



The Nonprofit Whisperer

“Board Bedevilments”

On questions of how to handle a whistleblower's complaint, or where exactly an agency-appointed board member's loyalty lies, the principles of good governance are quite clear. As regards the former, complaints should be handled transparently and in a timely manner, and the whistleblower must be protected from any fallout; with respect to the latter, if you have a split duty of loyalty as a board member, extra care must be taken to keep the “two-hat” issues to a minimum.

DEAR NONPROFIT WHISPERER, *After raising several serious complaints to the board chair of my nonprofit about our CEO's management practices, the chair told me that he was willing to keep my complaints confidential from the CEO in exchange for my not bringing them to the attention of the entire board. He assured me that he is planning to remove the CEO from his current role, and stated that if he quietly accepts a position where nobody reports to him, there will be no need to inform the board of my complaints. Reporting those matters to the board would start an unpredictable process, the chair says, and we would not necessarily get a different result.*

Are there any circumstances under which a board chair has the legal prerogative to withhold this type of information from the full board? Is it my responsibility to report this matter to the full board? Will I be legally liable for not reporting this?

Whistleblower

Dear Whistleblower,
There are not enough details about the nature of the CEO's management

practices to provide precise advice on whether you will be liable for not reporting mismanagement. So let's start with the question, Does your organization have a whistleblower policy? Such policies are not mandated but are considered good governance practice. If there is one, you should follow it, as should the board chair.

If what the CEO did breaks the law (sexual harassment/assault, mismanagement of funds), you should restate your complaint to the board chair and ask for immediate, substantive action. If none is forthcoming, talk to an attorney and then take appropriate action based on the attorney's advice. There should be no behind-the-scenes deals for you to remain quiet (or anything else), now or under any circumstances.

If the issue is poor management practice (not submitting reports, not paying invoices, missing critical stakeholder meetings) or bad behavior toward staff (bullying, lying), this unfortunately sometimes becomes harder to “prove” to board members, whose primary relationship (and, sometimes, loyalty) are with the CEO. Board members are not there day to day; they may only witness an executive's best behavior, and, being

human, may want to avoid confrontation and figure out some inappropriate face-saving solution instead—as it sounds like your board chair is doing.

When only one staff member is raising an issue, the chair or full board may be even less apt to take action commensurate with the mismanagement issue. However, it is the board's duty and responsibility to make sure that the organization is not put at legal risk, and to oversee the performance of the CEO and ensure sound management practices. A board member's loyalty is to the organization and the mission/community it is in service to—not the CEO (or staff, for that matter).

So your complaint should not be handled behind the scenes. At a minimum, the chair needs to inform the executive committee—if not the full board—of any complaint lodged by a staff person. That staff person should not be asked to be involved in any way, except possibly to restate the facts as he or she knows them. As a whistleblower, the staff person's name should be protected, and there should be no reprisal by management.

All the above said, my overall sense here is that your chair is not following

good governance norms, and is putting the organization at risk.

Dear Nonprofit Whisperer,
I am enormously frustrated with my experience on a particular board I sit on. Essentially, I am assigned to the board on behalf of my agency, which is part of local government. The problem is that the organization is relatively new and has a lot of needs. I very much want it to succeed, but I am constrained because the agency I represent has very often either not yet taken a position on the issues under consideration or is taking a position I do not believe in.

This makes me feel utterly useless. It feels like we are just a drain on the new executive, who has been trying valiantly to get the effort off the ground. As a board, we are dysfunctional in a way that cycles through exhaustion and overexcited arguments, even though we are not yet even two years old. (This is our second executive over that short period.)

I am interested in whether you have seen this kind of thing before, and whether you have any advice about how I should be trying to conduct myself. Should I try to make a case at my agency for having decision-making capacities that are binding? Should I just participate in discussions and stay out of decisions? About half of the board are appointees from agencies that either have funding or regulatory relationships with this group.

