ties to pay refunds to all current utility customers and, when practicable, to prior customers on an equitable pro rata basis. This bill would provide that whenever the PUC orders a local-exchange telephone carrier to distribute excess profits, it shall require the carrier to rebate its excess profits in accordance with that provision. This bill is pending in the Assembly Utilities and Commerce Committee.

The following is a status update on bills described in CRLR Vol. 10, No. 1 (Winter 1990) at page 152:

AB 1506 (Moore), which would authorize designated employees of the PUC assigned to the Transportation Division to exercise the power to serve search warrants during the course and within the scope of their employment if they complete a specified course in those powers, has been enrolled to the Governor.

ACA 17 (Moore), which would increase the membership of the PUC from five to seven members and abolish the requirement that the Governor's appointees be approved by the Senate, is pending in the Assembly Utilities and Commerce Committee.

AB 1974 (Peace), which would require the PUC to consider the environmental impact on air quality in air basins downwind from an electrical generating facility, is pending in the Senate Energy and Public Utilities Committee.

AB 1684 (Costa), which would require highway contract carriers to enter into a written contract for their services, and would require the contracts to be filed with the PUC, is pending in the Senate Energy and Public Utilities Committee.

AB 338 (Floyd), which would have provided that the California Supreme Court may transfer the review of an order or decision of the PUC to the First District Court of Appeal, or in its discretion, to another court of appeal, failed passage in the Assembly.

AB 1784 (Katz) was substantially amended and no longer pertains to the PUC.

LITIGATION:

In *United States of America v. Western Electric Co., et al.*, 900 F.2d 283 (Apr. 3, 1990), the U.S. Court of Appeals for the District of Columbia Circuit upheld a district court's ruling that, pursuant to the 1982 consent degree that severed the seven Regional Bell Operating Companies (BOCs) from AT&T, the BOCs may not provide interexchange (long distance) services or manufacture telephone equipment. However, the court affirmed the district court's removal of the restriction against BOC participation in non-telecommunication businesses, which had been an element of the consent decree.

Another element of the consent decree prohibited BOCs from providing information services. Despite the absence of opposition from any party to the litigation, the district court refused to lift this prohibition, citing the lack of "significant, relevant change" in market conditions justifying removal of this restraint. The Court of Appeals reversed and remanded this issue to the district court, directing that a more flexible standard of review be applied.

In *Napa Valley Wine Train, Inc. v. Public Utilities Commission*, No. S007919 (Mar. 19, 1990), the California Supreme Court overturned a PUC ruling requiring compliance with the California Environmental Quality Act (CEQA) before a company could initiate passenger service on a railroad right-of-way that was already in use. Napa Valley Wine Train, Inc., wished to take over a railroad line that had not been used since 1985. The PUC claimed jurisdiction over the matter and barred Wine Train from instituting passenger service until it had complied with CEQA.

However, section 21080(b)(11) of the Public Resources Code provides that a "project for the institution or increase of passenger or commuter service on...rail rights-of-way already in use" is exempt from environmental review under CEQA. The court found that even though the railroad line in question had been out of use for three years, its existence alone satisfied this requirement.

In *San Diego Gas & Electric Company v. Public Utilities Commission*, No. C89-3551-WWS, SDG&E is challenging a PUC finding that $21 million paid to the Public Service Company of New Mexico and to Tucson Electric Power Company for electricity is an unreasonable cost that SDG&E may not recover from its ratepayers. Regarding a specified contract entered into by SDG&E, the PUC determined that the utility failed to "consider and analyze carefully several of the important [contract] terms" and "fail[ed] to react appropriately to changing circumstances and information that affected key terms of the contract." SDG&E claims, among other things, that the federal "filed rate" doctrine, as reaffirmed by the Supreme Court in *Nantahala Power & Light v. Thornburg*, 476 U.S. 953 (1986), requires a state utility commission to allow, as reasonable operating expenses, costs incurred as a result of paying a wholesale price for electric energy.

