



Board Members Must Remember Their Duties

By: Richard Bar, Esquire
Partner, Association Practice Group
January 2011

I am asked by the Executive Director of a new client to meet the Board and discuss Board governance issues. I walk into the conference room for my first meeting with the Board. The ED introduces me. I look around the Board table and ask each Board member whom she represents. Starting on my left, each Board member tells me her job title and where she works. I listen patiently and wait for the last Board member to speak. Then I reintroduce myself. I thank them for their introductions. Now I am ready to give the Board my first piece of advice: they are all wrong. Not a good way to start with a new client. They turn to the ED. The ED worries that she is about to lose her job. After all, she hired me. And to top it off, I expect to be paid for this!

Before I am fired, I explain that they each represent the tax exempt organization, my client. At this Board table, they do not represent anyone else. They bring their experiences, both personal and professional, to the Board table. And, while their experiences are extremely valuable, they do not represent their employers. They look unsure of what I am saying. I explain that all of their decisions at this Board table must be based on what's in the best interest of the organization, even if the decisions conflict with what's in the best interest of their employer. If they can't do that, they should not be on this Board. They nod in understanding. I am not fired.

We settle into our seats. I explain that each Board member has three primary duties. They are the duties of: (i) care; (ii) loyalty; and (iii) obedience. I advise that if each of them abides by these three duties, they will properly execute their functions as Board members and are likely to greatly advance the organization's mission. Do they want to hear more? They say "yes."

The duty of care means that each Board member must act reasonably and make prudent decisions based on all of the relevant information. I make sure they understand that acting reasonably and prudently doesn't mean that in retrospect the decision has to be correct. It has to be reasonable and prudent at the time that the decision is made. The inquiry, debate and reasoning process is what is critical. They understand.

The duty of loyalty means that each Board member must be loyal to the tax exempt organization. Decisions must be for what is in the best interest of the organization and no one else. Each Board member is encouraged to bring all of her professional and personal experiences to the Board table. But those experiences can only be used to formulate direction and make decisions about what is best for the organization. There are times when a conflict may arise between what is best for the organization and for the Board member or her employer – financial, personal, competitive, or otherwise. Board members must disclose these conflicts to

the organization. In no instance should any Board member make a Board decision when she is conflicted and when such a decision is adverse to the organization. Again, they understand.

The duty of obedience is the duty of each Board member to act consistent with, and promote, the organization's mission. All of their decisions, and in fact their other two duties, are premised on the unalterable premise that the Board must act in accordance with the mission. This seems very simple and basic to everyone at the table. I ask whether anyone has read the mission within the past year. No one raises their hands. We pause and read the mission statement at the table. We all smile. They understand.

The Board is ready to proceed with the business agenda.