

Legislators Put Off Bar Dues Debate

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SACRAMENTO — Legislators Wednesday debated details of a massive proposed State Bar dues increase to finance an improved lawyer discipline system, but any consensus on the increase — which will raise the annual dues of most lawyers to \$470 in 1989 — appears weeks away.

A lengthy, sometimes heated hearing of the Subcommittee on the Administration of Justice of the Assembly Judiciary Committee left numerous key issues unresolved as harried legislators attempted to reach agreement on major, costly changes in the Bar's attorney disciplinary system.

On the heels of a legislative analyst's report Tuesday, which recommended major reductions in the Bar's proposed fee increase, the Judiciary subcommittee session avoided the subject of money altogether — by considering only "policy" recommendations contained in SB 1498 by Sen. Robert Presley, D-Riverside, and postponing consideration of AB 4391, by Assembly Speaker Willie Brown, D-San Francisco, which will contain all the funding for the policy recommendations.

Subcommittee Chairman Lloyd Con-



LLOYD CONNELLY: "We could end up with no discipline system."

nelly, D-Sacramento, expressed concern during Wednesday's hearing about separating the financial and policy aspects of the Bar dues increase. Connelly said the two bills must be considered as a package or they could fail individually in the Legislature or be vetoed singularly by Gov. George Deukmejian.

"Otherwise, we could end up with a mandated disciplinary system with no fee structure," Connelly said, "or we could

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end up with the fee structure and no discipline system. I'm concerned about it, because these two bills are inextricably intertwined."

Both bills were to be considered Wednesday by the full committee — a critical juncture in the controversial fee/discipline proposals — but just before the meeting, the Brown funding bill was postponed until May 4. After considerable debate Wednesday, the Presley bill was also postponed until May 4, but will be thoroughly examined in at least one legislative hearing on the matter as early as next week.

The lengthy, complicated Presley bill attempts to incorporate the recommendations of Bar Discipline Monitor Robert Fellmeth, a University of San Diego law professor.

In its report issued Tuesday, the Legislature's fiscal analyst said it could not approve major dues increases for the discipline program — called "discipline enhancements" in the legislation — because complete information and justification for the increases were not provided by the Bar.

AB 4391 proposes member fee increases of \$30 in 1989 and \$35 in 1990, while the discipline enhancement would increase those fees by \$145 in 1989, \$113 in 1990 and \$118 in 1991.

"Due to lack of information and justification, we are not able to recommend funding for those discipline enhancements which go beyond those recommended by the discipline monitor," the analyst concluded.

The analyst identified \$2.1 million in annual costs and \$6.1 million in one-time costs as exceeding the funds necessary to implement Fellmeth's recommendations.

Bar officials had no immediate response to the analyst's report, which they received late Tuesday and were studying Wednesday.

The Presley bill would eliminate the current "inefficient system" of using more than 450 volunteer attorneys as judges in the discipline system. Under the bill, eight to 10 professional hearing judges would be appointed by the California Supreme Court to hear and decide attorney discipline cases.

The measure also would revise the discipline review department — the appellate arm of the discipline system. The department would be altered under the legislation from the current panel of 12 attorneys and six citizens to a panel of professional judges. Only decisions dis-

puted or appealed by complainants or by respondent attorneys would be reviewed by the new department.

In other provisions, the measure would:

- Codify the Bar's authority to suspend an attorney who fails to respond to a notice to show cause in a timely fashion.

- Clarify the "interim suspension" authority of the Bar and shift the burden to the attorney to show "unlikely recurrence" after a showing by the Bar of "the likelihood of substantial harm" to three or more different clients.

- Give the Bar the authority to enforce Supreme Court orders against attorneys after resignation or disbarment.

- Make the unauthorized practice of law a "wobbler" — a misdemeanor or a felony depending on the circumstances.

- Require notification to criminal prosecutors when criminal acts are uncovered in Bar investigations. Bar officials say they take such action under current policies, but the Presley bill would make that practice mandatory.

- Strengthen the Bar's ability to detect possible attorney misconduct through a variety of increased reporting procedures and provide that a disciplined attorney cannot be reinstated until the client security fund has been reimbursed for moneys paid because of the attorney's theft, dishonesty or fraud.

- Modify existing self-reporting requirements by requiring attorneys to report instances of ordinary negligence and incompetence (rather than gross negligence or incompetence) to the Bar.

Judiciary Committee Chairman Elihu Harris, D-Oakland, expressed serious reservations about "institutionalizing" the proposed discipline process and said parts of it should be started on a trial basis.

"I think the concept of the ALJs [administrative law judges] is a good one, rather than volunteers," he said, "but I don't think we should put in a system that is locked in and may not work. If you set up an appellate body, we don't know if it's necessary, and we don't know what the workload will be. We're creating a new system of discipline, and I think we should do it in a methodical way."

Bar President Terry Anderlini responded that the Bar "is in support of the concept" of the Fellmeth-recommended system of administrative law judges and appellate review. "It can be done in a variety of ways," he said. "If you want to phase it in, we can phase it in, but it will take longer. If we do that, I would ask for patience and tolerance."