DELIVERING STRATEGIC SOLUTIONS ACCA'S 2000 ANNUAL MEETING

EXHIBIT "A"

INSURANCE PRACTICES SPECIAL STUDY COMMITTEE

REQUEST FOR COMMENT

The Board **of Governors** of The Florida Bar has appointed a committee to examine the practices of certain insurance carriers in the State of Florida in their implementation of both litigation and billing guidelines. Among other things, the committee is looking into practices which may materially limit a lawyers responsibility to exercise independent professional judgment in the representation of an insured. To fulfill it's goals, the committee is soliciting comment from the Bar on the following issues:

1. Do litigation guidelines promulgated by certain insurance carriers interfere with an attorney's responsibility to exercise independent professional judgment by directing the course and scope of a defense lawyer's actions? If so, please explain.

2. Have litigation guidelines promulgated by certain insurance carriers created instances where conflicts of interest have been created for defense lawyers? If so, please explain how.

3. Would your answers to questions #1 or #2 above change if the insured is exposed to an excess judgment? If the insurance carrier has agreed to pay any excess judgment?

4. Do insurance carriers disclose to their insureds the respective rights, duties, and obligations of the carrier and the insured arising from the insurance contract when litigation is initiated against those insureds?

5. Should a "Statement of Client's Rights" be adopted for insured defendants? If so, what should it say?

6. Do you feel there is any risk of a waiver of privileged information where defense counsel's bills are audited by outside auditing firms? If so. are you aware of actual instances of harm to an insured as a result of such a disclosure of information?

7 Have billing guidelines that designate certain activities to be compensated at a paralegal rate resulted

in the authorized practice of law by non-lawyers') Have such billing guidelines impacted the quality of the

defense offered insureds? If so, please explain.

7. Are you aware of actual harm done, or the potential for actual harm, arising from insurance practices which attempt to control litigation costs') If so, please explain. If so, would you be willing to elaborate before the committee as to the details')

8 Are adequate remedies currently available to insureds in Florida for situations where an insurance carrier may have caused actual harm through the strict implementation of litigation guidelines which have

compromised the defense of an insured? If not, what additional remedies would you suggest?

10. With reference to your responses, please indicate the type of insurance carrier involved, i.e., homeowner's, auto, commercial liability, title insurance carrier, worker's compensation, etc.

If you have experience with any of the matters being examined by the committee, please respond to the questions and mail or fax your response to Mary Ellen Bateman, UPL Counsel, 850 Apalachee Parkway, Tallahassee, Florida 32399-2300, Fax. No. (850)561-5665. Alternatively, you may e-mail your comments to: mbateman@flabar org.

EXHIBIT "B"

FLORIDA BAR PROFESSIONAL ETHICS COMMITTEE

PROPOSED ADVISORY OPINION 99-2

HEADNOTE: An attorney hired by an insurance company to represent an insured may not provide information relating to the representation to an outside auditor at the request of the insurance company without the specific consent of the insured. Such consent cannot be implied by the contract between the insured and the insurance company.

RPC: 4-1.6,4-1.8(f)

Opinions: 97-i, 93-5, 81-5, Alabama RO-98-02, D C. 290, Hawaii 36, Indiana 98-4, Maine 164, Mississippi 246, South Carolina 97-22, Tennessee 99-F-143, Utah 98-03, Virginia 1723

The Board Review Committee on Professional Ethics has' asked the Professional Ethics Committee to issue an opinion regarding insurance industry requirements that attorneys hired to represent insureds must provide information to outside auditors.

Pnor opinions of the Committee establish that an insurance defense lawyer's client is the insured, not the insurance company. Florida Ethics Opinions 97-1 and 81-5. The Committee opined in Florida Ethics Opinion 97-1 that the pnmary duty of an attorney hired by an insurance company is to the insured. Opinion 97-I concluded that an attorney representing an insured could not follow the insurance carrier's instructions regarding filing a motion for summary judgment where these instructions would be contrary to the best interests of the insured. The opinion further emphasized the attorney's duty of communication to the insured to keep him or her informed of all developments in the case as long as the representation continues.

