

-----Original Message-----

From: Kevin Mohr [mailto:kemohr@comcast.net]

Sent: Friday, January 13, 2006 11:20 AM

To: Jerome Sapiro, Jr.

Cc: Ruvolo, Ignazio; JoElla L. Julien; Sean SeLegue; Harry Sondheim; Difuntorum, Randall; McCurdy, Lauren; Kevin Mohr

Subject: Re: RRC - 3-500 [1.4] - Post-12/2/2005 Meeting Materials

Greetings:

1. I've attached draft 3.2 of rule 1.4 [3-500], incorporating Jerry's proposed comment [8] and some of his proposed revisions to comment [6]. I've also attached a redline, comparing draft 3.2 to draft 2.1, the draft the RRC considered at the 12/2/05 meeting.
2. I wasn't sure what Jerry was referring to in his proposal #3, below. I didn't see where he wanted the language added and, in any event, I'm not sure we need to add that. Aren't administrative matters generally considered civil in nature? If we make the change here, we should probably be consistent throughout the rules. I think the language used is "civil controversy," not "civil action," so I think we can do without the addition.
3. I've made the requested changes in Jerry's #4, below.
4. I did not make the requested addition in Jerry's #5, below. It didn't appear to be necessary.

Thanks,

Kevin

Jerome Sapiro, Jr. wrote:

Dear Kevin, Nace, and JoElla:

1. I apologize that I did not respond sooner to Kevin's request for a suggested revision of Comment [8]. Attached is my recommendation. You will see that, in addition to adding language addressing the problem that I suggested, I divided what was the second sentence into two sentences, so there are now sentences in the proposed comment.
2. In addition to the child custody context, orders or agreements of nondisclosure to clients may come up in trade secrets litigation and other contexts. I therefore did not try to limit it to the child custody situation.

3. Regarding proposed Comment [6] in Kevin's email of January 5th, I have several cosmetic suggestions. At the end of the first line, after "in a civil" I would add "or administrative." The rule is not limited to civil actions.
4. In the sixth line of the proposed Comment [6], I would insert a comma after the word "unacceptable," and in the seventh line I would insert a comma after the word "offer."
5. At the end of the last sentence of proposed Comment [6], I would add the phrase ". . . , whether orally or in writing."
6. I have a concern about proposed Comment [3], but I do not have a suggestion of language to correct the language that causes my concern. The concern is that the employment agreement should not have to expressly address the cost of copying documents required under the proposed new rule. For example, if a retainer agreement already provides that the client will reimburse the lawyer for all copying costs, there should not be a requirement that there also be a clause requiring the client to reimburse the lawyer for the costs of compliance with the proposed new rule. However, Comment [3] could be read to require the additional verbiage. Too often clients complain that our engagement letters are too long.
7. Having said all of the above, I still do not like this rule. It can be used to discipline lawyers who have accomplished all their clients' objectives and caused no harm in doing so, just because a client by hindsight says that the lawyer should have told the client more. It contains no requirements of materiality or consequential damages; just a failure to inform suffices for discipline. In addition, this proposal is yet another example of new Rules of Professional Conduct that will become trials of professional negligence issues, for it uses "reasonably" and "reasonable" as the standards of discipline. Again, we invite trial by expert witness testimony in the State Bar Court. I apologize for including this rant.

With best regards to all of you,

Jerry

Rule 1.4 [3-500] Communication

- (a) A lawyer shall:
- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these Rules or the State Bar Act;
 - (2) reasonably consult with the client about the means by which to accomplish the client's objectives in the representation;
 - (3) keep the client reasonably informed about significant developments relating to the representation;
 - (4) promptly comply with reasonable requests for information and copies of significant documents when necessary to keep the client informed as required by subparagraph (3); and
 - (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- (c) A member shall promptly communicate to the member's client:
- (1) All terms and conditions of any offer made to the client in a criminal matter; and
 - (2) All amounts, terms, and conditions of any written offer of settlement made to the client in all other matters.

