



Joint Legislative Audit Committee
Office of the Auditor General



REPORT TO THE CALIFORNIA LEGISLATURE



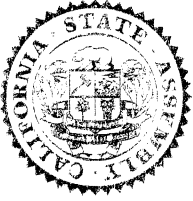
A MANAGEMENT REVIEW OF REGISTRATION, EXAMINATION AND DISCIPLINE Chapter 1483, Statutes of 1976

Office of the Auditor General
1955 - 1977

REPORT OF THE
OFFICE OF THE AUDITOR GENERAL
TO THE
JOINT LEGISLATIVE AUDIT COMMITTEE

296.2

THE STATE BAR OF CALIFORNIA
A MANAGEMENT REVIEW OF
REGISTRATION, EXAMINATION AND DISCIPLINE
CHAPTER 1483, STATUTES OF 1976
DECEMBER 1977



Joint Legislative Audit Committee

OFFICE OF THE AUDITOR GENERAL

California Legislature



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December 16, 1977

The Honorable Speaker of the Assembly
The Honorable President pro Tempore of the Senate
The Honorable Members of the Senate and the
Assembly of the Legislature of California

Members of the Legislature:

Your Joint Legislative Audit Committee respectfully submits the Auditor General's study of the functioning, programs, and fees of the State Bar prescribed by Chapter 1483 (AB 4073), Statutes of 1976.

By copy of this letter, the State Bar is requested to advise the Joint Legislative Audit Committee within sixty days of the status of implementation of the recommendations of the Auditor General that are within the statutory authority of the Department.

The auditors are Kurt R. Sjoberg, Audit Manager, and David B. Tacy.

Respectfully submitted,

MIKE CULLEN
Chairman

cc: Board of Governors

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volunteer attorneys. We recommend that the Board of Governors announce its policy on the use of volunteer prosecutors (see page 10).

Our review also disclosed that the grading of the essay portion of the General Bar Examination is inconsistent with the 70 percent passing score established by the State Bar's Committee of Bar Examiners. The Committee only rescores the essays of examinees who initially score just below passing. Exams which initially score just above passing are not rescored. This results in a biased grading system which lowers the actual grading standard below the official 70 percent passing score set by the Committee (see page 14).

State Bar data suggest that the State Bar may have considerable financial flexibility in 1978, mainly due to a projected 1977 surplus of over \$860,000. Lower membership fees than charged in 1977 may be sufficient to cover 1978 expenses. Alternatively, the State Bar could initiate new programs in 1978 (see page 18).

Our review was limited because the State Bar denied our request to review confidential admission and disciplinary records. We sought such access to verify the implementation of official procedures (see page 21).

SUMMARY

This third review of the State Bar since 1974 was requested by the Legislature in Chapter 1483 (AB 4073), Statutes of 1976, which authorized the State Bar to increase 1977 membership fees. This review focuses on (1) the effectiveness of the State Bar's two major regulatory programs: licensing attorneys and disciplining attorney misconduct; and (2) the membership fee level necessary in 1978.

We found that a legislative requirement that non-attorney applicants for admission must register with the State Bar when they begin law study is unnecessary for most law students. The main purpose of registering law students is to monitor the progress of students attending unaccredited law schools, which are not regulated by the State Bar. Unnecessary registration of the estimated 63 percent of registrants who attended accredited law schools generated at least \$74,000 in State Bar revenue in 1976 (see page 6).

Planning staff needs for disciplining attorney misconduct is precluded by the lack of an updated policy on the use of volunteer prosecutors in disciplinary hearings. Despite recommendations by an American Bar Association study and the 1972 decision by the State Bar's Board of Governors to abandon use of volunteer prosecutors, two-thirds of formal disciplinary prosecutions are still conducted by unpaid

INTRODUCTION

In response to a resolution of the Joint Legislative Audit Committee, we have reviewed the management of the State Bar of California. This review was conducted under authority vested in the Auditor General by Section 10527 of the Government Code.

Section 6140.3 of the Business and Professions Code was added in 1976 to increase State Bar membership fees charged to California attorneys. That legislation included the following provision:

The Joint Legislative Audit Committee is requested to request the Auditor General to review and study the functioning, programs, and fees of the State Bar.

Our current review was the third requested by the Joint Legislative Audit Committee since 1974. In five reports* issued since 1974, we reviewed State Bar management and programs. Because the State Bar had not developed workload analyses and specific justification for proposed budget increases, we recommended that the Legislature disapprove proposals in 1974 and 1976 to authorize increased State Bar membership fees. In our November 1977 letter report, we described selected improvements in State Bar management.

