6140.3 to, the Business and Professions Code, relating to the State Bar of California.

LEGISLATIVE COUNSEL'S DIGEST

SB 405, as amended, Boatwright. State Bar of California: dues.

Existing law establishes a basic annual membership fee of $175 for active members of the State Bar who have been admitted for 3 years or longer for 1984 and $180 for 1985. It establishes a maximum basic annual membership fee of $105 for active members of the State Bar who have been admitted for less than 3 years for 1984 and $115 for 1985. The membership fee for active members admitted for less than one year is $100. This provision is effective until January 1, 1986. Existing law also authorizes the *Board of Governors of the* State Bar to increase the annual membership fee by an additional amount not exceeding $10, to be applied for the cost of land and buildings to be used to conduct the operations of the State Bar, as specified. This authorization is effective only until December 31, 1985. *Existing law also authorizes the board to increase the annual membership fee by an additional amount not to exceed $10 to be used for the establishment of the Client Security Fund.*

This bill would increase the basic membership fee for active members of the State Bar who have been admitted to the practice of law for 3 years or longer to a maximum of $210 for 1986 and $220 for 1987. It also would increase the maximum basic membership fee for active members of the State Bar who have been admitted to practice less than 3 years to $145 for 1986, and $155 for 1987, and for members who have been admitted for less than one year to $130. The effective date of the above provisions of existing law which establish the basic annual membership fee would be extended from January 1, 1986, until January 1, 1988.

The bill also would authorize the State Bar to increase the annual membership fee for active members by not more than $15 for land and buildings and delete the provisions that make the authorization for the fee for land and buildings effective only until December 31, 1985,; it also would increase the maximum annual membership fee for inactive members from $20 to $35.

Further, the bill would authorize the State Bar to increase the annual membership fee for active and inactive members in 1986 and 1987 by an additional amount, not to exceed $10, to be applied only to costs related to the disciplinary function of the State Bar. The bill would require the State Bar to report to the Judiciary Committees of the Senate and Assembly concerning procedural changes and improvements in the disciplinary system, as specified, by March 31, 1987, and would require the achievement, by December 31, 1987, of a specified reduction in the number of complaints within the inventory of the State Bar as of March 31, 1985. It also would require the State Bar to set a specified goal with regard to the time required for the disposition of disciplinary complaints.

The bill would also provide that the fee authorized to be assessed for the Client Security Fund may be applied to the costs of the administration of the fund, as specified. It also would specify that the administration of the fund may be delegated to the State Bar Court rather than to a specified disciplinary board.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 6140 of the Business and Professions Code is amended to read:

6140. (a) The board shall fix the annual membership fee as follows:

(1) For active members who have been admitted to the practice of law in this state for three years or longer at a sum not exceeding two hundred ten dollars ($210) for 1986 and two hundred twenty dollars ($220) for 1987.

(2) For active members who have been admitted to the practice of law in this state for less than three years but more than one year preceding the first day of February of the year for which the fee is payable, at a sum not exceeding one hundred forty-five dollars ($145) for 1986 and one hundred fifty-five dollars ($155) for 1987.

(3) For active members who have been admitted to the practice of law in this state for less than one year preceding the first day of February of the year for which the fee is payable, at a sum not exceeding one hundred thirty dollars ($130).

(b) The annual membership fee for active members is payable on or before the first day of February of each year.

This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date.

SEC. 2. Section 6140.2 is added to the Business and Professions Code, to read:

6140.2. (a) In the years 1986 and 1987, the board may increase the annual membership fee fixed by subdivision (a) of Sections 6140 and 6141 by an additional amount not to exceed ten dollars ($10). This additional amount may only be applied to costs related to the disciplinary function of the State Bar.

(b) On or before March 31, 1987, the State Bar shall report to the Judiciary Committees of the California State Senate and Assembly the procedural changes and improvements which have been made in the State Bar

disciplinary system and what effect these changes have had on the number of complaints pending and the time required to process these complaints.

(c) On or before December 31, 1987, the State Bar shall reduce by 80 percent the complaints within its inventory as of March 31, 1985, which have been received but have not resulted in dismissal, admonishment of the attorney involved, or filing of formal charges by State Bar Office of Trial Counsel. This reduction shall be accomplished by dismissal, admonishment of the attorney involved, or recommendation by the State Bar for disposition by the Supreme Court.

(d) The State Bar shall set as a goal by December 31, 1987, the improvement of its disciplinary system so that no more than six months will elapse from the receipt of complaints to the time of dismissal, admonishment of the attorney involved, or the filing of formal charges by the State Bar Office of Trial Counsel.

SEC. 3. Section 6140.3 is added to the Business and Professions Code, to read:

6140.3. The board may increase the annual membership fee fixed by subdivision (a) of Section 6140 by an additional amount not exceeding fifteen dollars ($15). This additional amount may only be applied to the cost of land and buildings to be used to conduct the operations of the State Bar, including furniture, furnishings, equipment, architects' fees, construction and financing costs, landscaping, and other expenditures incident to the acquisition, construction, furnishing, and equipping of the land and buildings; the payment of interest on and the repayment of moneys borrowed for those purposes; and the reimbursement of the State Bar's treasury expended for those purposes.

SEC. 4. Section 6140.5 of the Business and Professions Code is amended to read:

6140.5. (a) The board may establish and administer a Client Security Fund to relieve or mitigate pecuniary losses caused by the dishonest conduct of ~~those~~ *the* active members of the State Bar. Any payments from the fund shall be discretionary and shall be subject to such

regulation and conditions as the board shall prescribe. The board may delegate the administration of the fund to the *State Bar Court* ~~disciplinary board provided for in Section 6086.5~~, or to any board or committee created by the board of governors.

(b) Commencing January 1, 1972, the board may increase the annual membership fees fixed by it pursuant to Section 6140 by an additional amount per active member not to exceed ten dollars ($10) in any year, the additional amount to be applied only for the purposes of the fund *and the costs of its administration, including, but not limited to, the costs of processing, determining, defending, or insuring claims against the fund.*

~~SEC. 4.~~

SEC. 5. Section 6141 of the Business and Professions Code is amended to read:

6141. (a) The board shall fix the annual membership fee for inactive members at a sum not exceeding thirty-five dollars ($35). The annual membership fee for inactive members is payable on or before the first day of February of each year.

(b) An inactive member shall not be required to pay the annual membership fee for inactive members for any calendar year following the calendar year in which the member attains the age of 70 years.

O

AMENDED IN SENATE MAY 30, 1985

AMENDED IN SENATE MAY 16, 1985

AMENDED IN SENATE APRIL 29, 1985

SENATE BILL No. 405

Introduced by Senator Boatwright

February 13, 1985

An act to amend Sections 6140 and 6141 of, and to add ~~Section~~ *Sections 6140.2 and* 6140.3 to, the Business and Professions Code, relating to the State Bar of California.

LEGISLATIVE COUNSEL'S DIGEST

SB 405, as amended, Boatwright. State Bar of California: dues.

Existing law establishes a basic annual membership fee of $175 for active members of the State Bar who have been admitted for 3 years or longer for 1984 and $180 for 1985. It establishes a maximum basic annual membership fee of $105 for active members of the State Bar who have been admitted for less than 3 years for 1984 and $115 for 1985. The membership fee for active members admitted for less than one year is $100. This provision is effective until January 1, 1986. Existing law also authorizes the State Bar to increase the annual membership fee by an additional amount not exceeding $10, to be applied for the cost of land and buildings to be used to conduct the operations of the State Bar, as specified. This authorization is effective only until December 31, 1985.

