

McCurdy, Lauren

From: Kevin Mohr [kemohr@charter.net]
Sent: Tuesday, October 27, 2009 2:29 PM
To: Jerome Sapiro Jr.
Cc: 'Raul Martinez'; Harry Sondheim; Difuntorum, Randall; McCurdy, Lauren
Subject: Re: RRC - 1-400 [7.6] - III.G. - 11/6/09 KEM Meeting Notes

Greetings all:

I thought I had written you both on this earlier but I can't find the e-mail, so my guess is that it was in a dream. My recommendation is in paragraph 8, below,

1. I've been opposed to the adoption of 7.6 since the 1-400 drafters first identified it as a rule for consideration. There are a number of reasons why I continue to oppose the adoption of either 7.6 or a "pay-for-play" rule.
2. It is the least adopted of the Model Rules. As I noted in my 5/7/09 e-mail, "[w]ith all but four states having at least issued a post-Ethics 2000 Report, there are seven states that have adopted or recommended the adoption of the Model Rule (Colorado, Delaware, Idaho, Iowa, Maine, Missouri, Washington)."
3. During the deliberations that led to the vote to recommend adoption of a "pay-to-play" rule, Ellen pointed out that all of the anecdotal stories that the members recounted in support of having such a rule involved judicial misconduct, e.g., overreaching by judges. We should leave this issue for resolution by the judicial council if it is truly a problem. I am not aware of an interest in such a rule outside of the Commission. As Raul observed in an earlier e-mail, there should be statutes that reach this conduct. No one has researched that; I am trying to budget my time and have not attempted to research the issue. I don't want to spend the time unless we are sure there is a problem that is need of a solution. See point #5, below.
4. Along the same lines, we are drafting rules of professional conduct. I have repeatedly heard the membership state that we can't regulate all conduct of lawyers. Yes, pay-for-play MAY be a problem, but I don't think that a rule of professional conduct is the appropriate solution for it.
5. As to whether pay-for-play is a problem, I am sure that everyone on the Commission has a story to tell. However, I am not aware of any study in California that indicates that lawyers making contributions to judges in return for appointments is a far-reaching problem. Maybe it is. But before we draft rule, we should know whether it is needed; we should not make a decision based on anecdotal evidence, all of which points to judicial and not lawyer misconduct. We can recommend that this might be an issue for further study, but it is beyond our limited resources -- of time and money -- to conduct such a study. I am very uneasy about recommending a rule that has met with near universal rejection elsewhere in the country until we know that California has a real problem that needs to be addressed, and we have made a careful consideration of the alternatives to resolving the problem besides a rule of professional conduct. If the State Bar, the Judiciary or the Legislature is so inclined, then they should investigate the issue further and request that a rule be

drafted.

6. There are also the First Amendment issues that Raul raised in his e-mail, below. Given the Commission's vote to retain the savings clause in proposed Rule 7.3 ("unless the communication is protected from abridgment by the Constitution of the United States or by the Constitution of the State of California"), a clause not found in any other state's provisions concerning legal marketing, I'm not sure why the Commission wants to wade into the political arena on this issue. There are limits on expression, even political expression. However, resolving whether pay-for-play is a problem that warrants careful balancing of the policies underlying the First Amendment and the policies that might warrant a self-regulating profession to intrude on the First Amendment, and whether an RPC would be the appropriate solution, is beyond the Commission's resources at this time.

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Section of Business Law

Section of State and Local Government Law

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The practice commonly known as "pay-to-play" addressed by the Rule is a system whereby lawyers and law firms are considered for or awarded either government legal engagements or appointments by a judge only upon their making or soliciting contributions for the political campaigns of officials who are in position to "steer" such business their way. The Rule's prophylactic effect inheres in its subjecting lawyers to possible disciplinary action when they knowingly participate in such a system.

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Despite the fact that the recommendation in August 1999 by the ABA Standing Committee on Professional Responsibility did nothing more than implement the prior instructions of the House of Delegates to draft a new Model Rule on lawyer's political contributions, it was rejected by the House. The Section of Business Law took the lead on resubmitting the proposal for reconsideration.

Model Code Comparison

DR 7-110 stated that "a lawyer may make a contribution to the campaign fund of a candidate for judicial office in conformity with" the provisions of the Code of Judicial Conduct.

