

State Bar Of New Mexico

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

Richard F. Rowley II, Bar President
Linda L. McDonald, Executive Director
Karen Klett, Editor
Veronica C. Trujillo, Advertising

Richard Montoya, Printer
Roberto Roibal, Printer

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.

SNOWPLOW YOUR WAY TO ...
CLE & SKI!



UJI Civil Committee Asks For Comments

A Replacement Pamphlet for UJI Civil, Judicial Pamphlet 18, will be published by The Michie Company in 1986. The UJI Civil Committee solicits recommendations for substantive changes and editing improvements. Direct comments to Chairman Richard Ransom, P. O. Drawer D, Albuquerque, N.M. 87103, or telephone 842-8600.

1986 BBC

Meeting Dates

1986 MEETING SCHEDULE
BOARD OF BAR
COMMISSIONERS

JANUARY 23
FEBRUARY 22
APRIL 5
MAY 17
JUNE 21
JULY 26
AUGUST 30
OCTOBER 8
(Annual Convention)
NOVEMBER 22

IOLTA Accounts Available

Albuquerque:

Bank of Albuquerque
Ron Shettlesworth
765-1800

New Mexico National Bank
Virginia Mendoza, Ken
Carson 888-0000

United New Mexico Bank
Saralee Rahm 765-5130

Alamogordo:

First National Bank in
Alamogordo
Michael Lowrimore
437-4880

Carlsbad:

Carlsbad National Bank
Betty Eglom 885-2121

Pioneer Savings and Trust
Maylene West 887-6551

Eunice:

United Bank of Lea County
Lori Oliver 394-2536

Farmington:

First National Bank of
Farmington
Steve Henry 325-4583

Sandia Federal Savings and
Loan
Doreen Kech 325-1785

Hobbs:

United Bank of Lea County
Julie Canon 392-5533

Los Alamos:

Los Alamos National Bank
William Enloe 662-5171

Lovington:

United Bank of Lea County
Linda Neel 396-5393

Roswell:

Valley Bank of Commerce
Betty Hughes 623-2265

Santa Fe:

Bank of Santa Fe
Carol Golden 984-0512

* Disciplinary Note

In two unrelated but similar cases, attorneys have accepted informal admonitions pursuant to Rule 11(a) (6) of the Rules Governing Discipline for neglecting matters in connection with appellate matters in violation of

(continued on page 3)

Section A

Disciplinary Note

(continued from page 2)

Disciplinary Rule 6-101 (A) (3).

In one case, an attorney was retained to appeal a decision of an administrative judge adverse to a Social Security claimant. The appeal was duly filed and competently briefed in the Federal District Court, but the Federal judge affirmed the decision of the administrative judge. In the opinion of the attorney, there was no basis for further appeal to the Tenth Circuit. The attorney, however, waited nearly two months to advise the client of the adverse decision and of the attorney's opinion that further appeal would be pointless. By the time the client learned of this, it was too close to the deadline for filing a further appeal to allow him time to seek the advice or assistance of another attorney.

In the second case, an attorney was appointed to handle the appeal of an indigent from his convictions on several counts of CSP. The issues on appeal were the requested suppression of a piece of physical evidence and the admissibility of a "show-up" identification, wherein the victim (the defendant's neighbor) had identified the defendant. Despite the efforts of the attorney, the Court of Appeals affirmed the convictions and ruled that both pieces of evidence had been properly admitted. The attorney promptly wrote to the client and advised him of this. He also advised the client that in his opinion there would be no basis to petition the Supreme Court for

certiorari and that he would be taking no further action on behalf of the client. The client was highly indignant and demanded that the attorney file a petition for certiorari. To avoid problems with the client, the attorney did so but, due to an inadvertent miscalculation of the deadline for filing, filed the petition one (1) day late. It was rejected by the Clerk of the Supreme Court.

Hearing officers who reviewed both files concluded that neither of these attorneys had damaged the client, because in both instances the facts of the cases would have made the chance of success infinitesimally remote even if the appeals had been perfected. The reviewing officers also acknowledged that an attorney is not obligated to pursue a cause of action he believes to have no basis in law or fact; furthermore, an attorney is prohibited from doing so under Disciplinary Rule 7-101 (A) (2). On the other hand, the client has the ultimate right to decide whether or not he wishes to pursue a matter further and should have the opportunity to seek the opinion and, if feasible, the services of other counsel.

The first attorney should have informed the client immediately of the decision of the Federal Judge, advised the client why no further action was warranted, and returned all papers to the client so that he could have sought the advice of other counsel. The second attorney, once he had agreed to take the appeal one step further, was obligated to do so within the appropriate time limits.

New Regulations Available

Regulations implementing the new Adoption Act which became effective July 1, 1985, were signed by the Secretary of the Human Services Department on November 8, 1985. For a copy of the regulations please contact: Ruth K. Lovald, Office of General Counsel, Human Services Department, P. O. Box 2348, Santa Fe, NM 87504-2348; Phone: 827-4083.

Section Expands Scope

Following the trend throughout the county, commercial litigation in New Mexico has become more complex. The discovery process is requiring greater document control and, at times, increased litigation support personnel and systems. At every stage, the management of cases, demands special attention.

There is now a section of the State Bar designed to meet the needs of practitioners who are either engaged in litigation of commercial cases or may have occasion to counsel regarding or litigate questions concerning the antitrust or trade regulation laws. Formerly, the Antitrust and Trade Regulation Section, the State Bar has expanded the scope of the Section and re-named it the Commercial Litigation and Antitrust Section.

The Section plans to assist practitioners in both large and small firms to address changing litigation and management issues in com-

(continued on page 4)