

Q&A

Perspectives on risk drawn from our claims experience.

Question

A lawyer in my firm wants to serve on the board of directors of a client. What are the issues I need to be concerned about?

Answer

Service on a client's board of directors is not prohibited per se, but it does present risk management issues. Wearing both "hats" can create conflicts of interests, jeopardize the attorney-client privilege and expose the firm to liability for the lawyer's acts as director. Caution and diligence are the order of the day:

- ✓ Decisions about board service by firm attorneys should be made by a committee with risk management expertise and not by individual lawyers. Prudent firms have formal policies requiring prior approval for board positions.
- ✓ A detailed business analysis is apropos: Will the role affect other client relationships or firm practice areas? Does the client have D&O coverage that will cover the lawyer as director? (Some policies exclude coverage where a person does not act "solely" as a director.) Does the firm's E&O policy contain any exclusion or provisions regarding board service?
- ✓ Generally, a lawyer sitting on a client board should not be the firm's "manager" for that account. Another partner should be designated as the lawyer responsible for managing the firm's representation.
- ✓ It is important to articulate - in writing - the relationship between the client and the board member lawyer, the managing lawyer and the firm so that the risks created by the proposed appointment are clearly disclosed to the client.
- ✓ A lawyer sitting on a client board should not bill time as a lawyer for board meeting attendance. The lawyer-director's function at board meetings should be limited to that of a business principal with the duties prescribed by the relevant state corporation laws. If legal advice might be requested at a board meeting, another lawyer from the firm should attend in the capacity as legal counsel.

Much risk can be avoided by remembering that service on a client board is not a way to "cement" client relationships, "train" junior lawyers or generate pro bono hours. A board seat is a fiduciary position that carries with it a panoply of statutory obligations, among them competence as a business principal of the enterprise. Savvy firms require their lawyers to attend mandatory business training prior to approving board service.



Need **confidential, privileged** answers to your firm's own risk management questions?

Call experienced law firm general counsel and risk management expert David Jargiello on the **Beazley Hotline (877-ASK-BEYL/877-275-2395)**.

David is available to provide confidential, privileged risk management advice to Beazley assureds.

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