8. **KEM Recommendation**: Provide the Commission with this e-mail string and call for another vote. I do not think that we should spend any more time on attempting to draft this Rule until the Commission has considered the arguments pro that Jerry has raised and the arguments con that Raul and I have raised. The arguments were not before the Commission when it voted at the July 2009 meeting.

a. I would ask Harry (whom I've copied) to call the vote when we have the fullest complement possible of the Commission -- probably some time on Friday morning. If the Commission insists that it wants such a rule, then the members should identify the rule's parameters (Jerry has suggested some below) and provide the drafters with guidance.

b. I've also copied Randy & Lauren so they know where we currently stand in getting them materials on this Rule.

Thanks,

Kevin

Jerome Sapiro Jr. wrote:

Dear Raul:

Thank you for these comments. I do not disagree with your concerns, but I still think that we should try to propose some substitute for Rule 7.6 that might be acceptable, and I sent my proposal to stimulate discussion.

I suggested the two year cooling off period for appointment of attorneys by elected officials and similar entities in order to discourage "pay to play." That might have the effect of deterring contributions to political campaigns, but if the contribution has been made for the purpose of getting the lawyer or law firm appointed to a plum position, that may not be a bad thing. I remember a judge in the Bay Area who used to appoint a referee or special master in a case whenever a discovery motion came on for hearing. The special master happened to be a political supporter of the judge. The political supporter would be appointed at the expense of the parties, whether they requested a referee or special master for discovery matters or not. I think that kind of tradeoff should be prohibited, but my proposal does not go so far as to prohibit it. Instead, I suggested a "cooling off" period. That would reduce the frequency of such arrangements.

I included the two year "cooling off" period for a lawyer who solicits campaign contributions because it seems to me that the lawyer who "bundles" campaign contributions and solicits them from many other sources is potentially buying more patronage than a lawyer who merely makes a donation that might be limited by local, state or federal law.

I do not suggest that judges be required to recuse themselves if a lawyer who appears before them made a political contribution to the judge. Conversely, requiring the lawyer to disclose the fact of the contribution would relieve the judge of that burden and would also give the opposing parties information that they might not otherwise be able to obtain, so they can decide whether to exercise a preemptory challenge or not.

Frankly, I do not know enough about "pay to play" legislation to know whether the political process provides any protection in these circumstances or not. My instinct is that it does not.

Kevin, what are your thoughts?

I see that, instead of December, we have until tomorrow to make a recommendation. We could present the opposing views and let RRC decide. In any event, under Harry's new rules we should recommend that the Commission not adopt the Model Rule.

With best regards,

Jerry

(9930.16:528)

CONFIDENTIAL E-MAIL from THE SAPIRO LAW FIRM

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From: Raul Martinez [<mailto:martinez@lbbslaw.com>]
Sent: Wednesday, September 30, 2009 9:12 PM
To: 'Kevin Mohr'; Jerome Sapiro Jr.
Subject: Re: Rule 7.6

Jerry:

I disagree with the proposal.

--It deters contributions to political campaigns and the political process itself.

--In small counties, where there are only two or three judges, a lawyer may be forced to send a case out of the county and thus penalize the litigant-client and strain the judiciary.

--The fact a firm contributes should not penalize an individual lawyer from accepting legal employment with the government or judge. A law firm's self interest in making a contribution does not coincide with the interests of an individual lawyer in the firm.

--I don't agree with putting the onus on lawyers rather than judges. Are judges required to recuse themselves if a lawyer appearing before them made a political contribution or make disclosure? If so, why put the burden on lawyers under part (c)?

--Part (a) disqualifies a lawyer for merely soliciting a contribution; this goes to far--where is the pay to play? The evil is the quid pro quo, not the contribution, or the appointment.

--On the political front, aren't there statutes that prohibit pay to play? We should let the political process address these concerns. It is not the State Bar's job to correct the corruption of the political process.

Raul

>>> On 9/30/2009 at 9:45 AM, in message <012801ca41ed\$730e1dc0\$592a5940\$@com>, "Jerome Sapiro Jr." <jsapiro@sapirolaw.com> wrote:

September 30, 2009

Email to Kevin Mohr and Raul Martinez

Dear Kevin and Raul:

I see that we are the committee on Rule 7.6. I offer the following for consideration.

I think everyone is in agreement that Model Rule 7.6 is so subjective that it is not capable of enforcement. I therefore offer three paragraphs for a California counterpart.