Appointed Board Member

Dear Appointed Board Member,
These kinds of boards with appointed members from government agencies or member organizations of a coalition are not all that unusual, but they do throw the traditional governance model off track. Thus, extra care has to be taken vis-à-vis policies and procedures, and ensuring

the board chair knows how to herd cats and facilitate a good meeting (and stay above the crowd).

Before getting to your specifics, let's look at the statewide coalitions or staff collaborations on any number of issues—housing, community development, domestic violence prevention, health initiatives—that have board members who are “assigned” by their organizations to serve.

By default, the organizations almost always struggle with issues you are raising (such as, am I representing my agency's position or the one that is best for this coalition?) and almost always struggle with fundraising due to competition with member agencies. There are ways to limit the “two-hat” issues, and many groups have addressed this in many ways:

- All develop strong policies and board-job descriptions that detail the roles and responsibilities.
- Most have conflict-of-interest policies to help all board members.
- Some statewide coalitions with assigned board members ensure that there is an equal or greater number of unaffiliated board members to flatten the potential for self-interest.
- Some define the parameters of funding issues through noncompetition agreements.

It is helpful if the sending or assigning organization's job description lists the board service most often assigned and outlines the roles and responsibilities vis-à-vis the board seat. The sending organization should be clear about any conflicts of interest with the nonprofit on which it has a seat, and about voting responsibilities.

I was on a coalition board for over ten years in an assigned seat. The “home” organization listed the assignment in the job description and the amount of



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work time per week this part of my job would necessitate. It was clear that I could make decisions as “any prudent person in the street”—so to speak—on behalf of the coalition. The time I spent in service helping to build and strengthen that coalition was one of the best work experiences of my life—but it would not have been so without clarity on roles/responsibilities/fundraising boundaries, and the ability, when member agency positions differed from those of the coalitions, for difficult discussions to be had openly (mostly) and with skill until resolution was reached.

For a start-up, the power and influence are often in the hands of the assigned board members who are helping to “stand up” the organization. In the case of a government seat—which can be tricky—it is very important to be transparent about the role. Are you there as a watchdog? If so, this is a lonely seat on a board. But if people know that is your *raison d’être*, and that it is a position of support, then that can be navigated as well.

I sat on the board of a nonprofit that operated a facility owned by a city municipality. The city, by contract, had an assigned person from the planning department on the board. It was clear that the person was there to protect the city’s asset in case the community board went off mission or awry in other ways. The planner was a great person who contributed, was helpful, and did not throw his weight around—but that was a bit of luck, getting a mature person in the seat.

So, back to setting up parameters and guidelines. You are assigned to the board of a new nonprofit that is struggling to find its footing—in large part due to what sounds like an unfocused board that has not established its policies and norms. You should not sort through decisions about levels of participation by yourself.

This should be a board conversation that takes up the following: (1) what the purpose of the assigned seats is; (2) that if there is a good rationale for these seats, you are properly recognized as a board member who will take part in discussions and make prudent, informed decisions on behalf of the organization; and (3) that as a board member you vote in the best interest of the nonprofit itself, regardless of the “sending” organization’s position.

The differences among the sending agencies’ positions will be worked out at the board table by the members, and your sending agency has to respect the collective decision making of the whole. And yes, I have seen agencies (usually the biggest ones) disagree with the stand of a coalition and “pull their seat” (or should I say “take their marbles”) and walk away in a huff from the organization. The good news is the culture of the board usually improves with the departure of a bullying or elephant-in-the-room type of agency/representative.

Bottom line: It is all about spending time on some up-front processes, which people often skip, assuming they know all about boards. But every organization deserves to take the time it needs to get its first board right—clarifying board roles and policies, setting strong agendas, and selecting a president who knows how to facilitate meetings. Then, you must all roll up your shirtsleeves as a collective group, and help this organization get off the ground.

THE NONPROFIT WHISPERER has over thirty years of experience in the nonprofit sector, serving variously as nonprofit staff and board member, foundation staff member, and nonprofit management consultant.

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