The PUC has filed a motion to dismiss based on lack of jurisdiction, and both sides have filed motions for summary judgment. A March 19 hearing on these motions was cancelled and has not yet been rescheduled.

FUTURE MEETINGS:

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

STATE BAR OF CALIFORNIA

President: Alan I. Rothenberg
Executive Officer: Herbert M. Rosenthal
(415) 561-8200
Toll-Free Complaint Number:
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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 122,000 members, more than one-seventh 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; nine 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 282 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.

At its June 14 meeting, the Board of Governors elected Los Angeles business trial lawyer Charles S. Vogel as its President for 1990-91. Vogel, a former Los Angeles judge and past president of the Los Angeles County Bar Association, defeated San Francisco's Robin Paige Donoghue and San Luis Obispo's Michael Morris. Vogel will succeed current Board President Alan Rothenberg in August at the conclusion of the State Bar's annual meeting in Monterey.

MAJOR PROJECTS:

State Bar Discipline Monitor Report. On March 1, State Bar Discipline Monitor Robert C. Fellmeth released his Sixth Progress Report on the improving Bar discipline system. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 137; Vol. 9, No. 2 (Spring 1989) pp. 120-21; Vol. 8, No. 4 (Fall 1988) p. 122; and Vol. 7, No. 3 (Summer 1987) p. 1 for extensive background information.)

In his report, Professor Fellmeth noted that the output of the Bar's disciplinary system has increased steadily and substantially since 1987; during 1989, the Bar's output increased 25-50% over 1988 levels. The 1990 level is expected to be more than double the annual levels during 1982-1987. Along with this increase in activity, the Bar has succeeded in decreasing the complaint backlog which has historically plagued its Office of Investigations, from almost 4,000 in March 1986 to 352 in January 1990. However, the Monitor noted that the Office of Trial Counsel (the Bar's prosecution unit) has accumulated a 590-case backlog of fully investigated matters awaiting the drafting and filing of formal charges.

The report also noted that the revamped State Bar Court created by SB 1498 (Presley), enacted by the legislature and signed by the Governor in 1988, is now fully functional. Both the hearing judges and the review panel have assumed complete responsibility for the judicial function within the State Bar, and the improvement in State Bar Court work product is readily apparent. Professor Fellmeth noted that two additional hearing judges are needed in the Los Angeles office of the State Bar Court, as predicted by the Monitor during legislative debate on SB 1498 (Presley), which created the new court.

The Monitor urged the Bar to take a closer look at areas which could prevent or reduce the onslaught of Bar discipline cases, such as continuing legal education, early substance abuse intervention, and competence-enhancing issues.

Relatedly, the Bar's top prosecutor, Chief Trial Counsel James A. Bascue, announced his resignation in March. Since 1987, Bascue has been a driving force in the Bar's reduction of complaint backlogs and overall improvement in its discipline system. Bascue said he is leaving to "seek new challenges and opportunities." He plans to return to his previous job with the Los Angeles County District Attorney's Office when his resignation becomes effective in October.

"Finality Rule" Sent Out for Public Comment. At its May meeting, the Board of Governors voted to release the proposed "finality rule" for a thirty-day public comment period. Under the proposed Rule of Court, a discipline decision of the newly-revamped State Bar Court would be final unless review to the California Supreme Court is sought within a specified time period. Under other rules, the State Bar Court would be delegated many of the administrative and ministerial duties of the Supreme Court, including processing of criminal conviction cases, and the Bar's Office of Trial Counsel would be permitted to petition for review of State Bar Court decisions to the Supreme Court.

The finality rule is designed to expedite the attorney discipline system, and alleviate the workload of the Supreme Court. Attorney discipline cases currently consume as much as 40% of the court's workload. Opponents of the rule argue that the finality rule would deprive accused licensees of judicial review of administrative agency decisions. However, the State Bar Court is comprised of full-time professional judges appointed directly by the California Supreme Court itself; the "administrative agency" aspect of the State Bar has no control over the State Bar Court. Further, disciplined licensees are afforded an opportunity to petition for review. In SB 1498 (Presley), the new State Bar Court was designed specifically to accommodate the then-developing finality rule.

