



ETHICS: THE LAWYER AS A BOARD MEMBER – ETHICAL AND PRACTICAL CONSIDERATIONS

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The Lawyer as Board Member: Ethical and Practical Considerations

Tom Heywood

“Lawyers lead in America. They always have. And they always will, in large measure because of their unique qualifications and ethical standards of conduct. It is time for lawyers to share this insight more broadly with others and consider the implications of this undeniable fact – lawyers lead!”¹

Introduction

Director. Board Member. Trustee. Whatever term is used, a board member’s duties involve bigger picture governance of an organization, including oversight of the CEO, mission planning, resource procurement, management monitoring, organizational review, and board evaluation. A board member is a policy-maker, supporting the clear distinction between the policy functions of the board and the day-to-day operational functions of officers. A board member is also a fiduciary, insofar as he or she has discretionary authority over the assets of another. In sum, a board member must act in the best interests of the organization he or she leads and represents.

Lawyers who are board members have additional duties and responsibilities. An attorney has formal and legal obligations under a code of professional and ethical responsibility. These responsibilities find their source in the Model Rules of Professional Conduct, and cover such areas as conflicts of interest and confidentiality. Thus, a lawyer board member must act in the best interests of the

organization he counsels and represents, and honor the ethical rules imposed upon legal professionals.

When the roles of lawyer and board member overlap, the lawyer board member must pay special attention to fulfilling the duties required of both positions. This paper discusses the ethical and practical considerations of serving an organization as both a lawyer and board member.

Ethical Considerations: Implications of the Model Rules of Professional Conduct

Rule 1.1 – Competence

A lawyer board member is likely to be considered a resource on all legal topics, not just the lawyer’s specific field of expertise. In these cases, how should the lawyer board member proceed? Should she volunteer a best guess or take valuable time to dig deeper? Should she include her legal colleagues in a discussion on the issue?

This is where the short, yet broad, professional conduct rule involving competence comes into play: “Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for representation.”²

The concept of “knowledge” encompasses substantive legal principles, basic research, procedure, court rules, and even technology³, while “skill” encompasses drafting

² Ann. Model Rules of Prof’l Conduct r. 1.1 (Am. Bar Ass’n 2015).

³ Sabis, Christopher and Daniel Webert, Understanding the “Knowledge” Requirement of Attorney Competence: A Roadmap for Novice Attorneys, 15 Geo. J. Legal Ethics 915 (2002). In 2012, language involving relevant and technology and continuing legal education was added to Rule 1.1 as a comment. Ann. Model Rules of Prof’l Conduct r. 1.1 cmt. 8 (Am. Bar Ass’n 2015).

¹ Hardesty, David, Leading Lawyers: Lawyers in Leadership Roles, WV Lawyer, at 37 (October/December 2009).

and legal analysis, and “thoroughness and preparation” encompasses investigation and research and application to specific client matters.⁴

Although “the required proficiency is that of a general practitioner... [e]xpertise in a particular field of law may be required in some circumstances.”⁵ The Supreme Court of New Hampshire explains that Rule 1.1 “mandates that a general practitioner must identify areas in which the lawyer is not competent and acquire sufficient knowledge about the specific area of law in which the lawyer is practicing in order to avoid harm to the client.”⁶ In *In re: Richmond’s Case*, New Hampshire’s high court affirmed the suspension of a lawyer who lacked competence in securities law because he lacked the knowledge required to help a company in its initial public offering.⁷ The Court agreed with the lawyer that “expertise in a specific area of law is not generally required,” but still found the attorney violated Rule 1.1 for failing to “acquire the knowledge needed from other sources,” “identify the areas beyond his expertise and bring these to the client’s attention,” and “pay sufficient attention to detail to avoid harm to [the client’s] interests.”⁸ Thus, even if a lawyer board member is not an expert on the topic of the board’s questions, he or she must make the effort to achieve competence and be forthright about his or her skill set.