* Report 223.1, "State Bar of California," June 1974; Report 223.2, "State Bar of California," August 1974; Report 284.1, "Review of the State Bar of California," August 1976; Report 284.2, "Opportunities to Improve Management of the State Bar of California," January 1977; Report 296.1, "The State Bar's Implementation of Auditor General Recommendations," November 1977.

This report discusses (1) the effectiveness of two major State Bar programs: licensing attorneys and disciplining attorney misconduct; and (2) the membership fee level necessary in 1978.

Background

The California Constitution requires that every attorney (except active judges) licensed in California be a member of the State Bar. The powers, duties and organization of the State Bar are specified in Section 6000 et seq. of the Business and Professions Code.

The State Bar's primary function is to regulate the legal profession in California. Under the jurisdiction of the California Supreme Court, the State Bar admits attorneys to practice and investigates and disciplines attorneys for professional misconduct. In appropriate cases the State Bar may recommend that the Supreme Court suspend or disbar an attorney. In addition, the State Bar may pay up to \$25,000 to a client who suffers monetary loss because of an attorney's professional misconduct.

In addition to these regulatory activities, the State Bar represents the interests of the legal profession before the Legislature and the public. The State Bar makes recommendations regarding the Governor's judicial appointments and the administration of justice. As California's professional attorney association, the State Bar also conducts an annual convention, publishes a monthly bulletin (State Bar

of California Reports) and a bimonthly magazine (California State Bar Journal), and supervises a continuing professional education program operated by the University of California.

The State Bar is governed by a Board of Governors composed of 21 members, 15 of whom are State Bar members elected to three-year terms from various geographical districts. The six other members are non-lawyers appointed by the Governor. Board members receive no remuneration beyond necessary expenses. The Board selects its own officers each year and appoints an executive director.

As of July 26, 1977, the State Bar reported an active membership of 52,923 attorneys. In 1977, projected membership fees should provide \$5,665,000 of the State Bar's expected revenue of \$7,848,000. The balance is expected to be composed of examination fees, interest and miscellaneous service charges. A full-time staff of 241 is budgeted for State Bar activities in 1977. Staff work is supplemented by voluntary service from State Bar members.

AUDIT RESULTS

UNNECESSARY REGISTRATION OF
MOST LAW STUDENTS

The Business and Professions Code, Section 6060 requires that each non-attorney applicant for admission to the State Bar register with the examining committee within 90 days of beginning law study. The Committee of Bar Examiners charges a \$15 fee for this registration. (Later registration is permitted for good cause, with a \$25 fee.) The merit of such registration is to verify that applicants have completed the required college education prior to studying law, and to notify certain first-year law students of special rules affecting them. Neither of these purposes applies significantly to students in accredited law schools who account for approximately 63 percent of all registrants. Therefore, registering this majority of law students is unnecessary. In 1976, students from accredited law schools paid at least \$74,000 in registration fees. Eliminating registration for these students would save them those fees, and the Committee would save the administration costs to process these registrations.

Once a potential applicant to the State Bar registers as a law student, the Committee of Bar Examiners notifies the applicant of the admission rules. Two rules are of particular importance to first-year law students: (1) the required completion of the equivalent of two years

of approved college education before beginning law study, and (2) the requirement that some law students--primarily those who study law in unaccredited schools or outside the classroom--must pass the Committee's First Year Law Students Examination (FYLSX) before undertaking further law study.

Neither of these rules justifies registering law students at accredited law schools, which are required to maintain records verifying their students' satisfaction of the prelegal education requirement. Almost all law students from accredited schools are also exempt from the FYLSX requirement. According to the Committee's administrator, the few students at accredited schools (and those who transfer to unaccredited study) who must take the FYLSX could be notified without registering these students. He agreed that these students could be identified from information either already available or easily provided by the accredited law schools. This could probably be done at less cost to the Committee than is currently incurred in registering all applicants from accredited schools.

Since the Committee does not keep statistics on the distribution of registrants among accredited and unaccredited means of study, we estimated this distribution from General Bar Examination statistics. These data suggest that at least 63 percent of law student registrants are from accredited law schools. Applying this percentage to registration fees collected by the Committee in 1976, we estimate that

registrants from accredited law schools paid at least \$74,000 in registration fees in that year. Eliminating the registration requirement for these law students would not only eliminate these registration charges, but should also reduce the Committee staff necessary to perform this admission function.

According to the Committee's administrator, it is possible that eliminating registration of students in accredited schools might increase fees for other Committee operations. We believe this effect would be small, since the funds at issue constituted less than seven percent of the Committee's total 1976 expenses, and because the Committee had a 1976 surplus of \$194,823 from the current fee structure.

CONCLUSION

Requiring law student registration and fees from students of accredited law schools is unjustified since the administrative value of registering these students is minimal. The few students in accredited schools who should be notified of special requirements can be identified at less expense without registering all applicants attending accredited law schools.