Rule 4-l.8(f)(3), Rules Regulating 'the Florida Bar, provides that "A lawyer shall not accept compensation for representing a client from one other than the client unless. . . information relating to representation of a client is protected as required by Rule 4-1.6."

Absent consent of the client, Rule 4-l.6(a), Rules Regulating The Florida Bar, prohibits an attorney from revealing any information relating to his or her representation of that client unless one of the limited specific exceptions provided in the rule applies. The Comment to Rule 4-1.6 states clearly that "the confidentiality rule applies not merely to matters communicated in confidence by the client, but also to all information relating to the representation, no matter what its source." An attorney's obligation to keep information confidential remains after the lawyer-client relationship is concluded. Id.

Florida Ethics Opinion 93-5 deals with audits of attorney trust account records by a title insurance company. The Committee concluded in Opinion 93-5 that an attorney who was an agent for a title company could not permit the insurer to audit the attorney's general trust accounts without consent of the affected clients. Additionally, opinions from other states which have examined the issue

of disclosure of information to third parry auditors have concluded that the informed consent of the client, the insured, is required. Alabama Ethics Opinion RO-98-02, Hawaii Formal Opinion 36, Indiana Ethics Opinion 98-4, Maine Ethics Opinion 164, Mississippi Ethics Opinion 246, South Carolina Ethics Opinion 97-22, Tennessee Ethics Opinion 99-F-143, Utah Ethics Opinion 98-03. and Virginia Ethics Opinion 1723

G[ven the requirements of Rule 4-l~6, Florida Ethics Opinion 93-5, and opinions from other states, an attorney cannot disclose information to third party auditors hired by insurers to audit case files of clients without first obtaining permission from the clients. The insurance contract between the insured and the insurance company is insufficient to provide the consent of the insured to the disclosure of confidential information to third parties. The consent of the client must be sought only after full disclosure to the client of the possible ramifications of the disclosure, including any risk that the attorney-client privilege may be waived by such disclosure. Whether the attorney-client privilege may be waived by the disclosure is outside the scope of this Committee's review.

EXHIBIT "C"

P ALIGN="CENTER">FLOIIIDA BAR PROFESSIONAL ETHICS COMMITTEE

PROPOSED ADVISORY OPINION 99-3

HEADNOTE: An attorney is ethically prohibited from entering into an agreement with an insurance company to represent insureds where the attorney's independent professional judgment and the client's rights will be affected by restrictive billing practices imposed by the insurance company.

RPC: 4-1.2, 4-1.4, 4-1.7, 4-1.8(f), *4-5.4(d),* 4-5.5

Opinions: 98-2, 97-1, 81-5, Alabama RO-98-02, Hawaii 37, Indiana 98-3, Mississippi 246, Virginia 1723

The Board Review Committee on Professional Ethics has asked the Professional Ethics Committee to provide its views on ethics issues related to attorneys, hired by insurance companies to represent insureds, agreeing to abide by billllng guidelines which restrict payment for time and costs of the attorneys without pnor approval of the insurance company. The Committee has reviewed a particular agreement, wbich places limits on discovery, the hiring of experts, and the amount of legal research to be performed. The agreement also delineates which tasks will be performed by certain law firm personnel such as paralegals and clerks, requires that the attorney give a coverage opinion to the insurance company upon request, and prohibits settlement, without prior approval by an adjuster.

Rule 4-1.8(f), Rules of Professional Conduct, provides as follows:

Compensafion by Third Party. A lawyer shall not accept compensation for

representing a client from one other than the client unless:

(1) the client consents after consultation;

(2) there is no interference with the lawyer's independence of professional judgment or

with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 4-

1.6.