This bill would increase the basic membership fee for active members of the State Bar who have been admitted to the practice of law for 3 years or longer to a maximum of $210 for 1986 and $220 for 1987. It also would increase the maximum basic membership fee for active members of the State Bar

who have been admitted to practice less than 3 years to $145, for 1986, and $155 for 1987, and for members who have been admitted for less than one year to $130. The effective date of the above provisions of existing law which establish the basic annual membership fee would be extended from January 1, 1986, until January 1, 1988.

The bill also would authorize the State Bar to increase the annual membership fee *for active members* by not more than $15 for land and buildings and delete the provisions that make the authorization for the fee for land and buildings effective only until December 31, 1985,; it also would increase the maximum annual membership fee for inactive members from $20 to $35.

Further, the bill would authorize the State Bar to increase the annual membership fee for active and inactive members in 1986 and 1987 by an additional amount, not to exceed $10, to be applied only to costs related to the disciplinary function of the State Bar. The bill would require the State Bar to report to the Judiciary Committees of the Senate and Assembly concerning procedural changes and improvements in the disciplinary system, as specified, by March 31, 1987, and would require the achievement, by December 31, 1987, of a specified reduction in the number of complaints within the inventory of the State Bar as of March 31, 1985. It also would require the State Bar to set a specified goal with regard to the time required for the disposition of disciplinary complaints.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 6140 of the Business and Professions Code is amended to read:

6140. (a) The board shall fix the annual membership fee as follows:

(1) For active members who have been admitted to the practice of law in this state for three years or longer at a sum not exceeding two hundred ten dollars ($210) for 1986 and two hundred twenty dollars ($220) for 1987.

(2) For active members who have been admitted to

the practice of law in this state for less than three years but more than one year preceding the first day of February of the year for which the fee is payable, at a sum not exceeding one hundred forty-five dollars ($145) for 1986 and one hundred fifty-five dollars ($155) for 1987.

(3) For active members who have been admitted to the practice of law in this state for less than one year preceding the first day of February of the year for which the fee is payable, at a sum not exceeding one hundred thirty dollars ($130).

(b) The annual membership fee for active members is payable on or before the first day of February of each year.

This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date.

~~SEC. 2. Section 6140.3 is added to the Business and~~

SEC. 2. Section 6140.2 is added to the Business and Professions Code, to read:

6140.2. (a) In the years 1986 and 1987, the board may increase the annual membership fee fixed by subdivision (a) of Sections 6140 and 6141 by an additional amount not to exceed ten dollars ($10). This additional amount may only be applied to costs related to the disciplinary function of the State Bar.

(b) On or before March 31, 1987, the State Bar shall report to the Judiciary Committees of the California State Senate and Assembly the procedural changes and improvements which have been made in the State Bar disciplinary system and what effect these changes have had on the number of complaints pending and the time required to process these complaints.

(c) On or before December 31, 1987, the State Bar shall reduce by 80 percent the complaints within its inventory as of March 31, 1985, which have been received but have not resulted in dismissal, admonishment of the attorney involved, or filing of formal charges by State Bar Office of Trial Counsel. This reduction shall be accomplished by dismissal, admonishment of the

attorney involved, or recommendation by the State Bar for disposition by the Supreme Court.

(d) The State Bar shall set as a goal by December 31, 1987, the improvement of its disciplinary system so that no more than six months will elapse from the receipt of complaints to the time of dismissal, admonishment of the attorney involved, or the filing of formal charges by the State Bar Office of Trial Counsel.

SEC. 3. Section 6140.3 is added to the Business and Professions Code, to read:

6140.3. The board may increase the annual membership fee fixed by subdivision (a) of Section 6140 by an additional amount not exceeding fifteen dollars ($15). This additional amount may only be applied to the cost of land and buildings to be used to conduct the operations of the State Bar, including furniture, furnishings, equipment, architects' fees, construction and financing costs, landscaping, and other expenditures incident to the acquisition, construction, furnishing, and equipping of the land and buildings; the payment of interest on and the repayment of moneys borrowed for those purposes; and the reimbursement of the State Bar's treasury expended for those purposes.

~~SEC. 3.~~

SEC. 4. Section 6141 of the Business and Professions Code is amended to read:

6141. (a) The board shall fix the annual membership fee for inactive members at a sum not exceeding thirty-five dollars ($35). The annual membership fee for inactive members is payable on or before the first day of February of each year.

(b) An inactive member shall not be required to pay the annual membership fee for inactive members for any calendar year following the calendar year in which the member attains the age of 70 years.

O

AMENDED IN SENATE MAY 16, 1985

AMENDED IN SENATE APRIL 29, 1985

SENATE BILL No. 405

Introduced by Senator Boatwright

February 13, 1985

An act to amend Sections 6140 ; ~~6140.5~~, and 6141 of , *and to add Section 6140.3 to,* the Business and Professions Code, relating to the State Bar of California.

LEGISLATIVE COUNSEL'S DIGEST

SB 405, as amended, Boatwright. State Bar of California: dues.

Existing law establishes a basic annual membership fee of $175 for active members of the State Bar who have been admitted for 3 years or longer for 1984 and $180 for 1985. It establishes a maximum basic annual membership fee of $105 for active members of the State Bar who have been admitted for less than 3 years for 1984 and $115 for 1985. The membership fee for active members admitted for less than one year is $100. This provision is ~~operative~~ *effective* until January 1, 1986. Existing law also authorizes the State Bar to increase the annual membership fee by an additional amount not exceeding $10, to be applied for the cost of land and buildings to be used to conduct the operations of the State Bar, as specified. This authorization is ~~operative~~ *effective* only until December 31, 1985.

This bill would increase the basic membership fee for active members of the State Bar who have been admitted to the practice of law for 3 years or longer to a maximum of $210 for 1986 *and $220 for 1987*. It also would increase the maximum basic membership fee for active members of the State Bar who have been admitted to practice less than 3 years to $145,

for 1986, *and $155 for 1987,* and for members who have been admitted for less than one year to $130. ~~The bill also would provide that in the years 1987 to 1990, the maximum annual membership fee shall be the amounts specified above, adjusted by a specified formula.~~ The ~~operative~~ *effective* date of the above provisions of existing law which establish the basic annual membership fee would be extended from January 1, 1986, until January 1, ~~1991~~ *1988*.

The bill also would ~~extend~~ *authorize the State Bar to increase* the ~~authorization for the $10~~ *annual membership* fee *by not more than $15* for land and buildings *and delete the provisions that make the authorization for the fee for land and buildings effective only until December 31, 1985,* ~~to December 31, 1990; require, in the years 1987 to 1990, inclusive, the annual adjustment of the $10 fee currently authorized to be imposed for the Client Security Fund by the formula applicable to membership fees; and~~ *it also would* increase the maximum annual membership fee for inactive members from $20 to $35 ~~and require its annual adjustment pursuant to that same formula in the years 1987 to 1990, inclusive~~.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 6140 of the Business and Professions Code is amended to read:

6140. (a) The board shall fix the annual membership fee as follows:

(1) For active members who have been admitted to the practice of law in this state for three years or longer at a sum not exceeding two hundred ten dollars ($210) for 1986 *and two hundred twenty dollars ($220) for 1987.*

(2) For active members who have been admitted to the practice of law in this state for less than three years but more than one year preceding the first day of February of the year for which the fee is payable, at a sum not exceeding one hundred forty-five dollars ($145) for 1986 *and one hundred fifty-five dollars ($155) for 1987.*

(3) For active members who have been admitted to the practice of law in this state for less than one year preceding the first day of February of the year for which the fee is payable, at a sum not exceeding one hundred thirty dollars ($130).

