



REGULATORY AGENCY ACTION

Commerce Committee.

RECENT MEETINGS:

On March 9, the PUC granted \$16,897 to the Utility Consumers' Action Network (UCAN) for substantially contributing to two December 1987 PUC decisions involving San Diego Gas & Electric's (SDG&E) electricity rates. The PUC said UCAN was influential in five areas that, in combination with other issues, led the PUC to reduce electricity rates by 5% for residential customers. SDG&E will pay UCAN the \$16,897 award and later recover the expense from customers.

UCAN qualified for the award under the PUC's rules for intervenor compensation, which may be awarded by the PUC if an organization suffers significant financial hardship by participating in the hearing process; the group represents interests not otherwise adequately represented; and if the PUC agrees that the group made a substantial contribution to the final outcome of a decision. (See *supra* FEATURE ARTICLE for further discussion of this issue.)

As part of its stepped-up coordinated safety efforts with the California Highway Patrol (CHP), the PUC, at its March 23 meeting, suspended the operating permits of Jim Degen Trucking of Redding, Youngblood Trucking of Tehachapi, and Calico Fuels, Inc. of Bakersfield. These carriers may not operate until they have corrected the deficiencies found by the CHP and can pass a safety inspection. A carrier may challenge the suspension by filing an application with the PUC asking that the suspension be lifted and requesting a prompt hearing.

At its meeting on April 27, the PUC authorized a rate increase of nearly 8% for SDG&E natural gas customers. The increase is attributable to a major restructuring of gas rates for California's three largest utilities as the PUC moves toward cost-based rates, ending subsidies which have characterized rate structures since the energy crisis of the 1970s.

Also at its April 27 meeting, the PUC ordered every gas, electric, and telephone utility with gross annual revenues exceeding \$25 million to implement a program developed by the PUC to inform, recruit, and obtain at least 20% of the products and services it purchases from women- and minority-owned business enterprises (W/MBE). Each utility must set for itself short-term (one-year), mid-term (three-year), and long-term (five-year) goals for increasing purchases from and contracts with

women and minority businesses. Each utility must report to the PUC each year by March 1 on its W/MBE purchases and/or contracts; W/MBE program expenses; progress in meeting or exceeding goals; and plans for increasing W/MBE procurement in purchases and/or contracts.

FUTURE MEETINGS:

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

STATE BAR OF CALIFORNIA

President: Terry Anderlini

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The State Bar of California was created by legislative act in 1927 and codified in the California Constitution by 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 110,000 members, more than one-seventh of the nation's population of lawyers.

The State Bar Act designates the 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. At its June 1988 meeting, the Board unanimously elected San Diego business lawyer Colin W. Wied as its President for the 1988-89 year.

The Board consists of 23 members: fifteen licensed attorneys elected by lawyers in nine geographic districts; six public members variously appointed by the Governor, Assembly Speaker, and Senate Rules Committee and confirmed by the state Senate; a representative of the California Young Lawyers Association (CYLA) appointed by that organization's Board of Directors; and the State Bar President. With the exception of the CYLA representative, who serves for one year, and the State Bar president, who serves an extra fourth year upon election to the presidency, each Board member serves a three-year term. The terms are staggered to provide for the selection of five attorneys and two public members each year.

The State Bar includes 22 standing committees, 16 sections in 14 substan-

tive areas of law, Bar service programs, and the Conference of Delegates, which gives a representative voice to 127 local bar associations throughout the state.

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 professional standards and enhancing competence; (3) supporting legal services delivery and access; (4) educating the public; (5) improving the administration of justice; and (6) providing member services.

MAJOR PROJECTS:

Task Force on Substance Abuse. At their June 17 meetings in San Francisco, the Board Committees on Discipline and Professional Standards began what promises to be a lengthy discussion of the State Bar's response to a national problem: substance abuse. The basis for these preliminary talks was the 110-page Report of the Staff Task Force on Substance Abuse, prepared by David Long and Heather Anderson of the Bar's Office of Research.

In October 1987, the Board Committee on Professional Standards requested Bar staff to develop a substance abuse diversion program as part of the Bar's discipline system. The Board of Governors later broadened that request to include "ways to allow local bar associations to be more directly involved in substance abuse intervention including proceedings...to assume jurisdiction over the practice of a member who has become incapable of attending to his or her law practice because of substance abuse or other problems" (Report at 1). During the study, the Task Force considered the nature of attorney substance abuse problems, the relationship of those problems to the Bar's disciplinary system, the scope of existing Bar substance abuse programs, and the potential of other programs in addressing the problem. As part of its study, the Task Force reviewed substance abuse programs of other California agencies and those in other states as well.