Comment

- [1] Rule 1.4 [3-500] is not intended to change a member's duties to his or her clients. (See Bus. & Prof. Code, §6068, subd. (m).)
- [2] ¹ Whether a particular event is significant will generally depend upon the surrounding facts and circumstances. For example, a change in lawyer

¹ **RRC Action:** At the 12/2/2005 Meeting, the RRC voted 5 to 4, with no abstentions, to delete the first sentence of proposed comment [2]. That sentence had provided:

As used in this rule, "significant" means an event or circumstance that more than trivially affects the interests of the client in the matter for which the lawyer

personnel might be a significant development depending on whether responsibility for overseeing the client's work is being changed, whether the new attorney will be performing a significant portion or aspect of the work, and whether staffing is being changed from what was promised to the client.² Other examples of significant events³ may include⁴ the receipt of a demand for further discovery or a threat of sanctions, a change in an abstract of judgment or recalculation of custody credits and the loss or theft of information concerning the client's identity or matter for which representation is being provided. Depending upon the circumstances, a lawyer may also be obligated pursuant to subparagraphs (a)(2) or (a)(3) to communicate with the client concerning the opportunity to engage in alternative dispute resolution processes.⁵ Conversely, examples of events or circumstances that generally are not significant⁶ include

provides representation, or which results in the imposition of more than a nominal expense to the client.

² **RRC Action:** The RRC voted 7 to 1, with no abstentions, to substitute this sentence (proposed by Bob Kehr) for the previous draft's reference to "changes in lawyer personnel assigned to the client's matter" as being a significant development.

³ **KEM Note:** I deleted reference to "circumstances" in the comment because "circumstances" should be covered by "developments" and the word "circumstances" has no predicate in the rule itself. In addition, subsequent use of the phrase, "depending upon the circumstances" would be awkward in referring back to "circumstances."

⁴ **RRC Actions:** (1) At the 12/2/2005 Meeting, the substitution of this clause for "Examples of events or circumstances which are 'significant' include" was deemed approved; (2) The deletion of the quotation marks around the word "significant" throughout the rule was also deemed approved (no longer a defined term).

RRC Action: There was no objection to the insertion of the word "may" in the opening clause to comment [2]. It was observed that the examples used could be significant, but it would depend upon the particular circumstances. Note that the drafters were instructed to change "which are significant" to "which may be significant," but that clause was subsequently revised.

RRC Action: At the 12/2/2005 Meeting, the RRC voted 8 to 0, with one abstention, to delete the example of a case management statement.

A recommendation was also made to include a specific reference to summary judgment in the comment.

⁵ **Further Drafting:** At the 12/2/05 Meeting, the RRC voted 6 to 4, with no abstentions, to include a comment that addresses the concept that under certain circumstances, the lawyer might be obligated pursuant to paragraph (a)(2) or (a)(3) to inform the client of the opportunity to engage in ADR. See 12/2/2005 KEM Meeting Notes, at ¶.11. The drafters propose the foregoing language to capture that concept. Previously, a comment concerning ADR appeared later in the commentary and provided:

"A lawyer should consider whether an opportunity to engage in alternative dispute resolution processes (ADR) constitutes a significant development in the client's matter requiring communication with the client."

⁶ **RRC Action:** At the 12/2/2005 meeting, substitution of "not significant" for "insignificant," which is not defined, was deemed approved. The word "generally" was added to address the concerns that whether an event is significant or not depends upon the circumstances.

the payment of a motion fee and the application for or granting of an extension of time for a time period that does not materially prejudice the client's interest.⁷

- [3] A lawyer's employment agreement may provide that the client assumes responsibility for the cost of copying the documents required to be provided to the client under this rule.⁸
- [4] As used in paragraph (c), "client" includes a person who possesses the authority to accept an offer of settlement or plea, or, in a class action, all the named representatives of the class.
- [5] Subparagraph (c)(1) is intended to require that counsel in a criminal matter convey all offers, whether written or oral, to the client, as give and take negotiations are less common in criminal matters, and, even were they to occur, such negotiations should require the participation of the accused.⁹ Therefore, a lawyer representing a defendant in a criminal action must promptly inform the client of the substance of any plea bargain the prosecution has proffered.¹⁰

⁷ **Further Drafting:** At the 12/2/2005 meeting, the drafters agreed to revisit comment [2] to address the concerns of members that whether the examples used are significant developments depend upon the particular circumstances.

⁸ **RRC Action:** At the 12/2/2005 Meeting, the RRC voted 9 to 1, with no abstentions, to substitute "A lawyer's employment agreement may provide that the client assumes responsibility for the cost for copying the documents" Previously, the proposed language had provided: "It is not a violation of this rule for the lawyer to require the client, as a condition of the lawyer's employment, to assume responsibility for the cost of copying documents"

At the same meeting, the RRC voted 5 to 3, with 2 abstentions, *against* keeping the second sentence in the second Discussion paragraph of current rule 3-500 ("This rule is not intended to prohibit a claim for the recovery of the member's expense in any subsequent legal proceeding.")