Mandatory Continuing Legal Education (MCLE). On May 12, the Board of Governors voted unanimously to seek approval from the California Supreme Court for a proposed Rule of Court that would require attorneys to complete at least 36 hours of legal education every three years. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 154; Vol. 9, No. 4 (Fall 1989) p. 138; and Vol. 9, No. 3 (Summer 1989) p. 129 for extensive background information.) The Board also voted to circulate for a ninety-day public comment period draft rules and regulations for implementation of the program.

The draft MCLE program will include one-hour courses in gender bias and substance abuse. At a special meeting in March, a Board committee decided that these issues are too significant to be handled as part of the eight-hour ethics and practice management course, which had included the subjects in earlier drafts.

The proposed MCLE program would require all attorneys, unless specifically exempted, to complete 36 hours of coursework in specific subjects during every 36-month period. Some of the courses would be taught in a classroom setting, others by audio or video self-study. Members failing to meet the requirement would be enrolled as inactive members.

In a related matter, the Board also voted to solicit applications for membership on the Standing Committee on Minimum Legal Education. The Committee, to be composed of fifteen lawyers and six public members, has not yet been created, but is proposed as part of the draft MCLE rules.

Proposed Rules Regarding Sexual Relations with Clients Circulated. Two draft versions of a proposed rule governing sexual relations between attorneys and their clients are being circulated for a ninety-day public comment period beginning May 12.

The mandated addition to the Rules of Professional Conduct, prompted by AB 415 (Roybal-Allard) (Chapter 1008, Statutes of 1989), would create guidelines for sexual relations in cases involving but not limited to probate matters and domestic relations, including dissolution proceedings, child custody matters, and settlement proceedings.

The Commission for Revision of the Rules of Professional Conduct responded by preparing a proposed rule prohibiting an attorney from demanding sexual relations with a client or another person incident to the case as a condi-

tion of professional representation. The Commission's version would also bar an attorney from accepting or continuing representation of a client with whom he/she has a sexual relationship if that relationship would impair the member's ability to competently perform legal services. The proposed rule excludes attorneys and their spouses.

At the request of Robin Paige Donoghue, chair of the Board's Committee on Professional Standards and Admissions, a second version was prepared which prohibits sexual contact between an attorney and his/her client unless the client is the attorney's spouse or the sexual relationship predates initiation of the attorney-client relationship.

At the conclusion of the ninety-day public comment period, the two drafts will return to the Board of Governors for further consideration.

Bar Overcharged Lawyers for 1990. The State Bar apparently overcharged its membership by $3.6 million in dues for 1990—a mistake attributed to an error in AB 4391 (Brown) (Chapter 1149, Statutes of 1988), the Bar's most recent dues legislation.

The deadline for paying the annual dues was March 9 and the apparent error was discovered in early May. Although it appears unlikely that the legislature would require the Bar to repay the amount overcharged, it is feared that the error might affect legislative action on the current Bar dues bill, AB 3991 (Brown) (*see infra* LEGISLATION).

The contents of AB 3991 (Brown) remain a mystery, even though the bill has already passed out of the Assembly and into the Senate. The bill is simply a spot bill and contains no clue as to what the Bar seeks in the way of dues in 1991, and what other provisions may be included. Earlier this year, the Board of Governors decided to seek a $58 dues increase in 1991; $33 of that amount would represent basic dues, and the rest would double the current Client Security Fund assessment, as the Fund is dangerously near insolvency. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 138 and Vol. 8, No. 4 (Fall 1988) p. 1 for background information on the CSF.)

Critics complain that the Bar is "sandbagging" and will only reveal its plans when it is too late for the opposition to mobilize. The Bar insists that it is negotiating with Assembly Speaker Willie Brown on other issues which may be introduced into the dues bill, including the Bar's desire for a two-tiered dues system to replace the existing three-tiered system. Under the two-tiered system, attorneys in practice for two years or less would pay 80% of the dues paid by more experienced attorneys. The Bar has also discussed a "dues scaling" program to give legal aid and low-income attorneys a break on the Bar's current $440-per- year dues.

