



The Florida Bar

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THE FLORIDA BAR PROFESSIONAL ETHICS COMMITTEE

AGENDA

Friday, October 21, 2016
9:30 a.m. until 12:00 p.m.
Airport Marriott
Tampa, Florida

1. Approval of the minutes of the June 17, 2016 meeting.
2. Appointment of Subcommittee for the Masters Seminar on Ethics 2017. No backup.
3. Informational report from staff on the request of the Vision 2016 Commission Bar Admissions Sub-group of either an amendment to the Rules Regulating The Florida Bar or an ethics opinion regarding a safe harbor for Florida Bar members who work with law firms with nonlawyer ownership that are located in a jurisdiction that allows nonlawyer ownership of law firms. The Professional Ethics Committee voted at its June 17, 2016 meeting to request that the Board of Governors permit the Professional Ethics Committee to issue a formal advisory opinion that would allow Florida Bar members to divide fees with out-of-state lawyers that bar members may otherwise divide fees with, even though those lawyers are in firms in which there is nonlawyer ownership because nonlawyer ownership is allowed in that jurisdiction. The Board Review Committee on Professional Ethics deferred this item at its July 28, 2016 meeting. The item will be on the December 9, 2016 Board of Governors agenda. No backup.
4. Consideration of Proposed Advisory Opinion 16-1 on the issue of waiving all or part of a lawyer's fee in a personal injury case. The proposed advisory opinion is based on review of Florida Bar Staff Opinion 35283 at the request of a member of the subcommittee to review Florida Bar staff opinions. Florida Bar Staff Opinion 35283 concludes that the inquirer, who waived attorney's fees in a personal injury cases, may not also reduce the costs the inquirer advanced to the client in the matter now that there is a recovery under Rule 4-1.8(e), which prohibits financial assistance to a client. The subcommittee member disagreed and requested that the committee issue an opinion stating that the lawyer may reduce or waive costs the lawyer

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advanced to the client. The Professional Ethics Committee voted at its January 22, 2016 meeting to direct staff to draft a proposed advisory opinion based on the facts provided that the conduct is permissible. The Professional Ethics Committee voted at its June 17, 2016 meeting to approve Proposed Advisory Opinion 16-1 for publication with changes from the draft. Proposed Advisory Opinion 16-1 was published in the July 15, 2016 issue of the Florida Bar *News*. One comment was received. Backup includes Proposed Advisory Opinion 16-1, the official notice, comments received in response to the official notice, the original inquiry (dated July 28, 2015), Florida Bar Ethics Hotline Call Record 397275 (dated May 28, 2015), Florida Bar Staff Opinion 35282 (dated August 11, 2015), and Florida Ethics Opinion 96-1.

5. Consideration of draft proposed advisory opinion 16-2 in response to a request for review of staff's response to Ethics Inquiry 35884, in which the inquirer asked about involvement with a finance company that advances attorney's fees for criminal cases. The Professional Ethics Committee voted at its June 17, 2016 meeting to withdraw the staff opinion and adopt a formal advisory opinion combining the original question and the question received as part of the request for committee review that concludes that the proposed conduct is permissible as long as the lawyer receives no other benefit from the finance company, but also directing staff to ask additional questions that might need to be addressed in the advisory opinion. Backup includes draft Proposed Advisory Opinion 16-2, the original inquiry (dated February 23, 2016), staff's response (dated March 10, 2016), the inquirer's request for Professional Ethics Committee review (dated March 14, 2016), staff's additional questions (dated June 20, 2016), the inquirer's response to the committee's questions (dated June 27, 2016), and relevant ethics opinions.

6. Consideration of request for review of Florida Bar Staff Opinion 36223 at the request of the inquirer. The inquiry involves conflicts of interest of a lawyer who worked as in-house counsel for an insurance company who left to open the inquirer's own practice representing homeowners against their insurance companies in the same kinds of cases the inquirer handled as in-house counsel for the insurance company. The inquirer asks about representing homeowners against the inquirer's former employer in the same types of matters in which the inquirer represented the former employer. Backup includes the original inquiry (dated May 31, 2016), Florida Bar Ethics Hotline Call Record 425018 (dated May 31, 2016), Florida Bar Staff Opinion 36223 (dated June 15, 2016), the inquirer's request for review dated July 14, 2016), Rule 4-1.9, and summary of relevant Florida cases.

7. Consideration of request for review of Florida Bar Staff Opinion 36194 at the request of the inquirer. The inquiry involves conflicts of interest of a legal aid organization that provides limited assistance through mobile clinics. Backup includes the original inquiry (dated May 27, 2016), Florida Bar Ethics Hotline Call Record 423016 (dated May 5, 2016), Florida Bar Staff Opinion 36194 (dated June 21, 2016), the inquirer's request for review (dated July 21, 2016), Rules of Professional Conduct 4-1.6, 4-1.7, 4-1.9, 4-1.18 and Rule 4-5.3, Family Law

Rule of Procedure 12.750, Florida Ethics Opinions 92-1, 79-7 and 79-7(Rec.), an excerpt of the final report of the Special Committee to Review the ABA Model Rules 2002, ABA Model Rule 6.5 and reporters notes from its adoption.

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

9. Discussion of the future meeting schedule. The next meeting of the Professional Ethics Committee is tentatively scheduled for **Friday, January 27, 2017, from 9:30 a.m. until 12:30 p.m. at the Gaylord Palms Hotel in Orlando in conjunction with The Florida Bar Winter Meeting.** An orientation will precede the meeting from 9:00 a.m. until 9:30 a.m. on the same date and at the same location. No backup materials.