- (a) A lawyer or a law firm shall not accept government legal engagement or an appointment by a judge for two years after the lawyer, the law firm, or any lawyer affiliated with the lawyer or law firm, makes a contribution to or solicits contributions for the election of any candidate for head of the government entity that will hire the lawyer or for the election or retention law firm or for the election of the judge who makes the appointment.
- (b) As used in this rule, "government entity" means any state or federal agency, authority, or instrumentality or political subdivision thereof, or a system, plan, program, or pool of assets sponsored or established by a state or political subdivision or by any agency, authority, or instrumentality thereof; and officers, agents, or employees of the state or political subdivision or any agency, authority, or instrumentality thereof, acting in their official capacity.
- (c) A lawyer shall not appear before a judge to whom or on whose behalf the lawyer, the lawyer's law firm, or the lawyer's client has made a contribution to, or has endorsed the election or re-election or retention election of the judge, unless the lawyer discloses to opposing counsel the fact of such contribution.

It seems to me that “pay to play” would be deterred by the two year “cooling off” period. The time period could be longer. However, I suggest the two year cooling off period by analogy to proposed SEC Rule 206(4)-5(a)(1) under the Investment Advisors Act of 1940. I plagiarized the definition of a “government entity” from SEC Proposed Rule 206(4)-5(f)(5).

It seems to me that a lawyer or law firm should be able to endorse or support candidates for judicial election. However, if the lawyer or law firm does so, and that fact is concealed from the lawyer’s or law firm’s opponents, the opponents will never know that the lawyer or law firm has done so. Disclosure gives the opponents the opportunity to move to recuse the judge if they want to. I think the same should also apply to donations and endorsements by parties to an action.

I communicated with Deborah Rhode to see whether she knew of any acceptable versions of Model Rule 7.6. She said she did not.

I know that, some years ago, either the New York State Bar Association or the City of New York Bar Association offered a proposed rule to the ABA House of Delegates. However, I have not been able to find online a record of what that proposal contained.

I am not committed to this proposal. However, I offer it for your consideration and to begin a dialog.

With best regards to both of you,

Jerry

(9930.16:496:vy)

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714-738-1000 x1147
714-525-2786 (FAX)
kevin_e_mohr@compuserve.com
kevinm@wsulaw.edu

McCurdy, Lauren

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Sent: Wednesday, October 28, 2009 8:31 AM
To: McCurdy, Lauren; Difuntorum, Randall
Cc: Jerome Sapiro; Raul L. Martinez; Harry Sondheim; Kevin Mohr G
Subject: RRC - 7.6 [1-400] - III.G. - 10/16-17/09 Meeting Materials
Attachments: RRC - 1-400 - E-mails, etc. - REV (11-03-09)_p135-140.pdf

Greetings:

To follow up on my e-mail of yesterday, I've attached an excerpt of the Rule 1-400 e-mail compilation that contains the e-mail exchange among the drafters -- Jerry, Raul and me -- concerning a "pay-for-play" rule. In PDF. Please use the attached as the agenda materials for this matter.

I've requested that Harry call another vote on whether to have any rule that addresses pay-for-play. See paragraph 8 of my 10/27/09 e-mail in the attached. The attached sets out the pros and cons, which were not before the Commission when it voted last summer.

Raul and I question whether we should pursue such a rule. Jerry favors it (although Jerry noted in his reply to my 10/27 e-mail that my suggested approach "is the practical solution," I still believe he favors a rule).

Please let me know if you have any questions. Thanks,

Kevin

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**RRC – Rule 1-400 [7.1 – 7.6]
E-mails, etc. – Revised (11/3/2009)**

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October 27, 2009 Sapiro E-mail to KEM, cc Martinez, Chair & Staff re 7.6:

I think yours is the practical solution.

Don't hold your breath until the judiciary or the executive branch adopt rules or statutes that cure the problems of pay to play.

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September 30, 2009 Sapiro E-mail to Martinez & KEM re 7.6:

I see that we are the committee on Rule 7.6. I offer the following for consideration.

I think everyone is in agreement that Model Rule 7.6 is so subjective that it is not capable of enforcement. I therefore offer three paragraphs for a California counterpart.

