maintenance programs, the total number of accidents is not decreasing."

Of the 324 grade crossing accidents in 1989, 38 were caused by motorists driving around lowered gates. Thirty-five persons died in such accidents. Drivers not only violate the Vehicle Code by avoiding gates, but ignore the basic warning of danger that gates provide, the report states. Moreover, drivers often fail to realize that a crossing with more than one set of tracks may be used by two trains at the same time. Drivers may not know that a train traveling at 30 miles per hour takes two-thirds of a mile to stop.

General railroad crossing accidents decreased from 280 in 1988 to 246 in 1989, but so did train-miles traveled. As for light-rail operations, which increased in activity, crossing accidents went up from 44 in 1988 to 78 in 1989. Of the total 324, 82% involved vehicle-train accidents at public crossings.

The PUC report is based on information derived from the Federal Railroad Administration forms and investigations conducted by the PUC Safety Division staff into many of the cases covered. The Safety Division is charged by the Commission with monitoring and making recommendations for improvement of safety measures and guidelines in the railroad industry. In an effort to reduce railroad-related accidents and deaths, the PUC has contracted with the University of San Francisco to study why people are being injured at an increasing rate and to suggest recommendations as to what might be done to reduce such accidents. The report is expected during the fall of 1991.

Use of "Extra Space" in Utility Billing Envelopes. On October 24, the Commission initiated an investigation (I.90-10- 042) into policies and procedures to be applied to the use of "extra space" in utility billing envelopes. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 8 and Vol. 8, No. 3 (Summer 1988) p. 1 for extensive background information on this issue.)

In the early 1980s, the Commission determined that the extra space in utility billing envelopes belonged to the ratepayers, and ordered SDG&E to permit a fledgling ratepayer organization in San Diego to place a billing insert recruiting members in the utility's bill envelopes. This order led to the creation of the Utility Consumers' Action Network (UCAN), now 52,000 members strong (*see supra* report on UCAN). The PUC issued a similar order to Pacific Gas & Electric Company (PG&E) to assist Toward Utility Rate Normalization (TURN), a San Francisco Bay area ratepayer organization. However, PG&E challenged the constitutionality of the order on first amendment grounds, and eventually prevailed in a plurality opinion by the U.S. Supreme Court. In *PG&E v. PUC*, 475 U.S. 1 (1986), the Court ruled that the Commission's order violated the first amendment rights of PG&E, a regulated natural monopoly utility corporation, because it forced PG&E to be associated with the views of parties with whom it disagreed.

In 1987, the Commission established a new Ratepayer Notice Program. Under this program, a Commission-sponsored billing insert was mailed to ratepayers quarterly; the legal notice insert simply informed ratepayers of the existence of various intervenor groups which represent ratepayer interests before the PUC in electric, gas, and telephone utility proceedings. The consumer was required to write to the PUC for the complete list of intervenor groups' names and addresses, and then contact directly the group of his/her choice for more information. This program lasted until December 1988.

In February 1990, the PUC's Public Advisor notified the Commission that the Ratepayer Notice Program was a complete failure. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 208 for background information.) The Public Advisor's report suggested several other options which would enhance ratepayer participation in PUC proceedings without running afoul of the Supreme Court's order in *PG&E v. PUC*.

Thus, the Commission initiated its October 24 order to review the "extra space" issue in light of the Court's decision and its recent experience. Opening comments by utilities and other interested parties were due on December 24.

LEGISLATION:

AB 90 (Moore), as introduced December 4, would require the PUC, in establishing rates for an electrical, gas, telephone, or water corporation, to develop procedures for these utilities to recover, through their rates and charges, the actual amount of local taxes, fees, and assessments, as specified, and to adjust rates to correct for any differences between actual expenditures and amounts recovered in this regard. This bill is pending in the Assembly Committee on Utilities and Commerce.

FUTURE MEETINGS:

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

STATE BAR OF CALIFORNIA

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The State Bar of California was created by legislative act in 1927 and codified in the California Constitution at Article VI, section 9. The State Bar was established as a public corporation within the judicial branch of government, and membership is a requirement for all attorneys practicing law in California. Today, the State Bar has over 128,000 members, which equals approximately 17% of the nation's population of lawyers.

