

Service through Leadership on Nonprofit Boards

By Ashley N. Wicks and Christine M. Miller

As a young lawyer, you may be asked to serve on the board of directors of a nonprofit organization. Serving as a director of a nonprofit can be a great way to be more involved in your community and can be personally rewarding. But, before you commit to serving on a nonprofit board, you should understand what it requires. Nonprofits are subject to state laws and are governed in a way that firm or corporate attorneys may not encounter in their law practices. Your role as a board member should not conflict with your full-time job as an attorney.

A key to understanding the governing and management structure of a nonprofit is to know the difference between the roles of directors and officers. A director's role is to direct the activities of the nonprofit; an officer's role is to execute the directions of the board. A good rule of thumb to help remember this distinction is "nose in/fingers out," which means that directors are supposed to be nose in but not supposed to run the day-to-day operations of nonprofits. Officers take care of running the daily operations.

To keep your "nose in" as a director, stay active: attend board meetings, review meeting minutes and financial information, and ask hard and important questions. Generally, nonprofit directors owe two fiduciary duties to the organization: duty of loyalty and duty of care. Duty of loyalty requires directors to act in good faith and in a manner that directors reasonably believe to be in the nonprofit's best interest. It also covers conflict-of-interest situations. Duty of care requires directors to act with the care that a person in a like position would reasonably believe to be appropriate under the circumstances. The specific duties of directors vary based on state law.

In your role as a director of a nonprofit, you may be asked for legal advice by other board members because you are an attorney. As an attorney, you must make it clear that you serve the nonprofit as a director and not as the nonprofit's attorney, and, if appropriate, you should recommend that the nonprofit retain outside legal counsel on an issue. Also, you should be aware of potential conflicts of interest that may arise and any attorney-client relationships that may develop through your board service that could be construed as conflicts of interest.

Even if you are not acting as the attorney of the nonprofit, as an attorney/director you'll benefit from having a general understanding of nonprofits and laws affecting them. It is important that the nonprofit's activities are consistent with its exempt purpose and that it has policies in place for good corporate governance, such as a gift-acceptance policy, a conflict-of-interest policy, a whistleblower policy, and an executive director compensation policy.

NEXT STEPS

For more information, visit www.abanet.org/yld/meetings.html to register for the March 2 teleconference "Anatomy of Business Law: Non-Profit Organizations." Unable to attend? View the full presentation notes of the past CLE on this topic at www.abanet.org/yld/fall09/details.shtml - [buslaw2](http://www.abanet.org/yld/fall09/details.shtml).

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