The Comment to Rule 4-1.8 specifically addresses conflicts between insurer and insured as follows:

A lawyer may be paid from a source other than the client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty the client. See Rule 4-1.8(f). For example, when an insurer and its insured have conflicting interests in a matter arising from a liability insurance agreement and the insurer is required to provide special counsel for the insured, *the arrangement should assure the special counsel's professional independence.*

(Emphasis added.)

Rule *4-5.4(d)* similarly prohibits attorneys from allowing any person who recommends, employs or pays the attorney to "direct or regulate the lawyer's professional judgment in rendering such legal services."

~~This Committee has opined that an insurance defense lawyer's client is the insured, not the insurance company.~~

In Florida Ethics Opinion 97-1, the Committee stated that the primary duty of an attorney lured by an insurance company is to the insured. Opinion 97-1 concluded that an attorney representing an insured could not follow the insurance carrier's instructions regarding filing a motion for summary judgment where these instructions would be contrary to the best interests of the insured. The opinion further emphasized the attorney's duty of communication to the insured to keep him or her informed of all developments in the case as long as the representation continues.

Similarly, in Florida Ethics Opinion 81-5, the Committee opined that an attorney could not withhold important information from the insured regarding the settlement value of a case at the request of the insurer. Opinion 81-5 advised the attorney to ask the insurer to reconsider its position and to withdraw from representation if the insurer would not See, Rules 4-1.2 and 4-1.4, Florida Rules of Professional Conduct

Most recently, the Committee has stated that the method of payment in such cases does not affect the obligations of the attorney to the insured. Opinion 98-2 concludes that a set fee arrangement in insurance cases is not per se prohibited, because the attorney's obligations to the client, including competence, diligence, prompt communication and confidentiality are not limited. The opinion also indicated that some set fee arrangements will provide for such low compensation that the attorney's independent professional judgment will necessarily be impaired. Id.

Other states which have examined the issue have found that restrictive billing guidelines may interfere with an attorney's independent professional judgment. Alabama Ethics Opinion RO-98-02, Hawaii Ethics Opinion 37, Indiana Ethics Opinion 98-3, Mississippi Ethics Opinion 246, Virginia 1723. Virginia Ethics Opinion 1723 has concluded, for example, the following:

it is ethically impermissible for an attorney to agree to an insurance carrier's restrictions on the attorney's representation of the insured absent full disclosure and consent of the client at the outset of the representation and absent a determination that the client's rights will not be materially impaired by the restrictions.

Indiana Ethics Opinion 1998-3 states that an attorney must seek to modify an agreement which controls

or impairs the attorney's judgment, and must refuse to accept the representation if the agreement cannot be modified.

The Committee finds that these guidelines, in the aggregate, are so restrictive that they necessarily will affect the attorney's independent professional judgment. Therefore, an attorney confronted with billing guidelines ~~such as these~~ that impair the attorney's professional judgment or which potentially prejudice the rights of the insured must refuse to enter into the contract. Additionally, it appears that the attorney's interest in receiving more referrals from the insurer ~~will~~ may affect the attorney's independent professional judgment in representing individual insureds under Rule 4-1.7(b), Rules of Professional Conduct.

The Committee is particularly troubled by two provisions in the contract which require the attorney to provide an opinion as to coverage to the insurer at the insurer's request, and which give settlement authority to the adjuster. A coverage opinion is potentially adverse to the client, the insured while settlement authority always lies with the client under Rule 4-1.2, Rules of Professional Conduct. If asked to give a coverage opinion, the attorney should decline because of the conflict of interest which may arise. Flonda Ethics Opiruon *93-8,* Rule 4-1.7(a), Rules of Professional Conduct. The attorney may not enter into an agreement which purports to give settlement authority to anyone other than the client.[1]

Finally, the Committee is concerned that restrictions which affect the attorney's independent professional judgment may also rise to the level of unlicensed practice of law by the insurer. An

attorney may not assist the unlicensed practice of law under Rule 4-5.5. Although it is not within the scope of the Committee's authority to decide such legal questions, the Committee refers this issue and also encourages anyone who is interested to request an opinion from the Unlicensed Practice of Law Committee.

