

**25th Annual
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ETHICAL ISSUES FOR LAWYERS AND EXECUTIVES

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1. You have been asked by a 501(c)(3) organization to serve on its board of directors. The member of the nominating committee who called you said that the organization needs a lawyer on the board. You are inclined to accept since you support the objectives of the organization. What are the ethical implications of accepting the position? Do you have an attorney client relationship with the organization?

2. A long time Board Member – BM - is the subject of a complaint by an employee, alleging serious sexual harassment and assault. Your Organization is not a defendant.

Another board member - John - has been retained by BM to defend him on all matters relating to the complaint. John has not asked the Organization for permission to do so. Two board members have expressed to you, as Organization's counsel, their nervousness about the situation.

Now what?

3. John has been successful in keeping BM from being found civilly liable for harassment of the employee, but 18 other women have made similar charges against BM. Since they all happened a while ago and the statute of limitations has run, BM will not likely be found to have civil liability on these claims but he has gotten very bad publicity. BM was very successful professionally and gave your university (not the one on whose board he serves) a \$100,000 gift for a scholarship fund in his name for low-income women from Philadelphia, and \$250,000 for a drug research lab in his name. Your university gave him an honorary degree. What, if anything, should the university do?

4. VP for fundraising tells you - Org's counsel - that she suspects a relatively New Development Associate [DA] is giving our donor lists, with details, to the entity most competitive in our field. VP wants you to ok her plan to have Org's IT consultant copy and give to the VP all of DA's email activity for past 3 months. VP will then sift through looking for evidence of this and anything else she comes across.

What do you tell her?

What if she finds DA's communication with DA's lawyer about her unhappy employment situation? Her Doctor concerning a serious medical issue?

5. You represent a woman psychologist who has been improperly terminated from her job with a nonprofit agency and you file suit on her behalf for damages, suing the agency, the chair of its board, and the executive director personally. The lawyer for the defendants files an answer denying the charges and adds a counterclaim seeking damages from your client. The lawyer alleges that your client, while out on medical leave caused by her mistreatment at work, earned income practicing as a psychologist privately. He alleges breach of contract, breach of loyalty, and failure to provide honest services, seeking substantial damages. During discovery, you found that the organization is in the process of dissolution, has not had a board meeting in months, and that the board did not authorize the counterclaim. You want to warn the others on the board that they could be subject to damages for abuse of process if they don't withdraw the counterclaim. How do you proceed?

6. Al Ask, a development officer at the We Want Money ("WWM"), a 501(c)(3) public charity, suggests to Mr. and Mrs. Legacy, a retired couple in their early 80s, that they could increase their current income and leave a great gift to WWM if they created a \$1 million charitable remainder trust providing income to themselves for life, with the remainder to WWM. The Legacies talk with their lawyer, their accountant, and their financial planner, all of whom express general support for the idea with some reservations.

Who is responsible for seeing that something gets done?

Should the Legacies call a meeting of the development officer and the advisers? If they don't call a meeting, should anyone else?

The Legacies' lawyer is a member of the Board of WWM and a member of its planned giving committee. May the lawyer represent the Legacies in drafting the CRT documents?

The Legacies express some concern about the cost of implementing a plan. Should the development officer offer to have WWM pay the attorney's fees?

The Legacies have two grown children. One is a ne'er-do-well jobless son married to a very wealthy woman and without children. The daughter is a successful (i.e. well to do) lawyer happily married to an even more successful (i.e. richer) lawyer with two young children.

Considering the situations of their kids, the Legacies don't believe that they need to worry about leaving them a lot of money and reject the wealth replacement trust idea.

The lawyer, who has been the family lawyer for a long time, has been consulted by the ne'er-do-well son about a pending, but unannounced divorce. Because of a pre-nuptial agreement with his wife, he will be left with little or nothing when the divorce goes through. Should the lawyer tell the parents about the situation so that they can consider it in their planning?

The development officer has also been talking with the daughter about a major gift to the organization and just learned about the husband's newly discovered degenerative condition that will force him to stop working and incur huge medical costs. It was revealed when the daughter said she didn't think she could make a major gift now. Should the development officer tell the parents?