

Charities in the Courtroom, Part 4: Who Can Sue the Board?

02.28.17 | Linda J. Rosenthal, JD



“There’s a surprisingly broad range of legal issues,” we noted in [Charities in the Courtroom, Part 1](#), “that may bring a charity into the courtroom either as a plaintiff or as a defendant. These can include disputes among or against board members, issues arising in connection with memberships, contract or real estate problems, and negligence liability – just to name a few.”

It’s an honor and privilege to serve on a nonprofit organization’s board of directors, but it’s also a serious responsibility with fiduciary duties and other obligations.

It’s understandable that many board members would prefer not to focus on any possible risks or liabilities, but turning a blind eye doesn’t make them magically disappear. To the contrary, the best course of action is for board members to learn about possible risks so that they can be lessened, including by prudent insurance coverage.

Insurance underwriters report that, by far and away, the most prevalent types of lawsuits facing nonprofits and their boards are from claims that are not directly tied to the nonprofit status. Instead, the most common claims arise [from the employer/employee relationship](#). Nevertheless, a surprising variety of other types of lawsuits turn up as well.

Sources of Risks for Boards and Board Members

So what are the types of risks for boards as a group or as individuals? Put another way, if you are a charity board member, [who – exactly – can sue you?](#)

Staff

Employees (and to a limited extent, volunteers or interns) may sue the nonprofit and/or its directors, officers, or staff for garden-variety, employment-related injuries and damages. These may include, for instance:

lawsuits for racial, gender, age, or other discrimination or harassment; wrongful termination or retaliation/whistleblower claims; wage, hour, and other labor law violations; and Americans with Disabilities Act problems.

Clients

The beneficiaries of the organization's charitable services may assert claims alleging negligent or intentional harm or failure to deliver benefits.

Vendors

Disputes arising from contractual relationships with vendors, consultants (including fundraisers), and other service providers can spark contract or tort litigation against the nonprofit and/or board members or staff.

Competing Organizations

Another nonprofit can sue for trademark or tradename infringement or other intellectual property claims.

Members

In the case of organizations that have statutory (voting) members, claims may be made by some or all members claiming wrongdoing and harm to their interests and rights as members.

Other Directors

One board member may sue another one alleging a breach of fiduciary duty or failure to act for the benefit of the organization. In some situations, legal action may be mandatory.

The Organization Itself

The nonprofit organization may, itself, bring legal action against one or more of its directors or officers.

Donors

Individuals who have made contributions may sue for alleged failure to abide by the terms of a restricted gift, or other problems in connection with the donation.

Funders

Grantors may sue for contractual or other violations of grants or contracts.

Government Regulators

In California, as in many other states, the attorney general may bring legal action against an organization or individuals connected with it for breach of charitable trust or other violation of duties under the state nonprofit corporation law. Other government officials may sue in connection with violation of federal or state tax, labor, or other laws.

Conclusion

There may be insurance coverage available for certain of the legal actions described. Specifically, D&O Liability Insurance, may offer protection for directors or officers. Generally, though, claims by the nonprofit – itself – against its own directors or officers will be excluded from D&O coverage.