'Florida Ethics Opinion 86-6 discusses the ethical dilemma in medical malpractice cases.

in which Florida Statutes authorize insurance companies to settle cases without the insured's consent within policy limits. The headnote to the opinion states the following:

In light of the potential adverse consequences for a physician of settlement of a malpractice action. and of the insurance carrier's right to settle without the physician’s consent a lawyer asked to represent both the physician and the carrier must, before accepting the employment, consult with both about the issue of settlement. The attorney may not participate in settlement negotiations on behalf of the carrier if the physician is opposed to settlement. nor may the attorney represent either the physician or the carrier in any dispute between them over settlement.

In sum an attorney is ethically prohibited from entering into an agreement with ~~these kinds of~~ restrictive billing practices that impair the attorney's professional judgment or which potentially prejudice the rights of the insured.

EXHIBIT "D"

P ALIGN="CENTER">FLORIDA BAR PROFESSIONAL ETHICS COMMITTEE

PROPOSED ADVISORY OPINION 99-4

The Board of Governors Review Committee on Professional Ethics ("Board Review Committee") has asked the Professional Ethics Committee to provide its views on "potential conflicts of interest which may arise when a lawyer is a full time salaried employee of an insurance company lured to represent insureds or when a law firm derives the majority of its income from an insurance company which pays the law firm to represent insureds."

Apparently there are two typical variations of ~~the~~ what mav be called a "captive" law firm. In the first, the insurer assigns its "in-house" counsel, who are salaried employees of the insurance company, to defend its insureds. In the second, the insurer engages attorneys, pays them on a salaried basis, and pays the expenses necessary for them to open and operate an office that appears to the public to be an independent law firm. In essence, the insurer sets up an "outside" counsel and then assigns defense of its insureds to this "law firm."

The ~~question presented~~ Board Review Committee's inquiry" implicates several Rules of Professional Conduct: 4-1.7 (conflicts of interest); 4-1.8(f) and 4-5.4(c) professional independence of the lawyer); and 4-5.5(b) (assisting nonlawyers in the practice of law).

This opinion is limited to addressing the threshold question of whether an attorney who is paid on a salaried basis by an insurance company (either as an "in-house" employee of the insurer. ~~or in association with a~~ as an apparent employee of an "outside law firm" or as a member or employee of a law firm that derivies the majority of its income from an insurance company) ethically may agree to represent the company's insureds. We do not attempt to examine the variety of specific conflict issues that can arise when an attorney is paid by an insurance company to represent insureds.[2] Some of these specific conflict situations have been addressed in prior Committee opinions. See, e.g., Florida Ethics Opinions 97-1; 86-6; 81-5.

Conflict of interest professional independence of the lawyer

~~It has been~~ Some have suggested that a salaried insurance company attorney has an inherent, unwaivable conflict of interest that ethically precludes the attorney from representing the company's

[1]In 1993. the Committee responded to an inquiry from an individual member of the Florida Bar Board of Governors by publishing Proposed Advisory Opinion 93-1. which reached conclusions similar to those reached inthis opinion. The Board ultimately voted to quash that proposed advisory opinion. The present Board Review Committee may believe that circumstances that have developed or continued since 1993 now warrant this Committee's consideration of the essential issue previously addressed in Proposed Advisory Opinion 93-1

[2]This same potential conflict can exist with even one case assigned by an insurer to an outside law

firm.