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

The Board consists of 23 members: seventeen licensed attorneys and six non-lawyer public members. Of the attorneys, sixteen of them—including the President—are elected to the Board by lawyers in nine geographic districts. A representative of the California Young Lawyers Association (CYLA), appointed by that organization's Board of Directors, also sits on the Board. The six public members are variously selected by the Governor, Assembly Speaker, and Senate Rules Committee, and confirmed by the state Senate. Each Board member serves a three-year term, except for the CYLA representative (who serves for one year) and the Board President (who serves a fourth year when elected to the presidency). The terms are staggered to provide for the selection of five attorneys and two public members each year.

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

The State Bar and its subdivisions perform a myriad of functions which fall into six major categories: (1) testing State Bar applicants and accrediting law schools; (2) enforcing the State Bar Act and the Bar's Rules of Professional Conduct, which are codified at section 6076

of the Business and Professions Code, and promoting competence-based education; (3) ensuring the delivery of and access to legal services; (4) educating the public; (5) improving the administration of justice; and (6) providing member services.

MAJOR PROJECTS:

Supreme Court Approves "Finality Rule." The California Supreme Court recently approved the so-called "finality rule," which went into effect on December 1. Under Rule 950 *et seq.* of the California Rules of Court, a State Bar Court recommendation of discipline may be adopted as a final order of the Supreme Court unless the respondent attorney or the Bar's Chief Trial Counsel requests review within 60 days. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 184 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 212 for background information.) Previously, every Bar recommendation for disbarment or suspension was formally reviewed and approved by the Supreme Court.

Further, in what the Bar perceives as a vote of confidence for its revamped disciplinary system, the Supreme Court recently announced its proposal to treat attorney discipline cases like most other cases which reach it—via a discretionary petition for review. Under the proposed rule, the Court would consider the merits of a petition for review in all contested matters, but would grant full oral argument and issue a written opinion only in cases where sufficient grounds for additional review are demonstrated. The Court proposes to limit its discretionary review to cases in which: (1) the State Bar Court has acted without or in excess of its jurisdiction; (2) the petitioner did not receive a fair hearing; (3) the decision is not supported by the weight of the evidence; (4) the recommended discipline is not appropriate in light of the record as a whole; and (5) review is necessary to settle important questions of law.

At this writing, this proposed rule is the subject of a public comment period which ends on January 1.

Bar Discipline System Focuses on "Repeaters". Over the past few years, the Bar's disciplinary component has greatly improved its computer system which tracks consumer and other complaints against California attorneys. Under the provisions of SB 1498 (Presley) (Chapter 1159, Statutes of 1988) and numerous administrative changes made by the Bar, the Bar's system is now compiling and tracking numerous sources of information regarding attorney misconduct, including NSF check notices written by attorneys on client trust accounts; arrests, felony charges, and convictions of attorneys; legal malpractice claim filings; and major contempt or sanctions orders imposed by judges against attorneys. (See CRLR Vol. 8, No. 4 (Fall 1988) pp. 123-24 for background information on SB 1498.)

Through this enhanced computerization, the Bar and State Bar Discipline Monitor Robert C. Fellmeth have documented that over 65% of the complaints which survive an initial screening by the Bar's Office of Intake/Legal Advice and are transferred to the Bar's Office of Investigations concern an attorney who is already a respondent in other pending Bar discipline proceedings. According to the Discipline Monitor, these data suggest that there is a hard core of 1-2% of the profession (1,000-2,000 active-status attorneys) accounting for an extraordinary proportion of consumer complaints. In November 1989, the Bar created a "Repeaters' Task Force" which recently identified just over 50 attorneys as responsible for 570 open disciplinary matters. The Task Force is attempting to devise strategies to identify and remove these attorneys from practice as soon as possible.

