Tales from the Boardroom: Tale of Two Boards
Excerpt from BoardLink Fall 2013

*Tales from the Boardroom case studies are fictional examples created by the editor to illustrate common governance challenges.*

David currently serves on the board of his local Hispanic Bar. He also has been involved in several state bar committees, and the bar's leadership is encouraging him to seek a spot on the state bar board. He is interested in greater involvement with the state bar. What should he do?

Our legal communities are small and our bar organizations are many, so the likelihood that lawyers will serve in multiple leadership capacities is high. There are a number of upsides to simultaneously serving on two boards. There's greater opportunity for inter-organizational awareness and collaboration. One organization may employ great practices that the other does not. On the other hand, quality board service usually requires a significant time commitment. And, at some point, it's likely a conflict of interest or competing interest situation will arise. The potential for conflict of interest is not a reason for David to say no to service on the state bar board, but he will need to be especially attentive to situations where conflicts may arise. They frequently occur around decisions involving members, money or volunteer resources.

According to BoardSource governance consultant, Berit Lakey, a conflict of interest is "a situation in which an individual has two separate and competing interests, and it is unclear which interest will win out if it comes down to it." Most conflict of interest policies are more narrowly written, however, so that so that a conflict of interest only exists if the individual has a material personal interest – direct or indirect – in a contract or transaction to which the corporation may be a party. Ultimately, both of these definitions address situations that may compromise board members' ability to carry out their duty of loyalty to the organization – "to act in the best interests of the corporation, rather than in their own interests or the interests of another entity or person." (ABA Guidebook for Directors of Nonprofit Corporations, Third Edition, pp 43-44).

If a potential conflict of interest situation exists, it's the board member's responsibility to disclose it. To avoid even the appearance of a conflict of interest, I recommend board members disclose based on the broader BoardSource definition. If the board determines a conflict of interest exists, the organization's conflict of interest procedures should be followed. This may involve an individual's recusal from the discussion and vote. If you're not familiar with the conflict of interest policy at your bar, be sure to ask about it. Most bars employ a policy that the board and staff sign. That policy also should include a disclosure form that asks about other nonprofit or for-profit boards on which the individual serves. Those affiliations should be submitted, reviewed and discussed on an annual basis to ensure the board's awareness of every individual's commitments.

Even if the board decides that no conflict of interest exists, the board member should ask himself: “Does my affiliation with the other organization affect my ability to use independent judgment and act in the best interest of this organization?” If the answer to that question is yes, he may want to consider voluntary recusal from the discussion and vote.

David's involvement in multiple associations is encouraged, but service on two boards will require extra diligence on his part.