insureds. We do not ~~agree~~ adopt such an uncompromising position~ We ~~believe~~ are convinced. however that at ~~least~~ minimum, a potential conflict always exists when an attorney is paid by an insurance company to represent insureds or agrees to represent both the insurer and the insured. The ~~Committee recognizes that thee~~thics rules contemplate that any attorney who is paid by one person or entity to represent another faces such a potential conflict of Interest. See Rules 4-1.7(b); 4-1.8(f); and 4-5 4(c). see also. Oath of Admission to The Florida Bar which states. in part. "1 will maintain the confidence and preserve inviolate the secrets of my clients. and will accept no compensation in connection with their business except from them or with their knowledge and approval." We are unwilling, however, to presume that attorneys paid on a salaried basis by an insurer are necessarily incapable of fulfilling the professional responsibilities owed to a client/insured. Rather, we believe that both variations of the conduct in question ethically may be engaged in by salaried counsel, *provided* there is compliance with the relevant ethics rules. Our conclusion is consistent with that reached by most ethics committees that have considered this issue. See, e.g., ABA Informal Opinion 1370; California Opinion 1987-91; Illinois Opinion 89-17; Michigan Opinion CI-1146, Ohio Opinion 95-14; Oklahoma opinion *309;* Pennsylvania opinion 96-196; Virginia opinion *598;* Nassau County (N~.) Bar Association opinion 8941; Philadelphia Bar Association opinion 86-108. See also Florida Ethics Opinions 97-1; 86-6, 81-5

~~More importantly~~ Thirtv years ago the Supreme Court of Florida spoke to this issue in *In re Proposed Addition to the Rules Governing Conduct of Attorneys in Florida,* 220 So. 2d 6 (Fla. 1969). The Supreme Court had been asked by The Florida Bar to approve a rule that would have barred an attorney employed by a lay agency (e.g., a bank or insurance company) in a master-servant or employer-employee relationship from rendering, in the course of such employment, legal services to the agency's customers unless the sole financial interest involved was that of the agency. In rejecting the proposed rule, the court concurred in the contention that insurance defense counsel represents both the insured's and the insurer's interest and discussed at length how the conflict of interest rules apply to *any* attorney who is employed to serve two interests.

in the many years since the Court's opinion. changes have occurred in the practice of law in Flonda.[3] The use

of salaried counsel by insurance companies to defend their insureds apparently has become more widespread and undoubtedly affects more people than ever before. In 1976. the Florida Legislature passed the non-joinder statute that effectively prevents insurance companies from being named as defendants in suits against their insureds.[4] Despite these changes. the Committee is of the view that one thing has not changed: the need for all insurance defense counsel. regardless of the terms of their employment arrangements. to "be held to the highest degree of loyalty and devotion to the causes of the clients whom they agree to serve." In *re Rules.* 220 So 3d at 8. We render this opinion

[3]The Supreme Court's opinion recognized the likelihood that changes would transpire and that the instant issues would be revisited. "It is altogether likely that this entire matter will receive further study by officials of the Bar as well as the business interests involved." *In re Rules,* 220 So.2d 6, 8 (Fla. 1969).

Fla.Stat. sec. 627.4136 (2000).

mindful of the importance of high ethical standards for all.

Rule 4-1 7, the general conflict of interest rule, provides in pertinent part:

(b) Duty to Avoid Limitation on Independent Professional Judgment. A lawyer shall

not represent a client if the lawyer's exercise of independent professional judgment **in** the representation of **that** client may be materially limited by the lawyer's responsibilities to another client or to a third person or by the lawyer's own interest, unless:

(1) The lawyer reasonably believes the representation will not be adversely affected; and

(2) The client consents alter consultation.

(c) Explanation to clients. When representation of multiple clients in a single matter is

undertaken, the consultation shall include explanation of the implications of the common

representation and the advantages and risks involved.

Under this rule, the attorney first must *reasonably* believe that he or she can adequately represent the interests of the insured in that particular case. This determination must be an objective one, based on a good-faith evaluation of all material facts and circumstances.