At a recent meeting of the Bar's Discipline Committee, Bar discipline staff presented the Committee with a proposed new definition of the term "repeater", as previous definitions had proven too broad to encompass an easily identifiable number of attorneys. Effective January 1, the Task Force has proposed the following working definition of a "repeater": any matter in which a formal investigation is opened and (1) the attorney had prior formal discipline imposed within the past five years; (2) the attorney had prior informal discipline (such as an admonition, letter of warning, or entered into an Agreement in Lieu of Discipline) within the past two years; (3) the attorney has a pending discipline matter in the State Bar Court; (4) the attorney is currently the subject of a Statement of the Case (a report of a completed investigation which has been approved and assigned for the drafting of formal charges); (5) the Office Of Investigations has five or more open investigations regarding the attorney; or (6) the Office of Intake/Legal Advice has opened five or more inquiries within the past 90 days regarding the attorney.

It is hoped that the new definition will be sufficiently narrow to permit the discipline system to target the small group of attorneys most harmful to the public. The Task Force then intends to implement a program which would accelerate the discipline of those attorneys; Discipline Monitor Fellmeth has repeatedly urged the use of involuntary inactive enrollment pursuant to Business and Professions Code section 6007(c).

Minimum Continuing Legal Education (MCLE). Pursuant to SB 905 (Davis) (Chapter 1425, Statues of 1989), the State Bar submitted a new Rule of Court establishing its MCLE program to the California Supreme Court in July 1990; on December 6, the Court approved the proposed rule after no opposition was filed. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 212; Vol. 10, No. 1 (Winter 1990) p. 154; and Vol. 9, No. 4 (Fall 1989) p. 138 for extensive background information on the Bar's MCLE program.)

After nearly a year of review, study, and analysis of public comments on seven drafts, the Board of Governors adopted new MCLE regulations at its December meeting. The program adopted by the State Bar includes the following provisions:

-Section 2.1 requires all active members of the State Bar to complete at least 36 hours of continuing legal education every 36 months. These hours must include: (a) at least eight hours in the area of legal ethics and/or law practice management, with at least four of those hours in legal ethics; (b) at least one hour relating to prevention, detection, and treatment of substance abuse and emotional distress; and (c) at least one hour shall relate to elimination of bias in the legal profession based on any of, but not limited to, the following characteristics: gender, color, race, religion, ancestry, national origin, blindness or other physical disability, age, and sexual orientation.

-Section 2.2 permits up to 18 hours of credit for self-study activities during any compliance period, and section 2.3 allows a member to carry forward up to eight excess credit hours earned in one compliance period into the next compliance period.

-Subsections 3.1 through 3.6 set forth standards for determining the beginning and end of compliance periods. The first compliance period will begin on February 1, 1992 and members will be assigned to one of three "compliance groups" depending on the first initial of their last name. Compliance Group 1 will end its first period in three years and is expected to complete all 36 hours; Group 2's period will end in two years and will be required to complete 24 hours; and Group 3 will complete 12 hours in one year. Further, the rules contain special provisions for members admitted or readmitted during the initial compliance period for their particular

group (again, based on first letter of the last name).

-Subsections 4.1 through 4.3 allow special categories of credit. Under "participatory credit," MCLE credits will be allowed for attending approved educational activities; viewing certain videotapes or listening to certain audiotapes; speaking at approved educational activities; attending law school classes after admission to the Bar; and teaching a course at a law school. Up to 18 hours of "self-study credit" may be claimed for viewing approved videotapes or listening to audiotapes of approved activities; preparing certain written materials as author or co-author; and participating in self-assessment testing. No MCLE credit shall be given for Bar exam preparation.

-Section 5.1 provides a formula for computing credits earned: minutes of instruction time (time spent in activity) divided by 60 equals the number of reportable credit hours. Subsections 5.2 through 5.4 set forth special credit award computations for specified activities.