Moreover, when a lawyer board member takes on an unfamiliar question, he or she should keep the following considerations in mind: clients may not be able to pay for excessive amounts of study or educational time⁹, the lawyer board member may not have time to take on this study on top of their case load¹⁰, the lawyer board member must obtain consent from the board before consulting colleagues about board inquiries¹¹, and the attorney-client privilege may attach to communications, even if the organization is not paying for the legal representation.

Today, no one can claim to be a Renaissance lawyer, even though others may expect as much. It takes self-awareness and humility to temper the expectations of others, and it takes time and care to ethically respond to board member questions in compliance with Rule 1.1.

Rule 1.6 – Confidentiality of Information and the Attorney-Client Privilege

The lawyer director or board member is obligated to observe confidentiality and the attorney-client privilege, even though similarly situated non-lawyer directors or board members do not. The ethical duty of confidentiality is a broad one, protecting disclosure of all information relating to the representation without informed consent.¹² Practically speaking, this means a lawyer board member must keep private any interaction or dialogue he has with his organization’s other board members or staff that relates to legal work, quite possibly even the very existence of said work.

Attorney-client privilege protects compelled disclosure of communications between a lawyer and a client, and is governed by rules of evidence, meaning it is often asserted to bar testimony.¹³ Thus, confidentiality and the attorney-client privilege are not “coextensive.”¹⁴ Nevertheless, both rules require the lawyer board member to be continuously and keenly aware of whether he or she is giving legal advice, business advice, or both.

Courts handle the application of the attorney-client privilege when legal advice overlaps with business advice in varying ways.¹⁵ In some cases, only purely legal advice is protected, even when other parts of the communication were relevant to decision-making.¹⁶ On the other end of the spectrum, several courts have found that when an attorney becomes a director, the privilege “evaporates.”¹⁷ Still, other courts consider what type of advice was being sought.¹⁸

Importantly, because a lawyer board member sits on both the lawyer and the client sides of the attorney-client privilege, the lawyer board member may have the power to waive the privilege that a non-board member would not. Moreover, the lawyer board member may have certain duties to disclose information, such as in an auditor’s request, that a non-lawyer would not.

The issue is well-summarized in an American Bar Association Ethics Opinion:

Acts of a lawyer-director and her knowledge as a

4 Ann. Model Rules of Prof’l Conduct r. 1.1 (Am. Bar Ass’n 2015).

5 Ann. Model Rules of Prof’l Conduct. r 1.1 cmt. 1 (Am. Bar Ass’n 2015).

6 In re. Richmond’s Case, 872 A.2d 1023, 1028, 152 N.H. 155, 159, (2005).

7 In re. Richmond’s Case, 872 A.2d 1023, 1029, 152 N.H. 155, 159, (2005).

8 In re. Richmond’s Case, 872 A.2d 1023, 1028, 152 N.H. 155, 158-59, (2005).

9 In re: Estate of Larson, 694 P.2d 1052 (Wash. 1985) (en banc).

10 Davis v. Ala. State Bar, 676 So.2d 306 (Ala. 1996) (disciplining lawyers who, “in an effort to turn over a huge volume of cases, neglected their clients and . . . prevented [associates] from providing quality and competent legal services”).

11 Ann. Model Rules of Prof’l Conduct. r 1.1 cmt. 6 (Am. Bar Ass’n 2015).

12 Model Rules of Prof’l Conduct r. 1.6 (Am. Bar Ass’n 2015).

13 Fed. R. Evid. 502.

14 Ann. Model Rules of Prof’l Conduct r. 1.6 (Am. Bar Ass’n 2015) (citing *Spratley v. State Farm Mut. Ins. Co.*, 78 P.3d 603, 608 n.2 (Utah 2003)).

15 ABA Comm. On Ethics and Prof’l Responsibility, *Lawyer Serving as Director of Client Corporation*, Op. 98 - 410 (Feb. 27, 1998).

