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### Mock Trial Competition Volunteers Needed

The 1984 Moch Trial Competition will be underway in February and volunteers are again needed to act as team coaches or judges. Coaches assist high school teams in preparing their cases and judges either preside at or evaluate team performance at competition trials. This year's trial is a murder case. If you would like to act in either capacity, please contact the New Mexico Law-Related Education Project at 842-6136 or 1-800-243-4694.

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# News Briefs

## Disciplinary Action

A homeowner undertook to sell her home without a realtor to save the cost of commissions. When a buyer was found the homeowner's attorney drafted a sales agreement for his client the seller which was duly executed by both parties. The agreement called for \$100.00 payment upon execution and \$10,000.00 paid on the date of closing. The parties contemplated that the buyer would assume the existing mortgage. On the date of the closing the mortgagee's approval of the assumption had not yet been obtained. Pursuant to an oral agreement between the parties, the buyer was allowed to take possession of the premises and gave the seller's attorney the \$10,000.00 payment to be held by him in escrow until the closing.

The sale ultimately was not consummated due to the mortgagee's refusal to approve an assumption of the mortgage by the buyer. When the buyer demanded that her \$10,000.00 be returned, the attorney refused unless the buyer agreed to the deduction of the moving and storage expenses incurred by the seller, an amount for rent for the period the buyer had lived in the house, and the attorney's fees incurred by the seller. The attorney mentioned to the buyer that his clients could demand the forfeiture of the entire \$10,000.00.

The complaint of the buyer against the seller's attorney was originally viewed by Bar Counsel as a possible violation of Disciplinary Rule 7-102 (A)(2) which prohibits an attorney from advancing a claim unwarranted under existing law. This analysis was based upon the conclusion that the \$10,000.00 was not earnest money and that the failure to complete the transaction was due to the non-occurrence of a condition precedent, the condition precedent being the mortgagee allowing the buyer to assume the existing \$50,000.00 mortgage. Under this analysis there was no willful breach and, therefore, the seller was not entitled to damages. Bar Counsel, however, concluded that the attorney had acted under a good faith belief that his client was entitled to damages and that the attorney legitimately could have argued issues of law and fact concerning damages. Accordingly, it was felt that there was no violation of DR 7-102 (A)(2).

Bar Counsel and two Reviewing Officers concluded, however that when the attorney continued to retain the buyer's \$10,000.00, (after the closing did not occur and in the face of demands from the purchaser

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**NEWS AND VIEWS**

February 2, 1984

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<b>Disciplinary</b>		
<b>Action</b>		
<p><i>(continued from page 2)</i></p> <p>for the return of her money), he acted improperly. When the sale did not occur, the attorney was placed in the untenable position of representing his client (who wished him to retain the \$10,000.00 as a bargaining lever against the buyer for the seller's out-of-pocket expenses) and acting as an escrow agent holding money for which a proper demand had been made.</p>	<p>His obligation to act in his client's best interests and retain the \$10,000.00 to the detriment of the purchaser was superceded by his duties as an escrow agent. The public is willing to use attorneys as escrow agents precisely because they have trust that attorneys will act in accordance with the terms of the escrow. This attorney's decision to ignore his duties as an escrow agent was wrong and damaging to the entire bar.</p> <p>The attorney was offered an informal admonition on the</p>	<p>condition that he acknowledge in writing that his conduct had adversely reflected on his fitness to practice law in violation of Disciplinary Rule 1-102 (A) (6). The attorney accepted the offer and was informally admonished pursuant to Rule 8 (b)(3)(iii) of the Supreme Court Rules Governing Discipline and Rule 9 of the Supreme Court Disciplinary Board Rules of Procedure.</p> <p style="text-align: center;">*</p>

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