



The Florida Bar

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THE FLORIDA BAR PROFESSIONAL ETHICS COMMITTEE MINUTES

Friday, January 27, 2017
9:30 a.m. until 10:45 a.m.
Gaylord Palms
Orlando, Florida

Chair Brian Coughlin presided over the meeting. Thirty-two members attended:

Abbott	Gano	Middleton
Arnold	Giannet	Newsome
Berman	Hintson	O'Connor
Blackwell	Kabler	Pollan
Braccialarghe	Kirsheman	Rizzardi
Campbell	Kroeger	Saiz
Chapman	Landsberg	Sullivan
Coughlin	Leppla	Swartz
Cox	Marshall	Weiss
Demers	Mayor	Young
Dillard	McGinnis	

Guest Lanse Scriven and staff members Elizabeth Clark Tarbert and LiliJean Quintiliani also attended the meeting. The committee took the following actions:

1. Approved the minutes of the October 21, 2016 meeting without objection.
2. Heard remarks from Lanse Scriven, candidate for Florida Bar President.

3. Heard a report on the Subcommittee for the Masters Seminar on Ethics 2017 from subcommittee chair Keith Rizzardi. The subcommittee has applied for the Presidential Showcase. The seminar will focus on conflicts involving technology, social media, use and misuse of disqualification motions, and cannabis. The subcommittee chair thanked subcommittee members Drew Demers, Hope Newsome and Alyssa Katz.

Committee member Leslie Kroeger entered the meeting.

4. Heard an informational report on Ethics Inquiry 35426, in which the inquirer requested reinstatement of Florida Ethics Opinion 67-5 regarding conflicts involved for a lawyer lobbying the legislature when the lawyer's partner is a legislator. The opinion was withdrawn by The Florida Bar Board of Governors on February 12, 1999, because the legislature instituted its own conflict of interest policy for public officials. The Professional Ethics Committee voted at its January 22, 2016 meeting to recommend that The Florida Bar Board of Governors direct the Professional Ethics Committee to issue an advisory ethics opinion on the issue. The Board Review Committee on Professional Ethics heard a presentation at its May 2016 meeting, but deferred this item until its December 2016 meeting at the request of the original inquirer. At its December 8, 2016 meeting, the Board Review Committee on Professional Ethics voted 8-0 to take no action on the request.

5. Heard an informational report on Proposed Advisory Opinion 16-1 on the issue of waiving all or part of a lawyer's fee in a personal injury case, which is now a formal advisory opinion because no comments were filed after publication of the revised proposed advisory opinion. The proposed advisory opinion is based on review of Florida Bar Staff Opinion 35283 at the request of a member of the subcommittee to review Florida Bar staff opinions. Florida Bar Staff Opinion 35283 concludes that the inquirer, who waived attorney's fees in a personal injury cases, may not also reduce the costs the inquirer advanced to the client in the matter now that there is a recovery under Rule 4-1.8(e), which prohibits financial assistance to a client. The subcommittee member disagreed and requested that the committee issue an opinion stating that the lawyer may reduce or waive costs the lawyer advanced to the client. The Professional Ethics Committee voted at its January 22, 2016 meeting to direct staff to draft a proposed advisory opinion that the conduct is permissible based on the facts provided. The Professional Ethics Committee voted at its June 17, 2016 meeting to approve Proposed Advisory Opinion 16-1 for publication with changes from the draft. Proposed Advisory Opinion 16-1 was published in the July 15, 2016 issue of the Florida Bar *News*. One comment was received. The Professional Ethics Committee voted to delete the sentence "In negotiating liens, the inquirer must disclose to lien holders that the inquirer will not be taking a fee, will not seek reimbursement for some of the inquirer's costs, and is seeking to disburse some of the recovery to the client" at lines 114-117 and otherwise affirm the opinion on October 21, 2016. Proposed Advisory Opinion 16-1 as modified by the committee was published in the November 15, 2016 issue of the Florida Bar

News. No comments were received within 30 days of the publication date, so the opinion is now final.

6. Considered a request of the Vision 2016 Commission Bar Admissions Sub-group of either an amendment to the Rules Regulating the Florida Bar or an ethics opinion regarding a safe harbor for Florida Bar members who work with law firms with nonlawyer ownership that are located in a jurisdiction that allows nonlawyer ownership of law firms. The Professional Ethics Committee voted at its June 17, 2016 meeting to request that the Board of Governors permit the Professional Ethics Committee to issue a formal advisory opinion that would allow Florida Bar members to divide fees with out-of-state lawyers that bar members may otherwise divide fees with, even though those lawyers are in firms in which there is nonlawyer ownership because nonlawyer ownership is allowed in that jurisdiction. The Board Review Committee on Professional Ethics deferred this item at its July 28, 2016 meeting. The Board of Governors voted on December 9, 2016, to direct the Professional Ethics Committee to adopt a formal advisory opinion on the issue of on the issue of Florida Bar members dividing fees with out-of-state lawyers as co-counsel, with whom bar members are otherwise authorized to divide fees, where those lawyers are in firms in which there is nonlawyer ownership because nonlawyer ownership is allowed in that jurisdiction, but that any opinion must state that Florida Bar rules prohibit nonlawyer ownership of law firms. The issue was published in the January 1, 2017 issue of the Florida Bar *News* for comment. A motion was made, seconded and passed 29-0 to direct staff to draft a proposed advisory opinion similar to ABA Formal Opinion 464, but adding that Florida does not permit nonlawyer ownership of law firms as directed by The Florida Bar Board of Governors, and also addressing the issue that fees may be divided with an out-of-state lawyer only when the out-of-state lawyer is providing legal services that the out-of-state lawyer is authorized by law to provide.

7. Considered Proposed Advisory Opinion 16-2 in light of comments received after publication. A Professional Ethics Committee member requested review of staff's response to Ethics Inquiry 35884, in which the inquirer asked about involvement with a finance company that advances attorney's fees for criminal cases. The Professional Ethics Committee voted at its June 17, 2016 meeting to withdraw the staff opinion and adopt a formal advisory opinion combining the original question and the question received as part of the request for committee review that concludes that the proposed conduct is permissible as long as the lawyer receives no other benefit from the finance company, but also directing staff to ask additional questions that might need to be addressed in the advisory opinion. The Professional Ethics Committee voted to approve Proposed Advisory Opinion 16-2 as drafted by staff but with modifications on October 21, 2016. Proposed Advisory Opinion 16-2 was published in the November 15, 2016 issue of the Florida Bar *News*. One comment was received. A motion was made, seconded, and passed 29-1 to affirm 16-2 as drafted and not amend Rule 4-1.5(h).

Alexcia Cox entered the meeting.

8. Considered staff's response in Ethics Inquiry 36733 regarding charging costs in participation with a legal services plan. A motion was made, seconded and passed 30-1 to affirm the denial of a staff opinion.

9. The chair recognized committee member Peg O'Connor, who received a pro bono award at the Supreme Court of Florida Pro Bono Awards Ceremony on January 19, 2017.

10. Discussed the future meeting schedule. The next meeting of the Professional Ethics Committee is tentatively scheduled for Friday, June 23, 2017, from 2:00 p.m. until 5:00 p.m. at the Boca Raton Resort & Club in conjunction with The Florida Bar Annual Convention.

11. The meeting was adjourned.