



# The Florida Bar

651 East Jefferson Street  
Tallahassee, FL 32399-2300

Joshua E. Doyle  
Executive Director

850/561-5600  
[www.FLORIDABAR.org](http://www.FLORIDABAR.org)

## THE FLORIDA BAR PROFESSIONAL ETHICS COMMITTEE MINUTES

**Friday, June 14, 2018**  
**2:00 p.m. until 5:00 p.m.**  
**Orlando, Florida**

Chair Alexcia Cox presided over the meeting. Twenty-three (23) members attended:

Abbott	Cox (C)	Newsome
Arnold	Denney	Perez Alonso
Blostein	Dillard	Pritchard
Braccialarghe(VC)	D'Incelli	Tramont
Campbell	Freire	Young (VC)
Chapman	Gelfand	Zweig
Chinaris	Hintson	
Coughlin	Mayor	

Board Liaison Thomas Bopp; incoming committee members Sarah Cortvriend, Kevin Franz, Carlos Llorente, Michael Skiscim, Jr., and Steven Tepler; guests Gerald Glynn, Dennis Moore, Melissa Murphy, and Tim Stevens; and staff members Elizabeth Clark Tarbert, Jeffrey M. Hazen, Lori S. Holcomb, and Jim Ash also attended the meeting. The committee took the following actions:

1. Approved the minutes of the October 13, 2017 meeting by unanimous voice vote.
2. Heard an informational report from staff regarding Board of Governors action on Proposed Advisory Opinion 17-1. The opinion became final as the Board of Governors, who requested that the committee write the opinion, took no action when presented with opinion at its December 8, 2017 meeting. The opinion concludes that Florida Bar members may divide legal fees with an out-of-state lawyer whose firm includes nonlawyer ownership where: the out-of-state lawyer is providing only services that the out-of-state lawyer is authorized by law to provide; nonlawyer ownership of the out-of-state firm is permitted in the jurisdiction where that law firm is located; the out-of-state firm is in compliance with that jurisdiction's requirements;

and the division of fees complies with Florida Bar rules on fee division. The opinion does not address a Florida Bar member becoming a partner, shareholder, employee, or other formal arrangement with a law firm with nonlawyer ownership.

3. Heard an informational report from staff regarding Florida Bar Board of Governors action on 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 concluded 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 Board of Governors voted 23-17 to reverse the decision of the Professional Ethics Committee and to direct bar staff to issue an advisory ethics opinion in response to a request for an advisory ethics opinion request regarding whether a lawyer who handles personal injury matters on a contingency fee basis can purchase litigation cost insurance and charge the client for the amount of such insurance in the event there is a recovery, directing that the opinion conclude that the arrangement presents a close question because the circumstances described create potential conflicts of interest between the lawyer and the client throughout the course of litigation, but that the arrangement is permissible only under the following circumstances: (1) the lawyer makes an objectively reasonable determination that the litigation cost protection insurance coverage serves the client's best interests; (2) the amount to be charged to the client is fair and reasonable and is communicated to the client, in writing, in a manner that the client can reasonably understand; (3) the lawyer fully explains to the client what litigation cost protection insurance is, why the lawyer believes a litigation cost protection policy will serve the client's best interests, that the lawyer will be the sole beneficiary under the insurance policy, and that the client will be liable for the insurance premium expense and all other costs and expenses in the event of a recovery; (4) the lawyer fully explains to the client that other lawyers may advance the client's costs without charging the client the cost of the litigation cost protection policy; (5) the lawyer provides the client with the opportunity to review the litigation cost protection policy; (6) the client is advised, in writing, of the desirability of seeking, and is given the opportunity to seek, independent counsel; (7) the lawyer obtains the client's informed consent in writing at the beginning of the representation; and (8) the lawyer does not allow the terms or availability of coverage under the insurance policy to adversely affect their independent professional judgment, the client-lawyer relationship, or the client's best interests; the opinion must also state that it merely addresses the ethics issues involved and does not endorse the concept of the insurance policy.

