

29th Annual

“THIS YEAR IN NONPROFIT LAW”

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ETHICAL ISSUES FOR NONPROFIT LAWYERS AND EXECUTIVES

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1. Mr. and Mrs. Legacy agree to create a \$3 million charitable remainder trust for LOST. But they are concerned about the legal fees that will be involved in drafting the documents.

As head of LOST’s development committee, should Bill offer to have attorney Steve, who is also a member of the Board, draft the documents?

- Should Steve accept the opportunity?
- Should Bill offer to pay the legal fees for Steve to draft the documents?

2. The Legacies are happy to do the CRT because they believe that their two children are both financially secure. They are preparing to sign the documents next week. Renee, the director of development, has been talking to their daughter about a \$100,000 gift for the capital campaign. The daughter told Renee yesterday that she can’t make the gift now because she has just been diagnosed with a long-term debilitating illness and will need the money for her care and for her family when she is gone.

- What should Renee do?

3. Independently, lawyer Steve, who is the family attorney, learned of the situation when he was asked to draft a new will for the daughter. What should he do?

4. LOST is closing in on a \$1 million campaign to renovate its office building, with only \$100,000 to go. A friendly foundation gives LOST \$50,000 and suggests that LOST advertise it as a “matching gift.” They urge Renee to tell its donors the matching funds will be available only to match new gifts, although the foundation makes clear that it will give the \$50,000 to LOST no matter what other donors actually do.

- What do Renee, Steve, and Bill do?

5. Simon Sez is the founder and CEO of his long-running nonprofit dance troupe. Bill is the chair of the board and Steve is a director and general counsel.

Steve is in a meeting with Simon, who tells him that he believes a third person is wearing a wire and recording them as part of an investigation, and that every time he says something suspicious or interesting, he hears a loud beep, like an answering machine recording. Steve is certain that Simon is experiencing auditory hallucinations and appears to be delusional as well.

- What should Steve do?

6. At a later meeting, which Bill also attends, Simon discloses that he has thought of killing himself. He says he wishes he were not alive.

- What does Steve do?
- What does Bill do?

7. At a third meeting, Simon says he has a plan and has acquired the means for how he could kill himself.

- What does Steve do?

8. All of the directors of Simon's troupe signed a confidentiality pledge upon their appointment to the board. The pledge says that they will support any decision that the board has made and will keep confidential the content of board meeting discussions and other non-public information they obtain as the result of their service.

- Is this a breach of fiduciary duty?

9. Simon has returned from a month's leave for psychological treatment but appears overly harassed and impatient, causing some difficulties both with donors and staff. Bill thinks the organization has become dysfunctional and wants to put Simon on a paid leave until he "recovers." At a very divisive board meeting, Bill's proposal is rejected. In a huff, Bill resigns from the board. Steve figures he has had enough of this crazy client and decides to quit as well.

10. Bill starts talking to some of the donors and suggesting that they ought to withhold support until Simon recovers. He threatens to take the situation to the local newspaper.

- Does the board have any basis for stopping Bill's actions?
- Is Bill in violation of his fiduciary duty?

11. The local newspaper gets word of the situation and asks Steve for his comments. What should Steve say?

12. The dynamic new mayor of Funville has just taken office following her landslide election. She has promised to mobilize the business and foundation community to undertake

major new projects. Since Steve worked hard for her election, she asks Steve to create “The Mayor’s Fund” as a 501(c)(3) public charity. She wants to raise money for her projects without having to go through the appropriation process of City Council. She wants to be the sole member of the corporation so that she can control what happens with the money. She even offers to pay for the work.

- Should Steve accept?

13. After the foundation has been created by another lawyer, the Mayor invites both Steve and Bill to serve on the board and they accept. Some of the potential donors suggest that they would be willing to give, but only if their gifts can be anonymous. The Mayor says she is okay with that because she will know who makes the gifts. What do Steve and Bill have to say about that?

14. The Foundation makes a grant of \$500,000 to support a new literacy project run by a social service agency at the high school in the district the Mayor previously represented in City Council. At a highly publicized ceremony at which the gift is announced, the Mayor stands behind the oversized foundation check that is presented to the board chair of the agency.

- Does this cause concern to Steve or Bill?

15. At the end of the second year of the Foundation’s operations, the board discovers that the CFO has been stealing from the Foundation. He needed it to pay for an experimental drug for his wife that was not covered by the Foundation’s health insurance policy. The drug has saved his wife’s life. When confronted with the situation, he readily admitted the theft, asked for forgiveness and mercy, and agreed to a quick reimbursement schedule. The amount taken was less than the threshold for reporting on the Form 990.

- What should the Foundation do?

16. Mrs. Donor wants to contribute \$50,000 to LOST’s capital campaign.

- She asks Renee: “To whom should I make out the check?”
- What should Renee say?

17. Steve is counsel to The Adoption Center, Inc. Bill is also member of this Board. They are flying home with the president from the annual adoption conference in California. They get word that the press is asking about a meeting the top staff people had with representatives of the government of Duchestan. The press wants to know what they were talking about in view of the state investigation about alleged trafficking in Duchestani kids for sex work.

18. The organization had surreptitiously obtained three children from Duchestan last year before the Emperor imposed a ban on adoptions by Americans and before Steve became counsel to the organization. The Adoption Center placed them with wonderful families. The kids are thriving and the parents are ecstatic. The Duchestanis were trying to get the children back.

19. The president doesn't want to talk about that, however, and asks Steve and Bill to help prepare a statement saying the meeting was about trying to get the Duchestani emperor to lift the new ban on allowing Americans to adopt Duchestani children. The actual purpose was to obtain more kids despite the ban.

- What does director Bill do?
- What does attorney Steve do?

20. Six weeks later Steve and Bill learn that the Center has arranged to obtain six more children from Duchestan who will arrive in about a month. Center staff is actively looking for adoptive families.

- What does attorney Steve do?
- What does director Bill do?