

## Albuquerque Attorney Celebrates 75th

On May 18, William Wilder Atkinson of Atkinson & Kelsey, P.A. celebrated his 75th birthday.

Mr. Atkinson has practiced law in the Albuquerque area since his admission to the New Mexico bar in 1948. Since that time Mr. Atkinson has made considerable contributions to the Albuquerque community through his membership in the Albuquerque City Commission, the City of Albuquerque Personnel Board, the Albuquerque Human Rights Commission, the Governor's Task Force on Municipal Financing, the UNM Governance Advisory Committee, the Albuquerque City Council, Albuquerque - Bernalillo County Economic Opportunity Board, and is one of its former presidents.

Mr. Atkinson was also a trustee for the Bernalillo County Mental Health and Mental Retardation Center.

He has served on the Board of Directors for Goodwill Industries, the Executive Committee for the Presbyterian Hospital Foundation, the Board of Directors of the New Mexico Chapter of NCCJ, and as Director of the UNM Alumni Association.

Mr. Atkinson claims membership in the Albuquerque and national bar associations and the Albuquerque Lawyer's Club as well as formerly acting as president of both organizations.

For his outstanding contributions Mr. Atkinson was

made the 1972 recipient of the NCCJ Brotherhood award. He has also been honored by membership in the Order of the Coif, and by inclusion in Who's Who in American Law and Who's Who in the West. □

## Alumni Breakfast

A joint alumni breakfast is being planned during the upcoming 1985 Bar Convention for graduates of law schools in Texas other than the University of Texas. If you would be interested in attending such a breakfast, please contact John E. Farrow, (St. Mary's '78) breakfast organizer, at 243-9744, P. O. Box 26387, Albuquerque, New Mexico 87125. At least ten reservations will be necessary to make this event feasible. Cost is estimated between \$6 and \$8. □

## Disciplinary Note

A man was arrested on a charge of criminal sexual contact with a minor and, after posting a bond, was released from custody pending further investigation. He hired an attorney, who also proceeded to conduct an investigation. The attorney found evidence which caused him to believe that the charges against his client were groundless and might have been maliciously instigated by the mother of the alleged victim who apparently bore some type of grudge against the client. He also concluded that his client might have a basis for a civil suit against various state agents for false arrest and negligent prosecution and against the victim's mother for defamation.

Although the criminal investigation against his client had not been completed, the attorney notified the State of New Mexico, the District Attorney's office, and the mother of the alleged victim that his client intended to pursue tort actions against them. The matter was referred to the Disciplinary Board by the District Attorney, who wondered whether this might not be a tactic which was somehow prohibited by the Code of Professional Responsibility.

The facts of the case were examined with reference to Disciplinary Rule 7-109(a) which prohibits an attorney from suppressing any evidence he has a legal obligation to produce, and 7-109(b), which directs that an attorney should not cause a person to secrete himself or to leave the jurisdiction for purposes of making himself unavailable as a witness. While the actions of the attorney fell outside the literal context of these rules, case law shows that courts have imposed discipline where evidence suggests that an attorney has acted with an intent to deprive the court or the opposing party with access to critical evidence.

A reviewing officer studied the file and concluded that the "checkmate" suit of this type was not per se violative of Rule 7-109 but could be if the threatened lawsuits had no basis in fact or law. Disciplinary Rule 7-1902 (a) (1) prohibits an attorney from asserting any position merely to harass another. In that the facts as presented could

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## Disciplinary Note

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conceivably give rise to a good faith basis for a civil cause of action and thus the attorney appeared to have a reasonable basis for this belief that such a cause of action existed, it could not be said that he was acting without justification or with the intent either to deprive a party of evidence or to harass another. No authority could be found for the proposition that the attorney had an obligation to wait until the criminal proceedings were resolved before notifying the potential defendants in the civil action that he intended to proceed against them on behalf of this client.

The entire situation was also analyzed in the context of Disciplinary Rule 7-105(A), which prohibits an attorney from threatening to present criminal charges solely to obtain an advantage in a civil matter. The key word in this type of case is "solely." Presenting or threatening to present valid criminal charges while simultaneously handling a related civil matter has been held not to violate this rule unless the threat was made exclusively to gain an advantage in the civil case. See Decato's Case, 379 A.2d 825 (N.H. 1977). Although the complaint in this instance presented a converse set of facts, the rationale of Decato seemed applicable.

For all of these reasons, the reviewing officer concurred with a dismissal of the complaint. □

Section A

## BBC

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recommended the addition of the language ". . . from a litigant presently before him in a case or from attorneys." The section now reads:

Solicitation. A judge or candidate for judicial office shall not personally solicit funds for any political campaign for any other candidate from a litigant presently before him in a case or from attorneys. A judge or candidate, in his own campaign, shall not personally solicit from a litigant presently before him in court or from attorneys.

After making these changes the Board agreed to support the proposal presented by the Committee appointed by the Supreme Court to revise the Code. President Hilgendorf then reported that the Supreme Court was not willing to adopt the Unauthorized Practice of Law Committee proposal as drafted. After some discussion, the Board passed a motion that the UPL Committee re-draft a proposal to regulate the unauthorized practice of law through the Board of Bar Commissioners based upon the mandate contained in Rule 1. President Hilgendorf further reported that the Supreme Court had approved the proposed amendment to assess new members' dues on a pro-rata basis. The Board approved the amendment. The Supreme Court also, approved the amendment to the State Bar Bylaws regarding the petitioning by inactive members to the Supreme

Court, rather than the Board of Bar Examiners, to resume active status. The Court also approved a Rule regarding notification to the Bar prior to adoption of certain proposed rules affecting attorneys. At the request of the Supreme Court recommendations for appointments to the Specialization Board were solicited from the Commissioners as the Court intends to re-activate the Board. Discussion was then held concerning the viability of publishing the headnote and indexing service.

### SECTIONS' REQUEST FOR BOARD OF BAR COMMISSIONERS' RECONSIDERATION OF ITS POLICY ON SECTION ADVOCACY

The Board agreed to postpone further discussion concerning section advocacy until the June 14 and 15 meeting.

### CORPORATION, BANKING AND BUSINESS SECTION BYLAWS AMENDMENT

The Board approved a proposed amendment to Section 6.3 of the Section's By-Laws allowing Board members present physically or telephonically to vote in order to conduct its business. It was further agreed to include the amendment in the Section Model Bylaws.

### REPORT ON PROPOSED LEGISLATION REGARDING FEDERAL PEREMPTORY CHALLENGE

Recent correspondence sent

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