household goods carrier, or a charter-party carrier, the decision may be appealed directly to the San Francisco Superior Court. This bill is pending in the Assembly Utilities and Commerce Committee.

AB 1260 (Chacon), as introduced March 6, would establish procedures applicable to dump truck carriers and household goods carriers that provide for appeal of any interim, interlocutory, or other order of the PUC to a state court of appeal. This bill is pending in the Assembly Utilities and Commerce Committee.

AB 682 (Moore), as introduced February 25, would prohibit a nonpublic utility provider of telephone services which provides service to a hotel, motel, hospital, or similar place of temporary accommodation from charging more for a nontoll call than the authorized charge for that call placed from a private coin-activated telephone plus 25 cents, and would prohibit charging more for a toll call than the telephone corporation's applicable charge plus the surcharge, if any, applicable to that call if placed from a public coin-activated telephone plus 25 cents. This bill is pending in the Assembly Utilities and Commerce Committee.

AB 461 (Moore), as introduced February 8, would provide for a state policy of the basic entitlements of telecommunications ratepayers in this state. This bill is pending in the Assembly Utilities and Commerce Committee.

FUTURE MEETINGS:

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

STATE BAR OF CALIFORNIA

President: Charles S. Vogel
Executive Officer: Herbert Rosenthal
(415) 561-8200
(213) 580-5000
Toll-Free Complaint Number:
1-800-843-9053

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

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

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

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

The State Bar and its subdivisions perform a myriad of functions which fall into six major categories: (1) testing State Bar applicants and accrediting law schools; (2) enforcing the State Bar Act and the Bar's Rules of Professional Conduct, which are codified at section 6076 of the Business and Professions Code, and promoting competence-based education; (3) ensuring the delivery of and access to legal services; (4) educating the public; (5) improving the administration of justice; and (6) providing member services.

MAJOR PROJECTS:

Eighth Progress Report of the State Bar Discipline Monitor. On March 1, State Bar Discipline Monitor Robert C. Fellmeth released his Eighth Progress Report on the Bar's overhauled discipline system. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 184; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 212; and Vol. 7, No. 3 (Summer 1987) p. 1 for extensive background information.) On the positive side, the report noted that:

-The huge complaint backlogs in the Bar's Office of Intake/Legal Advice and Office of Investigations have largely disappeared.

-The Bar's toll-free consumer complaint hotline number (1-800-843-9053) will finally be published in telephone directories in the location consumers are most likely to look—in the government section of the white pages.

-The predictability and stability of the restructured State Bar Court, which has been in full operation for over one year, is now yielding the result most anticipated—a greatly enhanced settlement rate. Previously, only 15-19% of the cases reaching the State Bar Court settled; now, almost 50% of those cases settle, thus reducing the Court's workload, enabling it to hear cases more quickly, and improving efficiency.

-Where cases are contested vigorously, the entire Bar disciplinary hearing and appeal process consumes only half as much time as does a civil case on "fast-track", and only one-third to one-fifth the time as does a disciplinary case in a regulatory agency subject to the Administrative Procedure Act.

-Only four years after publicly criticizing the work product of the State Bar Court, the California Supreme Court has now impliedly approved the restructured State Bar Court and the quality of its decisionmaking by adopting the "finality rule," under which a final discipline order of the State Bar Court becomes an order of the Supreme Court if no review is sought by the respondent or the Bar's Chief Trial Counsel within 60 days. Further, the Supreme Court will now treat petitions for review of State Bar Court discipline recommendations as discretionary, as are petitions for review of other types of cases. (*See infra* for details; *see also* CRLR Vol. 11, No. 1 (Winter 1991) p. 148 for background information.) Previously, the Supreme Court automatically reviewed all State Bar Court recommendations, whether or not appealed.

-The total output of the new system has increased steadily and substantially since 1987. Public, formal discipline increased markedly in 1988 over the base level of 1982-87; in 1989, the Bar's public discipline output increased 32% over 1988; and in 1990, public discipline increased almost 50% over 1989 levels. Informal discipline during 1990 was ten times what it was during 1981-86 (from 46-60 cases per year then, to 662 in 1990).

The Monitor also discussed several areas of the Bar's discipline system which still require improvement, including the following:

-The Bar's Office of Trials still has a troubling backlog of 250 completely

investigated cases awaiting preparation and filing of the formal accusation.