However, the Bar has also expressed its desire for a guaranteed baseline budget, which would relieve it of the requirement of obtaining annual legislative approval for dues to fund ongoing programs. Thus far, this proposal has received a cool reception in the legislature.

Legal Technician Legislation Unveiled. On May 15, Senator Robert Presley and HALT (Help Abolish Legal Tyranny), a nationwide legal reform organization, unveiled Preprint SB 9, which would create a licensing system for non-lawyer legal technicians, who could legally provide a variety of legal services in specified substantive areas.

The bill, which has been the subject of informational hearings but will not undergo a legislative hearing until it is introduced next fall, would create a five-member Board of Legal Technicians within the Department of Consumer Affairs. The Board would license or register legal technicians to practice in any of fourteen areas of law, including immigration, family, housing, public benefits, real estate, estate administration, consumer, corporate, estate planning, and bankruptcy. Technicians could practice in a particular specialty only after passing a specialized exam which tests their knowledge in that area—which many believe is an improvement over the generalized Bar exam administered to attorney applicants. The technicians would be required to inform clients that they are not lawyers, provide a cost estimate and explain how fees are calculated before serving a client, and provide written contracts to clients and inform them how to file a complaint if problems arise.

The bill is an outgrowth of a controversial 1988 report of the Board of Governors' Public Protection Committee, which recommended allowing legal technicians to provide direct services to consumers. The Bar's ad hoc Commission on Legal Technicians is still studying the issue, and is expected to release its recommendations later this summer. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 137; Vol. 9, No. 2 (Spring 1989) p. 121; and Vol. 8, No. 3 (Summer 1988) pp. 129-30 for background information.)

Bar Wavers on "Quake Exam". Hit with numerous protests and a below-average overall pass rate, Bar officials recently agreed to take another look at the February 1990 Bar exam.

On February 28, a 5.5 earthquake rumbled through southern California with approximately one hour remaining in the afternoon session of the multistate portion of the exam. Examinees in Pomona were evacuated; examinees in San Diego and Los Angeles felt the quake, but were not evacuated and were allowed to complete the test. Due to the interruption, the Bar later refused to grade the afternoon session of the multistate exam in its entirety for all examinees; instead, Bar officials graded the morning session and calculated a total multistate score based on that score and a national mean.

However, in June, officials of the Committee of Bar Examiners announced that it would conduct a complete investigation of the February Bar exam, including the earthquake- disrupted multistate portion, the fact that the overall passage rate dropped by 5.5% from 1989's February exam, and the fact that the pass rate for first-time examinees from unaccredited law schools was higher (63.3%) than that for graduates of ABA- accredited schools (60.2%). Whether the Bar will actually change any exam results—which has not happened in some time—remains to be seen.

JNE Commission Subject of Reform Legislation. The Bar's Judicial Nominees Evaluation (JNE or "Jennie") Commission, which conducts confidential investigations of and makes recommendations to the Governor on persons considered for judgeships, is currently the target of reform legislation urged by prosecutors and State Bar Discipline Monitor Robert C. Fellmeth. Currently, prior to the JNE Commission's interview with a prospective candidate, JNE investigators send out questionnaires to people familiar with the candidate. Candidates are informed of negative comments 48 hours before their interview with the JNE Commission, but are not told the identity of the people who made the negative comments. Once the interview is completed, JNE rates the candidate as exceptionally well-qualified, well-qualified, qualified, or not qualified. The rating is forwarded to the Governor, who acts independently; however, if the Governor appoints a candidate who has been rated not qualified, the Bar may publicize that fact.

Critics argue that the procedure lacks due process, in that it prevents candidates from confronting their accusers, allows the JNE Commission to rely on "triple hearsay", and prevents JNE commissioners from revealing enough information to enable the candidate to provide effective rebuttal. The Bar defends

its process, saying that the confidentiality procedures encourage frank disclosures about judicial candidates and protects those who complete the questionnaire from retribution.

