



representing the long-term interests of all utility ratepayers, will be renamed the Division of Ratepayer Advocates. The Policy and Planning Division will be renamed the Division of Strategic Planning to emphasize its role in designing and leading PUC investigations into restructuring the regulation of utilities as they move from monopoly to more competitive environments.

At its November 25 meeting, the PUC announced plans to temporarily increase the monthly surcharge for Centrex and Airport InterCommunications Services subscriber lines from one cent to ten cents and apply a monthly ten-cent surcharge to private lines and WATS/800 service. The increase will offset a projected deficit in the state's Deaf and Disabled Telecommunications Program. The deficit resulted from added services and increasing participation in the program. (For background information, see CRLR Vol. 7, No. 4 (Fall 1987) p. 106.)

The revenue base presently used to fund the Deaf and Disabled Telecommunications Program grows by only 3% per year. In contrast, the program's expenses grew by 230% in the first six months of 1987, due to legislative action which expanded the program. The PUC's Commission Advisory and Compliance Division recommended replacing the monthly flat-rate surcharge with a percentage surcharge so that revenues to fund the program can be readily adjusted to respond to expenses. In response, the PUC will seek urgency legislation to replace the flat-rate surcharge with a percentage surcharge applied to local telephone companies' intrastate revenues, effective July 1, 1988.

FUTURE MEETINGS:

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

STATE BAR OF CALIFORNIA

President: Terry Anderlini
(415) 561-8200

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 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 consists of 22 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; and a representative of the California Young Lawyers Association (CYLA) appointed by that organization's Board of Directors. With the exception of the CYLA representative, who serves for one year, 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 substantive areas of law, three regulatory boards, Bar service programs, and the Conference of Delegates, which gives a representative voice to the 113 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:

First Progress Report of the State Bar Discipline Monitor. In his 239-page progress report released November 2, State Bar Discipline Monitor Robert C. Fellmeth stated that although the Bar has made several constructive changes to its discipline system, it is still defective in five major respects. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 108 and Vol. 7, No. 3 (Summer 1987) pp. 1 and 133 for background information about the Monitor's June 1987 Initial Report.)

According to the progress report, reforms which have yet to be made include (1) the hiring of six to ten administrative law judges to replace the volunteer hearing referees (448 practicing attorneys and 80 public members) who currently hear attorney discipline cases; (2) replacement of the Bar's eighteen-member appellate Review Department with a panel of three appellate judges; (3) the addition of investigative resources to the Office of Trial Counsel in order to facilitate the handling of complex cases; (4) the addition of a sufficient number of investigators at competitive salaries to reduce the 2,500-case backlog

of consumer complaints; and (5) the initiation of approximately ten statutory and rule changes in areas such as confidentiality of pending investigations, and proactive monitoring by the Bar of contempt orders issued against attorneys, legal malpractice filings, and arrests of attorneys.

At its December 12 meeting, the Board of Governors voted to replace its system of volunteer hearing referees with a new system of paid, full-time professional State Bar Court judges. The judge applicants will be screened and rated by the Board of Governors, and appointed by the Chief Justice of the California Supreme Court. Although the Bar had previously indicated a desire to phase in this panel over a three- to five-year period, the Board voted to implement the system as soon as possible. The Board also voted to replace the Review Department with a three-member appellate body which will review only contested matters. One member will be a public member, and the members will be nominated by the Board of Governors and appointed by the state Supreme Court. The Board referred these reforms back to its Discipline and Administration and Finance Committees in order to work out the details.

In Business and Professions Code section 6140.2, the legislature gave the Bar until December 31, 1987, to reduce by 80% the number of complaints pending since March 31, 1985, which had not resulted in dismissal, admonition, or filing of formal charges; and further instructed the Bar to improve its disciplinary system so that no more than six months elapse between receipt of the complaint and dismissal, admonition, or filing of formal charges. After the number of cases peaked at about 4,000 in March 1986, the Office of Investigations reduced the backlog (defined as complaints pending for six months or longer) to under 3,000. The backlog, however, has remained at 2,500 for the last ten months, and the Bar announced in December that it would not meet the December 31 backlog reduction deadline. The backlog was reduced to 1,800 in January 1988, but that reduction required the use of Office of Trial Counsel (OTC) resources, exacerbating an OTC backlog which itself reached 300 by February 1988.

At its November 16 and December 12 meetings, the Board voted to immediately spend a total of \$754,000 to reduce its backlog of complaints within ninety days. The funds are supplemental appropriations to a balanced budget and



the Board has not yet determined whether the money will come from 1989 revenues or from cuts in 1988 funds allocated to other programs. The money will be used to hire ten additional Bar investigators, pay overtime to current investigators, and increase the number of staff attorneys, secretaries, and clerks in the Office of Trial Counsel and the State Bar Court so they can handle the increased caseload sent to them from the Office of Investigations. The funds will also be used to upgrade salaries to make wages competitive with those offered by other state agencies.