-The Bar is still reticent to use interim remedies where warranted; only 13 motions for interim suspension were filed during 1990.

-The Complainants' Grievance Panel, a seven-member body which is authorized to review the early closure of cases at the request of the complaining consumer, has a staggering backlog of 2,500 cases, and should be dramatically restructured in purpose.

-The Bar's Client Security Fund Commission, which reimburses clients who have been defrauded due to attorney dishonesty, should integrate its proceedings with those of the Bar's discipline system and the State Bar Court, rather than commencing its investigation of any claim at the conclusion of the lengthy disciplinary proceeding.

-The State Bar Court should relinquish its Probation Department function. Probation functions should be operated independent of the State Bar Court, either in a separate entity or preferably within the Office of Trials—with full information-sharing with Intake.

-The Board of Governors' Discipline Committee should cease hearing adjudications to shorten time for reinstatement. These are adjudicatory hearings properly heard by the State Bar Court.

-The State Bar should fund the *State Bar Court Reporter*. Although the Discipline Committee has approved publication of the *Reporter*, the Administration and Finance Committee has refused to allocate funds to pay for the project. The Monitor noted that it is false economy to spend millions of dollars on a professional adjudicatory system and then foreswear several thousand dollars to print the decisional output of what has been created.

-The Bar should seek legislation requiring malpractice insurance meeting minimum standards for all practitioners.

-The Bar should address the continuing lack of public protection from attorney incompetence. In addition to mandatory malpractice insurance, the Bar should begin the process of evaluating the licensure of attorneys in areas of actual practice, with at least some retesting required no less than once every ten years.

-The Bar should search for ways to deter attorney deceit, particularly in the practice of civil law. The Bar should provide sanctions for deceit, examine the underlying ground rules of civil representation, and develop new rules of behavior supervening adversary representation.

-The Bar needs to provide a more effective early intervention program to protect the public from alcohol- and drug-abusing counsel.

Unless altered by legislation, the State Bar Discipline Monitor position sunsets on December 31, 1991.

Finality Rule. The California Supreme Court announced that effective February 1, it will implement the second half of the "finality rule" and no longer automatically grant review any time a lawyer challenges a State Bar Court recommendation of disbarment or suspension. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 148 for background information.) In those cases in which the court denies review, the recommendation of the State Bar Court will become final.

Campaign to Reduce Attorney Financial Thefts. In mid-1990, the State Bar's discipline system created a program termed "Campaign to Reduce Attorney Financial Theft" (CRAFTS) to deal with the critical mass of consumer complaints alleging theft and/or embezzlement from client trust accounts. The CRAFTS task force consists of two parts. First, an intake section seeks out early signs of theft, using NSF check information (banks are required to report to the Bar all insufficient-funds checks written on attorney client trust accounts), criminal charges for embezzlement or theft, consumer complaints, and other information now being gathered in the enhanced pattern detection computer system of the Bar's Office of Intake/Legal Advice. In addition, a program of random audits of client trust accounts is being planned.

At its March meeting, the Board of Governor's Discipline Committee authorized CRAFTS staff to release for public comment proposed standards for Rule of Professional Conduct 4-100(C). In its current form, the rule authorizes the Board of Governors to "formulate and adopt standards as to what 'records' shall be maintained by law firms...." The new rule would require attorneys to maintain all documents relating to any business transactions with a client for five years.

The objectives of the recordkeeping requirement are to prevent attorneys from committing theft, educate California lawyers about their trust account recordkeeping obligations, and sensitize attorneys to their fiduciary duties. CRAFTS believes that by educating attorneys in the proper method of maintaining trust accounts, errors can be detected and corrected before serious misconduct occurs. Specific trust account recordkeeping standards are thought to be an effective deterrent to theft. They would also enhance public protection and confidence in the profession and its disciplinary system.

MCLE Provider Fee Issue Sparks Controversy. On December 7, 1990, the California Supreme Court adopted Rule of Court 958, Minimum Continuing Legal Education (MCLE). The Rule is general in nature and authorizes the State Bar to establish and administer an MCLE program. On December 8, 1990, the State Bar Board of Governors adopted the MCLE Rules and Regulations. The Rules and Regulations provide the details as to how the MCLE program will operate. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 148-49 for detailed background information.) The Board also appointed the 21-member Standing MCLE Committee (fifteen lawyers and six nonlawyers) provided for in the Rules and Regulations. In January, the Bar began considering options for setting the fees to be charged to become an approved provider of MCLE courses.