16 *Id.*

17 *Id.*, fn 12.

18 *Id.*, fn 13.

director may prove inseparable from the lawyer's acts and knowledge as member of a law firm. The director's fiduciary obligations as a director and her professional obligations as a lawyer cannot be placed in convenient separate boxes. The knowledge of a corporate director and officer, with respect to transactions in which she is authorized to act, is imputed to the corporation. Similarly, the knowledge of a partner in a law firm gained during confidential relationships with clients is imputed to the other partners in the law firm. There is a risk in some circumstances that the files and work processes of the law firm could become as available for discovery as are the files and records of the corporation itself.¹⁹

Rule 1.7 – Conflicts of Interests and Current Clients

A lawyer's service on a board of directors may create a conflict of interest for another existing client. The Model Rules of Professional Conduct prohibit representation that "will be directly adverse to another client."²⁰ Note that adversity for this purpose is legal adversity. Mere economic adversity does not trigger the rule.²¹ However, direct adversity may exist even when the matters are wholly unrelated. For example, a lawyer who represents a real estate purchaser in one transaction may not represent the seller, even in an unrelated matter. Such situations are likely to damage the attorney-client relationship because the existing client may feel betrayed, or fear that the lawyer did not represent his or her interests to the fullest extent out of deference to the other client.

The Rules also prohibit representation when there is a "significant risk" that the representation of one client will be materially limited by the lawyer's responsibilities to another client or person, or by the lawyer's own interests.²² This means that even when there is no direct adversity, a conflict of interest exists if there is a significant risk that the lawyer's independent professional judgment will be limited as a result of the lawyer's other responsibilities or interests. The most important consideration here is whether the representation of both clients will materially interfere with the lawyer's independent professional judgment.

For a lawyer board member with multiple clients, the lawyer may not act adversely to any of the lawyer's clients. This may require the lawyer to disqualify himself or herself from certain decisions or actions of the board. Lawyer disqualification may become necessary, even in the absence of litigation. In transactional matters,

disqualification becomes required if there arises "a substantial risk that the lawyer's representation of one or more of the clients would be materially and adversely affected by the lawyer's duties to one or more of the other clients."²³

Another consideration for lawyers serving as a board member and attorney for an organization is whether the two roles conflict. For example, if an organization asks a lawyer board member for legal advice regarding actions taken by the board, this would almost certainly create a conflict for the lawyer board member. The comments to Rule 1.7 advise that "[c]onsideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board, and the possibility of the corporation obtaining legal advice from another lawyer in such situations."²⁴ As always, lawyers should prevent or eliminate the conflict as soon as they are aware of it. This may mean stepping down as a director, or ceasing to act as legal counsel, when conflicts arise.

Rule 1.13 – Organization as a Client

Although a lawyer representing an organization works directly with the members of the organization, the lawyer represents the organization itself, and not the people who make up the organization.²⁵ Under the entity theory of representation²⁶, the lawyer must take care to ensure the individual members of the organization know this and understand it. Moreover, when conflicts or potential conflicts arise between the organization and its people, the lawyer must proactively caution the individuals involved that he or she represents the organization's interests, and not the individual's interests.²⁷ Examples might include warning the person that communications are not protected by the attorney-client privilege and advising the person to obtain separate legal counsel.²⁸

However, the delineation between the organization and its people is not always clear. Notably, the Model Rules of Professional Conduct do not prohibit dual representation of an entity and its people.²⁹ Further, even though the

²³ Restatement (Third) of the Law Governing Lawyers, § 130 (2000).

²⁴ Model Rules of Prof'l Conduct r. 1.7 (Am. Bar Ass'n 2015).

²⁵ Model Code of Prof'l Conduct r. 1.13(a) (Am. Bar Ass'n 2015).