Approximately 13% of adults suffer from some type of chemical dependency (Report at 4). Attorneys are not immune. They become addicted at about the same rate as the general population, and the rate of alcohol abuse appears to increase with the number of years in practice (Report at 5). For attorneys, substance abuse undermines job performance and contributes to unprofessional conduct. "[E]stimates of the actual percentage of [attorney discipline] cases



involving substance abuse range from forty to sixty percent...." (Report at 5).

The potential of any program to address the problem depends, in part, upon the stage of one's disease. Therefore, no one attack can be successful in all cases. The Report defines four levels of prevention programs which might operate within the Bar: voluntary, intervention, diversion, and probation. Voluntary programs are populated by "self-referrals." Intervention programs would be available to attorneys who might be at risk of, but are not yet subject to, disciplinary action. Diversion programs would be available to attorneys who might be offered the option to adhere to a strict recovery program in lieu of or as a condition of formal Bar discipline. Probation programs might be available to attorneys who offer the "substance abuse problem and/or treatment as [a] mitigating circumstance in a disciplinary proceeding" (Report at 7). At present, the Bar offers only voluntary and probation programs. Thus, the Task Force set out to describe suggested parameters version program.

Intervention programs assist those who live and work with a dependent individual (that is, those who might be hesitant to report a friend or colleague to the State Bar) to confront him/her, in a caring and concerned manner, with specific examples of past and probable consequences of substances abuse by that person. The goal of an intervention program is to motivate the dependent to embark upon recovery before serious disciplinary problems result. The Report recommends that the Bar adopt an intervention program with two components. First, the Bar should create a system of intervention/counseling committees whereby (a) the Bar itself would have authority to conduct intervention; and (b) the Bar would formulate and adopt rules authorizing local and other associations of Bar members to create such intervention committees. The Task Force recommended an emphasis on local activities (believed to be more effective and efficient and to cost less), with the Bar's role as compliance monitor, intake/referral service, and intervenor when no local programs are available. Second, the Bar should develop a mechanism to enable it to identify members with problems and order mandatory substance abuse assessments of those individuals. Authorizing legislation would be needed for both components.

The Report also recommends that the Bar institute a diversion and rehabili-

tation program, establish criteria for admission to and termination from the program, and create a committee to evaluate an individual member's need for admittance to or readiness for termination from the program. A member's participation in the program would be "a separate issue from whether to abate a disciplinary investigation or prosecution of that member" (Report at 22). In addition, a member may participate voluntarily. Authorizing legislation would also be required for this program.

Finally, and in concert with its focus on local activity, the Task Force outlined three options which would allow local bar associations to become more involved in client-protective proceedings under Business and Professions Code section 6190 *et seq.*

In addition to listing advantages and disadvantages of various approaches to both intervention and diversion programs, the Task Force Report also addressed the attendant questions of (1) the confidentiality of referring parties, referred attorneys, and records maintained by intervention and diversion committees; (2) the nature of appropriate immunities, if any, which should be conferred upon referred and referring parties; (3) methods of funding and staffing these programs; (4) the effect of program participation on formal discipline; and (5) the structure of minimum program standards and monitoring and evaluation systems.

Both Board committees commended the Task Force for its work and set up a special committee composed of members of the Discipline and Professional Standards Committees to further discuss the Report.

Changes to Bar Exam and Admission Requirements. Also at its June meeting, the Board of Governors approved in concept two recommendations from the Committee of Bar Examiners (CBE) which, if formally adopted after a public comment period, will change the Bar examination and admissions requirements after January 1, 1992. The Board approved the following modifications to the requirements for admission to practice law in California: (1) effective with the February 1992 Bar exam, the essay and performance portions may include, at CBE's option, testing on California civil and criminal procedure and the California Rules of Court; and (2) effective after January 1, 1992, all applicants for admission must be certified, as a condition to admission, as having acquired formal training in lawyering skills, including pretrial, trial, and other

litigation courses of a content and quality approved by the CBE.