Providing MCLE courses is expected to become a lucrative business for local bar associations, educational institutions, law firms, legal publishing companies, and other for-profit and nonprofit institutions. Thus, the issue of MCLE provider fees, which the Bar sought to assess in order to make the MCLE program self-supporting, created an explosive debate throughout the state. The Bar noted that in 1991, the cost of administering the program will be approximately $800,000 (the requirement is not effective until February 1, 1992), and that the costs of administering the MCLE program will be subsidized primarily by provider approval fees. With regard to MCLE providers, the Bar began with three fee options: (1) charge all providers an annual up-front flat fee based on their type and size; (2) charge all providers the same annual up-front flat fee, regardless of type and/or size; and (3) charge all providers the same fee based on the number of hours per attendee; for example, if a provider gave a three-hour course attended by 30 members and the provider fee were set at $2, the provider would submit $180 for that course (30 attendees x 3 hours = 90 hours x $2 fee = $180).

The Bar's Education Committee held numerous public hearings on the issue during January, at which other alternatives were raised. Several of the larger county bar associations (which would stand to lose if options (1) or (3) above were chosen) urged the Bar to simply charge each attorney $8 per year to cover the administrative costs of the MCLE program. However, this alternative would require legislative approval of a dues increase, and key legislators have

been hostile to Bar dues increase requests for almost a decade. Other groups argued that for-profit organizations should be charged more in provider fees than nonprofit organizations.

On February 13, the Education Committee agreed to recommend option (3) to the Board of Governors. In addition to the $2-per-hour-per-member, the Committee recommended a flat $50 application fee for all MCLE providers, which would go toward offsetting the Bar's cost of processing provider applications. This option was projected to generate at least $1.2 million each year, and would more than cover the Bar's estimated costs of administering the program.

At its February 15 meeting, the Board of Governors approved the Committee's recommendation by a 16-3 vote, despite the pleas of the largest voluntary bar associations, including those of Los Angeles, San Francisco, Orange County, San Diego, and Beverly Hills. These associations urged the Board to differentiate between provider types, and to charge commercial providers a flat $30,000 annual fee; alternatively, they argued for a graduated fee, with local bars paying $1 per hour per lawyer, law firms and nonprofit commercial providers paying $2 per hour per lawyer, and for-profit providers paying $3 per hour per lawyer.

Less than two weeks later, Senator Bill Lockyer, chair of the Senate Judiciary Committee, and Senator Ed Davis, a member of the Judiciary Committee and the author of the bill which created the MCLE program, expressed extreme dissatisfaction with the plan approved by the Board of Governors. The two legislators stated that the Bar had gone back on a promise made during 1988 negotiations on the MCLE bill that there would be no pass- through of MCLE administrative costs to lawyers. Davis stated that he might introduce legislation to abolish MCLE, and Lockyer stated that he was considering the introduction of a bill to disintegrate the now-mandatory State Bar.

Bar officials initially defended their action, arguing that the per-lawyer fee would enable it to monitor and approve the quality of MCLE programs, and that although they may have agreed not to charge lawyers for the program, they never agreed not to charge MCLE providers. However, the Bar agreed to drop the provider fee on February 26 after a meeting between Bar President Charles Vogel and the two legislators. Under the agreement, the Bar will repeal the provider fee assessment, and use existing revenues to audit providers and monitor attorneys' compliance with MCLE requirements. The $50-per-provider application fee will still be imposed. Next year, the Bar will report to the legislature on the program's fiscal condition, and future funding sources for the program will be discussed at that time.

On March 7, the Education Committee recommended ratification of the agreement; an embarrassed Board of Governors concurred at its March 9 meeting. Several Board members expressed dissatisfaction at the Bar's failed internal communications and about its continuing problems in dealing with the legislature, in spite of its well-funded lobbying corps in Sacramento.