²⁶ Restatement (Third) of the Law Governing Lawyers § 96(1) cmt. b (2000) ("The so-called 'entity' theory of organizational representation . . . is now universally recognized in American law, for purposes of determining the identity of the direct beneficiary of legal representation of corporations and other forms of organizations.")

²⁷ Ann. Model Rules of Prof'l Conduct r. 1.13(f) (Am. Bar Ass'n 2015).

²⁸ Ann. Model Rules of Prof'l Conduct r. 1.13 cmt. 10 (Am. Bar Ass'n 2015).

²⁹ When it is the case that the lawyer represents both the organization and one or more of its directors, officers, employees, or other persons, ordinary conflict of interest rules still apply (e.g., the lawyer must obtain informed, written consent on behalf of the organization by an authorized person other than the individual being represented). Ann. Model Rules of Prof'l Conduct r. 1.13(g) (Am. Bar Ass'n 2015).

¹⁹ Id. (internal quotations and citations omitted).

²⁰ Model Rules of Prof'l Conduct r. 1.7(a)(1) (Am. Bar Ass'n 2015).

²¹ ABA Comm. On Ethics and Prof'l. Responsibility, Op. 05-434 (December 8, 2004).

²² Model Rules of Prof'l Conduct r. 1.7(a)(2) (Am. Bar Ass'n 2015).

lawyer does not represent an organization's people, the lawyer may have authority to prevent another lawyer from communicating with the people.³⁰ And, while the ethical duty of confidentiality typically runs to the organization rather than the people, there can be cases where this does not seem obvious or appropriate. For instance, in Rhode Island, at the request of an unincorporated condominium association board, an attorney filed a complaint against a unit owner on behalf of the association.³¹ The lawyer later sought withdrawal from representation because the board breached its contract with him and consistently failed to accept his legal advice.³² The Rhode Island Supreme Court Ethics Advisory Panel found that the lawyer could not tell unit owners why he was seeking withdrawal, even though the lawyer had, on occasion, communicated with unit owners on matters relating to the association and believed such disclosure to unit owners would benefit the association.³³

Building on the concept of disclosure, a lawyer also has certain obligations when he or she becomes aware that a person within an organization has acted in a way that violates their legal obligation to the organization or is likely to cause substantial injury to the organization.³⁴ The phrase "substantial injury" sets a high bar, which means, normally, that a lawyer must accept the decisions of board members, even if the lawyer finds "their utility or prudence is doubtful" or "entail[s] serious risk."³⁵

The obligations include reporting to a higher authority, perhaps the highest authority, or (subject to some discretion) someone outside the organization.³⁶ Often the highest authority is, in fact, the board.³⁷ And when such reporting leads to being discharged or withdrawal as the organization's lawyer, the lawyer still must take actions to assure the organization's highest authority is informed of the discharge or withdrawal.³⁸ These latest reporting rules, amended in 2003, were partially in response to corporate scandals of the Enron³⁹ era.

30 Ann. Model Rules of Prof'l Conduct r. 4.2 cmt. 7 (Am. Bar Ass'n 2015).

31 R.I. Ethics Op. 2003-04, Req. 865 (Sept. 11, 2003), <https://www.courts.ri.gov/AttorneyResources/ethicsadvisorypanel/Opinions/2003-04.pdf>.

32 Id.

33 Id.

34 Ann. Model Rules of Prof'l Conduct r. 1.13(a)-(c) (Am. Bar Ass'n 2015) (emphasis added).

35 Ann. Model Rules of Prof'l Conduct r. 1.13 cmt. 3 (Am. Bar Ass'n 2015).

36 Ann. Model Rules of Prof'l Conduct r. 1.13(a)-(c) (Am. Bar Ass'n 2015).

37 Ann. Model Rules of Prof'l Conduct r. 1.13 cmt. 5 (Am. Bar Ass'n 2015). Lawyers working for public companies may have additional obligations under the Sarbanes-Oxley Act of 2002 and Securities and Exchange Commission Regulations. Ann. Mod. Rules Prof. Cond. § 1.13 (climbing corporate ladder) (citing 15 U.S.C. § 7201; 17 C.F.R. §§ 205.1-205.7).

