



# The Florida Bar

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## THE FLORIDA BAR PROFESSIONAL ETHICS COMMITTEE MINUTES

Friday, June 17, 2016  
2:00 p.m. until 5:00 p.m.  
Hilton Orlando Bonnet Creek

Chair Grey Squires-Binford presided over the meeting. Twenty-four (24) members attended:

Arnold	Denney	Reinhart
Berman	Duncan	Rizzardi
Borja	Gano	Shults
Braccialarghe	Hutchinson	Smith
Burkhart	Kabler	Squires-Binford
Chapman	Landsberg	Swartz
Coughlin	Martinez	Vaughn
Cox	Middleton	Young

The following incoming members whose terms start in 2016-17 also attended:

Abbott	Katz	O'Connor
Demers	Mayor	Pollan
Hintson	Newsome	

Incoming board liaison Thomas Bopp, guests Carolyn Bell, Timothy P. Chinaris and Pamela Cichon, and staff members Elizabeth Clark Tarbert, Lori S. Holcomb, Gail E. Ferguson, and Gary Blankenship also attended the meeting. The committee took the following actions:

1. Approved the minutes of the January 22, 2016 meeting.

2. Report from Subcommittee for the Masters Seminar on Ethics 2016 by subcommittee member Thomas Shults, who reported the seminar was successful, well-attended and was a dynamic presentation on representing clients with diminished capacity presented by Professor Roberta K. Flowers, Dr. Randy K. Otto, Mr. Edwin M. Boyer, and the Honorable Ginger Lerner-Wren. Mr. Shults thanked Assistant Ethics Counsel Gail E. Ferguson for assisting with the seminar. Ms. Ferguson thanked Mr. Shults for procuring 3 of the 4 outstanding speakers.

3. Heard an informational report from staff that Ethics Inquiry 35426 was on The Florida Bar Board of Governors agenda at its May 20, 2016 meeting. 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 The opinion was withdrawn by The Florida Bar Board of Governors on February 12, 1999, because the legislature instituted its own conflict of interest policy for public officials.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 deferred this item until its December 2016 meeting at the request of the original inquirer.

4. Considered draft Proposed Advisory Opinion 16-1 on the issue of waiving all or part of a lawyer's fee in a personal injury case. The draft 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 case, may not also reduce the costs the inquirer advanced to the client in the matter now that there is a recovery because Rule 4-1.8(e) 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 based on the facts provided that the conduct is permissible. A motion was made, seconded, and passed 20-0 to approve Proposed Advisory Opinion 16-1 for publication with the following changes: deleting "A majority of" at line 88; replacing "Those committee members believe" with "The committee believes" at lines 90-91; replacing "Those committee members who believe that the general prohibition against financial assistance is applicable to these circumstances are" with "Even assuming the general prohibition against financial assistance is applicable to these circumstances, the committee is" at lines 94-95; replacing "Those committee members are" with "The committee is" at line 100; replacing "Those committee members also are" with "The committee also is" at line 103; replacing "those members are" with "the committee is" at line 106; deleting "A small minority of the committee is of the opinion that Rule 4-1.8(e) prohibits the inquirer from 'forgiving' the costs when there has been a recovery that is equal to or more than the amount of the advanced costs" at lines 121-

123; deleting “a majority of” at lines 124; deleting “A majority/minority of” at line 129; and deleting “a majority/minority of” at line 131.

Committee member Keith Rizzardi entered the meeting.

5. Considered 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. Backup includes 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), and relevant Florida ethics opinions. A motion to affirm staff’s response was made and seconded. The motion failed 8-12. A motion was made, seconded, and passed 20-2, 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.

6. Considered, at the request of the Vision 2016 Commission Bar Admissions Subgroup, 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. A motion was made, seconded, and passed 16-7 to request that the Board of Governors direct the Professional Ethics Committee to issue a formal advisory opinion that would allow Florida Bar members to divide fees with out-of-state lawyers with whom bar members are otherwise authorized to divide fees, even though those lawyers are in firms in which there is nonlawyer ownership because nonlawyer ownership is allowed in that jurisdiction.

7. Heard a report from staff on American Bar Association Commission on the Future of Legal Services issue paper on Legal Checkups (dated March 22, 2016).

8. Heard a report from staff on American Bar Association Commission on Future of Legal Services issue paper on alternative business structures (dated April 8, 2016).

9. Heard a report from staff on a request by the bar’s Professionalism Commission regarding providing information on the professionalism complaints and panel at meetings and seminars.

10. The committee recognized departing members who are term limited: Grey Squires-Binford, Ana Maria Martinez, and D. Culver “Skip” Smith, III.

11. Discussed the future meeting schedule. The next meeting of the Professional Ethics Committee is tentatively scheduled for **Friday, October 21, 2016, from 9:30 a.m. until**

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**12:30 p.m. at the Tampa Airport Marriott in conjunction with The Florida Bar Fall Meeting.** An orientation will precede the meeting from 9:00 a.m. until 9:30 a.m. on the same date and at the same location.