



## **Break-Out Session**

**10:00 – 11:00 am  
August 2, 2006**

**An Ethical Organization  
for an  
Ethical Pr\*ofession:  
Building a Culture of Ethics  
In Bar Associations**

**Developed by Jack Marshall and ProEthics, Ltd.  
For the National Association of Bar Executives  
Annual Meeting 2006 ♦ Honolulu, Hawaii**

# **An Ethical Organization For an Ethical Profession: Building a Culture of Ethics In Bar Associations**

An organization must both reflect and embody the ethical values of its members, and the legal profession is based on ethics and integrity. This breakout session will explore the two most crucial tools of organizational ethics-building, as well as showing how they reinforce and enhance each other: the leadership habits and behaviors that foster ethical conduct, and organizational codes of ethics.

## **The Leadership Factor**

### **Warm-Up Exercise: The Stonecipher Connundrum**

Executive A is a strong and seemingly effective leader who has taken over a bar association that has been wracked with scandal, improprieties, and legal problems. He has instituted a state of the art ethics training program, and has insisted on -- and enforced -- the highest standards of ethical conduct from the staff.

**Which of the following actions by Executive A would warrant his *dismissal*?**

1. Carrying on a secret affair with his secretary. Executive A is married. The company has no policy regarding office dating.
2. Carrying on a secret affair with his secretary. Executive A is single. The company has no policy regarding office dating.
4. The Board has discussed entering an *amicus* brief in a Supreme Court case, but has made no decision. The staff is aware of deliberations. Executive A is asked on a live television news broadcast whether the Bar is going to take a position on the case. He replies, "We haven't discussed that, to my knowledge."
5. Being sentenced to probation for non-payment of taxes.
6. Being arrested and fined for non-payment of child support.
7. Publishing a best-selling memoir under an assumed name that is exposed as substantially fictional.
8. By-passing usual procedures and hiring a prominent board member's daughter in a management position.

9. Speaking at local law school graduation, he introduces a U.S. Senator by saying, "Believe me, this man would put a bullet between George Bush's eyes if he had the opportunity... a great, great Senator and a courageous patriot." Afterwards, he issues an abject public apology.
10. He has listed on his CV and personal profile for years that he was drafted by the Cincinnati Reds as a catcher out of high school. After a local reporter can find no record of such a draft, he declares that "someone told me I was drafted...I guess it's a mistake." He removes the reference.
11. Urging all employees to volunteer to participate in a weekend clean-up of an inner city neighborhood, sponsored by the non-profit he chairs, "Valentine's Day in July."
12. Using his office computer to shop, watch sporting events, and write a personal blog. Staff policy forbids personal computer use. He typically gets to work at 7:00, leaving at 8:00 or later.

## The Leader's Role in Building an Ethical Culture

- Rule-Making
- Enforcement
- Setting of Ethical Standards and Priorities
- Role Model
- Teacher
- Personal Style

### Compliance vs. Ethics

<u>Objective:</u>	Externally-imposed	Encourages responsible conduct
<u>Standards</u>	Prevent military or criminal misconduct	Self-imposed
<u>Motivation</u>	To avoid penalties or or punishment	Self-actualization and improvement of self and community
<u>Reinforce-ments</u>	Legally-driven; emphasis on restrictions	Principle-driven; emphasis on personal responsibility
	<b><u>“What you can’t do”</u></b>	<b><u>“What you should do.”</u></b>

### Hypothetical: “The Savior”

Lonnie Hutz had a decision to make. The beleaguered Executive Director of the Springfield Bar Association, she had managed to lure the number one CLE whiz in the country away from his former position, and in six months, she had already seen signs of a turnaround, something her struggling association desperately needed.

But she had paid a king's ransom to get Rudy Day to move from the Sin City Bar. Now she had to do some tough cost-cutting to keep the association's budget from exploding until Rudy's programming and marketing genius could work its magic. Lonnie had announced some staff reductions, and was now preparing some more bad news... a freeze on raises and a reduction in benefits for all non-management and middle management staff. But she also was going to announce that she was reducing her own benefits and not taking the annual increase called for by her contract. The rest of management had reluctantly agreed to similar sacrifices.

But not Rudy. He emphatically insisted that she stick to the terms he had been promised when she was secretly recruiting him; not only that, he stated that he had been willing to delay the promised renovation of the shabby office of his predecessor for six months, but no more. It was oriental rugs and rosewood furniture by the end of the month and all the benefits, perks and cash in his contract, or Rudy was walking, and maybe suing.