38 Ann. Model Rules of Prof'l Conduct r. 1.13(e) (Am. Bar Ass'n 2015).

39 Ann. Model Rules of Prof'l Conduct r. 1.13 (Am. Bar Ass'n 2015) (citing In re: Enron Corp., 235 F. Supp. 2d 549 (S.D. Tex. 2002) (finding that lawyers for Enron who co-authored financial reports could be responsible for securities violations as principal violators for misleading information given to third parties)).

Reporting misconduct often is not easy. Imagine a scenario where a CEO's conduct must be reported to the board. First, the attorney is put in a situation where he or she must report someone they work with on a day-to-day basis. Second, reporting this to the board could unintentionally imply to the board that they have not chosen their CEO wisely. Nor would reporting discharge or withdrawal be easy when it could impact an otherwise positive professional – or personal – relationship with a board member. Nevertheless, this rule underscores how important it is for the organization that the lawyer board member be ever attentive to whom they represent, and with whom they may (or must) share information.

Rule 2.1 – Advisor

When acting as a director, the lawyer must exercise "independent professional judgment." If the lawyer cannot do so, the lawyer should not join the board.

Independent professional judgment is steeped in both a board member's and a lawyer's fiduciary duties. A board member owes his organization a duty of care in decision-making, a duty of loyalty in governing solely in the best interests of the organization, a duty of impartiality, and a duty to avoid conflicts of interest, among other things. Likewise, a lawyer's duty to be independent stems from the ethical rules involving conflicts of interest and a parallel fiduciary duty pursuant to common law:

Where an attorney is hired solely to represent the interests of a client, his fiduciary duty is of the highest order and he must not represent interests adverse to those of the client. It is also true that because of his professional responsibility and the confidence and trust which his client may legitimately repose in him, he must adhere to a high standard of honesty, integrity and good faith in dealing with his client. He is not permitted to take advantage of his position or superior knowledge to impose upon the client; nor to conceal facts or law, nor in any way deceive him without being held responsible therefor.⁴⁰

For a lawyer, "independence" is also addressed in the Model Rules of Professional Conduct covering confidentiality⁴¹, professional independence⁴², and duties to former and future clients.⁴³

Temptations to stray from independence may arise in

40 Smoot v. Lund, 13 Utah 2d 168, 172, 369 P.2d 933, 936 (1962) (explaining that Utah recognizes legal malpractice actions based on breach of fiduciary duty).

41 Model Rules of Prof'l Conduct. r. 1.7, 1.8 (Am. Bar Ass'n 2015).

42 Model Rules of Prof'l Conduct. r. 5.4 (Am. Bar Ass'n 2015).

43 Model Rules of Prof'l Conduct. r. 1.9, 1.18 (Am. Bar Ass'n 2015).

the form of business obligations⁴⁴ or opportunities.⁴⁵ Likewise, personal loyalty interests can strain a lawyer board member's ability to be independent. For instance, the Maryland Committee on Ethics considered whether a lawyer who chaired his church's "legacy" committee to promote planned charitable giving from parishioners could also volunteer his services to prepare pro bono wills for parishioners who wanted to bequeath their property to the church.⁴⁶ The Maryland Ethics Committee explained that, certainly, the parishioners would be legal clients.⁴⁷ Further, even though it was unclear if the church was a legal client of the lawyer, the lawyer's role as a member of the church and chair of the legacy committee meant the lawyer also had fiduciary duties to the church.⁴⁸ In conclusion, while the lawyer's goals were "laudable," doing both acts would inevitably compromise his independent professional judgment in advising the parishioners.⁴⁹

Rule 2.1 essentially requires independence from the client⁵⁰, even when independent professional judgment is to the detriment of the lawyer board member or requires he or she to be the bearer of bad news. Organizations rely on board members and lawyers alike to be candid and neutral, and to think and act without letting outside influences come into play. What is best for the organization's mission must come first.