-Section 6.1 implements a statutory exemption for retired judges; officers and elected officials of the State of California; full-time professors at law schools accredited by the State Bar, the ABA, or both; full-time employees of the State of California acting within the scope of their employment who do not practice law in California except as employees of the state; and federal attorneys. (This last exemption was added by the State Bar pursuant to an order contained in the Supreme Court's approval of the plan.) Subsections 6.2 and 6.3 set forth procedures for requesting a modification of the MCLE requirements.

-Subsections 7.0 through 7.5 set standards for approval of educational activities and create requirements for providers of such activities. In approving Draft #7, the Board of Governors added subsection 7.4, which allows educational activities that have been approved by other MCLE states to be so approved in California.

-Subsections 8.1 through 8.3 set forth requirements for approval of certain individual educational activities, including those referred to in sections 4.1 and 4.2.

-Subsections 9.0 through 9.4 set forth requirements for the approval of providers of continuing legal education, including the application procedure and the possibility of revocation of approval.

-Section 10.0 allows a member to request approval of an educational activity not specifically mentioned in these rules.

-Section 11.0 indicates that those applying to become an approved MCLE provider must pay an application fee, but does not establish the fee or the procedure which will be used to calculate the fee.

-Subsections 12.1 through 12.4 outline the general compliance procedures to be followed by each member: each attorney must maintain records to demonstrate compliance, and submit a completed "compliance card" at the end of his/her compliance period, signed under penalty of perjury.

-Subsections 13.1 through 13.3 address noncompliance procedures and fees.

-Subsections 14.1 through 14.3 state that noncompliance will result in administrative inactive enrollment with no opportunity for hearing; membership fees will continue to accrue during this inactive period.

-Subsections 15.1 and 15.2 discuss reinstatement procedures following inactive enrollment due to noncompliance.

-Subsections 16.1 through 16.3 create a Standing Committee on MCLE composed of 21 members appointed by the Board of Governors. The Committee shall consist of six nonlawyer and fifteen lawyer members.

-Section 17.0 permits any interested person to view the MCLE compliance records of all State Bar members during regular business hours.

The Bar's MCLE program is scheduled to go into effect in February of 1992. Meanwhile, the Bar Association of San Francisco has expressed its concern that the MCLE regulations favor certain private education providers and the Los Angeles County Bar Association. The State Bar expects that the issue of the fees to be charged to MCLE providers will be the subject of a public comment period and hearing in the near future.

Legal Technician Legislation. Assemblymember Delaine Eastin has introduced legislation to create a new category of nonlawyer "legal technicians." (*See infra* LEGISLATION; *see also* CRLR Vol. 10, No. 4 (Fall 1990) p. 185; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 213; and Vol. 9, No. 4 (Fall 1989) p. 137 for background information on this issue.) Senator Robert Presley recently indicated that he does not approve of the version supplied by HALT (Help Abolish Legal Tyranny), which is the language introduced by Eastin. Senator Presley plans to introduce a legal technician bill sponsored by a broad-based coalition of public interest organizations. Both bills would generally permit nonlawyers who are specially trained and have passed a test in specified areas of substantive law to provide a variety of legal services to consumers.

The State Bar's Commission on Legal Technicians has drafted an entirely separate proposal that would allow for certification of nonlawyer legal technicians in only three initial areas: family law, landlord-tenancy, and bankruptcy. At this writing, the Bar is still accepting public comment on its 61-page report and recommendations on legal technicians. As expected, most of the attorney responses are opposed to any such legislation, while nonlawyers strongly support the idea. The Board of Governors is expected to consider the report and public comments in early 1991.

Lawyer Referral Services Investigated. On January 1, 1989, section 6155 of the Business and Professions Code began requiring all lawyer referral services (LRS) to be registered with the State Bar and to operate in conformity with certain minimum standards approved by the Supreme Court. On October 26, 1989, minimum standards proposed by the State Bar were approved by the Supreme Court. Under these standards, a bona fide LRS must have at least twenty participants with a minimum of one panel devoted to a certain area of law; the attorneys must carry malpractice insurance; and the referral must be made by a human being, not just an answering machine. To date, 72 LRS applicants have been certified and only two have been rejected.