- (a) A lawyer or a law firm shall not accept government legal engagement or an appointment by a judge for two years after the lawyer, the law firm, or any lawyer affiliated with the lawyer or law firm, makes a contribution to or solicits contributions for the election of any candidate for head of the government entity that will hire the lawyer or for the election or retention law firm or for the election of the judge who makes the appointment.
- (b) As used in this rule, “government entity” means any state or federal agency, authority, or instrumentality or political subdivision thereof, or a system, plan, program, or pool of assets sponsored or established by a state or political subdivision or by any agency, authority, or instrumentality thereof; and officers, agents, or employees of the state or political subdivision or any agency, authority, or instrumentality thereof, acting in their official capacity.
- (c) A lawyer shall not appear before a judge to whom or on whose behalf the lawyer, the lawyer’s law firm, or the lawyer’s client has made a contribution to, or has endorsed the election or re-election or retention election of the judge, unless the lawyer discloses to opposing counsel the fact of such contribution.

It seems to me that “pay to play” would be deterred by the two year “cooling off” period. The time period could be longer. However, I suggest the two year cooling off period by analogy to proposed SEC Rule 206(4)-5(a)(1) under the Investment Advisors Act of 1940. I plagiarized the definition of a “government entity” from SEC Proposed Rule 206(4)-5(f)(5).

It seems to me that a lawyer or law firm should be able to endorse or support candidates for judicial election. However, if the lawyer or law firm does so, and that fact is concealed from the lawyer’s or law firm’s opponents, the opponents will never know that the lawyer or law firm has done so. Disclosure gives the opponents the opportunity to move to recuse the judge if they want to. I think the same should also apply to donations and endorsements by parties to an action.

I communicated with Deborah Rhode to see whether she knew of any acceptable versions of Model Rule 7.6. She said she did not.

I know that, some years ago, either the New York State Bar Association or the City of New York Bar Association offered a proposed rule to the ABA House of Delegates. However, I have not been able to find online a record of what that proposal contained.

I am not committed to this proposal. However, I offer it for your consideration and to begin a dialog.

September 30, 2009 Martinez E-mail to Sapiro, cc KEM re 7.6:

I disagree with the proposal.

--It deters contributions to political campaigns and the political process itself.

--In small counties, where there are only two or three judges, a lawyer may be forced to send a case out of the county and thus penalize the litigant-client and strain the judiciary.

--The fact a firm contributes should not penalize an individual lawyer from accepting legal employment with the government or judge. A law firm's self interest in making a contribution does not coincide with the interests of an individual lawyer in the firm.

--I don't agree with putting the onus on lawyers rather than judges. Are judges required to recuse themselves if a lawyer appearing before them made a political contribution or make disclosure? If so, why put the burden on lawyers under part (c)?

--Part (a) disqualifies a lawyer for merely soliciting a contribution; this goes to far--where is the pay to play? The evil is the quid pro quo, not the contribution, or the appointment.

--On the political front, aren't there statutes that prohibit pay to play? We should let the political process address these concerns. It is not the State Bar's job to correct the corruption of the political process.

September 30, 2009 Sapiro E-mail to Martinez, cc KEM re 7.6:

1. Thank you for these comments. I do not disagree with your concerns, but I still think that we should try to propose some substitute for Rule 7.6 that might be acceptable, and I sent my proposal to stimulate discussion.
2. I suggested the two year cooling off period for appointment of attorneys by elected officials and similar entities in order to discourage "pay to play." That might have the effect of deterring contributions to political campaigns, but if the contribution has been made for the purpose of getting the lawyer or law firm appointed to a plum position, that may not be a bad thing. I remember a judge in the Bay Area who used to appoint a referee or special master in a case whenever a discovery motion came on for hearing. The special master happened to be a political supporter of the judge. The political supporter would be appointed at the expense of the parties, whether they requested a referee or special master for discovery matters or not. I think that kind of tradeoff should be prohibited, but my proposal does not go so far as to prohibit it. Instead, I suggested a "cooling off" period. That would reduce the frequency of such arrangements.
3. I included the two year "cooling off" period for a lawyer who solicits campaign contributions because it seems to me that the lawyer who "bundles" campaign contributions and solicits them from many other sources is potentially buying more patronage than a lawyer who merely makes a donation that might be limited by local, state or federal law.
4. I do not suggest that judges be required to recuse themselves if a lawyer who appears before them made a political contribution to the judge. Conversely, requiring the lawyer to disclose the fact of the contribution would relieve the judge of that burden and would also give the opposing parties information that they might not otherwise be able to obtain, so they can decide whether to exercise a peremptory challenge or not.