Practical Considerations for Navigating Dual Roles

Clear communication with the organization is vital to effectively fulfill the duties of lawyer and board member. At the outset, a lawyer board member must define the scope of his or her service to the organization, and make

it clear that he or she represents the board and not the board members. The lawyer board member should also provide a foundation for all opinions and statements made to the board. It should always be clear to the board when the lawyer board member is speaking as the organization's lawyer and offering legal advice, and when the lawyer board member is speaking as a board member and offering a business opinion. Finally, it is best to periodically clarify your role. If you are both legal counsel to the organization and member of the board, from time to time, point out to the board – and for the organization's records – that you are a board member and the organization's counsel, and help the other directors understand your dual role.

To prudently serve as both lawyer and board member, one must continually consider the duties imposed upon each role. As a board member, advice should be based upon business judgment. As legal counsel, it should be based upon legal judgment. As a board member, limitations on a lawyer's public statements arise from the duties imposed on board members. As legal counsel, limitations come from the attorney-client privilege and the duty of confidentiality. Finally, as a board member, potential conflicts are assessed under the duty of loyalty rule. As legal counsel, the assessment must be made under the rules of professional responsibility for lawyers.

Lawyers are in a unique position to provide both leadership and legal counseling to all types of organizations. However, because of their dual roles and obligations, lawyer board members must diligently communicate their roles to their organizations, and remain mindful of their differing duties under each role.

⁴⁴ In re Harper, 571 S.E.2d 292 (S.C. 2002) (lawyer advised client to invest in realty development business he owned, even after his business partner was having financial difficulties).

⁴⁵ In one high profile case, eighteen of a university's nineteen trustees were removed for violating their duties. The former president and board member of Adelphi excessive compensation package was widely criticized, which sparked an investigation by the Attorney General of New York and the New York State Board of Regents. *Vacco v. Diamandopoulos*, 715 N.Y.S.2d 269, 271-72 (1998). One trustee was the chair of the executive compensation committee. *Id.* at 274. She also owned the insurance company from whom the president purchased insurance for the university, meaning she had reason to "curry favor" with the president. *Id.* Another trustee's company provided marketing services for the university through an advertising agency he owned. *Id.* at 276. The investigations revealed that the president misled the board into thinking the advertising, as opposed to merely the trustee's services, were being provided free of charge. *Id.* In this scenario, the board members violated their duties of loyalty because they had divided allegiances and used their positions to put themselves – and not the organizational mission – first.

⁴⁶ Md. Ethics Op. 2003-08 (2003), <https://www.msba.org/ethics-opinions/may-an-attorney-who-chairs-his-churchs-legacy-committee-prepare-on-a-pro-bono-basis-wills-for-parishioners-in-the-which-the-parishioners-bequeath-property-to-the-church/>.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Michels, Kevin H., *Lawyer Independence: From Ideal to Viable Legal Standard*, 61 Case W. Res. L. Rev. 85, 112 (2010).

The Lawyer as Board Member

Ethical and Practical Considerations

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Basic Board Duties

1. Oversight of CEO
2. Mission planning
3. Resource procurement



Basic Board Duties

4. Management monitoring
5. Organizational review
6. Board monitoring and evaluation



Recognizing Conflicts of Interest

- **The Model Rule 1.7(a)(1)** prevents representation that “will be directly adverse to another client.”
 - Note: adversity for this purpose is *legal* adversity. Mere *economic* adversity does not trigger the rule. *ABA Comm. On Ethics and Prof'l. Responsibility, Op. 05-434 (December 8, 2004).*



Recognizing Conflicts of Interest

- **For board member-attorneys with multiple clients**, the attorney may not act adversely to any of the attorney's clients.
 - This may require the attorney to disqualify himself or herself from certain decisions or actions of the board.



