



The Florida Bar

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THE FLORIDA BAR PROFESSIONAL ETHICS COMMITTEE MINUTES

**Friday, June 23, 2017
2:00 p.m. until 3:45 p.m.
Boca Raton, Florida**

Chair Brian Coughlin presided over the meeting. Twenty-eight (28) members attended:

Abbott	Demers	Middleton
Berman	Dillard	Miranda
Betensky	Hintson	Pollan
Blackwell	Holman	Reinhart
Borja	Kabler	Rizzardi
Braccialarghe	Kirsheman	Saiz
Chapman	Kroeger	Swartz
Coughlin	Landsberg	Young
Corpion	Marshall	
Cox	Mayor	

Board liaison Thomas R. Bopp; incoming 2017-18 members Jeffrey L. Blostein, Timothy P. Chinaris, Jorge R. Escobar, and Alicia M. Zweig; guests Lawrence Bassuk, Carolyn Bell, and Justin Leto; and staff members Lori S. Holcomb, Elizabeth Clark Tarbert, Joy Bruner, and Gary Blankenship also attended the meeting. The committee took the following actions:

1. Approved the minutes of the January 27, 2017 meeting.
2. Heard a report on the Subcommittee for the Masters Seminar on Ethics 2017 from subcommittee chair Keith Rizzardi, who thanked Assistant Ethics Counsel Joy A. Bruner, and subcommittee members Colin Abbott, Drew Demers, Alyssa Katz, and Hope Newsome for a well-attended, informative and entertaining seminar.

3. Reviewed draft Proposed Advisory Opinion 17-1. The proposed advisory opinion was requested by the Vision 2016 Commission Bar Admissions Sub-group, who requested 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 Board Review Committee on Professional Ethics deferred this item at its July 28, 2016 meeting. The Board of Governors voted on December 9, 2016, at the Professional Ethics Committee's request (approved at its June 17, 2016 meeting), to direct the Professional Ethics Committee to adopt a formal advisory opinion on the issue of Florida Bar members dividing fees with out-of-state lawyers as co-counsel, with whom bar members are otherwise authorized to divide fees, where those lawyers are in firms in which there is nonlawyer ownership because nonlawyer ownership is allowed in that jurisdiction, but that any opinion must state that Florida Bar rules prohibit nonlawyer ownership of law firms. The issue was published in the January 1, 2017 issue of the Florida Bar *News* for comment. At its January 27, 2017 meeting, a motion was made, seconded and passed 29-0 to direct staff to draft a proposed advisory opinion similar to ABA Formal Opinion 464, but adding that Florida does not permit nonlawyer ownership of law firms as directed by The Florida Bar Board of Governors, and also addressing the issue that fees may be divided with an out-of-state lawyer only when the out-of-state lawyer is providing legal services that the out-of-state lawyer is authorized by law to provide. A motion to approve draft Proposed Advisory Opinion 17-1 was made, seconded, and passed on voice vote without objection.

4. Considered 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 committee heard a presentation from Messrs. Lawrence Bassuk and Justin Leto. A motion to affirm Florida Bar Staff Opinion 37289 as written was made, seconded, and failed, 10-13. A motion to defer action on the item and refer it to a subcommittee was made, seconded, and passed 26-0. Committee members Gary Betensky, Elicia Blackwell, Catherine Chapman, Kristen Corpion, Michele Hinton, Keith Rizzardi, and Thomas Young volunteered to serve on the subcommittee.

5. Considered withdrawal of Florida Ethics Opinion 71-22 at the request of staff regarding contact with potential witnesses who may also hire the inquiring lawyer for representation as part of a class action, in light of later rules and case law regarding contact with

prospective clients. A motion to withdraw Florida Ethics Opinion 71-22 was made, seconded, and passed 25-0.

6. Considered Recommendation 4 in the report of the Special Committee on Gender Bias. The recommendation directs the Professional Ethics Committee and Ethics Counsel to review the Rules Regulating The Florida Bar to determine if amendments should be made to address the special committee's report. A motion to recommend to the Board of Governors that no amendments to the Rules Regulating The Florida Bar are required, because Rule 4-8.4(d) already prohibits discrimination broadly and has a body of caselaw built up around it, was made, seconded, and passed 19-4.

7. Discussed the Professionalism Expectations at the request of committee member Keith Rizzardi. Committee member Rizzardi requested that the committee give him any comments on his forthcoming article and the concepts in it.

8. Heard an information report from staff on ABA Formal Opinion 477 (2017).
Digest: A lawyer generally may transmit information relating to the representation of a client over the internet without violating the Model Rules of Professional Conduct where the lawyer has undertaken reasonable efforts to prevent inadvertent or unauthorized access. However, a lawyer may be required to take special security precautions to protect against the inadvertent or unauthorized disclosure of client information when required by an agreement with the client or by law, or when the nature of the information requires a higher degree of security.

9. The chair presented Certificates of Meritorious Service to outgoing members Mary Ellen Borja and Leslie Kroeger.

10. Chair Brian T. Coughlin was presented with a clock to commemorate his service as chair.

11. Discussed the future meeting schedule. The next meeting of the Professional Ethics Committee is tentatively scheduled for Friday, October 13, 2017, from 9:00 a.m. until 12:30 p.m. at the Tampa Airport Marriott in conjunction with The Florida Bar Fall Meeting.