



Paper Title: Giving Feels Great! The Joy of Charitable Adventures
Session Title: Service on Non-Profit Boards: How to Give Back

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Speaker Biography:

Laura Fowler celebrated her forty third (43rd) year as a licensed attorney a few weeks before this presentation. At this time Laura practices actively in the five-county area that makes up Austin Texas. Much of her work is as a civil trial lawyer. Laura very hands on manages The Fowler Law Firm PC, a fourteen (14) attorney firm with offices in Austin and Georgetown Texas, as its Managing Shareholder. Austin Business Journal has described The Fowler Law Firm PC as the largest one hundred percent (100%) woman owned law firm in Austin. You can read more than you care to about Laura at: <https://www.thefowlerlawfirm.com/our-attorneys/laura-sanders-fowler>

Rebecca A. Nickelson, is a partner at Sinars Slowikowski Tomaska LLC in St. Louis, Missouri. She focuses her practice on toxic tort claims including products and premises liability, asbestos and other toxic torts. Rebecca is a proud member of DRI, where she has held numerous leadership positions at the national and state level. She is currently on the Board of Directors of DRI and the nonprofit DRI Foundation. She serves as the Chair of DRI Cares, which is responsible for coordinating and publicizing DRI's public service projects by its members and at its seminars. In this role, she has helped organizations like CASA, local hospitals, Dress for Success and many others. She has volunteered for the annual raffle

which raises money to educate appellate judges through the nonprofit National Foundation for Judicial Excellence (NFJE). She also serves as a member of the leadership group for the DRI Women in the Law Committee and is on the marketing committee for the DRI Asbestos Medicine Seminar. She was on the Board of Directors of the Missouri nonprofit Infant Loss Resources 2013-2018.

Session Title: Service on Non-Profit Boards: How to Give Back (Ethics)

Presented by Rebecca Nickelson, Sinars Slowikowski Tomaska, and Laura Fowler, The Fowler Law Firm

The following observations are inspired entirely from Laura's experiences working with many groups, secular, faith based, civic, political, educational foundation, social welfare, professional and trade organizations, giving of her resources and often contributing as a pro bono legal counsel. No matter how diverse their missions, Laura has been struck by how similar many charities' mistakes are, and how often a contributor with a law license is vulnerable because with the very best of intentions, they fail to understand their role as advisor and/or board member.

At this time, Laura serves with great joy as pro bono legal counsel or other form of active participant, to more than forty (40) local charitable corporations and nonprofit organizations. Every attorney with The Fowler Law Firm PC was offered an association with the firm only if they already had a well-established record of charitable outreach. Giving attorneys are happy people!

INTRODUCTION AND DISCLAIMER

It is because I believe with utmost conviction that a law license empowers its holder to truly make a difference, I have agreed to present today. My words are a cautionary tale about involvement in charitable outreach as a citizen and as a licensed attorney. Some of us from time to time have given not wisely but too well. Some faced public criticism or ridicule when their only real sin was to serve generously but without careful investigation of who and what they served. But let's start with something positive about charitable service:

THE MAGICAL POWER OF GIVING!

If you are reading this, I assume you are a licensed attorney. Most likely you chose to be a lawyer because you wanted to help others. I feel very strongly that all of us with a law license have a moral imperative to give generously of our time and resources, using our skills as a lawyer. If we were given the gift of being smart enough to become a licensed attorney, we need to give generously to others who are less fortunate than we are. I don't think that is too much to expect of each of us.

One of the best ways to achieve this is through charitable associations which the structure to do more, give more and associate many diverse individuals united in a common goal and vision.

Before I get started with *SCARY MONSTERS OF CHARITABLE LEADERSHIP*[™], I want to share the good experiences I have had. The simple fact is that once I did the things I describe below in Paragraphs 1-5, almost always, the charitable deeds I did, the charitable gifts I made through those charities to others, the modest amount of time I spent or resources I contributed, were rewarded in magical ways I never could have anticipated.

Why? Because if the mission of the charity I chose was something I believed in. Charitable leadership ran the charity in a responsible way. When the leadership knew I was a lawyer with a sincere intent, almost always, over time, those leaders asked me and other members of my law firm to represent them for a fee, for their business and family legal needs. This was true even when I their faith their race, their political affiliation, their sexual orientation was different than mine.