Lonnie was certain that the association would be in dire straits without Rudy, and that her job was probably on the line as well. But she also was convinced that if he didn't go along with the reduction in benefits, the rest of the staff might well rebel... And the thought of Rudy renovating his office while the staff was enduring riffs and cuts was giving her nightmares

**Question: What should Lonnie do?**

1. Forget about the cuts for her and the executives; the staff wasn't expecting them anyway. But tell Rudy that his office renovation would just have to wait, and hope he doesn't walk...
2. Insist on the sacrifices from management as the only alternative to collapse, and explain the reason why Rudy's perks and benefits would not be included in the cuts.
3. Give Rudy what was promised, cut her own salary and benefits only, and tell the staff that "there will also be a reduction in the total planned compensation and benefits paid to the company's management."
4. Tell Rudy that circumstances have changed, and he will have to accept the cuts and the delay in his office upgrade. If he quits, so be it.
5. Something else.

## **The Seven Enabling Virtues**

The following virtues are critical in pursuing ethical conduct.

- 1. Courage**
- 2. Fortitude**
- 3. Valor**
- 4. Sacrifice**
- 5. Honor**
- 6. Humility**
- 7. Forgiveness**

# The Ethics Code

## Key Considerations in Building a Code

**Consideration 1:** What is the mission?

**Consideration 2:** What are the “prime directives?”

**Consideration 3:** What is essential?

**Consideration 4:** What is unrealistic?

**Consideration 5:** Will it be used?

**Consideration 6:** Who will enforce it?

## The Building Blocks

### The Six Pillars of Character

*[The Josephson Institute of Ethics has gathered the basic ethical values into a useful structure it calls “The Six Pillars of Character.” The structure is largely duplicated Here, with some additions.]*

#### 1. Trustworthiness, including:

- Honesty in communication
- Candor
- Truth-telling
- Reliability

- Sincerity
- Honesty in Conduct
- Integrity
- Loyalty

**2. Respect, including:**

- Civility
- Courtesy
- Decency
- Dignity
- Tolerance
- Acceptance
- Autonomy

**3. Responsibility, including:**

- Diligence
- Pursuit of Excellence
- Competence
- Accountability
- Perseverance
- Self-restraint
- Prudence

**4. Fairness, including:**

- Openness
- Process
- Impartiality
- Proportionality
- Consistency
- Equity

**5. Caring, including:**

- Charity
- Benevolence

- Consideration
- Empathy
- Generosity

## **6. Citizenship**

# **The Ethical Obligations of Trust**

## **(Fiduciary Duties)**

- 1 The Duty of Competence
2. The Duty of Diligence
3. The Duty of Loyalty
4. The Duty to Maintain Independent Judgment
5. The Duty of Candor
6. The Duty of Communication
- 7, The Duty of Confidentiality
8. The Duty of Honesty

# The Ethical Duties of the Legal Profession

- Competence
- Diligence
- Communication
- Confidentiality
- Independent Judgement
- Loyalty
- Care
- Avoiding the Appearance of Impropriety
- Candor
- Honesty
- Fairness
- Respect for the legal process and the administration of justice
- Public Service
- Dignity
- Civility
- Maintaining the integrity of the profession

## What's In a Code?

*Following are EXCERPTS from the "Statement of Values and Code of Ethics for Nonprofit and Philanthropic Organizations" of the INDEPENDENT SECTOR (2004).*

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**Introduction:** As a matter of fundamental principle, the nonprofit and philanthropic community should adhere to the highest ethical standards because it is the right thing to do. As a matter of pragmatic self-interest, the community should do so because public trust in our performance is the bedrock of our legitimacy. Donors and volunteers support charitable organizations because they trust them to carry out their missions, to be good stewards of their resources, and to uphold rigorous standards of conduct.<sup>2</sup>

Nonprofit and philanthropic organizations must earn this trust every day and in every possible way. But organizations are, at base, people, and it is up to the board members, executive leaders, staff and volunteers to demonstrate their ongoing commitment to the core values of integrity, honesty, fairness, openness, respect, and responsibility...

This Statement of Values and Code of Ethics for Nonprofit and Philanthropic Organizations provides a starting point for organizations to use in developing their own codes with their own constituencies.

Adherence to the law is the minimum standard of expected behavior. Nonprofit and philanthropic organizations must do more, however, than simply obey the law. We must embrace the spirit of the law, often going beyond legal requirements and making sure that what we do is matched by what the public understands about what we do. Transparency, openness and responsiveness to public concerns must be integral to our behavior.