The Bar has recently received numerous complaints about agencies which operate as LRS but call themselves "cooperative advertising ventures" so as to avoid the minimum standards under section 6155 of the Business and Professions Code. At its October meeting, the Board of Governors heard from selected members of the public about problems with enforcement of the LRS standards, and adopted a "five-point plan" to deal with the problem:

-the Bar will seek stronger and/or corrective legislation;

-the Bar will continue to explore possible litigation against uncertified LRS and/or alleged false and misleading advertising by LRS;

-the Bar will convene a summit of all interested enforcement agencies at local, state, and federal levels to determine what action, if any, should be taken with regard to the potential abuses in this area;

-the Bar will organize a strong, aggressive media and education campaign to bolster certified LRS and expose the potential problems of uncertified LRS; and

-the Bar will establish a repository of information in the State Bar's Office of

Legal Services regarding allegations of consumer injury from uncertified LRS.

On November 28, the State Bar's Office of Legal Services held a summit to discuss this issue. Key participants included Marcy Tiffany, Regional Director of the Federal Trade Commission; Ira Reiner, Los Angeles County District Attorney; and David Scheper, Chief of the Consumer Affairs Office of the U.S. Attorney's Office.

The State Bar maintains that it has been cautious about enforcing section 6155 because it is not certain it will prevail under existing state law since these uncertified services are careful not to call themselves "lawyer referral services." Therefore, according to State Bar President Charles Vogel, specific legislation is needed to stop or at least regulate these services.

Lawyers Personal Assistance Program. The Lawyers Personal Assistance Program (LPAP), a statewide program set up by the Bar's Task Force on Substance Abuse and Emotional Distress to assist impaired attorneys, is primarily focusing its efforts on publicity and outreach programs in order to make attorneys aware of the services available. The program is also planning to begin outreach programs in law schools to address the issues of chemical dependency and emotional distress in the law school community. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 184 for background information on LPAP.)

As part of its promotional campaign, LPAP intends to produce two videos to educate attorneys on chemical dependency and stress. A survey recently released by the American Bar Association (ABA) revealed that 13% of lawyers said they had six or more beers, glasses of wine, or mixed drinks per day. Women lawyers reported greater alcohol consumption than men. Twenty percent of female lawyers and 11% of male lawyers reported having six or more drinks per day. The survey, entitled "The State of the Legal Profession," was based on a nationwide survey of 3,248 lawyers.

The program also sponsors the Bar's Ethics School. Since its inception last April, approximately 20 attorneys whom the Bar has identified as potentially subject to future disciplinary proceedings have completed the program. The program is designed to detect and treat potential problems before the consumer is harmed by an attorney's incompetence.

Potential candidates are identified through the Bar's Office of Intake/Legal Advice on the basis of the nature of the underlying allegation, prior disciplinary record, and the benefit of attending the Ethics School. The program currently involves one all-day session, and consists of three segments: (1) professional responsibilities; (2) substance abuse and stress; and (3) law practice management. At the conclusion of the session, a written test is administered and minimum score of 75% is required to pass the course. Each attorney is charged $75 to attend.

Lawyer-Client Sex Rule. Pursuant to AB 415 (Roybal-Allard) (Chapter 1008, Statutes of 1989), the Bar was required to submit a proposed rule of professional conduct governing sexual relations between attorneys and their clients to the California Supreme Court by January 1, 1991. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 212-13 and Vol. 9, No. 4 (Fall 1989) p. 138 for background information.) However, the Board was unable to reach a consensus at its December meeting and tabled the matter until its January meeting. The rule favored by the majority of the members of the Committee on Admissions and Competence stated that lawyers shall not: (1) require or demand sexual relations with a client or any other person incident to or as a condition of any professional representation; (2) employ coercion or intimidation in entering into sexual relations with a client; or (3) accept or continue representation of a person with whom the member has sexual relations if such sexual relations would impair the member's ability to perform legal services competently. The proposed rule would exempt sexual relations with spouse/clients, and those which predate the start of an attorney-client relationship. An alternative version of the rule includes a provision prohibiting a lawyer from causing a client to suffer emotional distress as a result of sexual relations between the lawyer and the client. If the Board is able to reach a consensus on an appropriate rule at the January meeting, California will become the first state in the country to establish specific ground rules on this area.