Good people want to turn to other good people when they have a legal need. It is just that simple. I never asked anyone on a board or executive leadership for their business. They always knew I was an attorney, trying to help their charitable mission. That was enough.

One thing that always surprises me practicing law in a city like Austin that has a huge population of lawyers, much more than many other cities, is that many sophisticated, prosperous people do not have a lawyer as their *Go To* attorney. Many people do not have anyone they ever developed a warm, trusting ongoing legal relationship with. When those people see you advising their favorite charity or serving on their charitable board, helping with a pure heart, it is almost guaranteed they are going to turn to you to help them with their personal or professional or business legal needs. I can't explain why that is, but it has happened so many times in my career, I just accept it as part of the magic that flows from doing good and loving what you do, and loving others.

The following are procedures I have followed most of my career when I consider associating individually with a charity or nonprofit organization. I encourage others to do this when I teach or publish. I share this with and for you today.

1. CHOOSE YOUR CHARITY WITH A PURE HEART

Because charitable service is just as demanding as any other type of activity, often requiring far more time, energy and commitment without direct remuneration, chose charities whose mission matters to you. Say "*NO*" to the ones that do not inspire you, even if they are the largest or most well-respected charities operating in your community.

Choosing a charity because its leadership are prominent people is fine if you also believe in the mission of the charity. Choosing a charity only because you think it will enhance your practice is likely to prove to be an exercise in pure torture.

Charitable work is hard work. The rewards are far more subtle, and wonderful. Only if you make a contribution with a sincere belief in what your organization is doing, will the magic I describe above appear.

2. KNOW WHAT YOUR CHARITY AND ITS MISSION ARE

You should not associate with any charitable association until you can answer the

following questions. Your author is often rendered speechless when she discovers the leadership of the governing board, the President and Executive Officers, do not have the first idea about any of the following:

- a) What is the legal name of your charity;
- b) What is your IRS designation and tax-exempt status;
- c) What is your state tax exempt status;
- d) Are you an affiliate of a state, national, international or other larger entity;
- e) What do the bylaws or other organizational documents of your charitable association authority it to do?

What does this have to do with you being a lawyer? If the leadership of any charitable association you are considering serving cannot answer these questions, there is a VERY real possibility that organization is fund raising in violation of IRS, state or local law mandates, failing to remit taxes in accordance with state or federal law, that being everything from local sales tax, alcoholic beverage tax, state franchise or federal income tax, etc. *Now ask yourself if that was you want your good name and reputation to be associated with?*

I do not EVER allow my name or that of my law firm to be associated with any charitable association until I carefully confirm that the group has received written authorization for the charitable exemptions they claim they have, has filed the proper paperwork to operate in the state in which they represent they operate, and has a website with wording consistent with whatever claims they make to others about their tax exempt status. This confirmation only a few minutes to confirm. Most taxing authorities make the exemptions public.

If you don't know what to do, try these incredibly helpful websites. While these are specific to the state and local governments of Texas where I practice law, all states have similar state and local taxing authorities and display publicly this information:

IRS: <https://www.charitynavigator.org/index.cfm?bay=content.view&cpid=6308>
Not only can you determine if the entity is a charitable corporation with a current tax exempt status, but you can also see whether they are filing their IRS 990 forms, which tell you EVERYTHING about what they spend their money on. INQUIRING MINDS WANT TO KNOW. By the way, those 990's also tell you what they are paying their team and what they are spending on the mission. That comes as a shock to some supporters.

Secretary of State: <https://www.sos.state.tx.us/corp/sosda/index.shtml> *You can learn everything you want to know and more if you simply go to your state agency electronic filing website where typically using only the name of the entity you have an interest in serving, you can find out if it really is a nonprofit organization, if it files its annual reports, if it has the authority to use the name it uses, and if its governing board and location bear any resemblance to what it has filed. Some*

nonprofit organizations have no respect for or even knowledge of their annual duties to report and maintain current their officers and location. This speaks volumes about the level of commitment of their leadership.