At a special meeting on June 16, which was attended by the deans of many of California's accredited law schools, the Board heard strong opposition to CBE's original proposal, which would have required all prospective admittees to have taken a CBE-approved course in trial skills. Several deans objected to being compelled to devoting their limited resources to courses focusing only on trial skills; while several Bar governors cited the ongoing work of the Bar's Consortium on Lawyering Performance and Education, and urged postponement of consideration of the CBE's recommendations until after the Consortium has issued its recommendations at the end of 1988. However, the Board expanded the CBE's original recommendation and approved a concept that new admittees be trained in "lawyering skills" as opposed to the more narrow "trial skills", and instructed the CBE to work with law schools and the Consortium in the formulation of specific proposals to implement the concept.

Registration of Legal Technicians. A State Bar panel's report recommending that nonlawyers be permitted to advise consumers with certain legal problems has been circulated among several Bar committees, the Executive Committee of the Conference of Delegates, and the California Young Lawyers Association for comment, and is scheduled to come before the Board of Governors in August.

The 47-page report, released in April by the Bar's special Public Protection Committee, urges that current unauthorized practice of law statutes be replaced with legislation prohibiting nonlawyers from claiming to be attorneys. The report suggests that "legal technicians" be registered with the state and permitted to provide some legal services to the public, such as proper completion of legal forms; the provision of basic legal advice in areas such as landlord-tenant, immigration, family law and bankruptcy; and other routine administrative tasks. The report also recommends that technicians be civilly liable for mistakes and criminally liable for consumer fraud. Nonlawyers would not be permitted to appear in court.

The recommendation has been attacked by Board President Terry Anderlini, who favors licensing, continuing education, and attorney supervision for legal technicians. Committee members have argued that licensing does not ensure competence or quality, but rather



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leads to increased fees and barriers which presently restrict blacks, Hispanics, and other minorities who now provide basic legal services; also, provision of basic legal services by technicians could mean better access to the legal system for those who cannot afford attorneys.

Mandatory Continuing Legal Education. At its April 9 meeting in Los Angeles, the Board voted to implement mandatory continuing legal education (CLE). (See CRLR Vol. 8, No. 1 (Winter 1988) pp. 109-10 and Vol. 7, No. 4 (Fall 1987) p. 109 for background information.) Thus, the Bar will sponsor legislation to establish such a program to become effective January 1, 1990. An appropriate rule of court must also be adopted by the state Supreme Court.

As adopted by the Board, the program would require active members of the Bar to complete a minimum of six hours of CLE each year and a total of 36 hours every three years, with no carry-over from one reporting period to the next. The Bar will approve CLE courses and accredit CLE providers. At its May 7 meeting in San Francisco, the Board approved an additional requirement that the CLE program include eight hours of legal ethics and/or law practice management, of which at least four hours must be in ethics.

Open/Closed Meeting Policy. July 5 was the deadline for public comments on the discussion draft of proposed amendments to the Bar's Administrative Manual regarding open and closed meetings of its standing and special committees. At present, only committee members or their approved invitees may attend such meetings. The draft amendments would change this policy and open these meetings to the public, except when the committee is considering: (1) matters which are subject to closed sessions at the Board and Board committee levels; (2) matters bearing upon pending or prospective litigation, complaints involving particular individuals, proposals or specifications for programs, or negotiation positions; (3) specific ethics opinions by the Committee on Professional Responsibility and Conduct; (4) examination development, grading, and administration by the Committee of Bar Examiners and the Board of Legal Specialization and its advisory commissions; (5) situations where individual privacy is necessary; (6) when closed sessions are required by rules or statutes governing particular committees (e.g., the Commission on Judicial Nominees Evaluation); or (7) a threat to

security of the meeting premises or safety of meeting participants exists.

The proposal contains no requirements for advance meeting notices or provisions for the availability or copying of committee records, because such requirements are not practical, according to the staff Task Force which drafted the proposed amendments. According to the Task Force, at the committee level, "flexibility to change dates of meetings on short notice is needed."

In August 1985, the Board adopted rules governing open meetings, closed sessions, and records of the Board of Governors, but these rules apply only to the Board and its committees.

Minimum Standards for Lawyer Referral Services. Public hearings were held in Los Angeles on April 7 and in San Francisco on April 15 to gather comments on the Bar's proposed Minimum Standards for Lawyer Referral Services in the state. At its June meeting, the Board of Governors approved the proposed standards, and directed staff to submit them to the California Supreme Court for approval by July 1. AB 29 (Killea), which was signed into law last year, requires all lawyer referral services to comply with the adopted minimum standards and to be registered with the State Bar in order to operate.

