



# The Florida Bar

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## THE FLORIDA BAR PROFESSIONAL ETHICS COMMITTEE

### AGENDA

**Friday, October 13, 2017**  
**9:00 a.m. until 12:30 p.m.**  
**Tampa Airport Marriott**  
**Tampa, Florida**

1. Approval of the minutes of the June 23, 2017 meeting.
2. Appointment of the Subcommittee for the Masters Seminar on Ethics 2018. No backup.
3. Consideration of Proposed Advisory Opinion 17-1 in light of comments received. The proposed advisory opinion was requested by the Board of Governors at the request of the Vision 2016 Commission Bar Admissions Sub-group and the Professional Ethics Committee, was approved by the Professional Ethics Committee at its June 23, 2017 meeting, and was published in the July 15, 2017 issue of the Florida Bar *News* for member comment. One comment was filed, and the opinion must be reconsidered in light of that comment. Backup includes Proposed Advisory Opinion 17-1, official notice and an article on the issue from the July 15, 2017 Florida Bar *News*, summary of authority on the issue, comments (received August 28, 2017). *[Additional materials provided with the June 23, 2017 agenda backup.]*
4. Consideration of Florida Bar Staff Opinion 37289 at the request of the inquirer. The inquirers are both personal injury lawyers and principals of a company that provides litigation cost protection, that reimburses lawyers for their advanced costs in litigation in the event there is no recovery. The inquirers indicate they plan to use the insurance and ask whether the cost of purchasing the insurance may be charged to clients in cases where there is a recovery if the insurance is specific to the individual client and the inquirers disclose the cost to the clients in the contingent fee agreement. Florida Bar Staff Opinion 37289 concludes that the cost of the insurance to cover the lawyer's loss in advancing costs and making them contingent on the outcome may not be charged to the client because it directly benefits the lawyer and is a business expense of the lawyer that should be accounted for in the lawyer's overhead, and is not a cost of

litigation that can be charged to the client. The Professional Ethics Committee voted to refer the issue to a subcommittee for a recommendation at its June 23, 2017 meeting. Backup includes Rules Regulating The Florida Bar 4-1.5 and 4-1.8(e), original inquiry (received May 8, 2017), Florida Bar Staff Opinion 37289 (dated May 23, 2017), inquirer's request for committee review (dated June 7, 2017), Florida Bar Staff Opinion 37055 (dated March 9, 2017, and referred to in the original inquiry), and Florida Bar Staff Opinion 28705 Revised (dated January 5, 2010, and referred to in Florida Bar Staff Opinion 37055).

5. Consideration of Florida Bar Staff Opinion 37300 at the request of the inquirer. The staff opinion concludes that the proposal, involving the inquirer's proposed arrangement with a company partially owned by the inquirer that provides services related to immigration matters and in which the company pays the inquirer's law firm a fixed flat fee for each legal service provided by law firm to the company's clients, is fraught with ethics concerns including potentially assisting in the unlicensed practice of law and solicitation. Backup includes original inquiry (May 11, 2017), Florida Bar Staff Opinion 37300 (dated May 30, 2017), inquirer's request for Professional Ethics Committee review (dated June 29, 2017), Rules Regulating The Florida Bar 4-7.17(b), 4-7.18, 4-5.4, 4-5.5 (a), and 4-8.4(a), summary of relevant authority, relevant Florida ethics opinions, relevant Florida cases, and American Immigration Lawyers Association Future of Immigration Report 2016.

6. Consideration of the denial of a staff opinion Ethics Inquiry 37536 at the request of the inquirer. The Professional Ethics Committee must first determine whether to review the request, which was not timely received, in response to the inquirer's request to file late due to Hurricane Irma. The inquiry involves division of fees in the appeal of an estate matter after the lawyer who was originally primarily responsible for the appeal withdrew from representation at the client's request where the agreement between the law firms was never reduced to a writing executed by the client and both lawyers. Staff declined to give an opinion because the inquiry involves past conduct, the conduct of a lawyer other than the inquirer, review of specific documents and questions of law. Backup includes Ethics Hotline Call Record 448378 (dated April 18, 2017), Ethics Hotline Call Record 450178 (dated May 9, 2017), Ethics Hotline Call Record 450741 (dated May 15, 2017), e-mail to inquirer based on call record 450741 (dated May 17, 2017), written inquiry (dated July 21, 2017), Florida Bar staff's response (dated August 14, 2017), request for Professional Ethics Committee review (dated September 21, 2017), Florida Bar Procedures for Ruling on Questions of Ethics (Rule 4-1.5(d) and (g) and summary of relevant authority can be found in staff's response dated August 14, 2017).

7. Consideration of withdrawal of Florida Ethics Opinion 88-9, which addresses advertising questions, in light of amendments to rules and a federal court order prohibiting The Florida Bar from enforcing an existing rule in *Searcy v. Florida Bar*, 140 F. Supp.3d 1290 (Sept. 30, 2015). Backup includes the official notice to withdraw Florida Ethics Opinions 88-9, 75-15,

and 73-37 from the September 15, 2017 Florida Bar *News*, Florida Ethics Opinion 88-9, Rule 4-7.14(a)(4), and court order in *Searcy*.

8. Consideration of withdrawal of Florida Ethics Opinion 75-15, which addresses advertising questions, in light of amendments to rules that permit lawyer advertising. Backup includes Florida Ethics Opinion 75-15 and Rule 4-7.11.

9. Consideration of withdrawal of Florida Ethics Opinion 73-37, which addresses advertising questions, in light of amendments to rules and changes in Florida law that create a civil notary status in Florida. Backup includes Florida Ethics Opinion 73-37 and Florida Statutes Section 118.10 on Civil Law Notaries.

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

11. Discussion of the future meeting schedule. The next meeting of the Professional Ethics Committee will be held in **January 2018 in conjunction with The Florida Bar Winter Meeting at a time, date and place to be announced.** No backup materials.