Legal Technician Legislation. At this writing, Bar staff is still compiling the comments received prior to the February 28 deadline on the report of its Commission on Legal Technicians, which recommended that qualified persons be admitted by examination to the limited practice of law in the areas of domestic relations, landlord-tenant law, and bankruptcy, but without the privilege of making court appearances. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 149; Vol. 10, No. 4 (Fall 1990) p. 185; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 213 for background information on this issue.) The Bar's proposal is extremely limited in comparison with legal technician legislation introduced by Assemblymember Delaine Eastin (*see infra* LEGISLATION) and a preprint bill which will soon be introduced by Senator Robert Presley. Bar staff hoped to present the Board of Governors with the results of the public comments at its April meeting.

Uncertified Lawyer Referral Services Warned. The State Bar recently formed a task force to investigate the problem of uncertified lawyer referral services. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 149-50 for extensive background information.) Harvey I. Saferstein, chair of the Board of Governors' Committee on Legal Services, heads the task force. Other members of the task force are Los Angeles District Attorney Ira Reiner, Los Angeles City Attorney James K. Hahn, and Deputy Attorney General Hershel Elkins.

On February 25, the State Bar issued warning letters to fourteen uncertified agencies acting as lawyer referral services. The uncertified agencies were given until March 15 to meet and confer with State Bar staff or the Los Angeles County District Attorney's office prior to the commencement of law enforcement action. District Attorney Reiner expects to initiate a number of civil actions after the March deadline.

Trial Court Reorganization and Access to Justice. For the past several months, the Board Committee on Administration of Justice (BCAJ) has participated with several members of the Judicial Council in two related taskforces: the Joint BCAJ/Judicial Taskforce on Trial Court Reorganization, and the Joint BCAJ/Judicial Taskforce on Access to Justice.

The Trial Court Reorganization taskforce has discussed the potential for unification of the superior, municipal, and justice courts, and the creation of a single-level trial court of general jurisdiction. The taskforce agrees that unification holds the potential for freeing up additional resources and increasing the courts' flexibility in utilizing these resources. The taskforce has reached tentative conclusions on several specific issues regarding the unification process, including the following: a constitutional amendment and companion implementing legislation should be the vehicle for effectuating unification; a proposal for unification should not include any changes to the terms or authority of the presiding judges; a single trial court of general jurisdiction should be available in every county; existing county boundaries of the superior court should be retained; there should not be classes of judges in the unified court; there should be state funding of the incremental costs of the reorganization; traffic cases should be heard by subordinate judicial officers; and all current municipal and justice court judges will become superior court judges.

The other taskforce has discussed access to justice through alternative dispute resolution (ADR) processes. This taskforce has also reached consensus on several specific issues, including the following: required pre-filing ADR with respect to attorney fee disputes should be expanded to other professions and licensed occupations; judges should have greater discretion to refer cases to ADR; establishment of ADR pilot projects should be considered immediately; a survey of courts should be conducted to determine the types of ADR programs now operating in the courts, the need for additional ADR mechanisms in the courts, and the types of cases appropriate for ADR; a rule of professional conduct relating to informing clients of the ADR option should be developed; a proposal for an ADR check-off submitted to the court at the time of filing should be developed; a survey of attorneys should be conducted to determine their level of experience, knowledge, and acceptance of ADR programs; and the creation of a clearinghouse for information on ADR

programs in California should be explored.

The work of the two joint taskforces is expected to culminate in final proposals to the Board Committee on Administration of Justice at its May 1991 meeting. The final proposals are expected to be presented to the Board of Governors at its August 1991 meeting.

Revisions to Lawyer-Client Confidentiality Rule. At its March meeting, the Board of Governors postponed consideration of proposed revisions to Rule of Professional Conduct 3-100. The proposed new rule would repeat section 6068(e) of the Business and Professions Code that it is a lawyer's duty "to maintain inviolate the confidence, and, at every peril to himself or herself, to preserve the secrets of a client," but would add exceptions to the rule, including revealing a confidence upon "the lawful order of a tribunal," in order to prevent the commission of a crime, or to defend oneself in a dispute with a client.

The revised rule was originally sent to the California Supreme Court for approval in December 1987. The court returned the rule in June 1988 with questions as to the interface of the attorney-client evidentiary privilege and the duty of confidentiality as set out in proposed Rule 3-100. In response to this concern, the Bar's Commission for the Revision of the Rules of Professional Conduct added a paragraph at the end of the discussion section to Rule 3-100, which includes the statement: "The rule is not intended to create, augment, diminish, or eliminate any application of either the lawyer-client privilege or work product rule."

