



FPLG: CIVIL LITIGATION

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: Series Introduction](#), “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.

Understandably, 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. Instead, the best course of action for board members is to learn about possible risks in order to lessen them, including by insurance coverage.

Underwriters report that – 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. Rather, the most common claims arise [from the employer/employee relationship](#).

In any event, though, nonprofits can expect to face many types of lawsuits, and must prepare accordingly.

Sources of Risks for Boards and Board Members



What are those possible risks for a nonprofit board as a group as well as individually? Put another way, if you are a charity board member, who – exactly – can sue you? Who can sue the organization you serve and to which you owe duties of loyalty, care, and obedience ?

Staff

Employees (and to a limited extent, volunteers or interns) may sue the nonprofit and/or its directors, officers, or staff on garden-variety employment-related claims and for remedies including monetary damages. Examples include: 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 infringement of trademark or trade name or for other intellectual property claims.

Members

In the case of organizations that have statutory (voting) members, claims may be made by some or all members alleging 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, it may be mandatory to pursue relief through legal action.

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 on the grounds of 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.

— *Linda J. Rosenthal, J.D., FPLG Information & Research Director*