This past year has seen the actual commencement of the Staff Examiner (prosecutor) System in several counties. It may take several years before we can totally abandon the Volunteer Examiner System; our problems are to recruit, train and be able to house staff to handle the work load. The development of this program will bring a professional quality to the disciplinary system and reduce delays. We will still need the outstanding and unselfish assistance of our lawyers who serve on hearing committees throughout the state. (Emphasis added.)

This policy mirrored the recommendations of a 1970 ABA study of attorney discipline systems across the county. The study reported that the use of volunteer prosecutors resulted in delayed proceedings, nonuniform standards and insufficient prosecutorial expertise. The study added:

We, therefore, strongly urge every disciplinary agency to make its first priority the obtaining of funding adequate to enable it to employ a full-time professional staff large enough to abolish the volunteer attorney system....This is not to say that the volunteer, practicing attorney should be removed from the disciplinary process. To the contrary, the employment of a full-time, professional staff to investigate and prosecute complaints would permit the volunteer members (i.e., judges) of inquiry and hearing committees to devote their full attention to evaluating cases developed by the staff, a role that should remain the responsibility of practicing attorneys who are fully conversant with the problems of day-to-day practice.

Despite the 1972 Board decision and the ABA study recommendations to transfer disciplinary prosecutions from volunteers to State Bar staff attorneys, about two-thirds of disciplinary prosecutions are still assigned to volunteers. Further expansion appears to be more a matter of State Bar policy than of insufficient funds or space. Available

resources have permitted a 58 percent increase in full-time State Bar staff since 1974. We estimate that abandoning volunteer prosecutors in 1976 would have required adding about seven staff attorneys (and appropriate support) to the 20 attorneys in the Discipline Enforcement Department.

We were unable to obtain an official explanation for this slow progress. Management of the Discipline Enforcement Department said it was unaware of the current Board's attitude toward the issue. The chairman of the Board's Committee on Discipline said he was unaware of the Board's policy regarding the use of volunteer prosecutors and he doubted the Board would formalize its policy for us.

Until the State Bar announces its policy and rationale for the use of volunteer prosecutors, the necessary number of disciplinary staff attorneys and the impact of using volunteers cannot be determined. In our opinion, formalizing priorities on major issues such as these is essential to effective program management and fiscal planning.

CONCLUSION

In 1970 an ABA study concluded that using volunteer prosecutors resulted in delayed proceedings, nonuniform standards and insufficient prosecutorial expertise. Without an updated policy decision, it is unclear why the State Bar has not progressed further in abandoning the use of volunteer prosecutors in disciplinary hearings.

RECOMMENDATION

The State Bar Board of Governors should reconsider and formally announce its policy regarding the use of volunteer prosecutors in disciplinary hearings.

BENEFIT

Implementing this recommendation would provide a basis for planning and evaluating staff needs and the use of volunteer prosecutors in the State Bar's program for disciplining attorney misconduct.

NEED TO REEVALUATE STATE
BAR EXAMINATION GRADING

The State Bar Committee of Bar Examiners employs a panel of graders who "reappraise" the initial grading of General Bar Examination essay answers for those examinees who initially score slightly below the 70 percent passing score. According to the Committee's expert grading consultant and one employed by the State Department of Education, impartial reappraisal would require rescoring examinations above the passing level as well as below. The Committee's current reappraisal system biases the grading in favor of those who barely pass the initial grading. As a result, the valid passing level for some examinees has been reduced below the 70 percent official standard to some point between 66.5 percent and 69 percent of total possible points. (A summary of State Bar admission procedures is provided in Appendix A.)

The following procedures were described to us by the Committee's chief administrator. The essay portion of the General Bar Examination is first graded by lawyer consultants employed specifically for the initial grading. Each examinee's essays are graded by a composite of 12 graders, one for each required question. An examinee's essay score is then added to his score on the computer-graded multiple-choice portion of the exam. To pass, an examinee must score at least 70 percent of the combined possible points.* A combined score of less than approximately 66.5 percent fails. In neither of these cases is an exam reviewed further.

* Beginning with the July 1977 examination, an examinee may carry credit for passing either the multiple-choice or essay part of the exam forward for 21 months. Therefore, an additional group of examinees scoring below about 66.5 percent of combined possible points but whose essays score between 65 and 69 percent of the possible essay points will be reappraised in the same manner as described.

Essays of examinees who score above about 66.5 percent* of the combined possible points but less than the 70 percent passing level are rescored by one or more reappraisers. One reappraiser reviews all of one examinee's essay answers and determines whether the initial grading was correct. Another reappraiser repeats this procedure. If the two reappraisals agree that the examinee should pass or fail, no further grading is conducted. If the reappraisals disagree, the essay answers are rescored by a third reappraiser who makes the decision. In 1976, 2,248 of the 9,902 General Bar examinees' essay answers were reappraised in this manner. 533 examinees passed reappraisal, representing 24 percent of those whose essays were reappraised.

