

28th Annual

“THIS YEAR IN NONPROFIT LAW”

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**ETHICAL ISSUES FOR NONPROFIT EXECUTIVES,
ACCOUNTANTS AND LAWYERS**

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1. An attorney responded to another attorney with the following communication:

“I am a former United States Attorney for the Southern District of Iowa. Your emails and message from today seem to be an apparent attempt at possible blackmail or extortion.

You also mentioned filing a complaint with the Better Business Bureau... I am assuming you understand that there could be serious civil and criminal consequences for you.”

Is this an appropriate response?

2. Environmental Litigation Fund is a 501(c)(3) public charity, which is controlled by Clean Environment Now, which is a 501(c)(4) social welfare organization. The Litigation Fund owns an office building that serves as its primary place of business. Clean Environment has its primary place of business in another building, but recently lost its lease. TV anchor Audrey Smashem of the Litigation Fund’s board of directors thinks the Litigation Fund could reorganize its operations to free up enough space to let Clean Environment move in. Randy Realtor, also a member of the Litigation Fund’s board, suggests a fair market rental rate and says he is willing to broker the deal at his standard commission rate. Sam “Soft Touch” Tockett says Litigation Fund ought to let Clean Environment use the space for free. You are an attorney, the only attorney on the board of the Litigation Fund. What do you recommend?

Does your recommendation differ if the Litigation Fund is a 501(c)(4) that controls Clean Environment, which is a 501(c)(3)?

3. Dorothy Daughter, along with her sister Sally, is the income beneficiary of a charitable remainder unitrust (CRUT) created by her mother. Dorothy wants to invest in a hot new hedge fund but there is a minimum commitment requirement that she can't make on her own. If the CRUT also invests in the fund, together they could make the minimum the commitment for investment. The CRUT does not need the anticipated tax benefit, but her tax advisor says it sounds like a good idea. Dorothy is also on the board of her college alma mater and could probably have the college invest a portion of its endowment with her. What should she do?

4. Ellen has a private family foundation that owns and maintains some statues in a public park near her brother Frank's company's office building. Frank gave the statues to Ellen's foundation, along with some stocks and bonds so that the foundation could pay for the cost of maintaining the statues. Frank has his company's janitor periodically remediate ornithological encrustations on the statues, and the company bills the foundation only for the wages paid to the janitor, absorbing all overhead costs including employer payroll taxes and cost of supplies. Should Frank's company charge Ellen's foundation at the fair market value of the service and make a profit?

5. Meyer University needs a large multi-use facility with an auditorium, gallery space, class rooms, and other specific requirements. There is no space available on campus for new construction, and one property that might meet the need is owned by Meyer Products, a small publicly traded company of which Scott Meyer is the president. Many years ago Scott's grandfather Hiram founded both Meyer University and Meyer Products in small community of Meyerstown. Scott is the third generation to serve on the board of the University and through his position as president of the Chamber of Commerce has close connections with most of the business and civic leaders of Meyerstown. A large public company that currently has a small stake in Meyer Products is considering purchasing the rest of the stock of the company, which would create a "liquidity event" that would be an opportunity for Scott to make a major gift to the University. Selling the building to the University would be a huge plus for the proposed acquisition since the prospective purchaser doesn't want to deal with the deteriorated structure. The University board has engaged an experienced local valuation expert to appraise the value of the building. You are advising the University. Are there any questions that should be asked or concerns to think about?

6. You work as the planned giving officer for the We Want Money charity. I. M. Loaded is a very wealthy woman who has been giving to We Want Money for a number of years. She traditionally gives \$100,000 from her IRA in lieu of her required minimum distribution, makes gifts from her donor advised funds, and writes checks personally. She also indicates that she plans to give your charity a very significant gift in her will.

Ms. Loaded met Pretty Please, your predecessor as the planned giving officer at We Want Money, when he gave an informational seminar on tax aspects of planned giving at one of the local hotels. He often boasted that taking Ms. Loaded to dinner later that evening was one of the best decisions he ever made. He assiduously cultivated the relationship over the years, primarily

through expensive entertaining, and she increased her annual pledge to We Want Money by about \$25,000 a year, in part to cover the increasingly growing cost of her entertainment. But Please complained to the V.P. for Development that Ms. Loaded continually asked him to come back to her room with her after his annual presentation at the hotel's annual giving seminar and after other dinner events. It finally got so bad that when We Want Money didn't do anything about it, he quit.

You inherited this relationship, and frankly your job depends on keeping it. You know it will require a lot of time and a lot of We Want Money's money, but you think it will be an extremely fun part of your job to indulge her expensive tastes, particularly the trip to the Islands every winter. The first thing you did was to get Ms. Loaded and the sponsoring organization of her DAF to make her sister the advisor for one of her DAFs, and have her sister make the recommendation to send money from the DAF to We Want Money. But you know that DAFs cannot be used for personal benefit and have begun to wonder if the payments are a problem. What do you do?

7. You are in a meeting with a colleague who works with you in your nonprofit organization. Your colleague tells you that they believe a third person is wearing a wire and recording them as part of an investigation, and that every time he/she says something suspicious or interesting, he/she hears a loud beep, like an answering machine recording. You are certain your colleague is experiencing auditory hallucinations and appears to be delusional as well.

Assume you are an accountant in a meeting with a client, but that the situation is otherwise as described above.

Assume you are an attorney, not an accountant, in a meeting with a client but that the situation is otherwise as described above.

Assume the same relationships as above, but instead of indicating that your colleague/client is delusional, your colleague/client shares with you that he/she has experienced suicidal ideation – that is, your colleague/client has expressed that he/she wished they were not alive, or thought about taking their life.

Assume that your colleague/client has shared that he/she has experienced suicidal ideation, but in addition, your colleague/client had shared with you that he/she has a plan for how they would take their life and have acquired the means for that plan.

For information on the Columbia Lighthouse Project for identifying risk and preventing suicide visit: www.cssrs.columbia.edu.