Proposed Rule on Gender Bias. The Commission for the Revision of the Rules of Professional Conduct (Commission) is considering the adoption of a new rule of professional conduct dealing with gender bias in the courtroom. In its current form, the proposed rule would prohibit an attorney from "manifesting, by words or conduct, bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, against parties, witnesses, counsel, or others," unless those factors are issues in the proceeding. The Commission anticipates focusing on possible changes to the rule in early 1991.

The Board of Governors' Committee on Professional Responsibility and Conduct (COPRAC) has rejected the rule in its current form. COPRAC believes the problem of courtroom bias is best resolved by the presiding judge's contempt power. COPRAC believes that the rule in its current form is vague and overbroad, and objects to the rule on grounds that Business and Professions Code section 6068(f), which requires that an attorney "abstain from all offensive personality," already addresses the issue of bias for disciplinary purposes.

LEGISLATION:

AB 168 (Eastin). Existing law provides that no person may practice law unless he/she is an active member of the State Bar. As introduced December 20, this bill would instead provide that no person may advertise or otherwise hold himself/herself out to be an attorney, or use a title that in any way implies that he/she is an active member of the State Bar, and that no person may appear, or advertise or hold himself/herself out as entitled to appear, on behalf of another, before any court or tribunal of this state unless that person is authorized to so appear pursuant to a rule adopted by the court or tribunal or pursuant to law. This bill would also create the Board of Legal Technicians in the Department of Consumer Affairs, and would require every person who practices as a legal technician to be licensed or registered by the Board, which would determine which areas require licensure and which require registration. The bill would require various disclosures by legal technicians, and would provide for conciliation and arbitration of consumer complaints. This bill is pending in the Assembly Committee on Governmental Efficiency, Consumer Protection and New Technologies.

LITIGATION:

The State Bar has finally decided upon what it believes will be a solution to the U.S. Supreme Court's reversal of the California Supreme Court's decision in *Keller v. State Bar,* 100 S.Ct. 2228, 90 D.A.R. 6131 (1990). (See CRLR Vol. 10, No. 4 (Fall 1990) p. 187; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 215; and Vol. 10, No. 1 (Winter 1990) p. 155 for background information on this case.) Pursuant to the *Keller* decision, the Bar may not use mandatory dues to pay for political activities with which members disagree, unless those activities directly relate to the regulation of the legal profession or improve the quality

of the legal profession; these permissible activities are referred to as "chargeable" activities.

The Bar has decided to implement a $3 rebate on mandatory Bard dues for those members who object to the Bar's expenses toward "nonchargeable" activities. The deduction is in accordance with the procedures outlined by the U.S. Supreme Court in *Teachers v. Hudson*, 475 U.S. 292 (1986), and is known as the "Hudson deduction." The due process requirements set forth in *Hudson* for the collection of compulsory fees require (1) adequate explanation of the basis of the fee; (2) reasonably prompt opportunity to object and have objections heard before an impartial decisionmaker; and (3) immediate escrow of amounts reasonably in dispute pending adjudication of the challenge.

The Bar claims that all but a small portion of State Bar expenditures are necessarily or reasonably related to the regulation of the legal profession or improving the quality of legal service, and are therefore chargeable to all members. The $3 Hudson deduction is based on an examination of what is permitted under *Keller* and an audit of Bar activities performed by the accounting firm of KPMG Peat Marwick. The audit found that $51,952 of the money the Bar proposed spending on its Conference of Delegates next year might be for prohibited purposes, while $221,831 of Conference allocations would be spent on permissible activities. In addition, the Bar included in the Hudson deduction computation $62,568 spent on the statewide Volunteers in Parole program, $12,338 spent on travel expenses for members of the ABA House of Delegates, $12,000 spent on public service announcements, and $98,779 of the $674,993 budget for its Office of Governmental Affairs, which handles legislative lobbying in Sacramento and Washington, D.C.