Improving the Profession's Public Image. The Statewide Committee on Professionalism and Public Action (SCOPAPA), created by the Board of Governors, has proposed the use of the state's 216 local and specialty bar associations instead of the State Bar to spread good news about the legal profession. Materials such as videotapes, brochures, and seminar packages will be prepared for distribution to local bars. The videotapes alone are expected to cost between \$5,000 and \$15,000 to produce. The plan, supported by the Office of Bar Communications and Public Affairs, comes in the wake of last year's \$40,000 175-page report which verified that the public believes lawyers are ethically mediocre and overpriced. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 125 for background information.)

Dispute Programs Directory. The Bar's Office of Legal Services has produced the *Directory of Dispute Resolution Programs and Resources in California*, a guide to the state's expanding dispute resolution services. The guide focuses on 38 programs in 17 counties and costs \$10. The directory includes information on organizations which handle a variety of interpersonal disputes within the family, the neighbor-

hood, the schools, and on the job. Some specialize in landlord-tenant conflicts or consumer complaints. For many, such programs offer the option of solving problems without going to court. Copies of the directory may be obtained through the Bar's Office of Legal Services in San Francisco.

New Specialization. At its June meeting, the Board of Governors added a Probate, Estate Planning, and Trust Law specialty to the State Bar's Program for Certifying Legal Specialists, and approved the proposed standards for certification and recertification of this new classification of specialists. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 109 and Vol. 7, No. 3 (Summer 1987) p. 136 for background information.)

February 1988 Bar Exam Results. On May 31, the Bar announced that 46.4% of February Bar exam takers passed the test, an improvement over last February's 42.8% pass rate. With the addition of these new lawyers, the number of attorneys eligible to practice in California rises to approximately 114,200.

LEGISLATION:

SB 1498 (Presley), as amended June 21, passed the Assembly Ways and Means Committee on June 29. This bill is a 35-section package of structural and other reforms proposed by State Bar Discipline Monitor Robert C. Fellmeth in an effort to enhance the authority and quality of the State Bar's disciplinary system. (See CRLR Vol. 8, No. 2 (Spring 1988) pp. 126-27 for detailed background information on the provisions of SB 1498.)

AB 4391 (Brown), as amended May 27, is a two-year Bar dues bill which would raise attorney dues, in part to finance the reforms contained in SB 1498 (Presley). Under the bill as currently worded, State Bar members on active status who have practiced for three years or more will pay \$417 in dues for 1989 and \$440 in 1990. AB 4391 is pending in the Senate Judiciary Committee at this writing.

AB 2723 (Friedman, Margolin), as amended June 15, would require counties to meet minimum due process standards in providing timely and adequate notice and a hearing, upon request, when the county seeks to terminate or deny an application for general assistance; and would provide that aid shall be continued pending a decision on a hearing contesting a proposed termination or reduction of benefits when a recipient has requested a hearing prior



to the effective date of the county action. This bill passed the Assembly on June 28 and is awaiting assignment to a Senate policy committee at this writing.

SB 1975 (Davis) would amend section 473 of the Code of Civil Procedure. If a party or his/her legal representative seeks relief from an adverse judgment, order, or other proceeding taken against him/her as a result of his/her mistake, inadvertence, surprise, or excusable neglect, this bill would require the court to grant such relief if the attorney timely files a sworn affidavit attesting to the fact of the mistake, inadvertence, surprise, or excusable neglect. The bill would also authorize the court to impose sanctions on the offending attorney, as appropriate. This bill passed the Senate on May 19 and is pending in the Assembly Judiciary Committee at this writing.

SB 2818 (Lockyer) would provide that review of State Bar disciplinary matters must be in accordance with procedures prescribed by the California Supreme Court. Passage of this bill would enable the Supreme Court to order that Bar disciplinary matters first be heard by state courts of appeal. (See CRLR Vol. 8, No. 2 (Spring 1988) pp. 124-25 for background information.) This bill passed the Senate on May 12 and is pending in the Assembly Judiciary Committee at this writing.

AB 3605 (N. Waters), as amended May 17, would amend section 6214 of the Business and Professions Code, which currently provides that certain legal service projects may qualify for State Bar funding if they meet specified criteria. Certain of these projects are required to receive cash funds from other sources in the amount of at least \$20,000 per year to support free legal representation for indigent persons. This bill would authorize in-kind donations from other sources not to exceed \$10,000 per year to be credited toward that cash funding requirement in rural counties of 50,000 or less population. This bill is pending in the Assembly Judiciary Committee at this writing.