Next, Rule 4-1.7 requires that the attorney obtain the consent of the client after consultation and full disclosure of the relevant facts. These relevant facts will include the nature of the attorney's relationship with the insurer. For example, "in-house" counsel must inform the insured of the employment relationship with the insurer. See Florida Ethics Opinion 98-3. Similarly, disclosure of relevant facts by "outside" counsel must include that the attorney is being paid a salary or fee by the insurer, that the insurer pays the attorney's office expenses, and that, for all practical purposes, the attorney's "law firm" exists solely to defend the insurer and its insureds. It is strongly suggested, though not required, that the disclosure and the consent be memorialized in writing. If the insured does not consent to the representation, an actual conflict of interest is presented and the attorney must decline to represent the insured. Cf The Florida Bar v Consolidated Business and Legal Forms. Inc., 386 So. 2d 797 (Fla. 1980).

Two other rules emphasize the critical importance of an attorney's ability to exercise unfettered, independent professional judgment on behalf of clients. Rule 4-1.8(f) provides:

(f) Compensation by Third Party. A lawyer shall not accept compensation for

representing a client from one other than the client unless:

(I) The client consents after consultation;

(2) There is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) Information relating to representation of a client is protected as required by rule 4-

1.6

Additionally. Rule 4-5.4(c) provides:

(c) Exercise of Independent Professional Judgment. A lawyer shall not permit a person

who recommends, employs, or pays the lawyer to render legal services for another to direct or

regulate the lawyer's professional judgment in rendering such legal

services.

The attorney must not permit the insurer to interfere in any way with the attorney-client relationship between attorney and insured. The attorney's professional independence must be assured For example, in an "in-house counsel" situation this means that: a legal department should be structured so as to achieve professional independence comparable to that of a truly independent law firm; attorneys should be responsible for employment review and promotions within this legal department; and supervision and control of the defense must rest with attorneys, not company claims personnel. An attorney's professional independence is of critical importance, as the Supreme Court ~~recently~~ emphasized in The Florida Bar re: Advisory Opinion - Nonlawyer Preparation of Living Trusts, 613 So. 2d 426 (Fla. 1992).

Additionally, our ethics rules require that the attorney honor the duty of confidentiality owed to the client/insured. In this regard, we fully concur with ABA Informal Opinion 1476, concerning a situation in which an attorney was retained by an insurance company to represent its insured (an employer) and an employee of the insured The attorney learned from the employee facts indicating that the employee might not be entitled to coverage. The ABA ethics committee concluded that the attorney could not disclose these facts to the insurer or the employer unless the employee consented after being fully informed of the consequences of such disclosure.

Assisting the Unlicensed Practice of Law

Finally, Florida lawyers are prohibited from assisting nonlawyers in conduct constituting the unlicensed practice of law. Rule 4-5 5(0). While it is not within the province of this Committee to determine whether certain conduct constitutes the unlicensed practice of law, we invite anyone interested in requesting an advisory opinion as it relates to this question to contact The Florida Bar's Unlicensed Practice of Law Committee.

EXHIBIT "E"

VIII. Statement of Insured Client's Rights and Implementation Rule

P ALIGN="JUSTIFY">

P ALIGN="CENTER">IMPLEMENTATION RULE

[MODIFY THE TITLE OF RULE 4-1 8 BY INSERTING THE FOLLOWING UNDERSCORED LANGUAGE:]

RULE 4-1.8 CONFLICT OF INTERESTS;

PROHIBITED AND OTHER TRANSACTIONS

[CREATE NEW SUBSECTION (j) TO RULE 4-1.8 AS FOLLOWS:]

(j) Representation of Insureds. When a lawyer undertakes the defense of an insured in regard to an action or claim for personal injury or for property damages, or for death or loss of services resulting from personal injuries based upon tortious conduct, including product liability claims, the Statement of Insured Client's Rights shall be provided to the insured at the commencement of the representation. The lawyer shall sign the statement certifying the date the statement was provided to the insured. The lawyer shall keep a copy of the signed statement in the client's file, and shall retain a copy of the signed statement for 6 years after the representation is completed. The statement shall be available for inspection at reasonable times by the insured, or by the appropriate disciplinary agency. Nothing in the Statement of Insured Client's Rights shall be deemed to augment or detract from any substantive or ethical duty of a lawyer, nor affect the extra-disciplinary consequences of violating an existing substantive legal or ethical duty; nor shall any matter set forth in the Statement of Insured Client's Rights give rise to an independent cause of action or create any presumption that an existing legal or ethical duty has been breached.