SB 2666 (Presley) would prohibit the Commission's practice of maintaining strict confidentiality regarding the persons who complete the questionnaire; prohibit the Bar from publicizing the "not qualified" rating if the Governor appoints someone so rated by the JNE Commission; provide judicial candidates with more notice of negative comments; and restructure the composition of the JNE Commission. The Bar has taken a "strongly oppose" position on SB 2666.

Legal Services Trust Fund. A record $21.6 million will be distributed in July under the 1990-91 Legal Services Trust Fund, a 17.39% increase over 1989-90. The funds represent interest on lawyers' accounts in which clients' funds are pooled for a short period of time; the funds are distributed to direct service providers and support centers which provide legal services to the poor. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 123 for background information.)

The Board of Governors, which approved the distribution at its April 9 meeting, praised the Fund for its low administrative costs, which came to $527,847—just 2.4% of the program's total revenue.

Certified Legal Specialists. In April, State Bar President Alan I. Rothenberg appointed a special subcommittee, chaired by Board member Robert H. Oliver, to "look into the whole question of legal specialization." The new committee was formed after the Board of Governors rejected a proposal to add a Civil Trial Specialty to the Bar's program for certifying legal specialists.

The program has recently come under fire. Harry L. Hathaway, president of the Los Angeles County Bar Association, called the program a "dismal failure" and concluded, "Unless somebody comes up with some very good ideas and a lot of money, it ought to be junked." Hathaway's dismal outlook was prompted by the fact that, at the end of 1989, fewer than 2,500 lawyers had been certified in the areas identified as specialties by the State Bar. Currently, the specialized areas of practice are: criminal law, family law, immigration and nationality law, taxation, workers' compensation, and probate, estate planning and trusts. That figure, representing about 2% of the Bar membership, is the latest step in a steady decline since the program was approved by the Supreme Court in 1985.

One proposal designed to increase interest in certification would change the rules of ethics regarding attorney advertising in a way that favors certified specialists. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 121 and Vol. 9, No. 1 (Winter 1989) p. 107 for background information.)

Commission on Lawyering Skills. The Bar panel designed to explore the mandatory practical requirements for admission to the State Bar met for the first time on April 27 to consider amending sections 6060 and 60602 of the Business and Professions Code.

The day before the meeting, members of the Commission on Lawyering Skills had heard statistics from the Bar president that more than half of California's new lawyers are sole practitioners or work for firms with only two or three lawyers. This statistic was perceived by many to be disturbing, since it precludes so many young attorneys from receiving necessary on-the-job training from experienced attorneys. It is for this reason the Bar is considering implementing preadmission skills requirements.

The proposal has been criticized as unnecessary overreaching that steps on the toes of the American Bar Associations's law school accreditation program and as misguided, since it does not address law practice management, a prime source of lawyer misconduct complaints.

LEGISLATION:

SB 2668 (Presley) provides that, in an action between an attorney and his/her former client, no work product privilege exists if the work product is relevant to an issue of breach by the attorney of a duty to the attorney's client arising out of the attorney-client relationship. This bill was signed by the Governor (Chapter 207, Statutes of 1990).

AB 4033 (Roybal-Allard), as amended May 17, would require the State Bar to establish a task force to study and develop policy recommendations to provide consumers with an avenue for filing complaints about professional legal practitioners, out-of-state attorneys, and persons fraudulently posing as attorneys. The bill would require the task force to report to the judiciary committees of the legislature on or before December 1, 1991. This bill is pending in the Senate Judiciary Committee.

SB 2666 (Presley), as amended June 12, would revise the provisions for the evaluation of candidates for appointment by the Governor to judicial office by (1) stating the intent of the legislature to authorize the evaluation of those candidates by judicial appointment advisory panels selected by county bar associations; (2) revising the confidentiality provisions applicable to the evaluation of those candidates, and making a violation of the confidentiality provisions by a member of the State Bar a disciplinary offense; and (3) specifying various procedures to be used by the State Bar in the evaluation of those candidates. This bill is pending in the Assembly Judiciary Committee.