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5. Frankly, I do not know enough about “pay to play” legislation to know whether the political process provides any protection in these circumstances or not. My instinct is that it does not.
6. Kevin, what are your thoughts?
7. I see that, instead of December, we have until tomorrow to make a recommendation. We could present the opposing views and let RRC decide. In any event, under Harry’s new rules we should recommend that the Commission not adopt the Model Rule.

October 27, 2009 KEM E-mail to Sapiro & Martinez, cc Chair & Staff re 7.6:

Greetings all:

I thought I had written you both on this earlier but I can't find the e-mail, so my guess is that it was in a dream. My recommendation is in paragraph 8, below,

1. I've been opposed to the adoption of 7.6 since the 1-400 drafters first identified it as a rule for consideration. There are a number of reasons why I continue to oppose the adoption of either 7.6 or a "pay-for-play" rule.
2. It is the least adopted of the Model Rules. As I noted in my 5/7/09 e-mail, "[w]ith all but four states having at least issued a post-Ethics 2000 Report, there are seven states that have adopted or recommended the adoption of the Model Rule (Colorado, Delaware, Idaho, Iowa, Maine, Missouri, Washington)."
3. During the deliberations that led to the vote to recommend adoption of a "pay-to-play" rule, Ellen pointed out that all of the anecdotal stories that the members recounted in support of having such a rule involved judicial misconduct, e.g., overreaching by judges. We should leave this issue for resolution by the judicial council if it is truly a problem. I am not aware of an interest in such a rule outside of the Commission. As Raul observed in an earlier e-mail, there should be statutes that reach this conduct. No one has researched that; I am trying to budget my time and have not attempted to research the issue. I don't want to spend the time unless we are sure there is a problem that is need of a solution. See point #5, below.
4. Along the same lines, we are drafting rules of professional conduct. I have repeatedly heard the membership state that we can't regulate all conduct of lawyers. Yes, pay-for-play MAY be a problem, but I don't think that a rule of professional conduct is the appropriate solution for it.
5. As to whether pay-for-play is a problem, I am sure that everyone on the Commission has a story to tell. However, I am not aware of any study in California that indicates that lawyers making contributions to judges in return for appointments is a far-reaching problem. Maybe it is. But before we draft rule, we should know whether it is needed; we should not make a decision based on anecdotal evidence, all of which points to judicial and not lawyer misconduct. We can recommend that this might be an issue for further study, but it is beyond our limited resources -- of time and money -- to conduct such a study. I am very uneasy about recommending a rule that has met with near universal rejection elsewhere in the country until we know that California has a real problem that needs to be addressed, and we have made a careful consideration of the alternatives to resolving the problem besides a rule of professional conduct. If the State Bar, the Judiciary or the Legislature is so inclined, then they should investigate the issue further and request that a rule be drafted.
6. There are also the First Amendment issues that Raul raised in his e-mail, below. Given the Commission's vote to retain the savings clause in proposed Rule 7.3 ("unless the communication is protected from abridgment by the Constitution of the United States or by the Constitution of the State of California"), a clause not found in any other state's provisions concerning legal marketing, I'm not sure why the Commission wants to wade into the political arena on this issue. There are limits on expression, even political expression. However, resolving whether pay-for-play is a problem that warrants careful balancing of the policies underlying the First Amendment and the policies that might warrant a self-regulating profession

to intrude on the First Amendment, and whether an RPC would be the appropriate solution, is beyond the Commission's resources at this time.

7. Finally, below is the legislative history of the Rule, as recounted in ABA, A Legislative History: The Development of the ABA Model Rules of Professional Conduct, 1982-1995 (proposed Rule drafts omitted). I've attached the legislative history w/ rule drafts, in Word. It appears to have had a checkered history.

**1. Standing Committee on Ethics and Professional Responsibility
Section of Business Law
Section of State and Local Government Law**

The ABA Standing Committee on Ethics and Professional Responsibility, ABA Section of Business Law, and ABA Section of State and Local Government Law's recommended Rule 7.6 (Report 122A) was proposed, debated and defeated at the August 1999 ABA Annual Meeting (by a vote of 164-146).

* * *

Discussion

At the August 1996 Annual Meeting, the Association of the Bar of the City of New York filed and withdrew a recommendation (Report 10C) that each jurisdiction enact a rule barring lawyers from undertaking "a government finance engagement awarded by an official of an issuer within two years after making a political contribution to such official of an issuer or a political solicitation for a political contribution to such official of an issuer" with certain exceptions.

