

MARCH 30, 2012

## An Ethical Issue for Estate Planning Attorneys Who Sit on Charity Boards — Take Heed!

The Maryland State Bar Association's Committee on Ethics issued an opinion in 2003 regarding an attorney who served on his church's "Legacy Committee." The attorney asked whether he could prepare estate planning documents free of charge for parishioners who wanted to leave a bequest to the church. The Ethics Committee found that this arrangement would constitute an irreconcilable conflict of interest, concluding that the attorney's "laudable interest in advancing [his] church's interests would inevitably compromise [his] independent professional judgment in advising [parishioners] regarding whether their own interests will be served by such giving...." The Committee went on to say that it "has reservations regarding whether parishioners would be sophisticated enough to weigh the risks involved in order to knowingly consent to [the] representation."

The Committee subsequently withdrew this opinion, although we don't know why. Nonetheless, the issues raised in the opinion should still be of concern to estate planning attorneys who sit on charity boards.

In fact, the Standing Committee on Ethics and Professional Responsibility of the State Bar of Nevada recently addressed a similar issue. The Nevada Committee considered two questions:

- (1) May a lawyer who sits on the board of directors of a company (which we assume means "charity") render estate planning services to a client interested in naming the charity as a beneficiary of a gift or bequest; and
- (2) If so, must the lawyer disclose his relationship with the charity to the estate planning client?

The Committee noted that the lawyer has a fiduciary obligation to the charity in his capacity as a director, and that such duties would limit his ability to advise his estate planning client, as he could not disclose information about the charity that might be relevant to the client (for example, the charity's pending bankruptcy). Further, the competing goals of advancing the charity's interests and representing his client's interests could create a conflict of interest. However, unlike the Maryland situation, the Nevada Committee found that the lawyer could remedy this conflict with appropriate written consents from both parties.

So estate planners serving on charity boards should check their state's professional responsibility resources carefully before offering legal services to would-be donors to the charity ☹ it may not even be allowed with the donor's consent!

### RELATED CATEGORIES

➤ Charitable Gift Planning

### AUTHOR



Erik Dryburgh  
Senior Counsel

### ABOUT OUR BLOG

Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

### EDITORS



Stephanie L. Petit  
Principal



Eric K. Gorovitz  
Principal