AB 2682 (Moore). Existing law requires the Board of Governors of the State Bar to establish, maintain, and administer a system and procedure for the arbitration of disputes concerning fees, costs, or both, charged for professional services by members of the State Bar or by members of the bar of other jurisdictions. Existing law requires the Board to allow arbitration of attorney fee and cost disputes to proceed under arbitration systems sponsored by local bar associations in this state. Existing law provides that the Board may allow one lay member of any arbitration panel of three members. As amended April 17, this bill would provide that if the panel consists of three members, at the option of the client, one of the members would be required to be an attorney whose area of practice is either civil or criminal law, and one member would be required to be a lay member. This bill is pending in the Senate Judiciary Committee.

AB 3458 (Friedman). Existing law does not prohibit a party to an action or proceeding from making a settlement offer conditioned upon the counsel for an opposing party waiving all or substantially all attorneys' fees in a case in which there may be entitlement to attorneys' fees pursuant to a private attorney general statute, as defined. As amended June 6, this bill would prohibit a party to an action or proceeding from making or presenting such a settlement offer. This bill is pending in the Senate Judiciary Committee.

AB 3571 (Quackenbush), as amended May 15, would revise the law protecting a lawyer's work product from discovery to provide that a law enforcement agency may obtain materials or information that are attorney work product, as defined, where the law enforcement agency shows by a preponderance of the evidence that the attorney's services were sought or obtained to enable or aid anyone to commit a plan to commit a crime, as specified. This bill is pending in the Assembly Public Safety Committee.

AB 3916 (Lempert), which, as amended May 2, would raise the mone-

tary jurisdiction of small claims court to $5,000, is pending in the Senate Judiciary Committee.

AB 3946 (Harris). Existing law sets forth the requirements for admission to the practice of law, which include fulfillment of certain educational criteria and passage of the Bar examination. A person beginning the study of law shall have completed at least two years of college or have attained in apparent intellectual ability the equivalent of two years of college. If the law school is accredited, the equivalent shall be determined by the dean or faculty thereof, and with respect to all other persons, by the examining committee of the State Bar and shall be made, in that case, after a personal interview or passage of a written examination. This bill would, instead, require that the equivalent be determined, in both of the above instances, by the examining committee, subject to those same conditions.

This bill would also provide that a person who has received his/her legal education in a foreign state or country where the common law of England is not the basis of jurisprudence shall demonstrate to the satisfaction of the examining committee that his/her education, experience, and qualifications qualify him/her to take the examination. This bill is pending in the Senate Judiciary Committee.

AB 3991 (W. Brown) is a spot bill intended to become the State Bar's dues bill. Although this bill has already passed out of both the Assembly Judiciary Committee and the Assembly, Assemblymember Brown and the State Bar have not yet amended AB 3991 to include language raising the State Bar dues. (*See supra* MAJOR PROJECTS.) As it presently reads, this bill makes nonsubstantive changes to section 6125 of the Business and Professions Code, which provides that a person may not practice law in California unless he/she is an active member of the State Bar. This bill is pending in the Senate Rules Committee.

SB 1910 (Killea). Existing law prescribes the membership of the Board of Governors of the State Bar. Provisions that were repealed on January 1, 1990, provided that any attorney who is a full-time employee of any public agency and who serves as a member of the Board shall not suffer the loss of job-related benefits, but existing law contains no such provisions. This bill would reenact similar provisions, but would not limit them to attorney members of the Board. This bill has been enrolled to the Governor.

SB 2066 (Davis). Under existing law, a court is authorized to notify the State Bar if it appears to the court that a contempt holding imposed against an attorney involves grounds warranting discipline. Existing law also requires a court to notify the State Bar whenever a reversal of a judgment in a judicial proceeding is based in whole or in part upon gross misconduct, incompetent representation, or willful misrepresentation by counsel. As amended May 2, this bill would, among other things, repeal these existing provisions and would enact similar provisions that would require a court to notify the State Bar of a final order of contempt imposed against an attorney that may involve grounds warranting discipline, whenever a modification or reversal of a judgment results from misconduct, incompetent representation, or willful misrepresentation of an attorney, or the imposition of any judicial sanctions against an attorney, except for certain sanctions.