The national Code of Recommended Standards for Bar Examiners adopted by the American Bar Association specifies that "(a) reappraisal of the borderline cases should be provided in order to assure fairness in grading." Reappraisal increases the reliability of grading essays by repeating the grading process with different graders. The chairman of the Committee's Subcommittee on Examinations and the Committee's administrator told us the State Bar's reappraisal system intentionally favors examinee passage, because it excludes any correction of initial scores above the minimum passing level. According to an expert in test evaluation who has studied the State Bar examination for the

* The actual cutoff is determined by adding 70 percent of possible points on the multiple-choice portion of the exam and 65 percent of possible points on the essay portion.

Committee, neutral grading precision would require reappraisal on both sides of the minimum passing score. We also consulted a Department of Education specialist in test evaluation who agreed with the Committee consultant's opinion.

The effect of the State Bar's one-sided reappraisal system is that neutral reappraisal (i.e., reappraisal of an equal margin of scores on both sides of the passing level) is only being conducted at a level below the 70 percent official standard. If the Committee intends a 70 percent score to represent the passing borderline in a neutral reappraisal, an equal margin of scores should be reappraised above and below the 70 percent level. If the Committee intends the passing grade to be below that level, that should be stated and reappraisal should be conducted for exams scoring on both sides of that point.

According to the chairman of the Committee's Subcommittee on Examinations, his Subcommittee is reviewing the reappraisal system.

CONCLUSION

The Committee of Bar Examiners' reappraisal system does not re-score examinations which initially score slightly above the official 70 percent passing level on the General Bar Examination. As a result, the grading favors examinees who barely pass, and neutral reappraisal is actually conducted only below the 70 percent passing level.

RECOMMENDATION

The State Bar Committee of Bar Examiners should review its grading policies to assure that the margin of scores selected for reappraisal is consistent with the official passing score set for the General Bar Examination.

BENEFIT

Implementing this recommendation would help ensure that the grading of the General Bar Examination is consistent with the official passing level and impartial for all examinees.

OTHER PERTINENT INFORMATION

1978 Membership Fees

The State Bar's Director of Financial Affairs projects that a cumulative surplus of over \$860,000 may be available in the State Bar's General Fund after all 1977 expenses. This surplus could give the State Bar significant financial flexibility in the next several years. The following analysis is intended to illustrate the range of such flexibility applied to the State Bar's 1978 finances.

Projecting the State Bar's future fiscal affairs is limited by the lack of formal priorities or fiscal plans established by the Board of Governors for the evaluation of State Bar programs. However, the Director of Financial Affairs has projected 1978 revenues and expenses, and he has outlined some possible new programs which may be adopted.

His estimates permit the following analysis of the State Bar's fiscal flexibility in 1978. If no new programs are adopted, he projects total General Fund expenses of about \$7,550,000. This expense level could be covered by applying the 1977 surplus and reducing membership fees to the rates charged in 1976, while still accumulating a surplus of at least \$350,000 available for 1979. On the other hand, if all new programs envisioned by the fiscal director were adopted in 1978 and the membership fees were not reduced, the

State Bar could still end 1978 with a surplus over \$1.1 million after expenses of about \$8,300,000. (The president of the State Bar has announced that a small reduction in membership fees is likely in 1978.) Table B outlines this range of fiscal alternatives.

Table B
State Bar General Fund
Alternative Projected Surpluses (Deficits)
Fiscal Year 1978

	If Membership Fees Are the Same <u>as in 1976</u>	If Membership Fees Are the Same <u>as in 1977</u>
<u>If No New Programs Are Adopted</u>	\$350,000	\$1,860,000
<u>If All Anticipated New Programs Are Adopted</u>	(390,000)	1,110,000
<u>Membership Fee Rates</u>		
Active Members:		
0 - 2 years	50	55
2 - 5 years	70	85
5 - 10 years	90	115
over 10 years	90	130

The projections described in the foregoing fiscal analysis are predicated on the following assumptions. Actual variations from these assumptions could affect the projections and thus the analysis of available surpluses.

Revenue

- 1978 membership levels and other General Fund revenue will be as projected by the State Bar's Director of Financial Affairs.
- 1978 State Bar Examiners, Legal Specialization and Sections income will be no higher than projected for 1977 by the Director of Financial Affairs.
- General Fund surpluses may be applied to any General Fund program, regardless of which program created the surplus.