This comment is based on the second Discussion paragraph in current rule 3-500. The second sentence of the Discussion paragraph has been deleted ("This rule is not intended to prohibit a claim for the recovery of the member's expense in any subsequent legal proceeding.")

⁹ **RRC Action:** No objection was raised at the 12/2/2005 Meeting to the inclusion of comment [5].

¹⁰ **RRC Action:** At the 12/2/2005 Meeting, the RRC voted 6 to 3, with no abstentions, to include as a comment to the rule the concept of the last full sentence of MR 1.4, comment [2], which provides:

"For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. See Rule 1.2(a)."

The comment as drafted was proposed during the meeting, but it was agreed that it needed to be redrafted, with input from Mark Tuft. I've taken a first stab at separating out the criminal plea concept from the civil settlement offer. See 12/2/2005 KEM Meeting Notes, at ¶. 13.c.-i. At Nace's suggestion, the criminal and civil aspects of preauthorization were added to comments [5] and [6], respectively.

- [6] Subparagraph (c)(2) requires a lawyer to advise a client promptly of all written settlement offers, regardless of whether the offers are considered by the lawyer to be significant.¹¹ Notwithstanding subparagraph (c)(2), a lawyer need not inform the client of the substance of a written offer of a settlement in a civil controversy if the client has previously indicated that the proposal will be acceptable or unacceptable, or has authorized the lawyer to accept or to reject the offer, and there has been no change in circumstances that requires the lawyer to consult with the client. See Rule 1.2(a).¹²
- [7] Any oral offers of settlement made to the client in a civil matter should also be communicated if they are significant.¹³
- [8] Rule 1.4 [3-500] is not intended to create, augment, diminish, or eliminate any application of the work product rule. The obligation of the member to provide work product to the client shall be governed by relevant statutory and decisional law. This rule is not intended to require a lawyer to disclose to a client any information or document that a court order or non-disclosure agreement prohibits the lawyer from disclosing to that client. This rule is also not intended to override applicable statutory or decisional law requiring that certain information not be provided to criminal defendants who are clients of the lawyer.¹⁴

Model Rule 1.4 Comments

[2]¹⁵

[3]¹⁶

¹¹ **RRC Action:** No objection was raised at the 12/2/2005 Meeting to the inclusion of comment [6].

¹² See note 10.

¹³ **RRC Action:** No objection was raised at the 12/2/2005 Meeting to the inclusion of comment [7].

¹⁴ **Further Drafting:** Jerry Sapiro noted that the third sentence of this comment (which is paragraph 3 of the Discussion to current rule 3-500), is too limiting. He states that “it is not just criminal defendants who may not be able to receive certain information. For example, in a child custody battle, a court may order that a psychiatrist’s or other consultant’s report not be disclosed to the parties.” Jerry provided the drafters with language to address this issue.

Previously, the third sentence of the comment had provided:

“Additionally, this rule is not intended to apply to any document or correspondence that is subject to a protective order or non-disclosure agreement, or to override applicable statutory or decisional law requiring that certain information not be provided to criminal defendants who are clients of the lawyer.”

The drafters are in agreement with Jerry’s proposed revision.

¹⁵ See note 10

¹⁶ **RRC Action:** At the 12/2/2005 Meeting, there were no objections to not including MR 1.4, cmt. [3].

[4]¹⁷

Explaining Matters

[5]¹⁸

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from mental disability diminished capacity. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.¹⁹

[6]²⁰

¹⁷ **RRC Action:** At the 12/2/2005 Meeting, there were no objections to not including MR 1.4, cmt. [4].

¹⁸ **RRC Action:** At the 12/2/2005 Meeting, the RRC voted 5 to 3, with 1 abstention, against including MR 1.4, cmt. [5].

¹⁹ **RRC Action:** At the 12/2/2005 Meeting, the RRC voted 8 to 1, with 1 abstention, to include the concept of MR 1.4, cmt. [6]. A suggestion that only a cross-reference to rule 1.13 was necessary was not pursued.

²⁰ **RRC Action:** At the 12/2/2005 Meeting, there were no objections to not including MR 1.4, cmt. [7].

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- (a) A lawyer shall:
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Comment

[1] Rule 1.4 [3-500] is not intended to change a member's duties to his or her clients. (See Bus. & Prof. Code, §6068, subd. (m).)