The following is a status update on bills described in detail in CRLR Vol. 8, No. 2 (Spring 1988) at pages 125-27:

AB 1933 (M. Waters) was signed by the Governor on March 29 (Chapter 61, Statutes of 1988). The bill requires any state governmental entity which awards contracts for professional bond services to have annual statewide participation goals of not less than 15% for minority business enterprises and 5% for women enterprises for those contracts, except as specified.

AB 2618 (Harris), which would require continuing education for California attorneys, is still pending in the Senate Judiciary Committee. (See *supra* MAJOR PROJECTS; see also CRLR Vol. 8, No. 2 (Spring 1988) p. 126 and Vol. 8, No. 1 (Winter 1988) pp. 109-10 for background information.)

SB 1737 (Kopp), as amended June 14, would allow a complainant prevailing in a civil action to appeal or review an administrative determination to collect reasonable attorneys' fees up to \$7,500 (computed at \$100 per hour), where it is shown that the determination was the result of arbitrary or capricious action by a public entity or officer in his/her official capacity. This bill passed the Senate on April 7 and is pending in the Assembly Ways and Means Committee at this writing.

AB 4134 (Speier, Friedman, Vasconcellos) would allow reimbursement of certain fees and expenses to involuntarily-appointed lawyers defending indigents in specified civil cases. As amended April 4, the appropriation for this reimbursement program would be lowered from \$1 million to \$250,000 for the program, and the responsibility for reimbursement would be transferred from the Controller to the Judicial Council. This bill has been placed in the Assembly inactive file on motion of Assemblymember Speier.

AB 3089 (Connelly), regarding repayment by disciplined attorneys of disbursements to injured clients made by the Bar's Client Security Fund, has passed the Assembly and is pending in the Senate Judiciary Committee at this writing.

ACA 3 (Harris), which would enable judges to teach in public law schools, has been dropped by its author. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 127 and Vol. 7, No. 4 (Fall 1987) p. 110 for background information.)

LITIGATION:

In *Giannini v. Committee of Bar Examiners*, No. 87-6443, 88 D.A.R. 4295 (9th Cir., Apr. 5, 1988), the Ninth Circuit Court of Appeals Affirmed the district court's dismissal of plaintiff's complaint, which alleged on various grounds that the California Bar examination unconstitutionally discriminates against out-of-state attorneys. Joseph Giannini sued the Committee of Bar Examiners (CBE) after he failed the July 1986 and February 1987 California Bar examinations. The appellate court held that Giannini's individual challenge to the Bar exam was properly dismissed

for lack of subject matter jurisdiction, because plaintiff failed to appeal the CBE's decision to the California Supreme Court and then to the U.S. Supreme Court. With regard to plaintiff's generalized constitutional challenges, the court found that plaintiff failed to state a claim for relief.

In a similar case, *Margulis v. State Bar of California*, No. 87-5889, 88 D.A.R. 5172 (9th Cir., Apr. 25, 1988), the Ninth Circuit also affirmed the district court's dismissal of plaintiff's action for failure to state a claim. Appellant Margulis is admitted to the New York State Bar but failed the February 1985 California Bar examination. As a result, the CBE did not recommend him for admission to the California Supreme Court. Under Business and Professions Code section 6066, that court alone has the decisional power to admit an applicant to the practice of law in California; the Committee's action amounts only to a recommendation. An applicant may, however, petition the Supreme Court for review of the Committee's action. Margulis did not do so. Instead, he sought review in federal court, raising constitutional challenges to California Bar examination procedures.

The Ninth Circuit found that recommendations to deny certification do not deprive an applicant of any rights "until the supreme court expressly or impliedly approves the Committee's [recommendation] so as to make this the basis or allow it to have the effect of a denial of admission.... Petitioning the supreme court for review, therefore, "is not a matter of exhausting state remedies in respect to an alleged federal right but of there being no basis for any alleged federal right to exist as to the Committee's actions until the California Supreme Court in the exercise of its original power over admission has allowed these actions to serve as a deprivation" (citations omitted). Since Margulis did not petition the state high court for review, no action was officially taken on his application. Therefore, he was never deprived of a federally protected right.

Maynard v. U.S. District Court for the Central District of California, No. 87-07550 (C.D. Cal.). Margaret Daney Maynard is admitted to the Indiana State Bar and the federal courts located in that state. Although she is a resident of California, she is not admitted here, nor does she intend to apply for admission here. She seeks only to be admitted to the District Court for the Central District on the basis that an



attorney licensed to practice before any state court or admitted to practice before the bar of a sister federal court has proved the minimal competency to practice before any federal court regardless of where such federal court is located. Maynard seeks declaratory judgment that Local Rule 2.2.1 is unconstitutional.

