



The Florida Bar

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THE FLORIDA BAR PROFESSIONAL ETHICS COMMITTEE MINUTES

Friday, October 13, 2017
9:45 a.m. until 12:15 p.m.
Tampa, Florida

Chair Alexcia Cox presided over the meeting. Twenty-six (26) members attended:

Abbott	Dalton	Middleton
Arnold	Denney	O'Connor
Berman	Dillard	Perez Alonso
Betensky	Escobar	Pritchard
Blostein	Giannet	Swartz
Braccialarghe	Katz	Tramont
Campbell	Landsberg	Young
Coughlin	Marshall	Zweig
Cox (C)	Mayor	

Board liaison Thomas R. Bopp and staff members Elizabeth Clark Tarbert and Jonathan Grabb also attended the meeting. The committee took the following actions:

1. Approved the minutes of the June 23, 2017 meeting.
2. The Chair requested volunteers to serve on the Subcommittee for the Masters Seminar on Ethics 2018. Committee members Giannet, Dalton, Blostein, Denney, and Pritchard volunteered to serve.
3. Considered 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. A motion was made, seconded and passed 25-0 to affirm Proposed Advisory Opinion 17-1 as written.

4. Heard remarks from Florida Bar President Michael J. Higer, who thanked the committee members for their service to the bar.

5. 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 Professional Ethics Committee voted to refer the issue to a subcommittee for a recommendation at its June 23, 2017 meeting. The subcommittee presented a draft that concluded that the conduct was permissible with informed consent of the prospective client and the inquirers complied with Rule 4-1.8(a) regarding business transactions with clients. A motion to approve the subcommittee's redraft of the staff opinion was made, seconded and withdrawn after discussion. A motion was made, seconded and failed 7-18 to approve the subcommittee's redraft of the staff opinion with the additional conditions that the inquirers inform the prospective client that other lawyers may not charge the client for the cost of the insurance and provide the client with the opportunity to review the insurance contract and that the opinion state that the opinion merely addresses the ethics issues involved and does not endorse the concept of the insurance policy. A motion to affirm the staff opinion as originally written was made, seconded, and passed 20-1.

6. A request to review Florida Bar Staff Opinion 37300 was withdrawn by the inquirer shortly before the meeting. 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

7. Considered the denial of a staff opinion in Ethics Inquiry 37536 at the request of the inquirer. 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. A motion to allow the request, which was not timely made due to Hurricane Irma, was made, seconded and passed 19-2. A motion to affirm the denial of a staff opinion was made, seconded and passed 23-0.

8. Considered 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). A motion to withdraw Florida Ethics Opinion 88-9 was made, seconded, and passed 23-0.

9. Considered withdrawal of Florida Ethics Opinion 75-15, which addresses advertising questions, in light of amendments to rules that permit lawyer advertising. A motion to withdraw Florida Ethics Opinion 75-15 was made, seconded, and passed 22-0.

10. Considered 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. A motion to withdraw Florida Ethics Opinion 73-37 was made, seconded, and passed 24-0.

11. The chair thanked the committee members and asked if there were any items for the good of the order. No items were presented.

12. Discussed the future meeting schedule. The next meeting of the Professional Ethics Committee will be held at 9:30 a.m. on Friday, January 19, 2018, at the Doubletree by Hilton at the entrance to Universal in conjunction with The Florida Bar Winter Meeting.

13. The meeting was adjourned.