Recognizing Conflicts of Interest

- **Attorney disqualification** may become necessary even in the absence of litigation.



Recognizing Conflicts of Interest

- **In transactional matters**, disqualification becomes required if there arises “a substantial risk that the lawyer’s representation of one or more of the clients would be materially and adversely affected by the lawyer’s duties to one or more of the other clients.”

– *Restatement (Third) of the Law Governing Lawyers*, § 130 (2000)



The Model Rules and the Board

Member-Attorney

- **Rule 1.1 – Competence**
 - A board member lawyer is likely to be considered a resource on all legal topics, not just the lawyer’s field of specific expertise.



The Model Rules and the Board

Member-Attorney

- **Rule 1.6 – Confidentiality of Information**

- The director-lawyer must observe attorney-client privilege, even though similarly situated non-lawyer directors do not.



The Model Rules and the Board

Member-Attorney

- **Rule 1.7 – Conflicts of Interest and Current Clients**

- The lawyer's service on the board may not create a conflict of interest for another existing client.



The Model Rules and the Board

Member-Attorney

- **Rule 1.13 – Organization as a client**

- When the organization is a lawyer's client, the lawyer should make it clear to board members that they *are not* the client.



The Model Rules and the Board

Member-Attorney

- **Rule 2.1 – Advisor**

- When acting as a director, the lawyer must exercise “independent professional judgment.” If the lawyer cannot do so, the lawyer should not join the board.

Practical Recommendations

- **Define the scope of your service**
 - Make it clear to the board that the attorney represents the board and not the board members.



Practical Recommendations

- **Provide a foundation for your statements**
 - If your comments are meant to be legal advice, say so, and if your comments are a matter of business judgment and not legal advice, say that, too.



Practical Recommendations

- **Periodically clarify your role**
 - From time to time, point out for the board, and for the organization's records, that you are a board member *and* the organization's counsel (if you are), and help the other directors understand that dual role.



Avoiding Ethical Pitfalls

The Lawyer as a Board Member

- Advice is based on *business judgment*
- Limitations on the lawyer's public statements come only from duties imposed by the board
- Analysis of potential conflicts is done under the duty of loyalty rule



Avoiding Ethical Pitfalls

The Lawyer as Legal Counsel

- Advice is based on *legal judgment*
- Limitations on the lawyer's public statements come from the attorney-client privilege
- Analysis of potential conflicts is done under the rules of professional responsibility for lawyers



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Roger G. Hanshaw concentrates his legal practice on the environmental and technical issues that arise in business transactions, as well as regulatory compliance matters and litigation for a diverse client base.

He holds a Ph.D. in chemistry from the University of Notre Dame. This advanced science degree is critical in representing clients in the science driven field of environmental law.

Roger is a certified professional parliamentarian and regularly counsels government bodies and nonprofit organizations throughout the state and nation on meeting procedures, parliamentary law, bylaws construction and convention management. He is also a certified magistrate court mediator and board of directors member for the West Virginia Farm Bureau.

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Practice Areas

- Environmental Litigation
- Mass Tort and Toxic Tort Defense
- Oil & Gas
- Coal
- Business Litigation
- Education Law
- Corporate Governance
- Environmental and Regulatory Law

Honors

- West Virginia Manufacturers Association Champion of Industry
- Recognized by West Virginia Super Lawyers as a Rising Star, 2017-present
- West Virginia University College of Law - Recipient of CALI Awards (recognition for achieving the highest grade in a particular subject) in real estate transactions, appellate advocacy, Supreme Court advocacy and civil rights.
- University of Notre Dame - Rohm and Haas Outstanding Graduate Award; University of Notre Dame Outstanding Teaching Award
- West Virginia University - Mountain Honorary; Order of Augusta; Dennis O'Brien Award (awarded annually to the top graduate of the WVU Honors Program)

Education

- J.D., West Virginia University College of Law (2012)
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