Rule 2.2.1 of the U.S. District Court for the Central District of California bars anyone who is not a member of the State Bar of California from seeking admission to practice law before that court. Maynard was denied admission to the court on that basis. Her suit names all individual judges of the Central District as defendants; they are being represented by the U.S. Attorney's Office in Los Angeles.

The State Bar was asked, on behalf of the U.S. District Court judges, to submit an amicus curiae brief in support of the constitutional validity of Rule 2.2.1. At its April meeting, the Bar's Litigation Committee unanimously voted to recommend to the Board that the Bar file such a brief, identifying in particular the state interests involved in the Bar membership rule. The Board approved the request.

RECENT MEETINGS:

In Los Angeles on April 9, the Board, among other actions, denied a request to exempt U.S. magistrates from membership in the Bar; approved consideration (including a public comment period) of reduced membership fee payments in hardship situations; expressed its support for permanently extending Internal Revenue Code section 120, which allows tax-free treatment of employer-provided prepaid and group legal service plans; approved a proposal to amend section 6015 of the Business and Professions Code, which would make attorneys who are members of discriminatory clubs ineligible for membership on the Board of Governors; and resolved that, as a branch of the judiciary, it endorses the goals for participation by minority and women businesses enterprises in State Bar contracts. In addition, the Board voted to support the amendment of Business and Professions Code sections 6142 and 6143 to allow the suspension of Bar members who fail to pay penalties imposed for failing to pay membership fees and to condition the receipt of membership certification upon the payment of penalties.

At its May 7 meeting, the Board amended the Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs to

require that only the State Bar form for notifying clients of the right to arbitration be used. In addition, the Board voted to support an amendment to Business and Professions Code section 6148, which would increase the time for response to a client's request for a bill from ten to no more than thirty days. Delivery of the client's written request may be by personal service or by first class mail. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 127 for background information.)

The Board also approved a proposed change to Code of Civil Procedure section 2018, to provide that in an action between an attorney and a client or former client, no work product privilege exists if the work product is relevant to an issue of the lawyer's breach of duty to the client. This issue surfaced when Senator Presley's staff identified a potential problem created by *Lasky v. Superior Court*, 172 Cal.App.3d 264 (1985) (beneficiaries sought the work product of the attorney for the trustee in a trust case), which appears to provide a basis for an attorney to assert the work product privilege against a client. In *Lasky*, the court interpreted section 2016(b) as meaning that the attorney's work product "shall not be discoverable under any circumstances," and held that the "privilege is held exclusively by the attorney in all circumstances and that, specifically there is no exception to this rule as between attorney and client" (*id.* at 270). Therefore, the attorney, as "sole holder," "may effectively assert it even as against a client" (*id.* at 278). The court did not decide whether its holding would apply in a legal malpractice case, but the language is broad enough to raise such a concern. Instead, the court invited the legislature to interpret and/or amend the statute if a different result is desired.

At its June 18 meeting in San Francisco, the Board authorized implementation of a "legislative key contacts program," and authorized the Board President to initiate the process of identifying potential key legislative contacts by canvassing various Bar entities. The Board also implemented section 6094.5 of the Business and Professions Code by adopting new Article V to its rules and regulations, requiring the Bar to respond to consumer inquiries regarding (1) the status of pending disciplinary cases in which a formal accusation has been filed; (2) public discipline which has been imposed upon an attorney in California or elsewhere (to the extent known); and (3) specified criminal cases

and all felony charges against an attorney. The Bar must comply with the new rules no later than January 1, 1989.

Also in June, the Board approved new Rule of Professional Conduct 1-120, which provides that members of the State Bar "shall not knowingly assist in, solicit, or induce any violation of these rules or the State Bar Act." A Board vote on a more controversial proposed rule was delayed until the Board's August meeting. Rule 2-400, which would state that "[a] member shall not make or present a settlement offer in any case involving a request by the opposing party for attorneys' fees pursuant to private attorney general statutes which is conditioned on opposing counsel waiving all or substantially all fees," was deferred because several city attorneys complained that they had only received notice of the proposed rule a few days earlier, and because it is too vague and would subject them to ethics complaints when they attempt to settle individual police brutality civil rights cases.

FUTURE MEETINGS:

August 26-27 in San Francisco.

September 23-26 in Monterey (annual meeting).