Expenses

- Basic 1978 expenses will be as projected by the Director of Financial Affairs.
- 1978 expenses for State Bar Examiners, Legal Specialization and Sections will be ten percent higher than projected for 1977 by the Director of Financial Affairs. (Note: This ten percent expense increase is assumed despite no comparable assumption of increased revenue.)

- Anticipated new program expenses will not exceed \$700,000 in 1978. The Director of Financial Affairs listed the following possible new expenses:

Computer	\$350,000 - \$400,000
Los Angeles Building	\$150,000 - \$225,000
Expanded Employee Benefits	70,000
Institutional Advertising Campaign	-unknown-
Decrease in Fees	-unknown-
Salary and Moving Expenses for New Executive Director	<u>-unknown-</u>
	\$695,000

Denial of Access to Certain Records

In 1976, the Legislature requested the Joint Legislative Audit Committee to require the Auditor General to "...review and study the functioning, programs and fees of the State Bar." To review the State Bar's procedures for licensing attorneys and disciplining attorney misconduct, we requested access to all State Bar licensing and disciplinary records. The State Bar Board of Governors denied such access. As a result, we are unable to fully comply with the audit request, and the Legislature has been denied independent accountability for the State Bar's regulation of attorneys.

The records in question are files on individuals' applications for admission to the State Bar and the State Bar's records of its investigation of complaints of individual attorney misconduct. The State Bar considers such records confidential.

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601 McALLISTER STREET
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December 7, 1977

Mr. John H. Williams
Auditor General
Suite 750, 925 L Street
Sacramento, CA 95814

Dear Mr. Williams:

We are in receipt of your report 296.2 which was hand-delivered to us on December 1, 1977.

The following comments reflect our considerations of the findings and recommendations as outlined in your report.

Findings and Recommendations re Bar Examiners

See Appendix 1. Report to Director of Financial Affairs from Director, Committee of Bar Examiners

Need to Reconsider Use of Volunteer Prosecutors in Disciplinary System

The Auditor General recommends that the State Bar Board of Governors should formally announce a policy regarding the use of volunteer prosecutors in disciplinary matters.

During the past several years, certain factors have precluded us from fully implementing the utilization of full time staff examiners ("prosecutors") and the phasing out of volunteer prosecutors. Among those considerations have been:

1. Budgetary constraints
2. Space limitations in existing facilities
3. The institution and implementation of a substantially revised disciplinary process requiring alternative use of available personnel.

We are now in a position to more fully implement (and appraise) the staff examiner system as originally planned.

1978 MEMBERSHIP FEES

The Auditor General's report states that a surplus of \$1,860,000 could be attained by the close of 1978 if the present membership fee structure is maintained. He further states that this surplus would be reduced to \$1,110,000 if all new programs or needs were implemented in 1978.

The Auditor General's estimates were based on some projections which had been made in the spring of 1977 and not on the latest budget projections which are now in the process of being analyzed. Based on this latest information a surplus projection could be made as follows:

Surplus 12/31/77	\$ 900,000
Surplus for the year 1978	400,000
	<u>\$1,300,000 *</u>

* This surplus takes into account only that portion which is derived from membership dues. Any surplus derived from fees paid to the Committee of Bar Examiners, Legal Specialization or Sections will be used to either reduce fees or cover increased operating expenses in the following year for these self-sustaining operations.

The Auditor General's report did state that this surplus could be used to implement some new programs or finance capital improvements needed during the coming year. His report noted that some of the needs were unknown at the time of his writing. The following list is the current projection of the contemplated programs or improvements:

1. Purchase of Computer	\$ 420,000
2. Renovation to and finishing of the Los Angeles Building	550,000
3. Furnishings and moving costs re new San Francisco building not covered by the Building Fund.	105,000
4. New programs	<u>415,000</u>
	\$1,490,000

Obviously these expenditures would completely erase any accumulated surplus projected for the end of 1978. Realizing that at best they are estimates at this time and taking into consideration that over 50% of these projected costs are capital items, the Board of Governors determined at a meeting on December 2, 1977, that these proposed capital expenditures in part or total should be financed over a period of years to allow greater participation by new members in their amortization; that membership fees for calendar year 1978 should be reduced by \$10 per member.

Mr. John H. Williams
December 7, 1977
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The Board thus set the fee schedule for 1978 as follows:

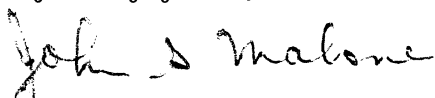
<u>Admitted</u>	<u>Fee</u>
0-2 years	\$ 45
2-5 years	75
5-10 years	105
Over 10 years	120

This reduction in fees will reduce revenue (and the projected surplus) by approximately \$600,000.

We are in complete accord with the theme of the Auditor General's report, which is, to provide the most comprehensive service commensurate with our responsibilities to the public and to the members of the State Bar and to administer these functions as economically as possible.