~~(b) For the years commencing January 1, 1973, and ending December 31, 1990, the board may increase the annual membership fee fixed pursuant to subdivision (a) by an additional amount not exceeding ten dollars ($10) in any or all of such years, the additional amount in any year to be applied only to the cost of land and buildings to be used to conduct the operations of the State Bar, including furniture, furnishings, equipment, architects' fees, construction and financing costs, landscaping and other expenditures incident to the acquisition, construction, furnishing and equipping of such land and buildings, the payment of interest on and the repayment of moneys borrowed for such purposes, and the reimbursement of the State Bar's treasury expended for those purposes.~~

~~(c)~~

(b) The annual membership fee for active members is payable on or before the first day of February of each year.

~~(d) In the years 1987 to 1990, inclusive, the maximum annual membership fee for active members of the State Bar shall be the amounts fixed pursuant to subdivision (a), adjusted by an amount equal to the change in the California Consumer Price Index for All Urban Consumers as calculated for July 1 of the preceding year.~~

This section shall remain in effect only until January 1, ~~1991~~ *1988*, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, ~~1991~~ *1988*, deletes or extends that date.

~~SEC. 2. Section 6140.5 of the Business and Professions Code is amended to read:~~

~~6140.5. (a) The board may establish and administer a Client Security Fund to relieve or mitigate pecuniary losses caused by the dishonest conduct of active members of the State Bar. Any payments from the fund shall be~~

~~discretionary and shall be subject to such regulation and conditions as the board shall prescribe. The board may delegate the administration of the fund to the disciplinary board provided for in Section 6086.5, or to any board or committee created by the board of governors.~~

~~(b) Commencing January 1, 1972, the board may increase the annual membership fees fixed by it pursuant to Section 6140 by an additional amount per active member not to exceed ten dollars ($10) in any year, the additional amount to be applied only for the purposes of the fund.~~

~~(c) In the years 1987 to 1990, inclusive, the maximum fee for the fund shall be adjusted by an amount equal to the change in the California Consumer Price Index for All Urban Consumers as calculated for July 1 of the preceding year.~~

SEC. 2. Section 6140.3 is added to the Business and Professions Code, to read:

6140.3. The board may increase the annual membership fee fixed by subdivision (a) of Section 6140 by an additional amount not exceeding fifteen dollars ($15). This additional amount may only be applied to the cost of land and buildings to be used to conduct the operations of the State Bar, including furniture, furnishings, equipment, architects' fees, construction and financing costs, landscaping, and other expenditures incident to the acquisition, construction, furnishing, and equipping of the land and buildings; the payment of interest on and the repayment of moneys borrowed for those purposes; and the reimbursement of the State Bar's treasury expended for those purposes.

SEC. 3. Section 6141 of the Business and Professions Code is amended to read:

6141. (a) The board shall fix the annual membership fee for inactive members at a sum not exceeding thirty-five dollars ($35). ~~In the years 1987 to 1990, inclusive, the maximum annual membership fee shall be adjusted by an amount equal to the change in the California Consumer Price Index for All Urban~~

~~Consumers as calculated on July 1 of the preceding year.~~ The annual membership fee for inactive members is payable on or before the first day of February of each year.

(b) An inactive member shall not be required to pay the annual membership fee for inactive members for any calendar year following the calendar year in which the member attains the age of 70 years.

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AMENDED IN SENATE APRIL 29, 1985

SENATE BILL No. 405

Introduced by Senator Boatwright

February 13, 1985

An act to amend ~~Section 6140~~ *Sections 6140, 6140.5, and 6141* of the Business and Professions Code, relating to the State Bar of California.

LEGISLATIVE COUNSEL'S DIGEST

SB 405, as amended, Boatwright. State Bar of California: dues.

Existing law establishes a basic annual membership fee of $175 for *active* members of the State Bar who have been admitted for 3 years or longer for 1984 and $180 for 1985. It establishes a maximum basic annual membership fee of $105 for *active* members of the State Bar who have been admitted for less than 3 years for 1984 and $115 for 1985. *The membership fee for active members admitted for less than one year is $100.* This provision is operative until January 1, 1986. Existing law also authorizes the State Bar to increase the annual membership fee by an additional amount not exceeding $10, to be applied for the cost of land and buildings to be used to conduct the operations of the State Bar, as specified. This authorization is operative only until December 31, 1985.

~~This bill would revise the above specified dates in an unspecified manner.~~

This bill would increase the basic membership fee for active members of the State Bar who have been admitted to the practice of law for 3 years or longer to a maximum of $210 for 1986. It also would increase the maximum basic membership fee for active members of the State Bar who have been admitted to practice less than 3 years to $145, for 1986, and for

members who have been admitted for less than one year to $130. The bill also would provide that in the years 1987 to 1990, the maximum annual membership fee shall be the amounts specified above, adjusted by a specified formula. The operative date of the above provisions of existing law which establish the basic annual membership fee would be extended from January 1, 1986, until January 1, 1991.

The bill also would extend the authorization for the $10 fee for land and buildings to December 31, 1990; require, in the years 1987 to 1990, inclusive, the annual adjustment of the $10 fee currently authorized to be imposed for the Client Security Fund by the formula applicable to membership fees; and increase the maximum annual membership fee for inactive members from $20 to $35 and require its annual adjustment pursuant to that same formula in the years 1987 to 1990, inclusive.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 6140 of the Business and Professions Code is amended to read:

6140. (a) The board shall fix the annual membership fee as follows:

(1) For active members who have been admitted to the practice of law in this state for three years or longer ~~at a sum not exceeding one hundred seventy-five dollars ($175) for / / / /~~ and ~~one hundred eighty dollars ($180) for / / / /~~: *at a sum not exceeding two hundred ten dollars ($210) for 1986.*

(2) For active members who have been admitted to the practice of law in this state for less than three years but more than one year preceding the first day of February of the year for which the fee is payable, at a sum ~~not exceeding one hundred five dollars ($105) for / / / /~~ and ~~one hundred fifteen dollars ($115) for / / / /~~: *not exceeding one hundred forty-five dollars ($145) for 1986.*

(3) For active members who have been admitted to

the practice of law in this state for less than one year preceding the first day of February of the year for which the fee is payable, at a sum not exceeding one hundred ~~dollars ($100).~~ *thirty dollars ($130).*

(b) For the years commencing January 1, 1973, and ending December 31, ~~1 1 1 1~~ *1990*, the board may increase the annual membership fee fixed pursuant to subdivision (a) by an additional amount not exceeding ten dollars ($10) in any or all of such years, the additional amount in any year to be applied only to the cost of land and buildings to be used to conduct the operations of the State Bar, including furniture, furnishings, equipment, architects' fees, construction and financing costs, landscaping and other expenditures incident to the acquisition, construction, furnishing and equipping of such land and buildings, the payment of interest on and the repayment of moneys borrowed for such purposes, and the reimbursement of the State Bar's treasury expended for those purposes.