[2] ~~As used in this rule, "significant" means an event or circumstance that more than trivially affects the interests of the client in the matter for which the lawyer provides representation, or which results in the imposition of more than a nominal expense to the client. Examples of events or circumstances which are "significant" [2] _____ [1]~~ Whether a particular event is significant will generally

¹ RRC Action: At the 12/2/2005 Meeting, the RRC voted 5 to 4, with no abstentions, to delete the first sentence of proposed comment [2]. That sentence had provided:

depend upon the surrounding facts and circumstances. For example, a change in lawyer personnel might be a significant development depending on whether responsibility for overseeing the client's work is being changed, whether the new attorney will be performing a significant portion or aspect of the work, and whether staffing is being changed from what was promised to the client.² Other examples of significant events³ may include ~~changes in lawyer personnel assigned to the client's matter, the preparation of a case management statement,~~⁴ the receipt of a demand for further discovery or a threat of sanctions, a change in an abstract of judgment or re-calculation of custody credits, and the loss or theft of information concerning the client's identity or matter for which representation is being provided. Examples Depending upon the circumstances, a lawyer may also be obligated pursuant to subparagraphs (a)(2) or (a)(3) to communicate with the client concerning the opportunity to engage in alternative dispute resolution processes.⁵ Conversely, examples of events or circumstances

As used in this rule, "significant" means an event or circumstance that more than trivially affects the interests of the client in the matter for which the lawyer provides representation, or which results in the imposition of more than a nominal expense to the client.

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"A lawyer should consider whether an opportunity to engage in alternative dispute resolution processes (ADR) constitutes a significant development in the client's matter requiring communication with the client."

~~which are “insignificant” that generally are not significant~~⁶ include the payment of a motion fee, ~~and~~ the application for or granting of an extension of time for a time period that does not materially prejudice the client’s interest.⁷

- [3] ~~It is not a violation of this rule for the lawyer to require the client, as a condition of the A lawyer’s employment, to assume~~ agreement may provide that the client assumes responsibility for the cost of copying the documents required to be provided to the client under this rule.⁸
- [4] As used in paragraph (c), “client” includes a person who possesses the authority to accept an offer of settlement or plea, or, in a class action, all the named representatives of the class.
- [5] Subparagraph (c)(1) is intended to require that counsel in a criminal matter convey all offers, whether written or oral, to the client, as give and take negotiations are less common in criminal matters, and, even were they to occur, such negotiations should require the participation of the accused.⁹ Therefore, a lawyer representing a defendant in a criminal action must promptly inform the client of the substance of any plea bargain the prosecution has proffered.¹⁰

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At the same meeting, the RRC voted 5 to 3, with 2 abstentions, against keeping the second sentence in the second Discussion paragraph of current rule 3-500 (“This rule is not intended to prohibit a claim for the recovery of the member’s expense in any subsequent legal proceeding.”)

This comment is based on the second Discussion paragraph in current rule 3-500. The second sentence of the Discussion paragraph has been deleted (“This rule is not intended to prohibit a claim for the recovery of the member’s expense in any subsequent legal proceeding.”)

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“For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. See Rule 1.2(a).”

- [6] ~~Paragraph~~Subparagraph (c)(2) requires a lawyer to advise a client promptly of all written settlement offers, regardless of whether the offers are considered by the lawyer to be “significant.”¹¹ Notwithstanding subparagraph (c)(2), a lawyer need not inform the client of the substance of a written offer of a settlement in a civil controversy if the client has previously indicated that the proposal will be acceptable or unacceptable, or has authorized the lawyer to accept or to reject the offer, and there has been no change in circumstances that requires the lawyer to consult with the client. See Rule 1.2(a).¹²
- [7] Any oral offers of settlement made to the client in a civil matter should also be communicated if they are “significant.”¹³
- [8] ~~A lawyer should consider whether an opportunity to engage in alternative dispute resolution processes (ADR) constitutes a significant development in the client’s matter requiring communication with the client.~~
- [9] — Rule 1.4 [3-500] is not intended to create, augment, diminish, or eliminate any application of the work product rule. The obligation of the member to provide work product to the client shall be governed by relevant statutory and decisional law. ~~Additionally, this~~This rule is not intended to ~~apply~~require a lawyer to disclose to a client any information or document or correspondence that is subject to a protective court order or non-disclosure agreement, or prohibits the lawyer from disclosing to that client. This rule is also not intended to override applicable statutory or decisional law requiring that certain information not be provided to criminal defendants who are clients of the lawyer.¹⁴

The comment as drafted was proposed during the meeting, but it was agreed that it needed to be redrafted, with input from Mark Tuft. I’ve taken a first stab at separating out the criminal plea concept from the civil settlement offer. See 12/2/2005 KEM Meeting Notes, at ¶. 13.c.-i. At Nace’s suggestion, the criminal and civil aspects of preauthorization were added to comments [5] and [6], respectively.