The Board was scheduled to revisit this matter at its April 19 meeting.

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. 11, No. 1 (Winter 1991) p. 150; 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 Bar failed to meet that deadline, and was unable to reach consensus on such a rule at its January and March meetings as well. As a result, Assemblymember Roybal-Allard has introduced AB 1400 (*see infra* LEGISLATION), which would completely prohibit sex between lawyers and their clients, in the event the Board of Governors continues to fail to come up with an acceptable rule of its own.

The latest proposal considered by the Committee on Admissions and Competence, known as "Draft Rule E," would prohibit lawyers from (1) requiring or demanding sexual relations with a client incident to or as a condition of any professional representation; (2) employing coercion, intimidation, or undue influence in entering into sexual relations with a client; or (3) accepting or continuing representation of a client with whom the member has sexual relations if such sexual relations cause the member to perform legal services incompetently. The rule exempts spouses and consensual sexual relations which predate the initiation of the lawyer-client relationship. The only substantial modification of the rule over prior proposed versions is the insertion of the term "undue influence" as an additional prohibiting factor.

Assemblymember Roybal-Allard objects to Draft Rule E in that it fails to address sexual harassment and the victimization of clients who enter a relationship into which they would not have entered in the absence of the attorney's particular role of trust and confidence. The proposed rule also requires the victim to prove that the act occurred and that the act fell within the specific parameters of the rule. Roybal-Allard prefers an outright ban on sexual relations with clients, but would agree to limiting the ban to the specific practice areas of family law and probate law, due to the particular emotional vulnerability of the clients in those areas.

The Committee on Admissions and Competence agreed to set up a separate subcommittee to continue developing an acceptable rule. Public member Dorothy Tucker suggested a proposal which would add to "Draft Rule E" a presumption shifting the burden of proof to the attorney. Under this proposal, any sexual relations with clients would presumptively violate the rule.

LEGISLATION:

SB 711 (Lockyer), as introduced March 6, would provide, as a matter of public policy, that in actions based on personal injury or wrongful death, no confidentiality agreement, settlement agreement, stipulated agreement, or protective order which bars public disclosure of court records shall be valid, except (1) where a constitutional right to privacy is involved; (2) to protect government informants and whistleblowers; and (3) where privileged trade secrets are involved. The bill would establish a procedure for contesting a court order, judgment, agreement, or contract that violates this provision, and would provide that a prevailing plaintiff is entitled to attorneys' fees and costs. This bill is pending in the Senate Judiciary Committee.

AB 1400 (Roybal-Allard), as introduced March 7, would provide that any act of sexual contact, as defined, by an attorney with his/her client constitutes a cause for suspension or disbarment, except as specified. This bill is pending in the Assembly Judiciary Committee.

AB 687 (Brown), as introduced February 25, is a spot bill which would delete an obsolete provision in the law which provides for the appointment of judges to the State Bar Court by the Supreme Court. This bill is pending in the Assembly Judiciary Committee.

SB 717 (Boatwright). Under existing law, it is unethical for an attorney to undertake the representation of both the prospective adoptive parents and the birth parents of a child in any negotiations or proceedings in connection with an independent adoption, unless written consent is obtained from both parties. As introduced March 6, this bill would provide that it is unethical in all circumstances for an attorney to undertake the representation of both sets of parents in any proceedings or negotiations in connection with the adoption. This bill would require the attorney retained or representing the prospective adoptive parents to inform them both verbally and in writing that the birth parent(s) may change their minds and any moneys expended in negotiations or proceedings in connection with the child's adoption are not reimbursable. The birth parent(s) would be required to sign a statement to indicate their understanding of this information. This bill is pending in the Senate Judiciary Committee.

AB 306 (Friedman). Existing law makes it unlawful for any person to act as a runner or capper for any attorney, solicit any business for any attorney in and about specified places, and solicit another person to act as a runner or capper. As introduced January 24, this bill would revise and recast those provisions, and would specifically make it unlawful for an attorney to offer, deliver, receive, or accept any consideration, as specified, as compensation or inducement for referring clients or customers to any person; specify that the prohibition relating to runners and cappers is applicable to runners and cappers for law firms; and specify that a violation of those provisions is punishable as a misdemeanor or felony for a first offense and as a felony for subsequent offenses. This bill is pending in the Assembly Public Safety Committee.

