

THIS YEAR IN NONPROFIT LAW

November 10, 2016

ETHICAL ISSUES FOR LAWYERS AND EXECUTIVES

©Donald W. Kramer, Esq.
Editor, *Nonprofit Issues*®
www.nonprofitissues.com
Montgomery, McCracken,
Walker & Rhoads, LLP
123 S. Broad St.
Philadelphia, PA 19109
(215) 772-7277
dkramer@mmwr.com

Virginia P. Sikes, Esq.
Montgomery, McCracken,
Walker & Rhoads, LLP
123 S. Broad St.
Philadelphia, PA 19109
(215) 772-7275
vsikes@mmwr.com

John M. Myers, Esq.
Montgomery, McCracken,
Walker & Rhoads, LLP
123 S. Broad St.
Philadelphia, PA 19109
(215) 772-7535
jmyers@mmwr.com

1. You are in-house counsel and corporate secretary for a 501(c)(3) organization dealing with drug and alcohol addiction. Its annual budget is about \$15 million, with programs funded primarily by the state and insurance payments on behalf of clients. You learn that the founder, who is chair of the board, has used some corporate funds for personal expenses. What do you do?

You subsequently discover that an executive at an affiliated treatment center has also misappropriated corporate funds for personal use. You are not counsel for the affiliate. The affiliate is not controlled by your employer but has substantial board overlap. What do you do?

After nothing is done to rectify the diversion of the corporate assets for your organization, the board chair asks you to sign the Form 990 tax information return that fails to disclose the misappropriation of funds. What do you do?

The CFO, who signed the Form 990 while you were thinking about what to do, is called before an investigating grand jury investigating the use of state funds by your agency? The CFO asks for your advice. What do you tell the CFO? Can you represent the CFO in the grand jury proceeding?

You subsequently learn that the misuse of corporate funds has been going on for more than a year and involves many of the board members and most of the affiliated agencies. The misuse totals more than \$1 million. The local newspaper is beginning to ask questions. You know the organization has done a lot of good in the community and that there are good people working there who are not involved in any wrongdoing. You fear that the agency will be destroyed if the newspaper learns all of the facts and people are prosecuted. What do you do?

2. At your annual charity auction, one of your directors offers a week vacation in January at the director's ritzy condo in Florida. The director values the week at \$2,000. As development director, how do you acknowledge the gift?

One of your major donors makes the winning bid of \$10,000 for the week vacation. He pays the following day by check, signed by his wife, from their family private foundation. What do you do?

Instead of paying by foundation check, you receive a check for \$10,000 from the winner's donor advised fund at a national provider of donor advised funds. What do you do?

In your annual appeal, you have a \$300 membership that provides return benefits that you value at \$35. A week after the mailing goes out you receive a check for \$300 from one of your supporters that comes from the supporter's IRA account. What do you do?

3. The university board proposes a rule that directors are not allowed to discuss university matters outside board meetings without the prior approval of the Board. Is this a wise proposal?

4. The CFO of your agency has absconded with money from the agency. Do you prosecute?