



# The Florida Bar

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## THE FLORIDA BAR PROFESSIONAL ETHICS COMMITTEE MINUTES

Friday, January 22, 2016  
9:30 a.m. until 12:30 p.m.  
Hilton Orlando  
Lake Buena Vista, Florida

Chair Grey Squires-Binford presided over the meeting. Thirty-three (33) members attended:

Arnold	Denney	Martinez (VC)
Berman	Duncan	McGinnis
Betensky	Esquivel	Middleton
Blackwell	Gano	Reinhart
Braccialarghe	Giannet	Rizzardi
Butler	Holman	Shults
Campbell	Kabler	Smith
Chapman	Kirsheman	Squires-Binford (C)
Charles	Kroeger	Sullivan
Coughlin (VC)	Landsberg	Swartz
Cox	Marshall	Young

Guests President Ramón A. Abadin, President-elect William J. Schifino, Jr., President-elect Designate Michael J. Higer, Judge Thomas Gallen and Judge Carlos Guzman and staff members Elizabeth Clark Tarbert, Lori S. Holcomb, and Joy A. Bruner also attended the meeting. The committee took the following actions:

1. The committee was thanked by Ramón A. Abadin, President-elect William J. Schifino, Jr., President-elect Designate Michael J. Higer for their service.

2. Approved the minutes of the June 25, 2015 meeting on voice vote without objection with no corrections.

3. Heard a report from Subcommittee for the Masters Seminar on Ethics 2016 by subcommittee chair Loula Giannet that the seminar at the June 2016 Annual Convention will be a lively interactive seminar on the subject of diminished capacity, featuring speakers Professor Roberta K. Flowers, Dr. Randy K. Otto, Charles P. Sabatino, Edwin M. Boyer, and Judge Ginger Lerner-Wren.

4. Heard an information report from staff that Florida Ethics Opinion 14-1 is now final after review by The Florida Bar Board of Governors. The proposed advisory opinion, based on Ethics Inquiry 32991, involves a lawyer's request regarding the ethical obligations involved in advising clients to "clean up" their social media pages before litigation is filed to remove embarrassing information that the lawyer believes is not material to the litigation.

5. Reviewed 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 disagrees and requests that the committee issue an opinion stating that the lawyer may reduce or waive costs the lawyer advanced to the client. A motion was made, seconded, and passed on voice vote, without objection, to direct staff to draft a proposed advisory opinion that would permit the lawyer to "forgive" all or part of the costs under the circumstances posed in the inquiry.

6. Reviewed Ethics Inquiry 35426, in which the inquirer requests 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. A motion was made, seconded, and passed 30-3 to recommend that The Florida Bar Board of Governors direct the committee to consider adoption of a proposed advisory opinion on the topic of a lawyer lobbying the legislature when the lawyer's partner is an elected member of the legislature.

7. Reviewed the denial of a staff opinion in Ethics Inquiry 35607, in which the inquirer asked regarding another lawyer's request that the inquirer's client execute a particular settlement agreement that included clauses which may prevent the inquirer's client from bringing a bar complaint against the opposing counsel and which contains a confidentiality clause. Staff declined to issue an ethics opinion because the inquiry involved the conduct of another attorney, legal questions, and the Professional Ethics Committee's policy that staff will not provide an opinion regarding a specific legal document. A motion was made, seconded and passed on voice vote without objection to affirm the denial of a staff opinion.

8. **EXECUTIVE SESSION.** The committee met in Executive Session and heard a report from staff on antitrust issues raised by *North Carolina Board of Dental Examiners v. FTC*, 135 S.Ct. 1101 (2015).

9. Discussed the future meeting schedule. The next meeting of the Professional Ethics Committee is tentatively scheduled for **Friday, June 17, 2016, from 2:00 p.m. until 5:00 p.m. at the Hilton Bonnet Creek in Orlando, Florida in conjunction with The Florida Bar Annual Convention.** If necessary, an interim meeting will be held before Annual Convention.