State Comptroller of Public Accounts:

<https://comptroller.texas.gov/taxes/exempt/charitable.php#:~:text=What%20kind%20of%20exemption%20is,their%20sales%20of%20taxable%20items.>

You can learn a lot in a hurry about whether your charitable leaders have any idea what they are talking about, if you simply go to the website where charitable entities in your state are eligible to receive a sales tax exemption permit and purchase without paying state and local sales tax. Whether that which your charity sells must remit sales tax may also be answered by examining these sites. Because state and local sales tax is a large expenses for any organization, if indeed the charitable organization you are interested in serving has not applied for this exemption both for what they purchase and what they sell, this tells you something very meaningful about their level of leadership.

Local Ad Valorem Tax Assessor Collector: <https://traviscad.org/>*The published records of local tax assessor collectors are a treasure trove of information for anyone about almost everything. Sometimes the charity you are interested in serving does not realize they do not own the land they occupy. Or they think they have an ad valorem property tax exemption, but they actually don't because they let it lapse. It surprises many who assume leadership on a board to learn of these mistakes and omissions.*

"How can this happen?" you ask. Often because the officers of an all-volunteer charity change frequently, and use their personal addresses as agent of record given to all the taxing authorities and regulators or have a charitable association PO box that no one is assigned the duty to check regularly for notices, these mistakes occur. If you see a charitable entity that has tax liens, forfeitures or other problems, it is best not to associate until you find out why and see the situation corrected.

3. KNOW YOUR STATE LAW CHARITABLE IMMUNITIES, LIABILITIES AND DEFENSES

It is with particular pleasure that I speak about charitable immunities, liabilities and defenses to this particular group of professionals who have a very sophisticated understanding of risk, defense and insurance. The protections afforded to charitable organizations differ dramatically from one state to the next. Your job is to figure out what your state law charitable immunities and defenses are and what insurance coverage will afford the best protections to the board members, employees and volunteers.

Sometimes, even though the charitable leaders I speak to are sophisticated and well-educated citizens, I discover they have no real understanding of charitable

immunities, defenses or insurance coverage. They have some vague notion about Good Samaritan or Charitable Volunteer protections. They have not spent time enlisting the advice of a skilled professional insurance agent or attorney that actually understands charitable immunities, defense and insurance coverage as it specifically applies in their state.

You should NOT ever agree to serve as legal counsel or as a governing board member to an organization that does not carry proper charitable errors and omissions and general liability insurance. *EVER!* Furthermore, you should carefully investigate the operating policies of the entity regarding whether they agree to defend and indemnify the charitable leaders and volunteers if there is a claim or suit naming them individually. The time to discover this is before you accept any duties as legal counsel, governing board member or volunteer, not after.

Not surprisingly one of the most common reasons any charitable entity is sued is because of a mishap involving an automobile. In other words, a volunteer, an employee or a board member injured someone or damaged property while operating a motor vehicle in the scope and course of the charitable association's mission. See: <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812013>

You should inquire of your charitable organization about what insurance coverage it carries that would defend and indemnify you if you are asked to operate your motor vehicle in the scope and course of your charity's mission. If the answer is "*NONE*" you should ask your personal auto liability insurance policy issuer if you are covered for volunteer missions to the benefit of others, which in some states is treated as different for coverage purposes than purely personal use of an automobile. This is a type of add on coverage that typically does not cost anything but will not be afforded to you when you are calling at the scene of your accident in the hopes of being covered.

4. KNOW YOUR CHARITY'S FEDERAL, STATE AND LOCAL TAX EXEMPTIONS AND CPA FIRM

You should inquire of your charitable organization about who they work with to file annual reports. If their answer is "*NO ONE*" you may want to rethink whether you want to become involved. Even if the charity is small, federal, state and local taxing authorities as well as any public or private grant administrators expect a certain level of regular, recurring accounting, record keeping and reporting. Whether your charity receives a public grant, obtains a local ad valorem property tax exemption or IRS charitable tax-exempt status, all require a certain level of regular reporting and record keeping.

What many otherwise well-educated citizens do not understand is that the beneficiaries of most charitable corporations technically are the public at large. A charitable corporation or nonprofit organization is a public trust. This is a

principle of law many have lost sight of as the word “trust” has not been as commonly associated with charitable entities in modern times.