(c) The annual membership fee for active members is payable on or before the first day of February of each year.

~~This section shall remain in effect only until January 1, 1 1 1 1; and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1 1 1 1; deletes or extends that date.~~

(d) In the years 1987 to 1990, inclusive, the maximum annual membership fee for active members of the State Bar shall be the amounts fixed pursuant to subdivision (a), adjusted by an amount equal to the change in the California Consumer Price Index for All Urban Consumers as calculated for July 1 of the preceding year.

This section shall remain in effect only until January 1, 1991, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1991, deletes or extends that date.

SEC. 2. Section 6140.5 of the Business and Professions Code is amended to read:

6140.5. (a) The board may establish and administer a Client Security Fund to relieve or mitigate pecuniary

losses caused by the dishonest conduct of ~~those~~ active members of the State Bar. Any payments from the fund shall be discretionary and shall be subject to such regulation and conditions as the board shall prescribe. The board may delegate the administration of the fund to the disciplinary board provided for in Section 6086.5, or to any board or committee created by the board of governors.

(b) Commencing January 1, 1972, the board may increase the annual membership fees fixed by it pursuant to Section 6140 by an additional amount per active member not to exceed ten dollars ($10) in any year, the additional amount to be applied only for the purposes of the fund.

(c) In the years 1987 to 1990, inclusive, the maximum fee for the fund shall be adjusted by an amount equal to the change in the California Consumer Price Index for All Urban Consumers as calculated for July 1 of the preceding year.

SEC. 3. Section 6141 of the Business and Professions Code is amended to read:

6141. (a) The board shall fix the annual membership fee for inactive members at a sum not exceeding ~~twenty dollars ($20)~~ *thirty-five dollars ($35). In the years 1987 to 1990, inclusive, the maximum annual membership fee shall be adjusted by an amount equal to the change in the California Consumer Price Index for All Urban Consumers as calculated on July 1 of the preceding year.* The annual membership fee for inactive members is payable on or before the first day of February of each year.

(b) An inactive member shall not be required to pay the annual membership fee for inactive members for any calendar year following the calendar year in which the member attains the age of ~~seventy (70)~~ *70* years.

O

SENATE BILL No. 405

Introduced by Senator Boatwright

February 13, 1985

An act to amend Section 6140 of the Business and Professions Code, relating to the State Bar of California.

LEGISLATIVE COUNSEL'S DIGEST

SB 405, as introduced, Boatwright. State Bar of California: dues.

Existing law establishes a basic annual membership fee of $175 for members of the State Bar who have been admitted for 3 years or longer for 1984 and $180 for 1985. It establishes a maximum basic annual membership fee of $105 for members of the State Bar who have been admitted for less than 3 years for 1984 and $115 for 1985. This provision is operative until January 1, 1986. Existing law also authorizes the State Bar to increase the annual membership fee by an additional amount not exceeding $10, to be applied for the cost of land and buildings to be used to conduct the operations of the State Bar, as specified. This authorization is operative only until December 31, 1985.

This bill would revise the above specified dates in an unspecified manner.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 6140 of the Business and Professions Code is amended to read:

6140. (a) The board shall fix the annual membership fee as follows:

(1) For active members who have been admitted to the practice of law in this state for three years or longer

at a sum not exceeding one hundred seventy-five dollars ($175) for ~~1984~~ _____ and one hundred eighty dollars ($180) for ~~1985~~ _____.

(2) For active members who have been admitted to the practice of law in this state for less than three years but more than one year preceding the first day of February of the year for which the fee is payable, at a sum not exceeding one hundred five dollars ($105) for ~~1984~~ _____ and one hundred fifteen dollars ($115) for ~~1985~~ _____.

(3) For active members who have been admitted to the practice of law in this state for less than one year preceding the first day of February of the year for which the fee is payable, at a sum not exceeding one hundred dollars ($100).

(b) For the years commencing January 1, 1973, and ending December 31, ~~1985~~ _____, the board may increase the annual membership fee fixed pursuant to subdivision (a) by an additional amount not exceeding ten dollars ($10) in any or all of such years, the additional amount in any year to be applied only to the cost of land and buildings to be used to conduct the operations of the State Bar, including furniture, furnishings, equipment, architects' fees, construction and financing costs, landscaping and other expenditures incident to the acquisition, construction, furnishing and equipping of such land and buildings, the payment of interest on and the repayment of moneys borrowed for such purposes, and the reimbursement of the State Bar's treasury expended for those purposes.

(c) The annual membership fee for active members is payable on or before the first day of February of each year.

This section shall remain in effect only until January 1, ~~1986~~ _____, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, ~~1986~~ _____, deletes or extends that date.

O

Interim Hearing on the Attorney
Discipline Function of the State Bar
September 30, 1985

SB 405

ASSEMBLY SUBCOMMITTEE ON ADMINISTRATION OF JUSTICE
LLOYD G. CONNELLY, Chairperson

SB 405 (Lockyer) - As Amended: September 10, 1985

SENATE VOTE 30-0 (June 18, 1985) ASSEMBLY VOTE 42-30 (August 22, 1985)

SUBJECT: This bill authorizes an increase in State Bar dues, as specified.

DIGEST

Current law relative to the State Bar:

1) Provides that all persons admitted and licensed to practice law in California are State Bar members, whose annual dues for 1985 are:

   a) A basic membership fee for active members at $180 for those admitted to practice for three years or longer; $115 for those admitted to practice for less than three years but more than one year; and $100 for those admitted to practice for less than one year. These amounts are the maximum amounts allowed by statute, effective only until January 1, 1986.

   b) A membership fee of $20 for inactive members under age 70. This amount is the maximum amount allowed by statute.

2) Authorizes the State Bar to charge active members:

   a) An additional fee not exceeding $10 to be applied toward the cost of land and buildings for State Bar operations. This authorization will expire on December 31, 1985.

   b) An additional fee not exceeding $10 for the Client Security Fund (to pay losses caused by the dishonest conduct of active members).

As passed by the Senate, this bill (as amended May 30, 1985) increased State Bar dues as follows:

1) Authorized the State Bar, until January 1, 1988, to raise the active membership fee to:

   a) $210 for 1986 and $220 for 1987 for members of three years or longer;

   b) $145 for 1986 and $155 for 1987 for members of one to three years; and

   c) $130 for 1986 and 1987 respectively for members of less than one year.

- continued -

2) Authorized a membership fee not exceeding $35 for inactive members under age 70.

3) Authorized a fee not exceeding $15 for active members for application to the cost of land and buildings for State Bar operations.

4) Authorized a new fee not exceeding $10 for all members for 1986 and 1987 respectively for application to costs related to the State Bar's disciplinary function.

5) Required the Bar to:

   a) Report to the Legislature by March 31, 1987, regarding procedural changes and improvements made in the disciplinary system and their effect on the number of pending complaints and the complaint processing time.

   b) Reduce by December 31, 1987, 80% of the complaints pending as of March 31, 1985, by directing dismissal, admonition, or disposition to the California Supreme Court.

   c) By December 31, 1987, establish as its goal six months as the maximum time for processing complaints from receipt to dismissal, admonishment, or the filing of formal charges.