In conclusion we wish to commend your staff and in particular, Mr. David Tacy, for the professional manner in which the audit was made.

Very truly yours,



John S. Malone
Secretary

JSM:ss

THE COMMITTEE OF BAR EXAMINERS

OF THE STATE BAR OF CALIFORNIA

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SAN FRANCISCO 94111
Telephone (415) 982-6626



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Reply to:

- LOS ANGELES
 SAN FRANCISCO

December 7, 1977

TO: Director, Financial Affairs
FROM: Director, Committee of Bar Examiners
SUBJECT: Draft Report of the Office of the Auditor General
re Management Review of the State Bar of California -
December 1977

Dear Mr. Gillis:

Copies of those sections of the subject report pertaining to the Committee of Bar Examiners have been distributed to the members of the Committee for their review. Unfortunately, time constraints have precluded formal consideration of the report by the Committee. Nevertheless, we thought that we should take advantage of the Auditor General's invitation to comment on pertinent sections of the report lest silence be interpreted as agreement. The Committee therefore authorized me to comment on the report. The comments which follow are my own and may not accurately reflect the views of the Committee or even include all comments which the Committee might wish to have made.

The report deals with three areas of particular interest to the Committee. They are:

1. Registration of law students,
2. Late filing fees, and
3. Reappraisal of bar examination answers.

Comments on those sections of the report will be made in that order. Before proceeding to the individual sections, however, I wish to comment on one matter which, from the text of the report, seems to have some bearing on and may be central to the recommendations regarding Registration of Law Students and late filing fees. Both of those sections contain recommendations which would reduce or eliminate the

- Appendix 1 -

total amount of fees collected by the Committee in connection with particular activities of applicants or prospective applicants. In both sections of the report, there appears to be substantial emphasis on the fact that the Committee had a 1976 surplus of \$194,823 from the current fee structure. That surplus resulted in substantial part from the fact that the increase in the number of applicants during that year was much larger than anticipated. Such an unprecedented increase in applications is not likely to recur in the foreseeable future. Present projections indicate that the surplus generated by the Committee in 1977 will be less than one-half the 1976 amount and that, absent an increase in fees, the expenses to administer the admission requirements for the two year period 1978-1979 will substantially exceed the fees collected during that period. Even if the increases in some fees now proposed to become effective in 1978 are adopted and the revenue from registration and late filing fees continues as under the current system, we anticipate that it will be necessary to use part of the surplus accumulated in 1976 and 1977 to defray expenses during the 1978-1979 period.

1. Registration of Law Students

With regard to the registration of law students, the draft report concludes that requiring law student registration and fees from students of accredited law schools is not justified because there is minimal administrative value in requiring such registrations and that the few students in such schools who should be notified of special requirements can be identified in a less expensive manner. The report, therefore, recommends a revision to the Business and Professions Code to exempt law students in accredited law schools from their registration requirements. The anticipated benefits would be the elimination of the need for registration fees from most law students and a reduction in the State Bar's administrative expenses.

There are certain advantages to the present system which would be lost if the recommendation is followed.

First, the present system provides a direct contact between the Committee and the great majority of law students immediately after their commencement of law study. This provides a direct method of communicating the educational and other requirements for admission to practice to the students at an early stage. Elimination of the requirement for students from accredited law schools would in fact reduce the State Bar's administrative expenses to some

extent, but would do so by shifting the burden to the law schools. Further, in those instances in which applicants who had failed to meet the requirements claimed that they were unfamiliar with them, the Committee would be forced to rely on the records of the law schools rather than its own to determine whether good cause existed for granting certain types of requests such as petitions for excess law study credit, etc. if the student did not take necessary examinations in the normal course.

Second, while the administrative expenses of processing registrations from individual law students would be reduced, administrative expenses of reviewing the records of the law schools to ensure compliance with the rules would be increased.

Third, that class of registrations under the current system which are most expensive to process are those from students at unaccredited law schools, those studying by correspondence, etc. where there are often questions regarding the pre-legal education of the registrant. The cost of reviewing these registrations is now offset by the lower cost of processing registrations from students in accredited law schools. If the latter category of registrations were eliminated, the registration fee for those students still required to register would be increased.

Fourth, there are substantial costs involved with answering inquiries from prospective law students who may or may not become law students and register with the Committee, distributing copies of the rules to those who request them, etc. At present, those costs are at least partially absorbed through the registration fees paid by substantial number of registrants. These costs would continue even with the recommended change in the registration requirements and if the recommendation is adopted, such costs would then have to be borne either by the smaller number of registrants or by those who subsequently apply for the various examinations administered by the Committee. The present system, by spreading these costs over a larger base, may be a more equitable method of defraying them.