SB 396 (Petris). Existing law requires interest earned by attorneys' client trust

funds to be remitted to the State Bar for funding the provision of civil legal services to indigent persons. As introduced February 19, this bill would require judgments in class actions to be amended pursuant to a specified procedure to allocate undistributed moneys paid in satisfaction thereof to the State Bar to provide additional funding for the provision of legal services to indigent persons. This bill is pending in the Senate Judiciary Committee.

AB 168 (Eastin), as introduced December 20, would revise existing statutes defining the unlicensed practice of law, and create the Board of Legal Technicians in the Department of Consumer Affairs. The bill 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. This bill is pending in the Assembly Committee on Consumer Protection, Governmental Efficiency, and Economic Development.

AB 1394 (Speier), as introduced March 7, would require any state board, including the State Bar, that receives an order from a court referring the issue of the suspension of a license, certificate, or registration of a person to engage in a business or profession regulated by the board, on the basis of nonpayment of child or spousal support, to provide notice to the person and hold a hearing to determine if the person holds such a license, certificate, or registration. This bill would require the board to take action to suspend the license, certificate, or registration if it finds that the person holds such, and evidence of full payment of all arrearages found to be due by the court is not presented at the hearing. However, it would authorize the board to allow the person to continue to practice his/her profession on probation under specified circumstances. This provision would apply to child and spousal support obligations ordered by any state, territory, or district of the United States. This bill would also require each applicant for the issuance or renewal of such a license, certificate, or registration, to sign a statement under penalty of perjury that, as of the date the application is filed, he/she either is not under an obligation to pay child or spousal support, or is in full compliance with a court order to pay child or spousal support and any plan for the payment of arrearages. This bill is pending in the Assembly Judiciary Committee.

LITIGATION:

In January, the State Bar released for public comment new "purview" rules to deal with the U.S. Supreme Court's ruling in *Keller v. State Bar*, 100 S.Ct. 228, 90 D.A.R. 6131 (1990). The *Keller* decision prohibits the Bar from using compelled dues for political or ideological purposes, unless those activities directly relate to the regulation of the legal profession or improvement of the quality of the legal profession. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 150-51; Vol. 10, No. 4 (Fall 1990) p. 187; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 215 for background information on this case.) The proposal relates to purview of legislative activity undertaken by the State Bar's Conference of Delegates. Under the draft amendment to the State Bar Rules and Regulations, "purview" is defined as:

-matters which are necessarily or reasonably related to the regulation of the legal profession or the improvement of the quality of legal service available to the people of California; and

-matters on which the Bar has special expertise or technical knowledge not shared by the general public, or any substantial portion of the general public, which concern the study and recommendation of changes in: (1) the practice of law, (2) the administration of the legal or justice system, or (3) procedural law.

At the request of members of the Conference of Delegates, the Board of Governors held a special meeting on February 16 and agreed to broaden the regulation to include the following:

-matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice;

-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; and

-other matters on which the Bar has special expertise or technical knowledge not shared by the general public without limitations.

The Board of Governors also agreed to allow the Conference of Delegate to discuss proposals for substantive changes in state and federal law at its yearly meeting, instead of being limited to talking about purely procedural changes. However, the State Bar's General Counsel, in consultation with the Executive Committee of the Conference, will decide whether a particular issue falls with the category of permissible debate under the purview rules. Any resolutions found outside purview may be appealed to the Board of Governors by the proponent. A second appeal may be made by the full Conference following debate on the floor and a two-thirds vote requesting that the Board reconsider its purview determination. The Board will then decide whether to reverse the decision.

In other *Keller*-related action, approximately 16% of California's actively practicing lawyers took the $3 *Hudson* dues deduction as of January 31. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 150-51 for background information.) The Bar had hoped that less than 10% of attorneys would elect the deduction. However, a decision by the State of California, which normally pays dues for its lawyer-employees, to request the $3 refund hurt the Bar's efforts.

Additionally, 100 lawyers decided to challenge almost all of the State Bar's operations under provisions of the *Keller* decision. The Pacific Legal Foundation (PLF), which represented the *Keller* plaintiffs, suggested that grounds for appeal could include the lobbying activities of the Bar's sections, the operations of its Conference of Delegates, the Bar's participation in affirmative action programs, and the actions of some of its committees (including its Human Rights Committee). (*See supra* report on PLF for related information.)