See: <https://www.irs.gov/charities-non-profits/private-foundations/charitable-trusts>

Mishandling of assets and failure to report, can generate individual civil liabilities and in extreme instances criminal consequences for the governing board members and executive leaders who are empowered to act on the charitable entity’s behalf.

Some generous donors and founding members of charities do not understand that what they give to a charitable entity they no longer control. They think CPAs, lawyers and financial advisors are a waste of everyone’s time and their donation. Those are the types of charities that you should avoid at all costs, no matter how appealing they seem.

CPAs with skill and experience in charitable corporation accounting are a fairly rare breed. Within that area of skill, there are CPA’s who handle many different types of charitable groups, from trade and professional organizations to public charities and private foundations, social welfare organizations, etc. If you are advised the charity you are considering associating your good name and reputation with uses a particular CPA, you should carefully investigate whether that CPA has any experience or any other clients who are the same type of charitable entity your group professes to be. Trade and professional associations are charitable organizations, typically 501(c) 6 charitable corporation. Those are very different from public charitable corporations with a 501(c) 3 tax exempt status. Faith based organizations including churches and religious associations are radically different in most ways from other types of charitable entities. Social welfare and recreational organizations differ as well. Find out what the CPA really does both with other charities and with the charitable organization you are considering before you make a decision to associate.

5. WHAT WILL YOUR ROLE BE?

Whether you chose to serve as pro bono legal counsel or governing board member, or both, you should carefully explain to other board members before you assume your duties, what your role is. If you do not, you place yourself in grave danger.

If you elect to serve as pro bono legal counsel, in many states your professional liabilities are the same as an attorney receiving a full fee. In other words, even if you receive no fee, if you advise in a manner that is later determined to be below the level of professional standards for an attorney, you have liability.

You should determine if the professional liability insurance your law firm or you carry covers pro bono legal advice. Some insurers expressly exclude all coverage unless you specifically declare your pro bono clients. Others require an

endorsement.

You should insist the governing board sign a letter of engagement that outlines what you will and will not do as pro bono legal counsel. If the board is unwilling to sign such an agreement, something is wrong, and you should not accept the engagement.

Do not let individual board members use you as an unlicensed form of psychotherapy. I mean by this, your duty is to the board as a whole. What one member says to you, must be shared by all. The way to avoid this unpleasant predicament is to insist before you begin representation that advice be sought through the board chair or executive director who is a gatekeeper of all questions. Then your answer back to the board president or executive director is with the expectation it will be shared with all. Factions on charitable boards are a problem not unlike warring governing boards of any other type of institution or entity. Resolve this before assuming your pro bono legal counsel duties.

Beware of falling into the trap of serving as a board member with a law license, of being asked to advise the board on a variety of legal issues about which you do not have any particular knowledge or experience. The best way to handle this is by frankly discussing with the President of the Board or the Executive Committee before you accept the appointment whether you will be expected to advise about anything because you are an attorney. Ask who the board turns to for legal advice. If the answer is “WE WERE HOPING TO TURN TO YOU”, you may want to evaluate if you really should accept an appointment.

And finally, the great thing about being a lawyer is that everybody thinks we are smart, more sophisticated and knowledgeable than others. Board members will turn to you even when they are actually smarter and more experienced than you are. That can be flattering at first but can generate negative consequences. Always remember, you are merely one board member among many. You are just one vote. Your opinion should not be treated any differently than any other board member. That one vote is your only power. Voting on propositions put to the board by the President at a duly called meeting with a proper agenda is your duty.

CONCLUSION

If you have read all this and still aren't discouraged, GREAT! If you follow these procedures, you actually will be well ahead of many charitable leaders and volunteers. They will think you are a REALLY smart lawyer as well as a really good person. What a deal!

I am honored to have been invited to present and publish. In your ever charitable adventure, I wish you the very best.

Here is a review of the legal ethics (professional conduct), ethics of board members (IRS regulations) and acting as fiduciaries for the organization (required by many states). As mentioned above, your state should have similar ethics rules.

ABA Model Rules of Professionalism (emphasis added)

Preamble: A Lawyer's Responsibilities

[3] ... there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are **acting in a nonprofessional capacity**. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4...