Fifth, in the past, when legislative changes have been made regarding the requirements for admission to practice law, those who had previously registered as law students have generally been exempted from the changes to the requirements. The Committee has been able to rely upon its own records to determine which applicants are and which are not exempt from such changes. The elimination of the registration requirements would eliminate this possibility for any future changes.

As indicated in the general comments above, it is not anticipated that the current or proposed fee structure will again generate a surplus of the magnitude of that in 1976. To the extent that the loss of revenue from registrations exceeded the amount by which administrative expenses might be decreased, additional revenue would have to be generated by further increasing remaining registration fees or other fees. In determining whether the recommendation for the elimination of some registrations should be supported or opposed by the Committee and the State Bar, I believe the Committee will wish to consider the question whether the opportunity to affect a relatively small savings in administrative expense by eliminating the registration requirement for some law students is outweighed by other considerations listed above.

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1/ Comments deleted refer to items shown in draft report but not included in this report.

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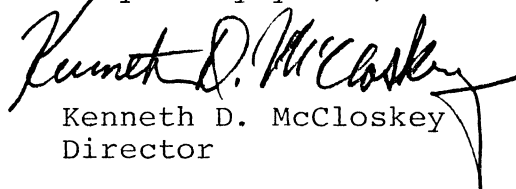
1/ Comments deleted refer to items shown in draft report but not included in this report.

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3. Reappraisal of Bar Examination Answers

As is indicated in the draft report, the Committee of Bar Examiners is currently studying methods by which the reappraisal process might be improved. In determining whether changes such as those suggested in the report will be made, I believe that the Committee will have in mind the fact that the current system has previously been approved by the Supreme Court. I believe that some change in the reappraisal system is probable and, while any such change would probably be consistent with the recommendation on page 22, it would not necessarily involve the reappraisal of an equal margin of scores above and below the passing level as suggested on page 21 on the report.

Very truly yours,


Kenneth D. McCloskey
Director

KDM:ns

1/ Comments deleted refer to items shown in draft report but not included in this report.

DESCRIPTION OF STATE BAR ADMISSION PROCEDURES

Procedures for admission to the State Bar of California are governed by Sections 6060-6068 of the Business and Professions Code, and by Rules Regulating Admission approved by the Board of Governors. The following description is based on our review of these authorities and on interviews with staff of the State Bar Committee of Bar Examiners, which administers the admission process.

Admission procedures are normally initiated with the registration of applicants when they begin law study or when an attorney from outside California applies to take the California examination. The majority of applicants apply as law students, and the admission of these "general applicants" is discussed below.

To be admitted to the California Bar, a general applicant must normally:

1. Have the equivalent of two years of college education prior to beginning the law study
2. Register with the Committee when he begins law study
3. Attend a law school accredited by the Committee, or pass a First Year Law Students Examination administered by the Committee at the end of the first year of law study

4. Graduate from a law school accredited by the Committee, or complete at least four years of other specified law study
5. Make appropriate applications and pass a Professional Responsibility (ethics) Examination and a General Bar Examination administered by the Committee
6. Satisfy the Committee that he is at least 18 years old and of good moral character.

Each applicant must submit a minimum of three separate application forms (to register as a law student, to apply for the Professional Responsibility Exam and to apply for the General Bar Examination). The minimum total fees for timely application and admission is \$131 (excluding \$65 of first year State Bar membership dues). The Committee's clerical staff processes the necessary forms and fees in either the State Bar's San Francisco or Los Angeles office, depending on where the applicant files.

The Committee administers the General Bar Examination each February and July in at least San Francisco and Los Angeles. The exam consists of two parts: a multiple-choice test prepared by the National Conference of Bar Examiners and a battery of essay questions developed by the Committee for each exam from draft questions solicited from out-of-state law professors and previous exam graders (California attorneys).

The multiple-choice part of the exam is graded by computer. The essay part is graded by California attorneys selected by Committee staff from those who have passed the exam at least one year prior and who passed the exam the first time they took it. An applicant must score at least 70 percent of the possible combined points from both exam parts to pass. Applicants scoring less than 70 percent, but at least about 66.5 percent, have their essay answers regraded by a veteran panel of graders.

In the 30 exams given between 1961 and 1975, 53.5 percent of examinees passed. This pass rate has remained fairly stable over the years. Beginning with the July 1977 exam, applicants may carry forward for 21 months credit for passing either part of the exam.

The Committee staff investigates each applicant's moral character by contacting sources whose names are provided by the applicant. If it appears possible that an applicant may not meet the Committee's criteria for moral character, the staff may conduct a more intensive investigation once the applicant has fulfilled all other admission requirements. If the Committee staff questions the applicant's fitness, a hearing may be held. About 15 such hearings are held each year by hearing subcommittees, consisting of three California attorneys appointed by the Board of Governors. A subcommittee's report is reviewed by the Committee for decision.

