



# Lawyer on the Board or No Good Deed Goes Unpunished

Ethical Issues for Lawyers Serving Nonprofits



## Lawyer on Board

- Lawyer's interest: personal satisfaction, obligation to provide pro bono service, meaningful and interesting work, professional networking
- Nonprofit's interest: legal expertise, understanding governance and management, community reputation and stature, financial contributions
- This relationship often causes the lawyer to wear two hats.



## Roles for Lawyers

- Legal committee
- Audit committee
- Governance committee
- Development committee
- Government relations/public affairs committee
- Various ad hoc committees, such as bylaws update



## Unclear Roles

- Even when a lawyer joins a board with the expectation of not serving as the lawyer for the organization, they can still end up providing legal services.
- For example,
  - amending bylaws;
  - Preparing the ED's employment agreement; or
  - Assisting with the 501c3 application.



## Dual Roles

- There is risk of conflict between the two roles.
- Fiduciary duties of nonprofit directors-the duty of care and the duty of loyalty- may conflict with the ethical duties imposed on lawyers.



## Considerations Prior to Membership

- Discuss expectations concerning legal representation.
- If there is an expectation of regular legal services, is there a likelihood that conflicts of interest will arise?
- Review corporate documents related to conflicts of interest, liability, and indemnification.
- Review state and federal filings, including 990's and employment taxes.
- Review financial statements, including cash flow, restricted funds, and balance sheet.

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## Title search: Lawyer on the Board or No Good Deed Goes Unpunished: Ethical Issues for Lawyers Serving Nonprofits

Also available as part of the eCourse

[Lawyer on the Board: Ethical Quagmire](#)

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9<sup>th</sup> Annual Advanced Texas Administrative Law Seminar session  
"Lawyer on the Board"