

# Report Of The NYSBA Task Force On “Pay To Play”

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## Executive Summary

The existence of specific instances of “Pay to Play” is difficult to establish, since the conduct in question is dependent upon the state of mind with which political contributions are made. In the absence of a forthright admission by the contributor or the recipient, therefore, “Pay to Play” is difficult to prove. Not surprisingly, the limited investigation we have conducted has not revealed any documented instance of “Pay to Play” by lawyers in New York. Although as a result our Task Force is unable to reach a definite conclusion whether “Pay to Play” exists in New York State, either with respect to municipal finance lawyers or in other fields of legal practice, we recognize that there is powerful anecdotal and circumstantial evidence that such activity has occurred, as is discussed in greater detail below. That evidence, together with the widespread public perception that the practice exists, is sufficiently strong to lead the Task Force to conclude that the public interest, and the interest of the Bar in general, dictate remedial measures to prohibit the practice known as “Pay to Play”, to the extent to which it actually exists.

Accordingly, the Task Force recommends:

- clarification of existing statutes, to make clear that it is ~. illegal for any person or entity to make or solicit contributions, or provide or solicit anything of value, to any public official, candidate for public office, political campaign committee or political party, in exchange for a promise, express or implied, of designation or selection of any person or entity to provide any service to any public entity, or to be considered to provide any such service.
- NYSBA should adopt an Ethical Consideration explaining that the practice of “Pay to Play” is improper, and prohibited by existing provisions of the Code of Professional Responsibility. The Ethical Consideration should clarify the impropriety in any lawyer or law firm making or soliciting any political contribution for the purpose of influencing any person or public entity to retain the lawyer or the lawyer’s law firm to provide services to any public entity, or to be considered to be retained to provide such services, and set out objective criteria that will enable lawyers to understand whether a particular contribution is improper.
- the Code of Professional Responsibility should not be amended to prohibit political contributions by any lawyer or law firm less than those contributions which are permitted for any other person or entity, nor to establish any presumption that a contribution in excess of any specified amount is presumed to be for an improper purpose.

- until the Legislature has adopted meaningful campaign finance reform legislation, full disclosure of all substantial contributions by lawyers or law firms to political candidates and political parties should be required, and such disclosures should be applicable to “soft” as well as “hard” money. Such disclosure should be made to the Office of Court Administration, and should be in a form which permits the media and other interested persons to access the disclosure information in a meaningful manner.
- except in minor matters or where compelling circumstances exist, legal counsel, and other professional services, should be selected on the basis of merit, and not on the basis of political activity or contributions. This goal may be achieved through use of merit procurement procedures such as those recommended in the ABA Model Procurement Code.

To those ends, the Task Force recommends to the House of Delegates the adoption of the resolution attached to this report as Task Force Proposal A. (Ed. Note: not included)

The Task Force has not extended its deliberations to the issue of contributions to judicial campaigns, or the practices whereby judges may appoint campaign contributors as guardians ad litem, receivers, referees, appointed counsel, executors or fiduciaries, and other similar positions. If requested to do so by the House, the Task Force is prepared to continue its work with respect to these issues, and to report with its recommendations upon the conclusion of those efforts.