

Task Force Proposal For New Ethical Consideration 2-37

The text of the New Ethical Consideration recommended by the NYSBA Task Force (p. 5) is as follows:

Improper Political Contributions

EC 2-37. Lawyer campaign contributions to government officials or candidates for public office who are, or may be, in a position to influence the award of a legal engagement threaten governmental integrity by subjecting the recipient to a conflict of interest. Correspondingly, when a lawyer makes a significant contribution to a public official or an election campaign for a candidate for public office, and is later engaged by the official to perform legal services for the official's agency, it can create the appearance that the official has been improperly influenced in selecting the lawyer, whether or not this is so. This appearance of influence reflects poorly on the integrity of the legal profession and government as a whole. For these reasons, just as a lawyer may not compensate or give anything of value to a person or organization to recommend or obtain employment by a client, the Code prohibits a lawyer from making or soliciting a political contribution to a government official or candidate for public office if a disinterested lawyer would conclude that the contribution is being made or solicited for the purpose of obtaining or being considered eligible to obtain government legal work, regardless of the existence of any understanding between the lawyer and any government official or candidate that special consideration will be given in return for the political contribution or solicitation. In determining whether a disinterested lawyer should conclude that a political contribution to a public official or candidate is or has been made for the purpose of obtaining or being considered eligible to obtain government legal work, the factors to be considered include (a) whether legal work awarded to the contributor or solicitor, if any, was awarded pursuant to a process that was insulated from political influence, such as a "Request for Proposal" process, (b) the amount of the contribution or the contributions resulting from a solicitation, (c) whether the contributor or any law firm with which the lawyer is associated has sought or plans to seek government legal work from the official or candidate, (d) whether the contribution or solicitation was made because of an existing personal, family or non-client professional relationship with the government official or candidate, (e) whether prior to the contribution or solicitation in question, the contributor or solicitor had made comparable contributions or had engaged in comparable solicitations on behalf of governmental officials or candidates for public office for which the lawyer or any law firm with which the lawyer is associated did not perform or seek to perform legal work, (f) whether the contributor has made a contribution to the government official's or candidate's opponent(s) during the same campaign period and, if so, the amounts thereof, and (g) whether the contributor is eligible to vote in the jurisdiction of the government official or candidate, and if not, whether other factors indicate that the contribution or solicitation was nonetheless made to further a genuinely held political, social or economic belief or interest rather than to obtain a legal engagement.