



# BoardLink

Your connection to effective bar governance

## To Disclose or Not to Disclose?

*Taken from "Tales from the Boardroom," in the Fall 2009 issue of BoardLink*

### The Situation

The Bar Association Board of Governors needs to appoint a new bar liaison to an important state commission. Three individuals express interest in the position. The board engages in a spirited debate about the strengths and weaknesses of each candidate and which one would best represent the bar's point of view. The vote is close between two of the candidates, with the winner receiving twelve votes, and the other candidate receiving ten. Immediately following the board meeting, a board member contacts the candidate who had received the ten votes, relays the details of the board discussion and who had voted for whom. Insulted and embarrassed that he had been described by a board member as "not as well connected" and "occasionally brusque," the member stops attending events and participating in bar association committee work.

How might this situation have been avoided?

### Our View

While bar associations certainly should conduct their business with a spirit of openness, boards inevitably will have discussions that are complicated, messy, and where board members may strongly disagree with one another. Reaching the best decision sometimes requires us to air difficult or challenging opinions. So, it's essential that the board meeting is a place where board member candor is respected and protected.

[The ABA's Guidebook for Directors of Nonprofit Corporations](#) describes board members' responsibility this way:

"A director should not, in the regular course of business, disclose information about the corporation's legitimate activities unless they are already known by the public or are of public record.

In the normal course of business, a director should treat as confidential all matters involving the corporation until there has been general public disclosure or unless the matter is of public record or common knowledge. The individual director is not a spokesperson for the corporation and thus disclosure to the public about corporate activities should be made only through the corporation's designated spokesperson ..."

If you, as a board member, disagree with a decision the board is making, you have a right to have your dissent officially recorded in the minutes. However, once the decision has been made, it's also every board member's responsibility to support it.