



The Florida Bar

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THE FLORIDA BAR PROFESSIONAL ETHICS COMMITTEE MINUTES

Friday, October 19, 2018
9:00 a.m. until 11:45 a.m.

Chair Jean Marie Middleton presided over the meeting. Thirty members attended:

Abbott	Escobar	Mayor
Blostein	Franz	McCune
Braccialarghe	Freire	Middleton
Caballero	Giannet	O'Connor
Campbell	Hintson	Perez Alonso
Chinaris	Kabler	Rizzardi
Cortvriend	Katz	Skiscim
Cox	Kolokoff	Teppler
Denney	Levine	Tramont
Dillard	Llorente	Weiss

Guests Melissa Murphy of The Fund and Ted Conner of Old Republic National Title Insurance Co., Board Liaison Thomas Bopp and staff members Elizabeth Clark Tarbert, Kelly N. Smith, and Gary Blankenship also attended the meeting. The committee took the following actions:

1. Approved the minutes of the June 15, 2018 meeting.
2. Discussed the Masters Seminar on Ethics 2019. Committee members Levine, Rizzardi, Teppler, and Weiss volunteered to serve on the subcommittee to plan the seminar.
3. 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. The Professional Ethics Committee voted 16-5 at its June 15, 2018 meeting to appoint a subcommittee to review the issue. Committee members Chinari, Denney, Hintson, Skiscim and Tramont volunteered to serve on the subcommittee. Subcommittee Chair Brian Denney

presented the recommendation of the subcommittee, to adopt the subcommittee's draft Proposed Advisory Opinion that would allow charging a reasonable and lawful rate of interest with the client's informed consent from the time the costs are actually incurred and paid by the lawyer, but that the 18.5% interest presented in the inquiry is not reasonable. Committee vice-chair Braccialarghe moved adoption of the proposed advisory opinion (which would be numbered 18-2), which was seconded by committee member Teppler. Committee member Rizzardi made a motion to amend the proposed advisory opinion to add a sentence to the penultimate paragraph that any disclosure of confidential information to a lending institution must comply with Rule 4-1.6, which was seconded by committee member Levine. The proponents of the main motion accepted the friendly amendment. The motion passed 27-1.

4. Considered 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. The Professional Ethics Committee voted 17-3 at its June 15, 2018 meeting to appoint a subcommittee to review the issue. Committee members Perez Alonso, Campbell, Courtvriend, Newsome, and Skiscim volunteered to serve on the subcommittee. Subcommittee chair Perez Alonso reported the unanimous subcommittee recommendation that the Board of Governors not approve the use of guidelines for any disciplinary purpose, but that the guidelines may be useful for practitioners, may be used in continuing legal education courses, and may be useful for selection and practice requirements if a statewide office of dependency representation as contemplated in the special committee's final report is adopted. Committee member McCune moved approval of the subcommittee recommendation, which was seconded by Committee member Blostein and passed 30-0. In response to a related comment and inquiry from Judge Sandy Karlan, the committee consensus was to direct staff to notify Judge Karlan that her request for committee review of ethical issues in the guardian ad litem office is outside the committee's purview.

5. 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. The Professional Ethics Committee voted 20-1 at its June 15, 2018 meeting 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. Staff reported that FinCEN has not responded to staff's requests for information. Ms. Melissa Murphy of The Fund and Ted Conner of Old Republic National Title Insurance Co. addressed the committee on the issue, stating that there is a current geographic targeting order that has been extended through the beginning of November, but that the order has been clarified that lawyers may disclose to clients that the transaction is the subject of a geographic targeting order and that information must be disclosed to FinCEN, but may not disclose to clients the threshold amount or the geographic region of the geographic targeting order. The committee consensus was if the lawyer may

disclose to and seek the informed consent of the client to disclose the information to FinCEN that no further guidance to staff was necessary.

6. Reviewed Florida Bar Staff Opinion 38678 at the request of the inquirer. The opinions concludes that the inquirer may not ethically receive a referral fee or commission for recommending that the inquirer's clients use the services of an independent insurance broker unless the inquirer 1) believes that the referral is in the client's best interests, 2) fully discloses the referral arrangement to the client, 3) obtains the client's informed consent, and 4) passes the benefit of the referral arrangement to the client. Committee member McCune moved to affirm Florida Bar Staff Opinion 38678, which was seconded by committee member O'Connor and passed 26-2.

7. Reviewed Florida Bar Staff Opinion 38273, regarding ethical obligations in participation in a networking group, at the request of committee member Thomas W. Young. Mr. Young indicated that the committee should consider adopting a formal advisory ethics opinion to address ethical issues of participation in networking groups, pointing out that other jurisdictions have formal advisory opinions on this topic, but Florida does not. Committee member Braccialarghe moved to affirm Florida Bar Staff Opinion 38273, which was seconded by committee member Chinaris, and passed 27-0. A motion was made by Committee member Perez Alonso to appoint a subcommittee to review the direct solicitation rule, which was seconded by Committee member Teppler and passed by committee consensus. Committee members Perez Alonso, Teppler, and Rizzardi volunteered to serve on the subcommittee.

8. Review of Florida Bar Staff Opinion 38457 regarding potential conflicts involved with court-appointed criminal defense representation based on how court-appointed counsel are paid at the request of committee member Judge McCune. Judge McCune reported on his request and stated that the Justice Administrative Commission would like to have input. Judge McCune made a motion to defer the item, which was seconded by Committee member Rizzardi and passed 28-0.

9. Review of Florida Bar Staff Opinion 38045, regarding ethical obligations in a firm merger, at the request of committee member Timothy P. Chinaris. Mr. Chinaris asks committee review stating that the staff opinion may be unnecessarily discouraging the way 2 law firms propose to handle a firm merger. Committee member Chinaris made a motion to replace the penultimate paragraph with a paragraph that indicates that the inquirer may form a separate bona fide law firm that is comprised of the 2 merging law firms while those 2 law firms continue operation for a reasonable period solely to wind up those 2 practices. The motion was seconded by Committee member McCune and passed 28-0.

10. Heard an announcement that former committee vice-chair Thomas W. Young won his election and is now a judge.

11. Discussed the future meeting schedule. The next meeting of the Professional Ethics Committee is scheduled for Friday, January 18, 2019, from 9:00 a.m. until 12:00 p.m. at the Doubletree by Hilton Orlando at SeaWorld.

12. The meeting was adjourned.