The Assembly amendments of July 18, 1985, provided that the administrative costs of the Client Security Fund would be paid out of the Client Security Fund fees and authorized the Board of Governors to delegate administration of these funds to the State Bar Court.

The Conference Committee amendments of September 10, 1985:

1) Delete the provisions in the bill for State Bar annual membership fees and instead set such fees for 1986 as follows:

   a) $205 for active members of three years or longer.

   b) $140 for active members of one to three years.

   c) $125 for active members of less than one year.

   d) $35 for inactive members.

2) Specify that of the membership fee received from each active member $15 must be expended on the disciplinary system and $10 may be expended on general administrative costs.

3) Specify that of the membership fee received from each inactive member $10 must be expended on the disciplinary system and $5 may be expended on general administrative costs.

- continued -

4) Authorize only for 1986 two proposed new fees for (a) disciplinary costs (not to exceed $10) and (b) the cost of land and buildings for State Bar operations (not to exceed $15).

5) Require the State Bar to submit its proposed annual budget to the appropriate fiscal committee of each house of the Legislature for review and recommendation in 1986 and 1987.

6) Require the State Bar to report by April 1, 1986, and June 1, 1986, to the Legislature regarding procedural changes and improvements made in the disciplinary system and their effect on the number of pending complaints, the time required for processing the complaints, and the progress made in reducing the complaint backlog, rather than by March 31, 1987.

7) Provide that, unless otherwise provided by law, hearings and records of original disciplinary proceedings in the State Bar Court would be public, following a notice to show cause.

FISCAL EFFECT

None

COMMENTS

1) The purpose of this bill is to reauthorize the assessment of State Bar dues to support more adequately the Bar's operation and programs. The State Bar is a public corporation within the judicial branch of government and is funded entirely by member fees and other non-public revenue sources. However, the Legislature is empowered to authorize the Bar to assess fees that support its operation. Current statutory authorization will expire on December 31, 1985, by which time a new authorization must be enacted for dues to be assessed thereafter.

2) According to the State Bar, the proposed increase in membership fees and the proposed revenue earmarked for disciplinary costs are needed to improve its disciplinary system. Between 1973 and 1983, complaints filed against California attorneys more than doubled, from 3,894 in 1973 to 8,094 in 1983, in direct proportion to the growth of the attorney population in California. The Bar asserts that although the rate of complaint has remained nearly the same (one complaint per year for every ten California lawyers), resources for the processing and disposition of complaints are inadequate.

   Nearly half of the Bar's $17 million general fund budget is used to pay for lawyer discipline. A copy of the Bar's 1985 Revenue and Expense Summary is attached herein (APPENDIX A). Projected disciplinary expenditures for 1985 are reflected in the $7.9 million listed for "Competence Group" and a portion of the amount listed for "Administration and Finance Group."

- continued -

Currently, the backlog of complaints against attorneys numbers 5,400. The processing of a discipline case against a guilty attorney takes an average of 30 months. Attempting to reduce this period to 20 months, the State Bar has undertaken to allocate additional resources to its disciplinary activities and to restructure the disciplinary process. Specifically, it has sought improved management of the Office of Trial Counsel by authorizing six new investigators, three new master calendar clerks, and improved data processing capacity. It has also eliminated the State Bar Court Investigation Department, authorized the Office of Trial Counsel to issue charges on its motion, reduced the State Bar Court hearing panel from three members to one, and instituted a master calendar for trying cases. The Bar has also sponsored AB 1275 (Calderon), Chapter 453, Statutes of 1985, which seeks to streamline the disciplinary process on a short-term basis.

The State Bar estimates that it will need in excess of $2 million phased into its disciplinary operation over the next two to three years to reduce the backlog and delay. It claims that reserve revenue allocated to the Client Security Fund and the Legal Services Trust Fund should not be tapped for disciplinary purposes.

Should the Bar be required to reduce the costs of discipline on a long-term basis specifically by restructuring the disciplinary process and providing alternative dispute resolution for all matters except professional misconduct?

3) The State Bar's major functions fall into six categories:

   a) Professional standards and lawyer competence,

   b) Legal services access and delivery,

   c) Administration of justice (e.g., legislation, Conference of Delegates, selection of judges),

   d) Member services (sections and committees),

   e) Admissions (examination and screening of applicants), and

   f) Public education and communication.

   Charts of the State Bar's 1984 budgeted revenues and expenditures are attached herein to indicate the range and scope of Bar functions (APPENDIX B).

4) The State Bar has consistently requested and received increases in dues without the requirement of concurrent legislative oversight of its activities and expenditures. Some of the controversial Bar-related issues which may be the focus of legislative investigation include:

- continued -

a) The purported failure of the Bar to discipline members in a timely and effective manner. The recent series of articles in The San Francisco Examiner suggested that dishonest lawyers are "running amok," destroying what little remains of public confidence in the legal profession. In response, the State Bar claims that it has undertaken serious efforts to reform the system and, given additional funding, expects improvements in processing complaints and enforcement of discipline.

b) The Bar's role in both lobbying legislation and political activities not necessarily representative of the entire membership. Some observers contend that the State Bar should be confined to admission and discipline.

c) The justification for the State Bar bureaucracy which has a budget of approximately $25.7 million. Some observers suggest that instead of having an integrated or unified bar association of mandatory membership, California should switch to a voluntary bar as a means of providing services to attorneys. In such case, regulatory functions of admission and discipline would be performed by a State agency or the California Supreme Court.

d) The Bar's function of examination and admission. In recent years, the Bar has been confronted by the Legislature and others regarding the validity of the bar examination and the admission process.

e) The Bar's record on affirmative action in its employment practices. The Bar has been challenged regarding its progress in hiring and promoting minority individuals into positions at the professional, attorney, and executive staff levels.

5) According to information furnished by the State Bar, a survey of bar associations in other states indicates the following ranges of membership fees as of December 1984:

a) District of Columbia

(i) The District of Columbia Bar (unified bar)
active member.....$55
inactive member/judge.....25

(ii) Bar Association of the District of Columbia (voluntary bar)
member.....5 years or longer....$75
".....0 to 5 years.....35
new admittee...for 6 months.....15

- continued -

b) Illinois State Bar Association (voluntary bar)

State licensing and registration fee		$60
member	15 years or longer	160
"	10 to 14 years	140
"	6 to 9 years	110
"	3 to 5 years	75
"	0 to 2 years	35
"	out of state	20
"	retired	15
student		10

c) New York State Bar Association (voluntary bar)

State licensing and registration fee		$25
sustaining member		175
member	9 years or longer	135
"	6 to 8 years	90
"	1 to 5 years	45
"	less than 1 year	0

d) Massachusetts Bar Association (voluntary bar)

member	16 years or longer	$140
"	14 to 15 years	125
"	8 to 13 years	100
"	5 to 7 years	75
"	2 to 4 years	50
"	1 year	30
new admittee		20
law school fac/govt atty/disabled/ retired		50
associate		25

e) State Bar of Michigan (unified bar)

member	3 years or longer	$150
"	0 to 3 years	90
inactive member age 70 or older		0
new admittee		45
student		8

f) State Bar of Texas (unified bar)

member	5 years or longer	$120
"	3 to 5 years	75
"	0 to 3 years	35
"	out of state	60

- continued -

6) In contrast to State Bar dues, current mandatory fees for other licensed professionals in California are as follows:

Accountants	$20	(paid $40 biennially)
Architects	50	(paid $100 biennially)
Dentists	30	(paid $60 biennially)
Physicians	100	(paid $200 biennially)

The regulatory functions performed by the licensing boards of these professions are analogous to the State Bar's regulatory functions: admission to practice and discipline. However, professional services such as those rendered by the State Bar are performed in these professions by voluntary associations.