¹¹ RRC Action: No objection was raised at the 12/2/2005 Meeting to the inclusion of comment [6].

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¹³ RRC Action: No objection was raised at the 12/2/2005 Meeting to the inclusion of comment [7].

¹⁴ Further Drafting: Jerry Sapiro noted that the third sentence of this comment (which is paragraph 3 of the Discussion to current rule 3-500), is too limiting. He states that “it is not just criminal defendants who may not be able to receive certain information. For example, in a child custody battle, a court may order that a psychiatrist’s or other consultant’s report not be disclosed to the parties.” Jerry provided the drafters with language to address this issue. Previously, the third sentence of the comment had provided:

“Additionally, this rule is not intended to apply to any document or correspondence that is subject to a protective order or non-disclosure agreement, or to override applicable statutory or decisional law requiring that certain information not be provided to criminal defendants who are clients of the lawyer.”

The drafters are in agreement with Jerry’s proposed revision.

Model Rule 1.4 Comments – ~~For Consideration:~~

- [2] ~~—If these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. See Rule 1.2(a).¹⁵~~
- [3] ~~—Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations—depending on both the importance of the action under consideration and the feasibility of consulting with the client—this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.¹⁶~~
- [4] ~~—A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. Client telephone calls should be promptly returned or acknowledged.¹⁷~~

Explaining Matters

- [5] ~~—The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance~~

¹⁵ See note 10

¹⁶ RRC Action: At the 12/2/2005 Meeting, there were no objections to not including MR 1.4, cmt. [3].

¹⁷ RRC Action: At the 12/2/2005 Meeting, there were no objections to not including MR 1.4, cmt. [4].

~~that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Rule 1.0(e).¹⁸~~

- [6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from mental disability diminished capacity. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.¹⁹

~~Withholding Information~~[6]²⁰

- ~~[7] — In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.~~

¹⁸ **RRC Action:** At the 12/2/2005 Meeting, the RRC voted 5 to 3, with 1 abstention, against including MR 1.4, cmt. [5].

¹⁹ **RRC Action:** At the 12/2/2005 Meeting, the RRC voted 8 to 1, with 1 abstention, to include the concept of MR 1.4, cmt. [6]. A suggestion that only a cross-reference to rule 1.13 was necessary was not pursued.

²⁰ **RRC Action:** At the 12/2/2005 Meeting, there were no objections to not including MR 1.4, cmt. [7].

-----Original Message-----

From: Jerome Sapiro, Jr. [mailto:JSapiro@sapirolaw.com]

Sent: Friday, January 13, 2006 11:33 AM

To: Kevin Mohr

Cc: Ruvolo, Ignazio; JoElla L. Julien; Sean SeLegue; Harry Sondheim; Difuntorum, Randall; McCurdy, Lauren; Kevin Mohr

Subject: RE: RRC - 3-500 [1.4] - Post-12/2/2005 Meeting Materials

Thanks!

Adding "administrative" is not critical. When I read the comment cold, I thought it referred to a civil litigation or prelitigation dispute. That triggered the suggestion I made. After I sent my email, I also realized it implicitly excludes amicable negotiations, because it refers to "controversy." Transactional negotiations are not necessarily controversial, but the concepts should apply there too.

Best to all,

Jerry

CONFIDENTIAL E-MAIL from THE SAPIRO LAW FIRM

This e-mail transmission, and any documents, files or previous e-mail messages attached to it, may contain confidential information that is legally privileged. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, please do not disclose, copy, distribute or use of any of the information contained in or attached to this e-mail. Instead, please immediately notify us that you received this e-mail, by: (1) reply e-mail, (2) forwarding this e-mail to postmaster@sapirolaw.com, or (3) telephone at (415) 771-0100. Please then destroy this e-mail and any attachments without reading or saving it. Thank you.

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To ensure compliance with Treasury Department regulations, we advise you that, unless otherwise expressly indicated, any federal tax advice contained in this message was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or applicable state or local tax law provisions or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.