Under the procedures established by the Bar, any challenges to its determination as to what expenses are mandatory and what expenses may be refunded must be filed by February 1.

In a related issue, the U.S. Supreme Court recently refused to hear *Schwarz v. Florida Supreme Court*, No. 89-1591. The Florida Supreme Court decision upheld a state administrative rule allowing the Florida Bar, which is also a mandatory bar, to engage in lobbying on matters that concern "great public interest." The Court's *Keller* decision expressly left open the question of whether lobbying activities financed by compelled licensing fees violate first amendment rights under the "free association" clause, and it again declined to tackle this issue presented in *Schwarz*.

In response to the recent U.S. Supreme Court decision in *Peel v. Attorney Registration and Disciplinary Commission of Illinois*, No. 88-1775 (1990) (see CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 215-16 and Vol. 9, No. 4 (Fall 1989) p. 138 for background information on this case), the Bar has revived its attempt to draft an appropriate rule regarding the use of the term "specialist" in attorney advertising. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 121 and Vol. 9, No. 1 (Winter 1989) p. 107 for background information.) As a result of the *Peel* decision, the Bar believes Rule of Professional Conduct 1-400-(d)(6) is unconstitutional. That rule precludes an attorney from calling him/herself a "certified specialist" unless the member holds a current certificate as a specialist issued by the California Bar's Board of Legal Specialization pursuant to a plan for specialization approved by the Supreme Court. At its October meeting, the Committee on Admissions and Competence recommended that Rule 1-400(d)(6) be submitted to the Supreme Court with a request that it be repealed. The Board's Discipline Committee has determined not to take any disciplinary action regarding purported violations of the rule pending appropriate amendments consistent with the *Peel* decision.

In *Tara Motors v. Superior Court of San Diego County*, 90 D.A.R. 14651 (Dec. 21, 1990), the Fourth District Court of Appeal expanded the tort liability of attorneys by ruling that attorneys may be liable for emotional distress damages arising out of professional negligence, in the absence of any showing of affirmative misconduct.

Plaintiff, a San Diego woman who inherited a family-owned car dealership, alleges that, as a result of improper advice given to her by her attorneys on the procedures she should follow to terminate the employment of her daughter as general manager of the dealership, she suffered financial damage and severe emotional distress amounting to at least $3 million. Plaintiff's complaint alleges professional negligence; it does not allege any intentional wrongdoing or bad faith on the part of her attorneys. The trial court granted defendants' motion for summary judgment on plaintiff's claim of damages for emotional distress, based on *Quezada v. Hart*, 67 Cal. App. 3d 754 (1977), which held that recovery of emotional distress damages in an attorney malpractice action requires a showing of affirmative misconduct.

In overturning the trial court, the majority held that "requiring clients to demonstrate affirmative misconduct to recover damages for severe emotional distress from their attorneys is not justified. Rather, it is in the public interest negligent attorneys be held responsible for injury to their clients and not be afforded favored treatment under the law." The court noted that it had questioned the continuing validity of *Quezada* in *Holliday v. Jones*, 215 Cal. App. 3d 102 (1989), in which it upheld an award of emotional distress damages to a client who had been convicted of involuntary manslaughter and imprisoned as a result of his attorney's malpractice. In extending the rule in *Holliday*, the court reasoned that the primary concern in limiting damages available for emotional distress is to avoid the risks of limitless liability and fictitious claims. However, in cases where an attorney's negligence causes emotional distress, "the existence of substantial economic loss, as well as the already circumscribed liability of attorneys, provides adequate safeguards against false claims and uninsurable risks."

In dissent, Justice Froehlich concluded that the majority's opinion "will engraft on every legal malpractice action to be filed hereafter an additional cause of action for mental distress."

Defendants planned to file a petition for review in the California Supreme Court in late January.

FUTURE MEETINGS:

April 18-20 in Los Angeles.
May 30-June 1 in San Francisco.
July 11-13 in Los Angeles.
August 22-24 in San Francisco.