The Board also amended the Bar's confidentiality rule, which previously prohibited the Bar from disclosing information to members of the public regarding pending investigations against attorneys prior to the time formal charges are filed. The Board agreed in principle to a proposed amendment which will allow inquiring consumers to learn of pending investigations in cases where more than one high-priority investigation is pending against an attorney.

Finally, the Board adopted several rule and proposed statutory changes, including a procedure whereby final contempt orders against attorneys must be forwarded to the Bar; a prohibition against sealing of the court record in attorney malpractice cases; and participation in the Attorney General's Arrest Notification System, through which information that an attorney has been arrested will be forwarded to the Bar for possible investigation or tracking.

Having Problems With Your Attorney? The Bar's community education program has revised its pamphlet entitled "What Can I Do If I Have A Problem With My Lawyer?" Avoidance tips and remedial steps are provided for clients. The pamphlet also describes the Bar's disciplinary process and lists the Bar's toll-free complaint number.

Malpractice Insurance Survey. A legal malpractice questionnaire, approved by the Board of Governors in October, was sent to 12,250 randomly-selected lawyers and included 22 questions concerning the nature of their practices, the amount and kind of malpractice insurance carried, if any, or an explanation of why insurance is not carried. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 108 for background information about the malpractice insurance plan.) The survey was funded by a \$1 fee added to the annual dues bill of all 93,500 active lawyers in the state by the Legislature. The results of the survey were to have been reported to the legislature on Decem-

ber 15, but as of this writing have not yet been compiled.

Appellate Court Review of Lawyer Discipline Cases. The State Bar Discipline Committee is investigating whether lawyer discipline cases should continue to be referred to the State Supreme Court for final action, or to a state appellate court. Under the proposal before the Committee, discipline cases would go first to the state courts of appeal, and could then be appealed to the Supreme Court. The high court could deny review. The Committee has postponed action on the proposal until the Bar implements its new system of professional State Bar Court judges. The Bar is disposed against the proposal because it would fragment and delay decisions.

Bar Exam Results. With a 50.3% pass rate, July 1987 exam results surpassed those of one year earlier by 5.9%. This marks the first time the pass rate has exceeded 50% since the July 1980 exam. Most of the increase is attributed to scaling. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 109.) First-time applicants (65.5% of examinees) passed at rates of 72.7% for applicants who attended law schools approved by the American Bar Association (ABA), and 45% for applicants who attended non-ABA-approved schools. Repeating applicants (34.5%) passed at the rates of 30% and 17%, respectively.

The Committee of Bar Examiners will study the scores in detail to determine the make-up of the additional 5.9% who passed. The Committee wants to determine whether "unqualified" people are passing as a result of the scaling. Another concern is that, because the pass rate is higher, a large number of people who previously flunked the exam may try again. Such an influx may again lower the scores.

Manual For Use of Habeas Corpus by California Prisoners. The Board's Committee on Legal Services has updated its 1982 version of the "Manual for Use of Habeas Corpus by California Prisoners." Stylistic revisions make the manual more readable; substantive revisions make the manual more useful. In particular, the end notes were updated to include recent law changes; and examples were added to illustrate the directions. The Board of Governors approved the publication and distribution of the manual at its December 12 meeting.

Client Security Fund. Bar officials testifying before the Senate Judiciary Committee on December 3 said that the Bar's Client Security Fund (CSF) faces a severe funding shortfall which will

result in payment delays. The Fund, they said, needs more money and staff, and rule modifications which would, among other things, narrow the scope of claims eligible for payment and force restitution from lawyers found to have misappropriated client monies. (For background information on the CSF, see CRLR Vol. 7, No. 3 (Summer 1987) p. 27 and Vol. 6, No. 2 (Spring 1986) p. 99.)

The Bar reported that the CSF faces a potential deficit of \$600,000 or more by the end of 1988 unless more money is allocated to support it. In part, the deficit has resulted from high administrative costs. At the Bar's Administration and Finance Committee meeting on January 16, several Board members expressed concern over an actuarial survey report which found that the CSF spends an average of \$2,000 to close a claim which is not paid, and \$4,000 to process a claim which is paid.

Critics of the Bar's handling of the Fund charge the following: (1) victimized client-consumers are confronted with long delays before receiving any reimbursement, and are not afforded adequate due process; and (2) appointment by the State Bar's Board of Governors of all seven members (four attorneys and three public members) of the CSF Commission which administers the funds and rules on client claims raises conflict of interest issues.

Although the Administration and Finance Committee voted against raising the Bar fees which support the CSF from \$25 to \$45 per attorney as recommended by Bar staff, the Board of Governors reversed the decision on January 23, and approved the full \$45 requested by staff for the CSF.

LEGISLATION:

Mandatory Malpractice Insurance. A bill requiring all California attorneys to carry insurance against malpractice claims is currently being drafted, and will likely be carried by Assembly-member Connelly. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 108 for background information.)

