

**THE FLORIDA BAR  
PROFESSIONAL ETHICS COMMITTEE  
MINUTES**

Thursday, June 25, 2015  
2:00 p.m. until 4:00 p.m.  
Boca Raton Resort & Club  
Boca Raton, Florida

Chair Grey Squires-Binford presided over the meeting. Twenty-seven (27) members attended:

Atkinson	Duncan	Ramos
Berman	Gano	Rizzardi
Borja	Haliczer	Shults
Braccialarghe	Kirsheman	Smith
Butler	Kroeger	Squires-Binford (C)
Chapman	Landsberg	Sullivan
Charles	Leppla	Vaughn
Coughlin	Marshall	Weiss
Criser	Martinez (VC)	Young

Also attending the committee's meeting were: Board Liaison Gary S. Lesser; new (2015-16) members Gary S. Betensky, Elicia D. Blackwell, Helen L. Miranda, and Alex J. Saiz; guests Henry M. Coxe, Steven Teppler and Greg Tindall; and staff members Elizabeth Clark Tarbert, Jonathan Grabb and Gary Blankenship. The committee took the following actions:

1. Approved the minutes of the January 23, 2015 meeting.
2. Heard a report on the Masters Seminar on Ethics 2015 by subcommittee Chair Martinez. The 2015 Masters Seminar on Ethics includes speakers Ethan Wall, author of "The Social Media Guide for Lawyers;" Michael (Mick) Stawasz, head of the U.S. Department of Justice's Cyber-Security Unit; John Delionado, a partner at Hunton and Williams whose practice focuses on cyber-security matters; and Judith Equels, Practice Management Advisor (PMA) with The Florida Bar's Attorney-Consumer Assistance Program and former Director of The Florida Bar's Law Office Management Assistance Service (LOMAS). The 2015 Masters Seminar on Ethics judicial panel includes: Former Florida Supreme Court Justice Raoul Cantero (moderator) and panelists Florida Circuit Judge Russell L. Healey; United States District Judge Marcia Cooke; and Florida Fourth District Court of Appeal Judge Jonathan D. Gerber.
3. Considered draft Proposed Advisory Opinion 14-1, based on Ethics Inquiry 32991, involving 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 matter. The request was denied for lack of precedent in Florida. At its January 24, 2014 meeting, the committee voted to

The Florida Bar  
Professional Ethics Committee  
Minutes  
Meeting of June 25, 2015  
Page 2

direct staff to draft a proposed advisory opinion on the issue. At its June 27, 2014 meeting, a subcommittee was appointed to redraft the opinion in light of the committee's discussion. At its January 23, 2015 meeting, the committee voted to adopt Proposed Advisory Opinion 14-1 as drafted by the subcommittee. Official notice of its adoption was published in the February 15, 2015 issue of the Florida Bar *News*. Proposed Advisory Opinion 14-1 was reconsidered in light of comments by Florida Bar members. A motion was made, seconded and passed on voice vote with objection by 1 member to delete lines 39-41, begin the paragraph with "Under these facts" and change "that" to "a." A motion was made, seconded, and passed 14-10 to add to the beginning sentence that the inquiring lawyer handles personal injury and wrongful death cases. A motion to add at line 112 "a lawyer in any area of practice" died for lack of a second. A motion to change "a lawyer" to "the inquirer" throughout the final 3 paragraphs of the opinion except for the first sentence, was made, seconded, and passed on voice vote without objection. A motion to remove "an appropriate record of" at lines 101-102 and line 116 was made, seconded, and passed on voice vote without objection. A motion to affirm Proposed Advisory Opinion 14-1 as modified was made, seconded, and passed on voice vote without objection.

4. Considered a request for Professional Ethics Committee review of a denial of a staff opinion in Ethics Inquiry 34699, involving the ethical propriety of members of a law firm representing private clients before a city commission, its boards and city staff if a member of the firm becomes a zoning hearing officer under the city's land development code. The request for an opinion was denied as an issue likely involving the code of judicial conduct. A motion was made to affirm the denial of a staff opinion and inform the inquirer that the issue of the hearing officer's conduct is not addressed by the Rules Regulating The Florida Bar and that there are insufficient facts to address the question of other lawyers in the firm appearing before the city commission, its boards and city staff, but referring the inquirer to Rule 4-1.7(a)(2). The motion was seconded and passed on voice vote without objection. Committee member Shults abstained from the discussion and vote.

5. Considered Florida Bar Staff Opinion 34735 at the request of a member of the subcommittee to review staff opinions. Florida Bar Staff Opinion 34735 concludes that a lawyer who holds funds on behalf of a client must follow Florida law and treat the funds as abandoned property when the client does not respond to repeated requests by the lawyer to accept the funds. A motion to affirm the staff opinion was made, seconded, and passed 18-4.

6. Heard a report from staff regarding amendments to Rule 4-4.2 (Communication with Represented Persons) that have been proposed by the City County & Local Government Law Section, the Florida Association of County Attorneys and Government Law Section. Comments in favor of the proposed amendments and in opposition to the proposed amendments

The Florida Bar  
Professional Ethics Committee  
Minutes  
Meeting of June 25, 2015  
Page 3

have been received by the bar. The proponents of the amendments have made a new proposal with some compromise to attempt to address concerns of opponents. The chair encouraged committee members with an interest to comment directly to the Board of Governors.

7. Considered posting agendas and minutes of the committee on the bar's website, including how far back and how long to post, at the request of staff. A motion to post committee agendas (without backup) and minutes from this date forward was made, seconded, and passed on voice vote without objection.

8. The chair recognized committee members Deborah A. A'Hearn, Linda S. Brehmer-Lanosa, James S. Haliczzer, and Miriam S. Ramos who are leaving the committee due to term limits and presented Certificates of Service to committee members James S. Haliczzer and Miriam S. Ramos.

9. The chair recognized committee member Rizzardi, who expressed concerns regarding the Professionalism Expectations, in which some of the expectations have been expressed as imperatives and therefore appear to be encroaching on the Rules of Professional Conduct and the area of ethics.

10. Discussed the future meeting schedule. The next meeting of the Professional Ethics Committee is tentatively scheduled for Friday, September 18, 2015, from 9:30 a.m. until 12:30 p.m. at the Tampa Airport Marriott in Tampa, Florida in conjunction with The Florida Bar Fall Meeting.