



The Florida Bar

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THE FLORIDA BAR PROFESSIONAL ETHICS COMMITTEE MINUTES

Friday, October 21, 2016
9:30 a.m. until 12:00 p.m.
Airport Marriott
Tampa, Florida

Chair Brian Coughlin presided over the meeting. Twenty-seven (27) members attended:

Abbott	Dillard	Miranda
Braccialarghe	Giannet	Newsome
Betensky	Hintson	O'Connor
Blackwell	Holman	Pollan
Borja	Kabler	Rizzardi
Corpion	Katz	Swartz
Coughlin	Kirsheman	Vaughn
Demers	Kroeger	Weiss
Denney	Mayor	Young

Board Liaison Thomas R. Bopp, guests Brandon Campbell, Terry Delahunty, Alan Landsberg, Greg Roper, Zach Roper, and Michelle Suskauer, and staff members John F. Harkness, Jr., Lori S. Holcomb, Elizabeth Clark Tarbert, Jeffrey M. Hazen, and Gary S. Blankenship also attended the meeting. The committee took the following actions:

1. Approved the minutes of the June 17, 2016 meeting without objection.
2. Appointed committee members Abbott, Demers, Katz, Newsome and Rizzardi to the Subcommittee for the Masters Seminar on Ethics 2017.

3. Heard an informational report from staff on the 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 item will be on the December 9, 2016 Board of Governors agenda.

4. Considered Proposed Advisory Opinion 16-1 on the issue of waiving all or part of a lawyer's fee in a personal injury case. 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. A motion was made, seconded, and passed 24-1 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. A motion was made, seconded and passed 25-0 to affirm Proposed Advisory Opinion 16-1 as amended. Committee member Rizzardi recused himself from the discussion and all votes on this item.

5. Considered draft proposed advisory opinion 16-2 in response to a request for 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 if 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. A motion was made to affirm the original staff opinion, which received no second. A motion was

made, seconded, and failed 6-20, to withdraw the original staff opinion and not issue an advisory opinion. A motion to affirm draft Proposed Advisory Opinion 16-2 was made, seconded, and failed 3-21. A motion to affirm draft Proposed Advisory Opinion 16-2, but changing the terms “participation” and “participate” to another more appropriate term at lines 34, 56, and 61 and adding that the inquirer should explain the inquirer’s role in the financing transaction and may recommend that the client obtain independent legal advice in the financing transaction or obtain information directly from the financing company was made, seconded, and passed 21-4.

6. Considered a request for review of Florida Bar Staff Opinion 36223 from the inquirer. The inquiry involves conflicts of interest of a lawyer who worked as in-house counsel for an insurance company who left to open the inquirer’s own practice representing homeowners against their insurance companies in the same kinds of cases the inquirer handled as in-house counsel for the insurance company. The inquirer asks about representing homeowners against the inquirer’s former employer in the same types of matters in which the inquirer represented the former employer. A motion to withdraw Florida Bar Staff Opinion 36223 and direct staff to issue a new staff opinion analyzing the inquiry under rule 4-1.9 was made, seconded, and passed 25-0.

7. The request for review of Florida Bar Staff Opinion 36194 was withdrawn by the inquirer prior to the committee’s meeting, which involves conflicts of interest of a legal aid organization that provides limited assistance through mobile clinics. No action was taken by the committee.

8. Discussed the future meeting schedule. The next meeting of the Professional Ethics Committee is tentatively scheduled for Friday, January 27, 2017, from 9:30 a.m. until 12:30 p.m. at the Gaylord Palms Hotel in Orlando in conjunction with The Florida Bar Winter Meeting.

9. A motion to adjourn the meeting was made, seconded, and passed on voice vote without objection.