Mandatory Continuing Legal Education (MCLE). On January 13, the Assembly Judiciary Committee approved a preliminary version of a bill which would require California lawyers to go back to school. AB 2618 (Harris) currently prohibits the renewal of a lawyer's membership without proof of "successful completion of at least forty hours of continuing education courses, approved by the State Bar, during the preceding five years, eight hours of which shall be



in legal ethics." Other provisions of the bill include requirements that: (1) the Bar's Board of Governors must promulgate rules for certification of continuing education courses; (2) only courses provided by nonprofit organizations would be eligible for certification; and (3) new Bar admittees must be certified as trial specialists before practicing in court, beginning January 1989.

Concurrently, the Bar itself has been studying various recommendations for an MCLE program. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 109 for background information.) The Commission on MCLE held hearings during which some additional issues were raised and substantive changes to the Bar's proposal were made. The new issues addressed include methods of approving continuing education providers; sources of funding for the program (e.g., an assessment of all active members); and whether activities with the Bar should receive credit (with prior approval from the MCLE board). According to the present proposal, the requirements will become effective January 1, 1990. The Bar's plan is said to have broad-based support, with the exception of district attorneys' offices, which have requested an exemption.

Urgency Dues Bill. In the summer of 1987, Bar Monitor Fellmeth requested a 1988 increase in the \$25 discipline surcharge to pay for the implementation of recommended discipline reforms. The Bar did not support the proposal, instead requesting only a flat cost-of-living increase in 1988 dues. As a result, the Bar has no "extra" money in its budget and cannot implement any of its own discipline staff's proposals or any of the Discipline Monitor's proposals, nor can it finance from 1988 dues the staffing increases needed to attack the backlog of discipline cases which were required to be processed by December 31, 1987.

A substantially-increased 1989 discipline surcharge of \$145 is now estimated to be necessary to pay 1989 expenses (and to repay part of the monies needed for 1988 beyond the 1988 authorized budget). The Bar anticipates that Senator Presley will carry the urgency dues bill, as well as a large package of legislative reforms to the Bar's discipline system (SB 1498-Presley). The urgency monies requested by staff (\$6 million) for 1988 discipline system expenses will not be committed beyond the initial first quarter monies authorized for backlog reduction (see *supra* MAJOR PROJECTS) unless the bill passes, or unless more 1988 money is otherwise assured.

LITIGATION:

Keller v. State Bar of California, No. SF25050. Complainants seek a writ of mandate to enjoin the State Bar from using their mandatory membership fees to advance political and ideological causes with which they disagree. In 1986, the Third District Court of Appeal agreed with plaintiffs and held that the Bar may not expend a dissenting attorney's compelled dues on political or ideological causes unless the Bar can prove that its actions are supported by a compelling governmental interest. Oral argument was heard before the California Supreme Court on December 9.

RECENT MEETINGS:

The Board recently approved an increase by \$10 to \$40 the filing fees for law students who practice law. A \$10 recertification fee was also approved.

Also at its October meeting, the Board heard the Committee of Bar Examiners' proposal to require incoming lawyers to pass a trial skills course as a prerequisite to practicing law in California. (For related discussion, see *supra* LEGISLATION.) Under the proposal, all applicants for admission to the State Bar after January 1, 1990 would be required to complete a trial skills training course in order to practice law. The course would not be tested on the Bar exam, but would be taught in law schools. The proposal has generated concern by law schools over the expense of offering such a course to the 7,000 students who graduate each year. The Committee's proposal grew out of a study required by AB 3072. The Board is scheduled to act on the proposal in March.

Also at its October meeting, the Board approved a drug and alcohol abuse program which places greater emphasis on education and has been expanded to cover emotional distress. The Bar's \$145,000 Voluntary Alcohol and Drug Abuse Program will continue to be administered by the Employee Support Systems Company and The Other Bar, Inc.

The Board Committee on Professional Standards oversees a multi-disciplinary task force which is preparing an issue paper on a diversion program for attorneys with substance abuse problems. At its meeting on December 11, the Committee announced that the paper is expected to be presented at the Bar's April 1988 meeting.

The Bar recently released a one-page illustrated fact sheet entitled "Amnesty Under the New Immigration Law," which

explains how individuals seeking amnesty can obtain help and includes information on the difference between a notary public and an attorney, how to find out if someone is a licensed California attorney, and phone numbers to call if a person believes his/her rights have been abused.

At its December 12 meeting in San Francisco, the Board of Governors approved an amendment to its refund policy regarding examination application fees. Under the previous policy, refunds were based on the passage of time from the date of timely filing. The revision will base refunds on the more economically-sound method of cost accounting for services performed. In general, 60% will be refunded if requests are received within 30 days after the deadline for timely filing, and 30% will be refunded if within 30-45 days of the deadline, but no refunds will be considered after 45 days. All requests must be received in writing.

In other action, the Board approved an addition to Rule 3 of the State Bar's Rules of Procedure affecting the time limit for claims filed against the CSF. Effective January 1, 1988, a claim against the CSF must be filed within four years of the date that the injury was discovered or should have been discovered.

FUTURE MEETINGS:

March 7-8 in Sacramento.

April 8-9 in Los Angeles.

May 6-7 in San Francisco.