4. Reviewed Florida Bar Staff Opinion 37896 at the request of the inquirer. The opinion concludes that the inquirer may not charge interest on costs in a contingent fee case where the inquirer advances costs and makes them contingent on the outcome because the costs are not liquidated until a recovery is made based on Florida Ethics Opinion 86-2. A motion was

made to amend Florida Ethics Opinion 86-2 to remove the word “liquidated,” but was withdrawn. A motion was made and seconded to withdraw Florida Bar Staff Opinion 37896 and adopt a formal advisory opinion allowing the inquirer to charge interest on advanced costs with appropriate limiting language. A friendly amendment to exclude the cost of non-recourse funding from costs that can be charged to the client was accepted by the proponents. The motion failed 8-14. A motion to form a subcommittee to review the issue was made, seconded, and passed 16-5. Committee members Chinaris, Denney, Hintson, Skiscim and Tramont volunteered to serve on the subcommittee.

5. Reviewed a denial of a staff opinion in Ethics Inquiry 38398. The inquirer, who is a retired Florida Bar member, asks whether the inquirer may refer to himself as “Dr.” in conversations and correspondence. The request for an opinion was declined because of a lack of direct authority on which to base an opinion. A motion was made, seconded, and passed 22-0 to affirm the denial of an opinion.

6. Reviewed Florida Bar Staff Opinion 37643 at the request of committee vice chair Thomas W. Young. The staff opinion concludes that the inquirer who represents a professional guardian may not disclose to law enforcement or the Department of Children and Families past improper acts of the client committed as a guardian or power of attorney for elderly persons that might constitute a felony, and that the lawyer should withdraw from representation of the client, citing irreconcilable differences. A motion was made, seconded, and passed 17-4 to withdraw the staff opinion and advise the inquirer that the inquirer must disclose confidential information that the inquirer reasonably believes is necessary to prevent a client from committing a crime.

7. Reviewed a request for committee consideration of adopting a formal advisory opinion on responding to negative on-line reviews based on Florida Bar Staff Opinion 38049 at the request of committee vice chair Thomas W. Young for consideration of a formal opinion on the issue presented. The opinion concludes that a lawyer may not disclose confidential information to respond to a negative on-line review by a client. A motion was made, seconded, and passed 18-0 to affirm the staff opinion.

8. Reviewed a request by the Florida Bar Board of Governors for review of the request by the Special Committee on Child and Parent Representation for Board of Governors endorsement of or use of the following in disciplinary cases (recommendation 7 of the final report): the ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases and the Florida Guidelines of Practice for Attorneys who Represent Children in Delinquency Proceedings. Gerald Glynn, Special Committee on Child & Parent Representation, presented the majority position. Dennis Moore, Special Committee on Child & Parent Representation, presented the minority position. A motion was made, seconded, and passed 17-3 to appoint a subcommittee to review the issue. Committee members Perez Alonso, Campbell, Courtvriend, Newsome, and Skiscim volunteered to serve on the subcommittee.

9. Reviewed a request from staff to consider ethics issues related to geographic targeting orders issued by the Financial Crimes Enforcement Network (FinCEN) that require certain lawyers to disclose specific information to FinCEN regarding real estate purchases that

meet specific FinCEN requirements. Melissa Murphy, General Counsel for The Fund, presented general information to the committee on geographic targeting orders and suggested that the committee direct bar staff to suggest to callers with questions in FinCEN geographic targeting orders to call their title insurance underwriters for advice. A motion was made, seconded, and passed 20-1 to defer the item to the next meeting and direct staff to seek additional information from FinCEN regarding the types of restrictions the geographic targeting orders have on communications with clients and the reporting obligations.

10. The chair presented Certificates of Meritorious Service by the chair to the following members who are leaving the committee because of term limits: Lynwood F. Arnold, Andrew S. Berman, Catherine B. Chapman, Brian T. Coughlin, Stewart A. Marshall, Robert E. Vaughn, Jr., and Vice Chair Thomas W. Young.

11. Discussed the future meeting schedule. The next meeting of the Professional Ethics Committee is scheduled for Friday, October 19, 2018, from 9:00 a.m. until 12:00 p.m. **at** the Tampa Airport Marriott.

12. The meeting was adjourned.