[6] **As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession.** As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. **Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel.** A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

[7] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also **guided by personal conscience** and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to **exemplify the legal profession's ideals of public service...**

[17] Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine **whether a client-lawyer relationship exists**. Most of the duties flowing from the client-lawyer relationship attach **only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so**. But there are some duties, such as that of confidentiality under Rule 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. See Rule 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact...

Model Rule 1.8: Current Clients: Specific Rules (Changed in 2020)

https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/scepr-revised-resolution-and-report-107-to-rules-calendar071020-with-tracks.pdf

Texas Disciplinary Rules of Professional Conduct (emphasis added)

I. CLIENT-LAWYER RELATIONSHIP

Rule 1.01. Competent and Diligent Representation

- (a) A lawyer shall not accept or continue employment in a legal matter which the **lawyer knows or should know is beyond the lawyer's competence**, unless:
- (1) another lawyer who is competent to handle the matter is, with the prior informed consent of the client, associated in the matter; or
 - (2) the advice or assistance of the lawyer is reasonably required in an emergency and the lawyer limits the advice and assistance to that which is reasonably necessary in the circumstances.
- (b) In representing a client, a lawyer shall not:
- (1) neglect a legal matter entrusted to the lawyer; or
 - (2) frequently fail to carry out completely the obligations that the lawyer owes to a client or clients.
- (c) As used in this Rule, "neglect" signifies inattentiveness involving a conscious disregard for the responsibilities owed to a client or clients.

Comment:

1. A lawyer generally should not accept or continue employment in any area of the law in which the lawyer is not and will not be prepared to render competent legal services. "Competence" is defined in 11 Terminology as possession of the legal knowledge, skill, and training reasonably necessary for the representation. **Competent representation contemplates appropriate application by the lawyer of that legal knowledge, skill and training, reasonable thoroughness in the study and analysis of the law and facts, and reasonable attentiveness to the responsibilities owed to the client.**
2. In determining whether a matter is beyond a lawyer's competence, **relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience in the field in question, the preparation and study the lawyer will be able to give the matter**, and whether it is feasible either to refer the matter to or associate a lawyer of established competence in the field in question. The required attention and preparation are determined in part by what is at stake; **major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequences.**
3. **A lawyer may not need to have special training or prior experience to accept employment to handle legal problems of a type with which the lawyer is unfamiliar.** Although expertise in a particular field of law may be useful in some circumstances, the appropriate proficiency in many instances is that of a general practitioner. A newly admitted lawyer can be as competent in some matters as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. **Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge.**

4. A lawyer possessing the normal skill and training reasonably necessary for the representation of a client in an area of law is not subject to discipline for accepting employment in a matter in which, in order to represent the client properly, **the lawyer must become more competent in regard to relevant legal knowledge by additional study and investigation.** If the additional study and preparation will result in unusual delay or expense to the client, the lawyer should not accept employment except with the informed consent of the client.

5. A lawyer offered employment or employed in a matter beyond the lawyer's competence generally must decline or withdraw from the employment or, with the prior informed consent of the client, associate a lawyer who is competent in the matter. Paragraph (a)(2) permits a lawyer, however, to give advice or assistance in an emergency in a matter even though the lawyer does not have the skill ordinarily required if referral to or consultation with another lawyer would be impractical and if the assistance is limited to that which is reasonably necessary in the circumstances.

Rule 1.02. Scope and Objectives of Representation

(b) A lawyer may limit the scope, objectives and general methods of the representation if the client consents after consultation.

Rule 1.12. Organization as a Client

(a) A lawyer employed or retained by an organization represents the entity. While the lawyer in the ordinary course of working relationships may report to, and accept direction from, an entity's duly authorized constituents, in the situations described in paragraph (b) the lawyer shall proceed as reasonably necessary in the **best interest of the organization** without involving unreasonable risks of disrupting the organization and of revealing information relating to the representation to persons outside the organization.

(b) A lawyer representing an organization must take reasonable remedial actions whenever the lawyer learns or knows that:

(1) an officer, employee, or other person associated with the organization has committed or intends to commit a violation of a legal obligation to the organization or a violation of law which reasonably might be imputed to the organization;

(2) the violation is likely to result in substantial injury to the organization; and

(3) the violation is related to a matter within the scope of the lawyer's representation of the organization.