At the August 1997 Annual Meeting, the House of Delegates adopted, by voice vote, the revised recommendation of the Association of the Bar of the City of New York (Report 10D) that called for "the President of the American Bar Association to appoint a task force: . . . to submit for consideration by the House of Delegates at its meeting in August 1998 recommendations as to any additional professional standards, laws or procedures found to be necessary or desirable in the form of amendments to the Model Rules of Professional Conduct, aspirational ethical standards or other appropriate measures [relating to lawyers making or soliciting political contributions to or for public officials of issuers of municipal securities].

At the August 1998 Annual Meeting, the ABA House of Delegates adopted a recommendation of the Task Force on Lawyers' Political Contributions (Report 301A) that directed the Standing Committee on Ethics and Professional Responsibility to "report to the House of Delegates, by its 1999 Annual Meeting, a proposed Model Rule that declares that a lawyer or law firm shall not make a political contribution or solicitation for the purpose of obtaining or being considered for a legal engagement." (At the same August 1998 Annual Meeting the ABA Section of State and Local Government Law filed a recommendation (Report 108) asking that the Standing Committee on Ethics and Professional Responsibility be directed "to consider a formal opinion or an amendment or

comment to the existing Model Rules to specifically address the issue." That recommendation was withdrawn.)

The practice commonly known as "pay-to-play" addressed by the Rule is a system whereby lawyers and law firms are considered for or awarded either government legal engagements or appointments by a judge only upon their making or soliciting contributions for the political campaigns of officials who are in position to "steer" such business their way. The Rule's prophylactic effect inheres in its subjecting lawyers to possible disciplinary action when they knowingly participate in such a system.

* * *

2. Section of Business Law
Section of State and Local Government Law
Standing Committee on Ethics and Professional Responsibility
Association of the Bar of the City of New York

The ABA Section of Business Law, ABA Section of State and Local Government Law, ABA Standing Committee on Ethics and Professional Responsibility, and Association of the Bar of the City of New York's proposed new Rule 7.6 and Comment (Report 110) was debated and adopted at the February 2000 ABA Midyear Meeting.

* * *

Discussion

Despite the fact that the recommendation in August 1999 by the ABA Standing Committee on Professional Responsibility did nothing more than implement the prior instructions of the House of Delegates to draft a new Model Rule on lawyer's political contributions, it was rejected by the House. The Section of Business Law took the lead on resubmitting the proposal for reconsideration.

Model Code Comparison

DR 7-110 stated that "a lawyer may make a contribution to the campaign fund of a candidate for judicial office in conformity with" the provisions of the Code of Judicial Conduct.

8. **KEM Recommendation:** Provide the Commission with this e-mail string and call for another vote. I do not think that we should spend any more time on attempting to draft this Rule until the Commission has considered the arguments pro that Jerry has raised and the arguments con that Raul and I have raised. The arguments were not before the Commission when it voted at the July 2009 meeting.

a. I would ask Harry (whom I've copied) to call the vote when we have the fullest complement possible of the Commission -- probably some time on Friday morning. If the Commission insists that it wants such a rule, then the members should identify the rule's parameters (Jerry has suggested some below) and provide the drafters with guidance.

b. I've also copied Randy & Lauren so they know where we currently stand in getting them materials on this Rule.

October 27, 2009 Sapiro E-mail to KEM, cc Martinez, Chair & Staff re 7.6:

I think yours is the practical solution.

Don't hold your breath until the judiciary or the executive branch adopt rules or statutes that cure the problems of pay to play.

October 28, 2009 KEM E-mail to McCurdy & Difuntorum, cc Drafters & Chair:

To follow up on my e-mail of yesterday, I've attached an excerpt of the Rule 1-400 e-mail compilation that contains the e-mail exchange among the drafters -- Jerry, Raul and me -- concerning a "pay-for-play" rule. In PDF. Please use the attached as the agenda materials for this matter.

I've requested that Harry call another vote on whether to have any rule that addresses pay-for-play. See paragraph 8 of my 10/27/09 e-mail in the attached. The attached sets out the pros and cons, which were not before the Commission when it voted last summer.

Raul and I question whether we should pursue such a rule. Jerry favors it (although Jerry noted in his reply to my 10/27 e-mail that my suggested approach "is the practical solution," I still believe he favors a rule).

Please let me know if you have any questions.