



PRESIDENT'S PAGE

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This, That, and the Other

This month's column is focused on recent developments that affect all California lawyers. I have communicated much of this by email, but I wanted to once again alert our members to these important issues.

New Professional Conduct Rules

The New Rules of Professional Conduct take effect November 1, 2018. The State Bar website has a link to the new rules with a cross-reference table of current-to-new rules, new-to-current rules, and new rules-to ABA model rules.

At the time of this article's publication, the OCBA will have hosted a three-hour seminar on the new rules. Look for the sections to provide CLE on the most significant rule changes over the next few months.

Legal Malpractice Insurance Study

The State Bar formed a committee to undertake a statutorily (B&P Code § 6069.5) mandated study of legal malpractice insurance issues as follows:

- Availability of lawyers' professional liability insurance;
- Measures for encouraging attorneys to obtain such insurance;
- Adequacy of the current insurance disclosure rule; and,
- Advisability of mandating attorneys obtain professional liability insurance.

The committee is considering the following options (public comment is open until November 5, 2018):

- Amending rules requiring attorneys to disclose to clients the lack of malpractice insurance (options: (a) requiring attorneys to disclose to the State Bar whether they have malpractice insurance; (b) requiring written client acknowledgement of attorney's disclosure of no insurance; (c) requiring attorneys disclose on all written client communications, on websites and advertising the lack of insurance; or (d) no change);
- Mandating malpractice insurance for attorneys as a condition of licensing, except in-house counsel and government attorneys;
- Developing a Continuing Legal Education or Practice Management program providing interactive self-assessment of law practice operations to assess malpractice liability; and
- Promoting voluntary purchase of insurance by educating attorneys on the benefits and/or educating the public about the significance of an attorney not having coverage.

Attorney Fingerprinting

Under Rule of Court 9.9.5, all active attorneys licensed in California must be re-fingerprinted by April 30, 2019. Failure to do so may subject the attorney to penalties. The OCBA has set up Live Scan fingerprinting days offered at a discount for OCBA members: November 12, November 27, and December 10.

State Bar Changes

The overall structure and mission of the State Bar and its relationship to attorneys have significantly changed this past year. The State

Bar is now primarily a consumer protection organization. A new and separate entity, the California Lawyers Association (CLA), has taken over the practice area sections and some of the other functions previously performed by the State Bar, e.g., conducting an annual conference. The State Bar remains a mandatory bar, while the CLA is voluntary with membership open to all California lawyers, lawyers from other jurisdictions, or anyone else interested in joining.

The State Bar's new mission is primarily regulatory, and includes the functions of licensing, regulation, and discipline of attorneys; the advancement of the ethical and competent practice of law; and support of efforts for greater access to, and inclusion in, the legal system. There are no longer elected positions for attorney members to the Board of Trustees of the State Bar of California. The thirteen-member Board of Trustees consists of five attorneys appointed by the California Supreme Court, two attorneys appointed by the legislature, and six public (non-attorney) members (four appointed by the governor, one by the Senate Committee on Rules, and one by the Speaker of the Assembly).

On September 14, 2018, the State Bar Board of Trustees met and considered recommendations from the State Bar staff with respect to several of the remaining standing committees and programs of the State Bar. The recommendations were aimed at reducing the number of, or even eliminating, volunteer attorneys who traditionally served on these committees in favor of shifting the functions of these programs and committees to the State Bar staff. Most of the staff recommendations were accepted, with the exception of the staff recommendation to eliminate the certification of legal specializations because such certifications are primarily "marketing" for attorneys and are not necessary for the protection of the public. The Board of Trustees voted that, for the time being, legal certifications will continue as part of the State Bar, with various revisions to take place over time. Finally, it appears the Legal Assistance Program (LAP) will no longer accept voluntary participants, who for years have been able to seek help with substance abuse and other issues. The specifics are still being considered, especially as to how the program will operate for involuntarily referrals in connection with admissions and discipline.

The State Bar Board of Trustees is scheduled to meet in November and will likely deal with many of these issues.

The OCBA is dedicated to assisting its members and will keep our members apprised of the ongoing changes that affect the practice of law.

The instructions regarding re-fingerprinting of attorneys, the Request for Public Comment regarding the legal malpractice issue, and the agenda (Appendix I) for the State Bar Board of Trustees meeting relating to the State Bar programs and committees can all be found on the State Bar's website at www.calbar.gov. Also, feel free to contact me for additional information.



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