



# The Florida Bar

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## THE FLORIDA BAR PROFESSIONAL ETHICS COMMITTEE

### AGENDA

Friday, January 27, 2017

9:30 a.m. until 12:30 p.m.

Gaylord Palms Hotel  
Orlando, Florida

1. Approval of the minutes of the October 21, 2016 meeting.
2. Report on the Subcommittee for the Masters Seminar on Ethics 2017. No backup.
3. 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 The opinion was withdrawn by The Florida Bar Board of Governors on February 12, 1999, because the legislature instituted its own conflict of interest policy for public officials.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. No backup.
4. 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. Florida Ethics Opinion 16-1 is attached.

5. Consideration of 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.

6. Consideration of 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*. Backup includes draft Proposed Advisory Opinion 16-2, comments received, the original inquiry (dated February 23, 2016), staff's response (dated March 10, 2016), the inquirer's request for Professional Ethics Committee review (dated March 14, 2016), staff's additional questions (dated June 20, 2016), the inquirer's response to the committee's questions (dated June 27, 2016), and relevant ethics opinions.

7. Consideration of staff's response in Ethics Inquiry 36733 regarding charging costs in participation with a legal services plan. Backup includes Ethics Hotline Call Record 436921 (dated November 9, 2016), the original written inquiry (dated November 9, 2016), staff's response (dated November 10, 2016), the inquirer's request for Professional Ethics Committee review (dated November 14, 2016), the inquirer's supplemental email (dated November 30, 2016), additional information on the legal plan on costs, Rule 4-1.8(e), Rule 4-1.5, summary of authorities on flat fee representation, Florida Ethics Opinion 98-2, Ohio Ethics Opinion 95-2, and Texas Ethics Opinion 542.

8. Discussion of other items at the direction of the chair. No backup materials.

9. Discussion of 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.** No backup materials.