The Court Comes Calling

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

In each issue, we plan to share with you a sticky governance scenario that has arisen in some form in one of our bar associations. How would such a scenario play out in your bar? We'll propose a few ways we would deal with the situation.

The facts of the matter

- An influential bar board member asks the bar to contribute $5,000 to the retirement celebration for a local judge.
- The board member is married to the court's chief administrator, which he discloses.
- The board member explains that the court's budget has been slashed, and that the court will not have the resources to hold an event comparable to those held in years past. The board member advocates strongly that this is an important way for the bar to support the local legal community.
- Board discussion:
  - One board member observes that the bar has the money to contribute. Law Week activities are coming in under budget; several committees haven't met and, thus, also are under budget.
  - Another board member observes that this judge generally has been supportive of the bar, and periodically participates in bar-related activities.
  - A third board member expresses concern about the appearance of not contributing. What might this say about the bar's willingness to work with the courts, and what happens next time we need them?
  - A fourth board member suggests that she believes the bar should contribute something, but feels more comfortable with a slightly smaller figure. She makes a motion to contribute $3,000 to the event.
  - The president calls for a vote; the board member abstains; the motion passes.

How do you think this issue would have played out at your bar association?

It's all about context

Many bar associations make contributions to judges' retirement celebrations, and it's quite possible this was a perfectly prudent decision by the board of directors. However, while some pertinent questions were asked, many other important questions were not. Bar members rely on the board to decide how best to use the bar's resources.

As the bar's stewards, here are a few questions we'd suggest this board should have posed:
1. Does the bar have a history of making contributions to these sorts of celebrations?
2. If we make this contribution, what precedent does it set?
3. How does funding a judge's retirement party advance our mission? What, specifically, do we expect this expenditure of resources to accomplish?
4. What are we not doing in order to make this contribution? Is this truly the best use of our resources, or is this simply what's in front of us?
5. By the way, as a follow-up discussion, why do we have inactive committees? What other questions would you have asked?

And what about conflicts of interest?
This board member appropriately disclosed the conflict of interest as he made his pitch, and he abstained from the vote. However, he participated in the discussion and was present in the room for the vote. Were his actions adequate?

Board best practices hold that, if there is a conflict of interest situation, interested parties should not participate in the vote nor in the discussion that precedes it. Most model conflict of interest policies also require the interested parties to physically leave the room for the discussion and vote, although it may be necessary for the individual to remain in the room to provide clarification on questions that arise. Why is it recommended that the individual step out? It's possible the questions we listed above weren't asked because board members felt uncomfortable challenging a peer at the table.

- Does your bar association have a conflict of interest policy? If not, we have samples.
- Is your board aware of the requirements of the bar's conflict of interest policy? Does the policy require members to disclose possible conflicts on an annual basis? Do board members understand how conflicts are to be handled? For example, does the policy require interested parties to step out of the room?
- And it's one thing to have a policy. Does your board actually abide by the policy when conflict situations arise?