



The Florida Bar

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THE FLORIDA BAR PROFESSIONAL ETHICS COMMITTEE

AGENDA

Friday, February 7, 2020
9:00 a.m. until 12:30 p.m.
Orlando, Florida

1. Approval of the minutes of the June 28, 2019 meeting.
2. Report on the Masters Seminar on Ethics 2019 Subcommittee by subcommittee chair Steven Tepler. No backup.
3. Report on action regarding the Professional Ethics Committee request to amend Rule 4-7.18 on solicitation. The Standing Committee on Advertising voted 10-0 at its June 27, 2019 meeting to approve revisions to the proposal. The Professional Ethics Committee voted to approve the Standing Committee on Advertising changes with the addition of “business-related social gathering” in the first sentence and “when the discussion would endanger a prospective client’s confidentiality” in the third sentence at its June 28, 2019 meeting. The Board Review Committee on Professional Ethics voted 7-0 to approve the proposed amendments, but changing “business cards” to “contact information” on September 19, 2019. The amendments were on the Board of Governors agenda for first reading on December 6, 2019 and on the January 31, 2020 agenda for final action. Backup includes the Subcommittee on Solicitation’s January 29, 2019 memo and the amendments as approved by the Board Review Committee on Professional Ethics at its September 19, 2019 meeting.
4. Report on action regarding amendments to the Florida Bar Procedures for Ruling on Questions of Ethics at the request of the Standing Committee on 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. The committee voted 26-1 to approve amendments to the procedures. The Board of Governors approved the amendments on December 6, 2019. Backup includes the Florida Bar Procedures for Ruling on Questions of Ethics with amendments in legislative format as approved by the Board of Governors at its December 6, 2019 meeting.
5. Consideration of a request for review of Florida Bar Staff Opinion 39630 by the inquirer. Florida Bar Staff Opinion 39630 concludes that a proposed interstate partnership is

improper in which the Florida office would be managed by a “non-equity” partner who does not share in the firm’s profits and losses as required by *The Florida Bar v. Savitt*, 363 So.2d 559 (Fla. 1978). Backup includes Florida Bar Staff Opinion 39630 (dated June 5, 2019), the original inquiry (dated May 16, 2019), Florida Bar Ethics Hotline Call Record 501823 (dated April 9, 2019), Florida Bar Ethics Hotline Call Record 503949 (dated May 7, 2019), Inquirer’s request for Professional Ethics Committee Review (dated July 3, 2019), *The Florida Bar v. Savitt*, 363 So.2d 449 (1978), copies of out-of-state ethics opinions provided by the inquirer, and a summary of authority.

6. Consideration of a request for review of Florida Bar Staff Opinion 39873 by the inquirer. Florida Bar Staff Opinion 39873 concludes that a lawyer may continue representation of a client in which the client has agreed to pay a public adjuster a contingent fee if the client’s contingent fee agreement with the public adjuster pre-dated the inquirer’s representation of the client, there was no improper solicitation or referral by the public adjuster to the inquirer, the client pays the public adjuster under the client’s original contract with the adjuster, the inquirer does not have an improper business arrangement with the public adjuster as described in Florida Ethics Opinion 92-3, and there is no payment or incentive to the public adjuster for the public adjuster’s testimony. The inquirer requested review, asking that the committee issue a formal advisory opinion responding to each scenario raised in the inquirer’s initial inquiry and concluding that there are no circumstances under which a lawyer may permit a public adjuster to receive a percentage of a gross recovery in which attorney’s fees are included. Backup includes Florida Bar Staff Opinion 39873 (dated August 15, 2019), the original inquiry (dated July 24, 2019), the inquirer’s request for Professional Ethics Committee review (dated August 30, 2019), Rule 4-5.4, Florida Ethics Opinion 92-3, and Florida Ethics Opinion 02-4.

7. Consideration of a request for review of the denial of a Florida Bar staff opinion in ethics inquiry 40093, in which the inquiring lawyer asked about obtaining court documents that the inquiring lawyer authored while a staff lawyer for the court. Staff declined to issue an opinion because the request involves legal issues beyond the scope of an ethics opinion as the general counsel for the court in question directed the inquirer to file a motion under Florida Rule of Judicial Administration 2.420 to obtain the requested information and the Rules Regulating The Florida Bar do not determine confidentiality of court documents authored by the inquirer while a staff attorney nor the appropriate procedures for obtaining them. The inquirer requested Professional Ethics Committee review, stating that the bar’s response did not “carefully contemplate” the inquirer’s questions or how the Rules Regulating The Florida Bar apply. Backup includes the original inquiry (dated October 2, 2019), staff’s denial (dated October 15, 2019), and the inquirer’s request for Professional Ethics Committee review (dated October 22, 2019).

8. Consideration of adoption of a formal advisory opinion on lawyers’ ethical obligations in responding to negative on-line reviews by clients at the request of the subcommittee to review staff opinions. Florida Bar Staff Opinion was affirmed by the Professional Ethics Committee on June 15, 2018, but the committee declined to adopt a formal

advisory opinion on the topic. Subsequently, members of the subcommittee to review staff opinions requested that the committee reconsider adopting a formal advisory opinion on the topic. Backup includes Florida Bar Staff Opinion 38049 (dated January 24, 2018) and a summary of relevant Florida and out-of-state authority.

9. Consideration of amendments to Rule 4-1.14 Client Under a Disability proposed by the Real Property Probate and Trust Law Section. Backup includes Rule 4-1.14 in legislative format, ABA Model Rule, and legislative history.

10. Discussion of other items at the direction of the chair. No backup materials.

11. Discussion of the future meeting schedule. The next meeting of the Professional Ethics Committee is scheduled for Friday, June 19, 2020 from 2:00 p.m. until 5:00 p.m. at the Hilton Orlando Bonnet Creek. Professional Ethics Committee 2019-20 Meeting Schedule is attached.