7) AB 1260 (La Follette) seeks to assess the cost of discipline against the disciplined attorney. The bill was heard by this Subcommittee and assigned to interim study in the hearing scheduled for September 30, 1985.

8) This bill provides that administrative costs of the Client Security Fund would be paid out of the Client Security Fund fees. Costs of administration would include, but not be limited to, the cost of processing, determining, defending, or insuring claims against the fund. The Board of Governors would be authorized to delegate administration of the fund to the State Bar Court. This proposal was deleted from AB 1275 (Calderon), Chapter 453, Statutes of 1985, at the request of the Senate Judiciary Committee, which preferred that all State Bar funding measures be placed in SB 405.

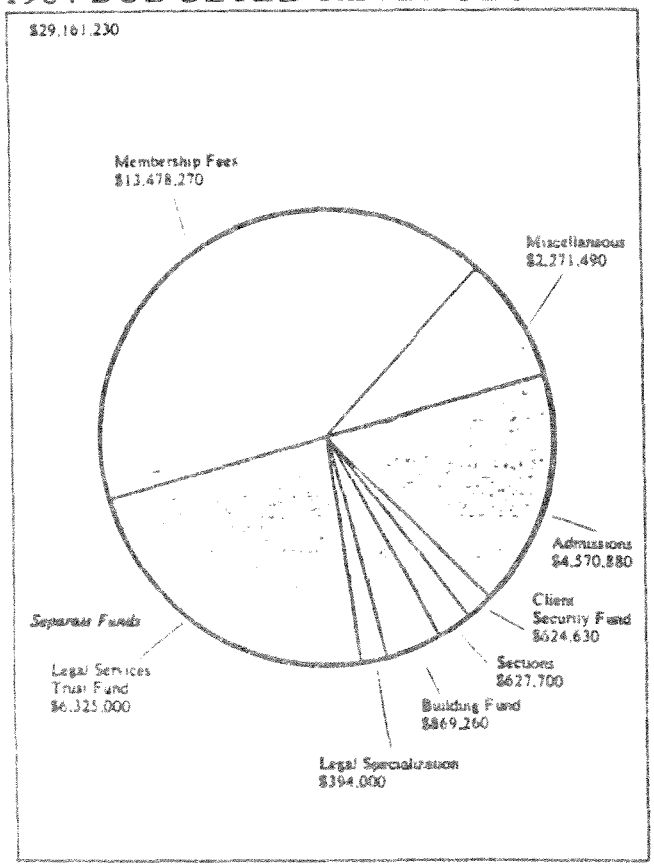
L. Young
324-7593

The State Bar of California
1985 Budget
Revenue and Expense Summary of the State Bar

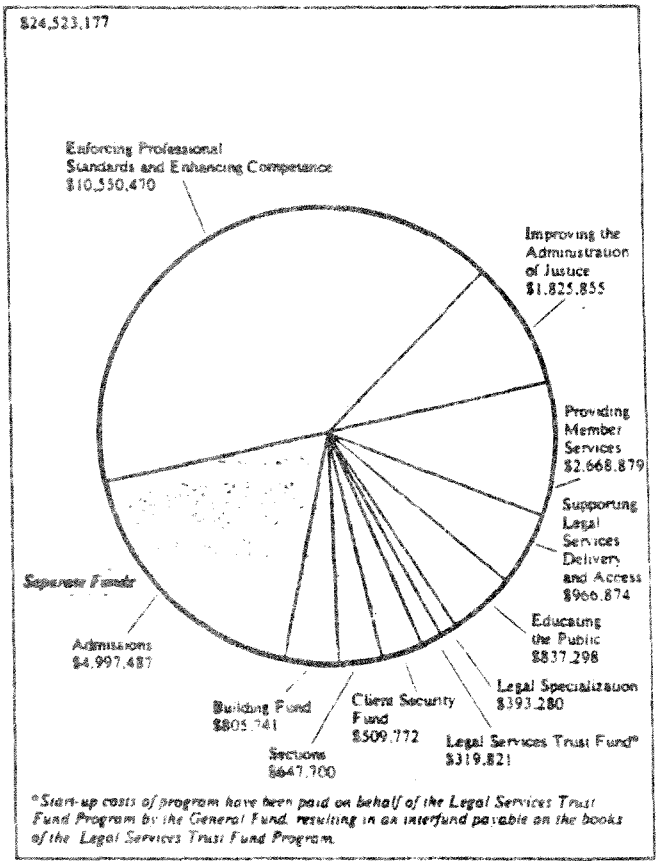
December 14, 1984

REVENUE	GENERAL FUND	SECTIONS	CLIENT SECURITY FUND	BUILDING FUND	LEGAL SERVICES TRUST FUND	LEGAL SPECIALI-ZATION	ADMISSIONS	TOTAL STATE BAR
Membership Fees	$14,454,495	$	$424,585	$849,170	$	$210,000	$	$15,938,250
Application Fees		748,792				30,000	3,512,700	4,291,492
Penalties/Late Fees	365,000					750		365,750
Interest Revenue	590,000		232,361	29,397	1,248,000	9,000	236,170	2,344,926
Annual Meeting	311,000							311,000
Law Corporation	442,850							442,850
Cal. Lawyer Mag. Revenue	740,000							740,000
Outside Billing - Labels	50,000							50,000
Prac. Trng. Law Students	46,200							46,200
Sales of Compendium	40,000							40,000
Other Revenues	8,575					3,000	153,660	165,235
Fee Arbitration & Reinst.	29,000							29,000
First Year Exam							97,880	97,880
Certification/Recert.						40,000		40,000
Educational Program						35,000		35,000
SB 713 Revenue					8,600,000			8,600,000
Registration as Law Student							267,690	267,690
Grant		87,942					50,000	137,942
Sales of Wills	10,000							10,000
TOTAL Operating Revenue	$17,087,120	$836,734	$ 656,946	$878,567	$9,848,000	$327,750	$4,318,100	$33,953,217
EXPENDITURES								
Executive Offices	$ 2,352,529	$	$	$	$	$	$	$ 2,352,529
Competence Group	7,887,375		500,000			328,623	4,013,841	12,729,839
Administration and Finance Group	4,055,906			350,140				4,406,046
Professional and Public Services Group	4,598,837	780,296			279,228			5,656,361
TOTAL Operating Expenses	$18,894,647	$780,296	$ 500,000	$ 350,140	$ 279,228	$328,623	$4,013,841	$ 25,146,775
Interfund Charges/ (Credits)	$(1,062,614)	$ 27,375	$ 218,235	$ --	$ 37,765	$ 41,688	$ 737,551	$ -0-
TOTAL Operating Expenses After Interfund Allocation	$17,832,033	$807,671	$ 718,235	$ 350,140	$ 316,993	$370,311	$4,751,392	$25,146,775
OTHER EXPENSES/ADJUSTMENTS								
Grant to Legal Services Section	$ 87,942			$	$	$	$	$ 87,942
Depreciation Expenses	(286,658)			(223,375)	(5,637)	(2,841)	(23,692)	(542,203)
Salary Saving	(713,428)							(713,428)
Loan Payment	232,904			675,643				908,547
Amortization of Admission Deficit	125,000							125,000
Grant to Admission	0							0
Contingency Reserve	400,000							400,000
Capital Asset	170,725				1,500		18,499	190,724
Lease Computer Equipment	102,154							102,154
TOTAL Cash Basis Operating Expenditures	$17,950,672	$807,671	$ 718,235	$ 802,408	$ 312,856	$367,470	$4,746,199	$25,705,511
Budgeted Operating Excess/(Deficit)	$ (863,552)	$ 29,063	$ (61,289)	$ 76,159	$ 9,535,144	$(39,720)	$ (428,099)	$ 8,247,706
Projected Prior Years Excess/(Deficit) Revenue over Expense	1,500,000	52,701	2,100,000	(242,000)	11,300,000	28,940	1,000,000	15,739,641
Budgeted Operating Excess/(Deficit) After Other Expenses/ Adjustments	$ 636,448	$ 81,764	$ 2,038,711	$ (165,841)	$20,835,144	$(10,780)	$ 571,901	$23,987,347

