



The Florida Bar

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THE FLORIDA BAR PROFESSIONAL ETHICS COMMITTEE MINUTES

Friday, January 18, 2019
9:30 a.m. until 12:30 p.m.
Orlando, Florida

Chair Jean Marie Middleton presided over the meeting. Twenty-six (26) members attended:

Abbott	Franz	O'Connor
Betensky	Gelfand	Perez Alonso
Blostein	Gross	Rizzardi
Braccialarghe	Kirsheman	Skiscim
Chinaris	Kolokoff	Stanley
Dalton	Levine	Teppler
Dillard	McCune	Tramont
D'Incelli	Middleton	
Escobar	Newsome	

Guests Justice Administrative Commission General Counsel Ana Cristina Martinez, Justice Administrative Commission Assistant General Counsel Christian Lake, Charles Stratton, Joshua Stratton, Laird Lile, and staff members Elizabeth Clark Tarbert, Jeffrey M. Hazen, Ghunise Coaxum, and Gary Blankenship also attended the meeting. The committee took the following actions:

1. Approved the minutes of the October 19, 2018 meeting on voice vote without objection.
2. Heard a report on the Masters Seminar on Ethics 2019 by subcommittee chair Carolyn Johnson Levine. The seminar has been approved for 4 ethics and 2 technology CLE credits, will include panels on technology, bar grievances, and by judges. Committee member Dalton thanked bar staff who are assisting.

3. Heard a report from staff that Florida Ethics Opinion 18-1 issued by The Florida Bar Board of Governors regarding how qualifying providers and lawyer referral services may be paid is now final.

4. Heard a report from staff that Florida Ethics Opinion 18-2, regarding charging interest on costs that are contingent on a recovery, was published in the November 15, 2018 bar *News* and became final when no comments were filed.

5. Reviewed 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. This item was deferred at the October 19, 2018 meeting. Justice Administrative Commission General Counsel Ana Cristina Martinez and Justice Administrative Commission Assistant General Counsel Christian Lake appeared on behalf of the Justice Administrative Commission and addressed the committee. A motion to amend the staff opinion was made and seconded. A motion to amend the motion was not adopted by the initial movants and was ruled out of order. The initial motion failed 10-15. A motion was made to direct staff to provide the inquirer with the information provided to the committee by the Justice Administrative Commission and encourage the inquirer either to contact the Justice Administrative Commission about how the inquirer may seek additional payment for particular cases or make a new inquiry with the additional information about payment. The motion was seconded and passed 25-1.

6. Reviewed Florida Bar Staff Opinion 38857 at the request of the inquirer. Florida Bar Staff Opinion 38857 concludes that the inquirer should not act as personal representative to an estate while representing multiple beneficiaries to the same estate. A motion to take no action because the opinion appears moot in light of subsequent inquiries by the same inquirer was made, seconded, and passed 26-0.

7. Reviewed a denial of a staff opinion in Ethics Inquiry 38957 at the request of the inquirer involving division of fees with a retired Florida Bar member who is ineligible to practice law in Florida. Guests Joshua Stratton and Charles Stratton addressed the committee on the issue. A motion was made to affirm the denial of a staff opinion, which was seconded and failed 10-14. A motion to direct staff to issue a staff opinion was made, seconded, and passed 22-1.

8. Reviewed a request to amend the Florida Bar Procedures for Ruling on Questions of Ethics by the Standing Committee on the Unlicensed Practice of Law to give ethics opinions to foreign and out-of-state lawyers who are subject to the Rules Regulating The Florida Bar. UPL Counsel from Orlando Branch Ghunise Coaxum appeared for this item. Committee members Jeffrey Kolokoff and C. C. Abbott spoke in favor of the request as former chairs of the Standing Committee on the Unlicensed Practice of Law. A motion to direct staff to draft amendments to the procedures to allow staff to give oral opinions to out of state lawyers, to allow staff to give written opinions to out of state lawyers that the bar keeps registration information for, and clearly indicate that staff will not determine whether the out of state lawyer is authorized to provide the services or whether the Rules Regulating The Florida Bar apply to the out of state lawyer, was made, seconded, and passed 26-0.

9. Discussed recent out of state ethics opinions on crowdfunding at the request of committee member Michael Gelfand. The committee took no action.

10. President Michelle R. Suskauer appeared to thank the committee for their work and request that the consider applying or encouraging others to apply for Judicial Nominating Commission openings.

11. Discussed the recommendation of the Subcommittee on Solicitation proposing an amendment to the comment to Rule 4-7.18(a) on solicitation. A motion to refer the subcommittee's recommended draft to the Standing Committee on Advertising was made, seconded, and passed 26-0.

12. Discussed the future meeting schedule. The next meeting of the Professional Ethics Committee is scheduled for 2:00 p.m. until 5:00 p.m. on Friday, June 28, 2019, at the Boca Raton Resort & Club in conjunction with The Florida Bar's Annual Convention. No backup materials.

13. The meeting was adjourned.