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STATEMENT OF INSURED CLIENT'S RIGHTS

An insurance company has selected a lawyer to defend a lawsuit or claim against you. This Statement of Insured Client's Rights is being given to you to assure that you are aware of your rights regarding your legal representation. This disclosure statement highlights many, but not all, of your rights when your legal representation is being provided by the insurance company.

l.Your Lawver If you have questions concerning the selection of the lawyer by the insurance company, you should discuss the matter with the insurance company and the lawyer. As a client, you have the right to know about the lawyer's education, training and experience. If you ask, the lawyer should tell you specifically about the lawyer's actual experience dealing with cases similar to yours and give you this information in writing, if you request it. Your lawyer is responsible for keeping you reasonably informed regarding the case and promptly complying with your reasonable requests for information. You are entitled to be informed of the final disposition of your case within a reasonable time.

2. *Fee and Costs* Usually the insurance company pays all of the fees and costs of defending the claim. If you are responsible for directly paying the lawyer for any fees or costs, your lawyer must promptly inform you of that.

3 Directing the Lawyer If your policy, like most insurance policies, provides for the insurance company to control the defense of the lawsuit, the lawyer will be taking instructions from the insurance company. Under such policies, the lawyer cannot act solely on your instructions, and at the same time, cannot act contrary to your interests. Your preferences should be communicated to the lawyer.

4 Litigation Guidelines. Many insurance companies establish guidelines governing how lawyers are to proceed in defending a claim. Sometimes such guidelines affect the range of actions the lawyer can take, and may require authorization of the insurance company before certain actions are undertaken. You are entitled to know the guidelines affecting the extent and level of legal services being provided to you. Upon request, the lawyer or the insurance company should either explain such guidelines to you or provide you with a copy. If the lawyer is denied authorization to provide a service or undertake an action the lawyer believes necessary to your defense, you are entitled to be informed that the insurance company has declined authorization for the service or action.

5 Confidentiality Lawyers have a general duty to keep secret the confidential information a client provides, subject to limited exceptions. However, the lawyer chosen to represent you may also have a duty to share with the insurance company informationrelating to the defense or settlement of the claim. If the lawyer learns of information indicating that the insurance company is not obligated under the policy to cover the claim or provide a defense, the lawyer's duty is to maintain that information in confidence. If the lawyer cannot do so, the lawyer may be required to withdraw from the representation without disclosing to the insurance company the nature of the conflict of interest which has arisen. Whenever a waiver of the lawyer-client confidentiality privilege is needed, your lawyer has a duty to consult with you and obtain your informed consent. Some insurance companies retain auditing companies to review the billings and files of the lawyers they hire to represent policyholders. If the lawyer believes a bill review or other action releases information in a manner that is contrary to your interests, the lawyer should advise you regarding the matter.

6 Conflicts of Interest. Most insurance policies state that the insurance company will provide a lawyer to represent your interests as well as those of the insurance company. The lawyer is responsible for identifying conflicts of interest and advising you of them. If at any time you believe the lawyer provided by the insurance company cannot fairly represent you because of conflicts of interest between you and the company (such as whether there is insurance coverage for the claim against you), you should discuss this with the lawyer and explain why you believe there is a conflict. If an actual conflict of interest arises that cannot be resolved, the insurance company may be required to provide you with another lawyer.

7. *Settlement*. Many policies state the insurance company alone may make a final decision regarding settlement of a claim, but under some policies your agreement is required. If you want to object to or encourage a settlement within policy limits, you should discuss your concerns with your lawyer to learn your rights and possible consequences. No settlement of the case requiring you to pay money in excess of your policy limits can be reached without your agreement, following fill disclosure.