1984 BUDGETED REVENUES



1984 BUDGETED EXPENDITURES



*Start-up costs of program have been paid on behalf of the Legal Services Trust Fund Program by the General Fund, resulting in an interfund payable on the books of the Legal Services Trust Fund Program.

EXHIBIT K

CALIFORNIA LEGISLATURE—1985–86 REGULAR SESSION

ASSEMBLY BILL No. 1260

Introduced by Assembly Member La Follette

March 4, 1985

An act to amend Sections 6142 and 6143 of, and to add Sections 6086.8 and 6140.7 to, the Business and Professions Code, relating to the State Bar of California.

LEGISLATIVE COUNSEL'S DIGEST

AB 1260, as introduced, La Follette. State Bar of California.

Existing law specifies the powers and duties of the Board of Governors of the State Bar of California.

This bill would require that any order imposing a reproval or discipline on, or accepting the resignation under specified circumstances of, a member of the State Bar shall include a direction that the member pay for costs of the disciplinary proceeding, as defined and as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 6086.8 is added to the Business and Professions Code, to read:

6086.8. (a) Any order imposing a reproval on a member of the State Bar shall include a direction that the member shall pay costs. In any order imposing discipline, or accepting a resignation with a disciplinary matter pending, the Supreme Court shall include a direction that the member shall pay costs.

(b) The costs required to be imposed pursuant to this section include all of the following:

(1) The actual expense incurred by the State Bar for the original and copies of any reporter's transcript of the State Bar proceedings, and any fee paid for the services of the reporter.

(2) All expenses paid by the State Bar which would qualify as taxable costs recoverable in civil proceedings.

(3) The fixed charges determined by the State Bar to be "average costs" of investigation, hearing, and review. These amounts shall serve to defray the costs, other than attorney's fees, of the State Bar in the preparation or hearing of disciplinary proceedings, and costs incurred in the administrative processing of the disciplinary proceeding and in the administration of the client security fund.

(c) A member may be granted relief, in whole or in part, from an order assessing costs under this section, or may be granted an extension of time to pay these costs, in the discretion of the State Bar, upon grounds of hardship, special circumstances, or other good cause.

SEC. 2. Section 6140.7 is added to the Business and Professions Code, to read:

6140.7. Costs assessed against a reproved or suspended member shall be added to and become a part of the membership fee of the member, for the next calendar year. Costs unpaid by a member who resigns with disciplinary charges pending or by a member who is suspended or disbarred shall be paid as a condition of reinstatement of membership.

SEC. 3. Section 6142 of the Business and Professions Code is amended to read:

6142. Upon the payment of the annual membership fees, *including any costs imposed pursuant to Section 6140.7*, each member shall receive a certificate issued under the direction of the board evidencing the payment.

SEC. 4. Section 6143 of the Business and Professions Code is amended to read:

6143. Any member, active or inactive, failing to pay any fees *or costs* after they become due, and after two months written notice of his *or her* delinquency, shall be

suspended from membership in the State Bar.

~~He~~ *The member* may be reinstated upon the payment of accrued fees *or costs* and such penalties as may be imposed by the board, not exceeding double the amount of delinquent dues *or costs*.

O

Date of Hearing: May 13, 1985 AB 1260

ASSEMBLY SUBCOMMITTEE ON ADMINISTRATION OF JUSTICE
LLOYD G. CONNELLY, Chairperson

AB 1260 (LaFollette) - As Introduced: March 4, 1985

SUBJECT: This bill requires an attorney who is reproved or disciplined for professional misconduct to pay the costs of the State Bar disciplinary proceeding, as specified.

DIGEST

Current law generally provides that all persons admitted and licensed to practice law in California are members of the State Bar. The State Bar Board of Governors (Board) has power to discipline members for a willful breach of any of its Rules of Professional Conduct. The Board may establish committees, known as disciplinary boards, to act in its place and stead in the determination of disciplinary and reinstatement proceedings. After a hearing for any of the causes warranting disbarment, suspension, or other discipline, the Board may recommend to the Supreme Court a member's disbarment or suspension from practice or may discipline the member by public or private reproval without such recommendation. The Board may review all petitions for reinstatement of membership.

This bill requires attorneys who are reproved or disciplined to pay the costs of the State Bar disciplinary proceeding. Specifically, the bill:

1. Requires an order imposing reproval on a member to include a direction that the member shall pay costs.

   Requires the Supreme Court's order imposing discipline, or accepting a resignation with a disciplinary matter pending, to include a direction that the member shall pay costs.

2. Provides that "costs" would include:

   a) the actual expenses incurred by the State Bar for the original and copies of the reporter's transcripts of the State Bar proceedings and the fee paid for the reporter's services.

   b) all expenses paid by the State Bar which qualify as taxable costs recoverable in civil proceedings.

   c) the fixed charges determined by the State Bar to be "average costs," other than attorneys' fees, of investigation, hearing, and review.

3. Authorizes the State Bar to grant a member relief, in whole or in part, from an order assessing costs or an extension of time to pay the costs for reasons of hardship, special circumstances, or other good cause.

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4. Provides that costs assessed against a reproved or suspended member would be added to and become a part of his or her membership fee for the next calendar year.

   Provides that costs unpaid by a member who resigns with disciplinary charges pending or who is suspended or disbarred must be paid as a condition of reinstatement of membership.

5. Makes technical changes.

FISCAL EFFECT

None

COMMENTS

1. The purpose of this bill is to defray the costs borne by the State Bar for disciplining its members for professional misconduct. It is intended to defray the State Bar's costs, other than attorneys' fees, in the preparation or hearing of disciplinary proceedings, and costs incurred in the administrative processing of the disciplinary proceeding and in the administration of the client security fund. Information furnished by the author's office states:

   > "The State Bar has continuously proposed to the Legislature increases in the dues to be paid by its members. The expenses for the State Bar for disciplinary proceedings represent over one-third of its regular budget income and cost the lawyers of California many millions a year from dues paid by members.
   >
   > "Some attorneys do not believe that short suspension for violations of the Code of Professional Conduct or other disciplinary rules really hurts them. Therefore, the public may not be protected by existing sanctions. Disbarment in many instances recently has been limited to lawyers who repeatedly violate the code.
   >
   > "The other lawyers of the State are penalized by having to bear the significant expenses of prosecuting this minority of lawyers....Recoupment of some of these costs would significantly reduce the necessity for a portion of proposed increases in dues of the State Bar."