This bill would also require all bills of an attorney to his/her client to clearly state the basis thereof, would require the fee portion to include the amount, rate, basis for calculation, or other method of determination, and bills for the cost and expense to clearly identify the costs and expenses incurred, and the amount. This bill is pending in the Assembly Judiciary Committee.

SB 2102 (Deddeh). Under existing law, a plaintiff is entitled to obtain a default judgment in an action on a contract or for money damages only, where the defendants have all been personally served and have not responded in specified ways within the time permitted by the summons. Existing law provides that if the plaintiff's complaint requests an award of attorneys' fees pursuant to contract or statute, the clerk entering the default may include an amount for attorneys' fees in accordance with a schedule adopted by rule of court. Existing law also authorizes the plaintiff entitled to such a default judgment to have the award of attorneys' fees determined by the court upon hearing. This bill would authorize a plaintiff who requests the court to determine attorneys' fees in these cases to submit supporting evidence in the form of prescribed affidavits if the total of damages, attorneys' fees, and costs does not exceed $25,000. This bill is pending in the Senate Judiciary Committee.

SB 2606 (Torres). Existing law requires an attorney who contracts to represent a plaintiff on a contingency fee basis to provide a duplicate copy of the contract to the plaintiff at the time the contract is entered into and specifies the minimum contents of that contract. The law exempts from these requirements any contingency fee contract for the recovery of workers' compensation benefits. As amended May 16, this bill would also exempt from those requirements contingency fee contracts for the recovery of claims between merchants arising from the sale or lease of goods or services rendered, or money loaned for use, in the conduct of a business or profession, providing each merchant employs ten or more individuals. This bill is pending in the Assembly Judiciary Committee.

AB 1949 (Eaves), which would have limited the maximum attorneys' fees that may be recovered based on a contingency fee arrangement for all tort claims other than those based upon negligence of a health provider, died in committee.

LITIGATION:

On June 4, the U.S. Supreme Court reversed the California Supreme Court's decision in *Keller v. State Bar*, No. 88-1905, 90 D.A.R. 6131, and ruled that the State Bar may not use compulsory dues to finance political or ideological activities which are not necessary or reasonably connected to the regulation of the legal profession. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 155; Vol. 9, No. 4 (Fall 1989) p. 138; and Vol. 9, No. 2 (Spring 1989) p. 123 for background information on this case.)

In so ruling, the justices rejected the California Supreme Court's characterization of the integrated California Bar as a "government agency", finding instead that it more closely resembles a labor union, and that free speech protections accorded to labor union members similarly prevent the Bar from using mandatory Bar dues for political purposes with which individual members disagree. Writing for a unanimous Court, Chief Justice Rehnquist stated that "the guiding standard must be whether the challenged expenditures are necessarily or reasonably incurred for the purpose of regulating the legal profession or improving the quality of legal service available to the people of the state."

Because the Bar spends 80% of its dues revenue on attorney discipline, Bar officials initially stated that the Keller decision would have no significant impact on its legislative advocacy program. However, the Bar subsequently halted much of its lobbying, delegating to its General Counsel the authority to approve exceptions to the freeze for bills directly related to the Bar's regulation of the legal profession.

Also on June 4, the U.S. Supreme Court decided *Peel v. Attorney Registration and Disciplinary*

Commission of Illinois, No. 88-1775, invalidating Illinois' blanket ban on attorney advertisement of private trade association specialist certifications. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 138 for background information on this case.)

