

State Bar Of New Mexico

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

Robert N. Hilgendorf, Bar President
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Karen Klett, Editor
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Roberto Roibal, Printer

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

1985 Annual Convention

The State Bar of New
Mexico Annual Convention
will be held at the
Albuquerque Convention

Center September 12-14.
As these dates coincide with
the New Mexico State Fair,
attorneys are advised to
make early reservations at
one of the following hotels
which are holding rooms for
State Bar members. When
calling for a reservation, be
sure to mention that you
will be attending the State
Bar Convention.

The Regent Hotel

247-3600

\$55 for a single or double
\$65 for a triple or a quad

2

The Albuquerque Hilton
800-821-1901

(The following rates depend
on location of rooms.)

\$59 for a single
\$69 for a double

\$67 for a single
\$77 for a double

\$75 for a single
\$85 for a double

La Posada de Albuquerque

242-9090

Standard Rooms

\$42 for a single
\$50 for a double

Deluxe Rooms

\$55 for a single
\$63 for a double

IOLTA Receives IRS Ruling

New Mexico IOLTA has
received approval from IRS.
On July 10 IRS notified
Julie P. Neerken that the
New Mexico IOLTA program
has received the favorable
ruling it had requested.
This is the last of the
federal rulings needed
before implementation of
IOLTA can begin in New
Mexico.

Neerken says, "The ruling
states that banks will not
be obliged to send informa-
tion returns to IRS for
funds deposited in IOLTA
accounts, and that partic-
ipating law firms and their
clients have no negative tax
consequences because of the
program."

Director Patricia A.
D'Andrea has announced
plans to begin signing up
IOLTA participants at the
Bar Convention in Septem-
ber.

Disciplinary Note

A woman complained that
she had sought advice from
an attorney regarding a
divorce and had paid a
retainer fee. She further
alleged that she had
changed her mind almost
immediately and had so
advised the attorney,
requesting a partial refund
of the fee. She had re-
ceived no response from the
attorney.

While the Disciplinary Board
does not generally become
involved in fee disputes,
when it appears that the
fee may be excessive under
the circumstances, an
inquiry will be made. In
that the woman was alleging
that she had paid \$600.00
for a thirty minute meeting,
it seemed appropriate to
contact the attorney in
question.

The attorney responded and
provided documentation that
he had spent four (4)
hours interviewing the
woman and preparing plead-
ings which were in fact
filed prior to her decision
to reconcile with her hus-
band. His hourly fee for
the work of this type was

\$105.00, and the retainer
agreement indicated that the
complainant was aware of
and had accepted this
hourly rate.

The agreement also provid-
ed that the minimum fee to
be paid was \$780.00. The
attorney stated that \$100.00
of the \$600.00 he had
received was for costs and
offered to refund the
remaining \$50.00 in trust.
He contended, however,
that pursuant to the terms

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Section A

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*** Disciplinary Note**
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of the fee agreement he was entitled to an additional \$280.00 from the complainant as his minimum fee (although he did state that he was willing to forego the collection of any additional monies from his former client.) While disciplinary counsel is

not aware of any ruling to this effect by New Mexico appellate courts, courts in other jurisdictions have held that the charging of a minimum non-refundable fee in a divorce case would be violative of the public policy which is to encourage the stability of family units and thus would constitute an illegal fee in violation of Disciplinary Rule 2-106. The theory behind such

theory is that efforts at reconciliation might be hampered where one or the other of the parties has a financial investment (attorney fees) at stake and that courts should encourage the preservation of viable family units rather than promote their dissolution. This theory was advanced to the attorney as one which

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Continuing Legal Education

NEGOTIATION & SETTLEMENT

August 8 & 9, 1985 • The Classic Hotel, Albuquerque

- New Mexico and Federal District and Appellate Court Judges and Magistrates (Fee waived)
- \$50 Non-attorney Law Office Personnel
- \$95 Trial Practice Section Member
- \$100 Attorney + + +
- \$100 All Others
- Please register me as a member of the Trial Practice Section and apply \$5 of my registration fee to Section dues.

PLEASE COMPLETE:

- a sole practitioner
- b 2 - 5 Attorneys
- c 6 - 10 Attorneys
- d 11 or more Attorneys
- I was first admitted to practice law in any jurisdiction after December 31, 1981.

An additional \$10 will be charged to all those who register at the door.

ONE NAME PER REGISTRATION FORM, PLEASE!

NAME _____

ADDRESS _____

CITY/ZIP _____

PHONE _____

Mail with payment to: Continuing Legal Education, State Bar of New Mexico, P. O. Box 25883, Albuquerque, New Mexico 87125.
 Phone: In Albuquerque 842-6132. In-state WATTS 1-800-432-6976.

Please indicate below if you wish to have this program filed for accreditation in an mandatory CLE state (Alabama, Colorado, Georgia, Idaho, Iowa, Kansas, Kentucky, Minnesota, Mississippi, Montana, Nevada, North Dakota, South Carolina, Vermont, Washington, Wisconsin and Wyoming) Please apply for CLE credit in the State of _____

Disciplinary Note

(continued from page 4)

disciplinary counsel was willing to pursue.

The attorney had not considered the possibility that his fee agreement might be unethical and agreed to refund the portion of the fee which had not actually been earned by him. The file in the matter was closed, although the attorney was cautioned to revise his fee agreement as it pertained to any future divorce clients.

It should be noted that large retainers in divorce cases are not per se

violative of any rule of the Code of Professional Responsibility so long as it is made clear that unearned portions of the fee will be refunded in the event of the termination of the lawyer's services for any reason. Neither is it the policy of the Disciplinary Board to direct attorneys with regard to hourly fees which may be agreed upon with a client, so long as the entire fee charged is in keeping with the directives and spirit of Disciplinary Rule 2-106(B).

Board. Bar Commissioners has adopted a new planning and budgeting cycle. The new cycle requires sections and committees to submit proposals for new programs and budgets to the State Bar by August 1, 1985 so that they may be reviewed and evaluated prior to the September Board of Bar Commissioners meeting. Proposals submitted after the September meeting will be considered and funded to the extent that funds are available.

Budgets Due

As reported in *News and Views*, Vol. 24, No. 27, the

LANM Seminar

Legal Assistants of New Mexico (LANM) will hold their summer seminar at the
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Continuing Legal Education

1985 UPDATE: PREVENTING LEGAL MALPRACTICE CLAIMS

- New Mexico and Federal District and Appellate Court Judges and Magistrates (Fee Waived)
- \$15 Non-attorney Law Office Personnel
- \$25 Attorney

I WILL ATTEND ON:

- August 5
Inn at Loretto, Santa Fe
- August 6
UNM Law School
Albuquerque

Size of Firm:

- a sole practitioner
- b 2 - 5 Attorneys
- c 6 - 10 Attorneys
- d 11 or more Attorneys
- I was first admitted to practice law in any jurisdiction after December 31, 1981.

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