The Bar intends to take up each challenge and rule on its merits. If the challengers are unhappy with its decision, they can appeal to arbitration, either by a neutral arbitrator acceptable to both sides, or by an arbitrator or panel appointed by the American Arbitration Association.

The California Supreme Court recently disbarred San Jose attorney Betsey Warren Lebbos in *Lebbos v. State Bar*, No. S011535. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 155 and Vol. 9, No. 4 (Fall 1989) p. 138 for background information.) On February 8, Lebbos unsuccessfully argued that the State Bar Court which recommended her disbarment is unconstitutional, because only the electorate can create new courts under the California Constitution. The new State Bar Court was created in SB 1498 (Presley) (Chapter 1159, Statutes of 1988); State Bar Court judges are appointed by the California Supreme Court. In deciding to disbar Lebbos, the court concluded there was sufficient proof that Lebbos commingled client funds, filed an altered copy of a court order, concealed her assets from a court and creditor, continued to appear before a judge who had already disqualified himself from her cases, and named a person as a plaintiff in a lawsuit without that person's knowledge or consent.

In dismissing Lebbos' accusation that the State Bar Court is unconstitutional, the court held that Lebbos lacked stand-

ing to attack the State Bar Court because her disciplinary proceeding did not occur under its authority. The court also rejected Lebbos' claims that the State Bar violates the Sherman Antitrust Act and the Racketeer Influenced and Corrupt Organization Act (RICO). Lebbos provided "no authority for the claim that a State Bar disciplinary proceeding is an appropriate forum for establishing a RICO violation, or for the claim that a RICO violation necessarily would void a State Bar disciplinary recommendation based on a practitioner's pattern of gross misconduct." In rejecting Lebbos' claim that the State Bar Court is void under the Sherman Antitrust Act, and that it "is an anticompetitive, lawyer-fixing mechanism to limit private competition by forcing all opponents and competitors to support the communism of the state bar trade group and its desire for totalitarian control," the court noted that the judicial power in disciplinary matters remains with the state Supreme Court and was not delegated to the State Bar. Consequently, Lebbos' claim that the State Bar operates an invalid "private court" or "de facto court" using "untrained volunteers" failed.

On March 21, the California Supreme Court granted review in *Tara Motors v. Superior Court of San Diego County*, No. S019299, in which 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. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 151 for background information on this case.)

RECENT MEETINGS:

At its January meeting, the Board of Governors unanimously agreed to eliminate the twelve-vote minimum requirement for election of the State Bar President. Instead, a majority of votes cast will win the election. This change is an attempt to eliminate the manipulation of elections by abstaining members. The Board also voted to ban candidates from personally visiting other Board members without the unanimous written consent of the other candidates. The Board rejected a proposal to ban absentee voting in presidential elections.

At the Bar's March meeting, two federal law clerks, admitted to the State Bar and employed by a U.S. District Court located in California, objected to the State Bar's requirement that they be enrolled as active members of the State Bar. Since the law clerks are precluded by their employer from practicing law, they believe that they should be allowed to enroll as inactive members. The clerks noted that federal law clerks working in California are not required to be members of the Bar at all, pursuant to Business and Professions Code sections 6125 and 6126(a), and disputed the Bar's requirement that, once they pass the California Bar exam, they must enroll as active rather than inactive members. The Bar relied on section 2, Article I of the Rules and Regulations of the State Bar, which prohibits those who, *inter alia*, "examine the law or pass upon the legal effect of any act, document or law" in California from being enrolled as inactive members. As recommended by the Board Committee on Administration of Justice, the Board of Governors denied the law clerks' request to be enrolled as inactive members.

At its March meeting, the Board Committee on Admissions and Competence approved for publication for a 90-day comment period and public hearing proposed draft standards for certification and recertification of personal and small business bankruptcy law specialists. Last December, the Committee released for public comment the repeal of current Rule 1-400 pertaining to use of the term "certified specialist," as a result of the U.S. Supreme Court's 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.) As a result of the *Peel* decision, there is currently no enforcement of the "certified specialist" rule. Nonetheless, specialized areas such as bankruptcy continue to seek adoption of standards for certification as specialists.

FUTURE MEETINGS:

July 11-13 in Los Angeles.
August 22-24 in San Francisco.