Once an applicant fulfills all admission requirements, the Committee so notifies the Supreme Court, which enrolls the new attorney. Any applicant who is denied admission may appeal to the California Supreme Court for review.

DESCRIPTION OF DISCIPLINARY PROCEDURES

State Bar procedures for disciplining California attorneys are governed by Rules of Procedures established by the State Bar Board of Governors. The following description is based on our review of these rules and on interviews with State Bar disciplinary staff.

The State Bar's disciplinary procedures are initiated from citizen complaints about attorneys and State Bar actions against member misconduct or members convicted of selected crimes. The majority of disciplinary activity arises from citizen complaints, which are processed as follows.

Citizen complaints are acted on by the State Bar's Discipline Enforcement Department in its San Francisco or Los Angeles Office, depending on whether the alleged misconduct or allegedly errant attorney is in Northern or Southern California. After the complaint is registered, an acknowledgement letter is mailed to the complainant, and the complaint is assigned to one of the Department's staff attorneys for review.

The staff attorney considers whether the allegations appear meritorious and whether the alleged misconduct is within the State Bar's disciplinary authority. State Bar members may be disciplined only if they violate the State Bar Act or the State Bar's Rules of Professional Conduct. If the issue is only a misunderstanding or an

honest mistake, the State Bar has no jurisdiction. Fee disputes between attorneys and their clients are also outside the State Bar's disciplinary power unless the attorney's fee would shock the conscience of other attorneys in the same community. Factors considered in determining the reasonableness of an attorney's fee include the difficulty of the service, the attorney's experience and reputation, the amount of money involved in the legal action, the attorney's success on behalf of his client and the client's informed consent to a fee agreement.

If the State Bar staff attorney determines that a complaint either involves undisciplinable conduct or is not meritorious, he sends a letter describing his conclusions to the complainant. If a complainant is unsatisfied with the disposition of his complaint, he may appeal for review by the Board of Governors.

If the staff attorney determines that a complaint may be meritorious and within the State Bar's jurisdiction, he will usually correspond with the complainant and other witnesses to acquire specific evidence of the alleged misconduct. One of the State Bar's staff investigators may be used to obtain court documents or other records, or to interview witnesses. Once the staff attorney has developed a sufficient file of specific evidence of misconduct, he requests the accused attorney to explain his behavior.

If the accused attorney does not respond or his response does not satisfy the staff attorney, he will request the State Bar's Discipline Administration Department to arrange for an Investigation Committee hearing. This Department acts as a court clerk to schedule disciplinary hearings and assign hearing judges, independent of the Discipline Enforcement.

An Investigation Committee hearing is official, but informal; the proceedings are not public and are not recorded. This hearing provides an opportunity to explore the issues more thoroughly. An independent State Bar member appointed by the Board of Governors acts as a volunteer (unpaid) hearing judge to decide whether there is sufficient basis to bring formal charges against the accused.

Beginning in 1976, an Investigation Committee judge may "admonish" an accused attorney for minor misconduct which would probably not constitute disciplinable offenses. Such admonishments are not publicized, but a case can be reopened if an admonished attorney engages in further misconduct within two years after the admonishment.

If formal charges are brought against the accused, a formal hearing will usually be held, with evidence and witnesses presented and cross-examined. Unless otherwise requested by the accused attorney, formal hearing proceedings are not public, but a formal record is made.

A separate panel of three volunteer (unpaid) referees presides at the formal hearing of each disciplinary case. The referees are assigned from a pool of attorneys and non-attorneys appointed by the Board of Governors. Each referee panel must include at least two attorneys.

After the formal hearing, the referee panel prepares a proposed set of findings and recommended discipline (or dismissal of the charges), which becomes the final State Bar action if neither the Discipline Enforcement Department nor the accused requests an independent review of the decision.

If a review is requested, the parties to the formal hearing meet with a three-member Advisory Review panel selected in a similar manner as the referee panel. This review is not binding on the initial referees' decision, but a new hearing may be called if enough panelists disagree with the original decision and if the independent Presiding Disciplinary Referee so orders.

If Advisory Review is not requested or if the original decision is upheld, a decision to dismiss the case or to publicly or privately reprove the accused attorney may be implemented immediately. A decision to suspend or disbar an attorney is only a recommendation to the California Supreme Court, which alone may impose the strictest discipline. The accused attorney may also appeal a public or private reproof to the Court, whose disposition of disciplinary cases is final. If such a case goes before the Court, the State Bar's case is presented by the General Counsel Department instead of Discipline Enforcement Department.

Office of the Auditor General

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
Secretary of State
State Controller
State Treasurer
Legislative Analyst
Director of Finance
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
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