(c) Except where prior disclosure to persons outside the organization is required by law or other Rules, a lawyer shall first attempt to resolve a violation by taking measures within the organization. In determining the internal procedures, actions or measures that are reasonably necessary in order to comply with paragraphs (a) and (b), a lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other

relevant considerations. Such procedures, actions and measures may include, but are not limited to, the following:

- (1) asking reconsideration of the matter;
- (2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and
- (3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.

Rule 1.13. Conflicts: Public Interests Activities

A lawyer serving as a director, officer or member of a legal services, civic, charitable or law reform organization, apart from the law firm in which the lawyer practices, shall not knowingly participate in a decision or action of the organization: (a) if participating in the decision would violate the lawyer's obligations to a client under Rule 1.06; or 50 (b) where the decision could have a material adverse effect on the representation of any client of the organization whose interests are adverse to a client of the lawyer.

Comment:

1. **Lawyers are encouraged to serve as directors, officers or members of legal services, civic, charitable or law reform organizations,** and, with two exceptions, they may do so notwithstanding that the organization either itself has interests adverse to a client of the lawyer or else serves persons having such adverse interests.
2. When the lawyer is a director, officer or member of a legal services organization, further problems can arise when a client served by the organization has interests adverse to those of a client served by the lawyer. A lawyer-client relationship with persons served by the organization does not result solely from the lawyer's service in those capacities. Nonetheless, if the lawyer were to participate in an action or decision of the organization concerning that representation, a real danger of having this quality of the organizational client's representation being dictated by its adversary would be presented. To avoid that possibility, paragraph (b) prohibits a lawyer's participation in actions or decisions of the organization that could have a material adverse effect on the representation of any client of the organization, if that client's interests are adverse to those of a client of the lawyer.
3. Law reform organizations (like civic and charitable organizations) generally do not have clients, in which event paragraph (b) does not apply. For reasons of public policy, it is not generally considered a conflict of interest for a lawyer to engage in law reform activities even though such activities are adverse to the interests of the lawyer's private clients. A lawyer's representation of a client does not constitute an endorsement of the client's political, economic, social or moral views, nor does he forego his own. When the lawyer knows that the interests of a client may be materially benefitted by a law reform decision in which the lawyer participates, the lawyer should disclose that fact but need not identify the client.

Rule 6.05. Conflict of Interest Exceptions for Nonprofit and Limited Pro Bono Legal Services

(See this section if you are interested in providing legal pro bono services for free/reduced fee.)

<https://www.texasbar.com/AM/Template.cfm?Section=Home&ContentID=27271&Template=/CM/ContentDisplay.cfm>

What do the IRS numbers mean and duty of loyalty?

501(c) 3 tax exempt entities (public or private foundations)

<https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations>

501(c) 6 tax exempt entities (business leagues)

<https://www.irs.gov/charities-non-profits/other-non-profits/business-leagues>

501(c) 4 (social welfare organizations)

<https://www.irs.gov/charities-non-profits/other-non-profits/social-welfare-organizations>

501(c) 7 (social clubs)

<https://www.irs.gov/charities-non-profits/other-non-profits/social-clubs>

More on 501(c) 3 organizations:

https://www.irs.gov/pub/irs-tege/governance_practices.pdf

4. Governance and Management Policies

B. Conflicts of interest. The directors of a charity owe it a duty of loyalty. The duty of loyalty requires a director to act in the interest of the charity rather than in the personal interest of the director or some other person or organization. In particular, the duty of loyalty requires a director to avoid conflicts of interest that are detrimental to the charity. Many charities have adopted a written conflict of interest policy to address potential conflicts of interest involving their directors, trustees, officers, and other employees.

The Internal Revenue Service encourages a charity's board of directors to adopt and regularly evaluate a written conflict of interest policy that requires directors and staff to act solely in the interests of the charity without regard for personal interests; includes written procedures for determining whether a relationship, financial interest, or business affiliation results in a conflict of interest; and prescribes a course of action in the event a conflict of interest is identified.