8. *Your Risk* If you lose the case, there might be a judgment entered against you for more than the amount of your insurance, and you might have to pay it. Your lawyer has a duty to advise you about this risk and other reasonably foreseeable adverse results.

9 Hiring Your Own Lawyer The lawyer provided by the insurance company is representing you only to defend the lawsuit. If you

desire to pursue a claim against the other side, or desire legal services not directly related to the defense of the lawsuit against you, you will need to make your own arrangements with this or another lawyer. You may also hire another lawyer, at your own expense, to monitor the defense being provided by the insurance company If there is a reasonable risk that the claim made against you exceeds the amount of coverage under your policy, you should consider consulting another lawyer.

10. *Reporting Violations* If at any time you believe that your lawyer has acted in violation of your rights, you have the right to report the matter to The Florida Bar, the agency that oversees the practice and behavior of all lawyers in Florida. For information on how to reach The Florida Bar call (850) 561-5839 or you may access the Bar at www.FlaBar.org.

IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS,

PLEASE ASK FOR AN EXPLANATION.

CERTIFICATE

The undersigned hereby certifies that this Statement of Insured Client's Rights has been provided to [name of insured/client(s)] by

[mail] [hand delivery] at_____ [address of insured/client(s) to which mailed or delivered] this

_____day of_- 2O_.

[Signature of Attorney]

P ALIGN="JUSTIFY">[Print/Type Name]

Florida Bar No_____

COMMENT

Representation of Insureds.

P ALIGN="JUSTIFY">As with any representation of a client where another person or client is paying for the representation, the representation of an insured client at the request of the insurer creates a special need for the lawyer to be cognizant of the potential for ethical risks. The nature ot the relationship between a lawyer and client can lead to the insured or the insurer having expectations inconsistent with the duty of the lawyer to maintain confidences, to avoid conflicts of interest, and otherwise to comply with professional standards. When a lawyer undertakes the representation of an insured client at the expense of the insurer, the lawyer should ascertain whether the lawyer will be representing both the insured and the insurer, or only the insured. Communication with both the insured and the insurer promotes their mutual understanding of the role of the lawyer in the particular representation. The Statement of Insured client's Rights has been developed to facilitate the lawyer's performance of ethical responsibilities. The highly variable nature of insurance and the responsiveness of the insurance industry in developing new types of coverages for risks arising in the dynamic American economy, render it impractical to establish a statement of rights applicable to all forms of insurance. The Statement of Insured Client's Rights is intended to apply to personal injury and property damage tort cases. It is not intended to apply to workers' compensation cases. Even in that relatively narrow area of insurance coverage there is variability among policies. For that reason, the statement is necessarily broad. It is the responsibility of the lawyer to explain the statement to the insured. In particular cases, the lawyer may need to provide additional information to the insured.

Since the purpose of the statement is to assist lay persons in understanding their basic rights as clients it is necessarily abbreviated. While brevity promotes the purpose for which the statement was developed, it also necessitates incompleteness. For these reasons, it is specifically provided that the statement shall not serve to establish any legal rights or duties, nor create any presumption that an existing legal or ethical duty has been breached. As a result, the statement and its contents should not be invoked by opposing parties as grounds for disqualification of a lawyer or for procedural purposes. The purpose of the statement would be subverted if it could be used in such a manner.

The statement is to be signed by the lawyer to establish that it was timely provided to the insured, but the insured client is not required to sign it. It is in the best interests of the lawyer to have the insured client sign the statement to avoid future questions, but it 15 considered impractical to require the lawyer to obtain the insured client's signature in all instances.

Establishment of the statement and the duty to provide it to an insured in tort cases involving personal injury

or property damage should not be construed as lessening the duty of the lawyer to inform clients of their rights in other circumstances. When other types of insurance are involved, or where there are other third-party payors of fees, or where multiple clients are represented, similar needs for fully informing clients exist, as recognized in Rule 4-1.7(c) and Rule 4-1.8(f).