   If enacted, this bill would reduce only a small portion of the State Bar's disciplinary costs, leaving most of the costs still to be paid by membership fees. It is, however, consistent with laws in thirty-three other states which assess the costs of disciplinary proceedings against the disciplined attorney.

2. This bill is similar to a State Bar proposal which was submitted in March 1984, to the California Supreme Court with a request for its adoption as a

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new rule of the California Rules of Court. The Supreme Court subsequently rejected the proposal without giving reasons for its decision.

The State Bar has taken a neutral position on this bill.

3. This bill requires an attorney who is reproved or disciplined for professional misconduct to pay the costs of the State Bar disciplinary proceeding. In cases where the attorney prevails and the misconduct is not proved, should the bill require the State Bar to pay costs incurred by the attorney?

4. Under this bill, assessable "costs" would include "the fixed charges determined by the State Bar to be 'average costs' of investigation, hearing, and review." What specific items would this description include and how would the determination of "average costs" be made?

5. This bill allows the State Bar to grant a reproved or disciplined member relief from an order assessing costs or a grace period to pay the costs if hardship, special circumstances, or other good cause is demonstrated. By what procedure would a member seek relief from the order assessing costs or an extension of time for payment? Should the bill specify the panel (e.g., State Bar Court) which would receive such requests for relief or extensions and which would make such determinations? To whom would appeals be taken in the event a request is denied?

6. The bill provides that costs assessed against a reproved or suspended attorney would be added to and become a part of that attorney's membership fee for the "next calendar year." As a technical point, suspension may be ordered for up to three years. The bill should therefore specify that the cost assessment would accrue during the next calendar year in which membership fees would accrue after the year of cost assessment.

Support	Opposition
Unknown	Unknown

L. Young
324-7593

COST OF LAWYER DISCIPLINE IN CALIFORNIA

The State Bar of California
General Fund Expenses

	1980	1981	1982	1983	1984	1985	1986
Cost of Lawyer Discipline (including overhead)	$4,574,173	$5,027,262	$6,305,231	$7,073,189	$8,317,391	$9,702,542	$12,835,071
Percent of Total State Bar Expenses/Budget	50.7%	48.2%	48.2%	51.8%	53.7%	54.6%	58.5%
Total State Bar Active Membership	68,509	71,867	76,216	79,876	82,471	84,917	88,217
Cost of Lawyer Discipline per Active Member	$66.77	$69.95	$82.73	$88.55	$100.85	$114.26	$145.49
California Consumer Price Index	260	289	291	305	320	336	353
Cost per Active Member (in constant dollars)	$66.77	$62.93	$73.92	$75.49	$81.94	$88.41	$107.16
Growth in Cost per Active Member (in constant dollars)		-5.8%	10.7%	13.1%	22.7%	32.4%	60.5%

Notes: 1. 1985 and 1986 costs are budget and proposed budget, respectively.

2. Estimated increase in consumer price index for 1985 and 1986 is 5% per annum.

EXHIBIT L

EXHIBIT M

American Bar Association

August 27, 1985

Assemblyman Lloyd G. Connelly
California Legislature
1100 J Street, Room 515
Sacramento, CA 95814

Dear Mr. Connelly:

Thank you for your interest in the program of evaluations of lawyer discipline systems sponsored by the ABA Standing Committee on Professional Discipline. The following is a brief summary of the scope, purpose, and methodology of the evaluation project.

In 1979 the ABA House of Delegates adopted the Standards for Lawyer Discipline and Disability Proceedings which suggest a structure and procedure for efficient and strong performance of state disciplinary enforcement systems. The Lawyer Standards reflect the best policies and procedures drawn from the collective experience of disciplinary agencies throughout the country.

The Standing Committee has developed 107 criteria adapted from the Standards for Lawyer Discipline and Disability Proceedings, which is applied in evaluating an agency as a diagnostic tool. Upon invitation from a state disciplinary system, the Standing Committee will send a team of individuals experienced in the field of lawyer discipline to conduct an on-site evaluation of the structure, operation, and practice and procedures of the disciplinary system.

The evaluation involves a review of the entire lawyer discipline system in a jurisdiction. The Standing Committee believes that it is essential for the invitation for an evaluation to be requested jointly by the chief disciplinary counsel, the chairman of the disciplinary board, and the chief justice of the highest court in the jurisdiction to ensure that those responsible for the discipline system participate in and support the evaluation effort.

August 27, 1985

As part of the evaluation process, the team conducts extensive interviews with both lawyers and nonlawyers responsible for and affected by the discipline system, including members of the disciplinary board and hearing committees, disciplinary counsel and staff, members of the court with disciplinary jurisdiction, former respondents, counsel for respondents, complainants, independent lawyers, and representatives of the unified and voluntary bar associations. This investigation is conducted for the purpose of providing the team with an understanding and broad cross-section of views about the disciplinary process.

The team consists of three or four individuals, including an experienced bar counsel, a member of the Standing Committee, a professional lawyer or legal assistant from the ABA Center for Professional Responsibility, and an individual experienced in the field of lawyer discipline. The team spends approximately three days in the jurisdiction examining case records, observing office practices and procedures, and reviewing all rules governing discipline in the state. One team member may arrive one or two days in advance of the team to review disciplinary records and operational procedures, and to discuss with disciplinary personnel those matters which should be specifically addressed by the team.

The report is issued by the Standing Committee and is filed on a confidential basis with the individuals requesting the evaluation. The report is designed to assist those responsible for the administration of the disciplinary process to improve their system by providing constructive suggestions and recommendations based upon the team's investigation, its collective knowledge and experience, and the application of the Lawyer Standards.

The jurisdiction is requested to contribute to the cost of the evaluation. Small jurisdictions requiring a three member team would contribute $1,500 and large jurisdictions requiring a four or five member team would contribute $2,000. The balance of team expenses and the costs associated with the production of the report are contributed by the American Bar Association.

As part of the evaluation process, the team examines case records and administrative files. If your jurisdiction requires special permission to provide the team with access to confidential information, it is requested that you obtain appropriate authorization to accomplish this by the date of the evaluation.

August 27, 1985

The Standing Committee strongly suggests the jurisdiction appoint an ad hoc committee to receive the team report and make further recommendations to the Court. The Ad Hoc Committee should not contain members with disciplinary positions. The ABA team reporter will revisit the jurisdiction to meet with the Ad Hoc Committee as part of the evaluation process.

If you are interested in participating in the evaluation program, would you kindly contact me at your earliest convenience. If you desire further information or clarification of any matters presented, please do not hesitate to contact me.

Very truly yours,

Timothy K. McPike
Regulation Counsel

TKM:gje
1186K

Enclosure: 1) Professional Discipline for Lawyers and Judges
2) Model Rules for Lawyer Disciplinary Enforcement