

State Bar Of New Mexico

(505) 842-6132
In-State Wats: 1-800-432-6976

Robert N. Hilgendorf, Bar President
Judy Zanotti, Executive Director
Karen Klett, Editor
Veronica C. Trujillo, Advertising

Richard Montoya, Printer
Steve Smith, Printer's Assistant

Contributions to News and Views
are welcome, but the right is reserved
to select material to be published.

Unless otherwise specified, publication
of any article or statement is not
deemed to be an endorsement by the
State Bar of New Mexico of the views
expressed therein nor shall publication
of any advertisement be considered an
endorsement by the State Bar of the
product or service involved.

Postmaster: Please send form 3579
to the State Bar of New Mexico,
1117 Stanford, N.E., Albuquerque,
New Mexico 87131.

Lawyers Oppose Medical Malpractice Bill

Sixty percent of lawyers in private practice oppose a bill that will be introduced in the 99th Congress to restructure the rules for medical malpractice suits. Only 23 percent favor the bill, and 16 percent are not sure.

The bill would allow doctors and hospitals to make settlement offers to claimants, within 180 days of the injury, for net economic losses. The injured patient who received the offer would not be able to sue for non-economic losses, like pain and suffering, and the defendant would be obliged to cover the pa-

tient's economic loss as long as the injury persisted.

These results stem from a LawPoll survey conducted for the *American Bar Association Journal* by the New York City public opinion research firm of Kane, Parsons & Associates.

Among the lawyers who oppose the medical malpractice bill, 79 percent believed that it would unfairly restrict the scope of damages an injured patient could recover. Twenty-one percent thought it would lower the standard of care for doctors in malpractice suits and 12 percent thought it would encourage patients to make claims that they would not otherwise litigate. Only 3 percent said they opposed the bill because it would reduce their income.

The 23 percent who favor the bill were less unanimous in their reasons, although each of four arguments in favor was selected by more than a third.

Forty-one percent thought compensation would be quicker under the legislation, 39 percent thought that more injured patients would be paid for their economic losses and that the amount of medical malpractice litigation would be reduced, and 36 percent said the bill would reduce the overall cost of the insurance system. Two other arguments were each chosen by 24 percent: compensation would be more adequate and insurance premiums would stabilize.

The bill received more support among lawyers age 55 and over, lawyers spe-

cializing in business law and those in the West.

Disciplinary Note

An attorney who represented a defendant in a criminal case gave a statement to a newspaper reporter shortly after the client's indictment by a Grand Jury. The information provided by the attorney, which was ultimately published, indicated that the attorney had reviewed the police file and record of the Grand Jury proceedings but felt that no crime had been committed by the client.

Disciplinary Rule 7-107 (8) (C) provides that a lawyer associated with the prosecution or defense of a criminal matter shall not, from the time of the filing of an indictment until the commencement of the trial, make or participate in making an extra-judicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to any opinion as to the guilt or innocence of the accused, the evidence or the merits of the case.

Bar Counsel and a Reviewing Officer felt that the attorney's comments to the press violated Disciplinary Rule 7-107 (B) (6) in that it constituted an opinion on the client's innocence or upon the evidence in the case or both.

While the Disciplinary Board is aware that attorneys enjoy the same First Amendment rights as other citizens, courts have almost

(continued on page 4)

Disciplinary Note

(continued from page 2)

uniformly upheld the right of attorney licensing agencies to discipline attorneys for comments on pending litigation which might prejudice the fair administration of justice. This is especially true in criminal cases, and defense attorneys as well as prosecutors are obligated to refrain from making comments which could be interpreted as opinions concerning the guilt or innocence of the accused or relating to the evidence in the case.

The Disciplinary Board concluded its investigation with a letter of caution issued pursuant to Rule 11(a) (7) of the Supreme Court Rules Governing Discipline. □

BBC Meeting

(continued from page 1)

and revised Article 9 of the UCC, with no position taken on the filing requirements.

General Legislative Policies

President Hilgendorf reported that Jerry Wertheim and Tom Horan are co-chairs of the State Bar's Legislative Committee for the year. The co-chairs have recommended several lawyer-legislators for membership on the Committee, and will present at the January Board meeting areas of interest to the Bar regarding upcoming legislation. The Bar's Legislative Policy will be reviewed and sent along with the Long Range

Plan to members of the Legislative Committee. It was suggested that local bar associations meet with the judiciary to discuss areas of legislation that need support from the Bar and that President Hilgendorf contact New Mexico lawyer-legislators to indicate the Bar's willingness to assist them.

Supreme Court Meeting Report

The Supreme Court is in favor of mandatory arbitration and will support legislation which will establish that project by Court rule rather than by legislative action. The Court asked for the Bar's help in getting funding for the program from the Legislature.

The Court stated that it is not the Court's desire that inactive status members must re-take the Bar Exam to return to active status. The Court informed the officers that it would handle requests for reinstatement to active status rather than the Board of Bar Examiners. In response to this, the Board proposed an amendment to Article II, Section 2.2 of the State Bar Bylaws which reads:

To resume active status, A Petition for Reinstatement will be required for presentation to the Board of Bar Examiners.

The amended Bylaw would read:

. . . for presentation to the Supreme Court.

The proposed Bylaws

amendment will be voted on at the January Board meeting.

The Supreme Court rule regarding the experienced attorneys exam was eliminated, and effective October 1, 1984 all attorneys are required to take the full Bar Exam. The Court agreed to allow the Bar to solicit comments from members for a period of approximately 45 days before future rule changes become effective.

The Court reviewed the State Bar's budget for 1985, and agreed to the possibility of incorporating Prepaid CLE into the CLE program this year if the BBC approved of this concept.

National Council on Alcoholism Seminar

The Executive Committee approved the co-sponsorship of an annual seminar by the National Council on Alcoholism which involves the sending of the seminar brochure to State Bar members at an approximate cost of \$200.

1986 Annual Convention

The Board passed a motion to hold the 1986 Annual Convention at the Inn of the Mountain Gods, Ruidoso, on October 8-12.

Appointments

President Hilgendorf reported on three appointments; Phil Higdon to the Institute of Public Law Advisory

(continued on page 5)