The Internal Revenue Service encourages organizations to require its directors, trustees, officers and others covered by the policy to disclose, in writing, on a periodic basis any known financial interest that the individual, or a member of the individual's family, has in any business entity that transacts business with the charity. The organization should regularly and consistently monitor and enforce compliance with the conflict of interest policy. Instructions to Form 1023 contain a sample conflict of interest policy. Organizations are urged to tailor the sample policy to their own particular situations and needs, with the help of competent counsel if necessary. Organizations that file Form 990 will find that Part VI, Section B, Line 12 asks whether an organization has a written conflict of interest

policy, and whether it regularly and consistently monitors and enforces compliance with the policy...

TEXAS CIVIL PRACTICE AND REMEDIES CODE

CHAPTER 84. CHARITABLE IMMUNITY AND LIABILITY

Sec. 84.004. VOLUNTEER LIABILITY.

(a) Except as provided by Subsection (d) and Section [84.007](#), a volunteer of a charitable organization ***is immune from civil liability*** for any act or omission resulting in death, damage, or injury if the volunteer was acting in the course and scope of the volunteer's duties or functions, including as an officer, director, or trustee within the organization....

(b) A volunteer of a charitable organization ***is liable*** to a person for death, damage, or injury to the person or his property proximately caused by any act or omission arising from the operation or use of any motor-driven equipment, including an airplane, to the extent insurance coverage is required by Chapter [601](#), Transportation Code, and to the extent of any existing insurance coverage applicable to the act or omission.

Texas Charitable Immunity and Liability Act of 1987:

<https://statutes.capitol.texas.gov/Docs/CP/htm/CP.84.html>

TEXAS CIVIL PRACTICE AND REMEDIES CODE CHAPTER 84. CHARITABLE IMMUNITY AND LIABILITY

Sec. 84.006. ORGANIZATION LIABILITY

Except as provided in Section 84.007 of this Act, in any civil action brought against a nonhospital charitable organization for damages based on an act or omission by the organization or its employees or volunteers, ***the liability of the organization is limited*** to money damages in a maximum amount of \$500,000 for each person and \$1,000,000 for each single occurrence of bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property.....

(g) Sections [84.005](#) and **84.006 of this Act do not apply to any charitable organization that does not have liability insurance coverage in effect on any act or omission to which this chapter applies. The coverage shall apply to the acts or omissions of the organization and its employees and volunteers and be in the amount of at least \$500,000 for each person and \$1,000,000 for each single occurrence for death or bodily injury and \$100,000 for each single occurrence for injury to or destruction of property.**

WHAT AND WHERE ARE YOUR BY LAWS AND CONFLICT OF INTEREST POLICIES?

<https://www.irs.gov/charities-non-profits/form-1023-purpose-of-conflict-of-interest->

[policy#:~:text=A%20conflict%20of%20interest%20occurs,with%20their%20own%20financial%20interests](#)

All board members should review the bylaws and conflict of interest policies

BEFORE they are members. Members should disclose conflicts. Members should

abstain from discussion or vote on conflict items. Board meeting minutes should reflect disclosure and abstention.

Sample text for a letter requesting/accepting a position on the board of directors of a nonprofit organization:

Dear Executive Director:

I am an attorney at the law firm of xxxx. I am licensed to practice law in the State of XXXX. I focus my practice on the areas of xxxxx and xxxxx. I do not have any experience in nonprofit law. I am seeking to be on the board of directors for xxxxx (organization) in order to give back to my community, learn more about nonprofit organizations and use my knowledge/experience to better society. I am not seeking to be legal counsel or give legal advice for your organization.

It is my understanding that you currently obtain legal counsel from xxxx (firm/person). All communications from/to me should be presumed to be in my capacity as a Board Member unless otherwise specified. This will help ensure that very important protections, such as attorney-client privilege, are not overlooked or assumed to exist in circumstances where they may not.

It is also my understanding that your organization provides insurance for the board of directors (D&O insurance) through xxxx (company).

Optional: I can help this organization identify legal issues, determine the need for the outside counsel, monitor legal work done by the outside counsel and give my personal opinion based on my legal experience. This will be provided on a pro bono basis. If that is requested, please be clear in any communication that you are seeking my legal advice, and that such communications are covered by the attorney-client privilege.