With the end of March came the first two opinions from the newly formed State Bar Court, and both reversed or altered the opinions of a Bar referee. In the court's first published opinion, *In the Matter of Mapps*, 90 D.A.R. 3490, the court held that a referee's recommendation that Los Angeles attorney Raymond E. Mapps be disbarred was excessive. Mapps had failed to timely pay a medical lien out of one client's personal injury settlement, failed to fully reimburse another client the settlement funds retained for medical payments when the payments were made by the defendant's insurer, and—in both cases—avoided contact with the physician and the client when they called to inquire about bounced checks and missing payments. Both the doctor and the client were eventually paid in full.

The referee found no mitigating circumstances, found aggravating circumstances in that Mapps misled clients and failed to cooperate with the State Bar, and recommended disbarment. But a unanimous State Bar Court differed, finding mitigating factors in the facts that there was a single period of misconduct, full responsibility was assumed by Mapps, and restitution had been made. Therefore, the court recommended that Mapps be suspended from practice for five years, only two of which would be actual suspension if he could prove after that time that he had been satisfactorily rehabilitated. He was also to be placed on five years' probation.

In *In the Matter of Giddens*, 90 D.A.R. 3506, the State Bar Court denied a disbarred attorney's application for reinstatement, despite a Bar referee's recommendation favoring reinstatement. Elroy Giddens was disbarred in 1981 after his conviction in federal court of conspiracy to distribute controlled substances (amphetamines). In order to be reinstated to the Bar, a petitioner must show "sustained exemplary conduct over an extended period of time," as well as establishing rehabilitation and moral fitness, present ability and learning in the general law, and passage of the Professional Responsibility Examination.

Despite very strong favorable character testimony, the court unanimously rejected Giddens' application because he failed to disclose in his petition for reinstatement two 1987 lawsuits in which he was involved during a period since his disbarment when he worked in the roofing business. In one case, he was sued in small claims court. In the other, he had sued the small claims plaintiff for fraud, slander, and interference with contract.

Although Giddens said in his earlier reinstatement hearing that the suits had slipped his mind—and although the court did not question that, his omission of the suits was sufficient to prevent him from meeting the heavy burden of providing the court with clear and convincing evidence of his present moral fitness.

An attorney admitted to practice law in two states had his constitutional challenge to California's out-of-state attorney admissions process heard by the U.S. Ninth Circuit Court of Appeals on May 8. In *Giannini v. Committee of Bar Examiners*, Joseph R. Giannini claims that the Bar exam discriminates against practicing out-of-state attorneys, and that the Bar's requirement that he pass the Bar exam violates his constitutional rights to practice law and to travel freely. Giannini, a member of the Pennsylvania and New Jersey bars, has failed the California Bar exam twice. "The Committee's admission policies are aimed at discouraging and preventing sister-state attorneys from gaining admission," Giannini wrote in his *in propria personam* opening brief. "These policies adversely impact the viability of the United States as a single entity."

His suit was dismissed on jurisdictional grounds by Senior U.S. District Court Judge Stanley A. Weigel, who found that federal courts have no jurisdiction to review the California Supreme Court's dispositions of attorney admissions or disciplinary proceedings. The action has already been dismissed by the Ninth Circuit once. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 131 for background information).

In *United States v. Stites*, No. 90-0391-K, fourteen attorneys were indicted by a San Diego federal grand jury on April 24 on racketeering and mail fraud charges. The group, known as "The Alliance," is charged with bilking insurance companies out of up to $50 million. The scheme was based on a 1984 appellate decision, *San Diego Navy Federal Credit Union v. Cumis Insurance Society Inc.*, which held that an insured who is sued and then becomes involved in a coverage dispute with the insurer is entitled to separate counsel at the insurer's expense. The Alliance used this ruling to create lawsuits with sham conflicts between the insured and insurer. The manufactured lawsuits were then prolonged by the attorneys for long periods of time while generating huge charges for attorneys' fees. The defendants face twenty-year prison terms, forfeiture of illegally gotten gains or fines of twice the amount of the gains if convicted on the RICO counts, as well as a $250,000 fine if found guilty of mail fraud.

FUTURE MEETINGS:

August 24-28 in Monterey (annual meeting).

September 21-23 in Rancho Bernardo.

October 25-27 in San Francisco.

December 6-8 in San Francisco.