**Statement of Values:** Any code of ethics is built on a foundation of widely shared values. The values of the independent sector include:

- Commitment to the public good;
- Accountability to the public;
- Commitment beyond the law;
- Respect for the worth and dignity of individuals;
- Inclusiveness and social justice;
- Respect for pluralism and diversity
- Transparency, integrity and honesty;
- Responsible stewardship of resources; and,
- Commitment to excellence and to maintaining the public trust.

These values lead directly to the Code of Ethics for Nonprofit and Philanthropic Organizations that follows. The values inform and guide the actions that organizations should take in developing their policies and informing their practices.

### **A. Personal and Professional Integrity**

All staff, board members and volunteers of the organization act with honesty, integrity and openness in all their dealings as representatives of the organization. The organization promotes a working environment that values respect, fairness and integrity.

### **B. Mission**

The organization has a clearly stated mission and purpose, approved by the board of directors, in pursuit of the public good. All of its programs support that mission and all who work for or on behalf of the organization understand and are loyal to that mission and purpose. The mission is responsive to the constituency and communities served by the organization and of value to the society at large.

### **C. Governance**

The organization has an active governing body that is responsible for setting the mission and strategic direction of the organization and oversight of the finances, operations, and policies of the organization. The governing body:

- Ensures that its board members or trustees have the requisite skills and experience to carry out their duties and that all members understand and fulfill their governance duties acting for the benefit of the organization and its public purpose;
- Has a conflict of interest policy that ensures that any conflicts of interest or the appearance thereof are avoided or appropriately managed through disclosure, recusal or other means; and
- Is responsible for the hiring, firing, and regular review of the performance of the chief executive officer, and ensures that the compensation of the chief executive officer is reasonable and appropriate;
- Ensures that the CEO and appropriate staff provide the governing body with timely and comprehensive information so that the governing body can effectively carry out its duties;
- Ensures that the organization conducts all transactions and dealings with integrity and honesty;
- Ensures that the organization promotes working relationships with board members, staff, volunteers, and program beneficiaries that are based on mutual respect, fairness and openness;
- Ensures that the organization is fair and inclusive in its hiring and promotion policies and practices for all board, staff and volunteer positions;
- Ensures that policies of the organization are in writing, clearly articulated and officially adopted;
- Ensures that the resources of the organization are responsibly and prudently managed; and,
- Ensures that the organization has the capacity to carry out its programs effectively.

#### **D. Legal Compliance**

The organization is knowledgeable of and complies with all laws, regulations and applicable international conventions.

#### **E. Responsible Stewardship**

The organization and its subsidiaries manage their funds responsibly and prudently. This should include the following considerations:

- It spends a reasonable percentage of its annual budget on programs in pursuance of its mission;
- It spends an adequate amount on administrative expenses to ensure effective accounting systems, internal controls, competent staff, and other expenditures critical to professional management;
- The organization compensates staff, and any others who may receive compensation, reasonably and appropriately;
- Organizations do not accumulate operating funds excessively;
- Organizations ensure that all spending practices and policies are fair, reasonable and appropriate to fulfill the mission of the organization; and,
- All financial reports are factually accurate and complete in all material respects.

### **F. Openness and Disclosure**

The organization provides comprehensive and timely information to the public, the media, and all stakeholders and is responsive in a timely manner to reasonable requests for information. All information about the organization will fully and honestly reflect the policies and practices of the organization....

### **G. Inclusiveness and Diversity**

The organization has a policy of promoting inclusiveness and its staff, board and volunteers reflect diversity in order to enrich its programmatic effectiveness. The organization takes meaningful steps to promote inclusiveness in its hiring, retention, promotion, board recruitment and constituencies served.

### **I. Fundraising**

Organizations that raise funds from the public or from donor institutions are truthful in their solicitation materials. Organizations respect the privacy concerns of individual donors and expend funds consistent with donor intent. Organizations disclose important and relevant information to potential donors.

In raising funds from the public, organizations will respect the rights of donors, as follows:

- To be informed of the mission of the organization, the way the resources will be used and their capacity to use donations effectively for their intended purposes;
- To be informed of the identity of those serving on the organization's governing board and to expect the board to exercise prudent judgment in its stewardship responsibilities;
- To have access to the organization's most recent financial reports;
- To be assured their gifts will be used for the purposes for which they were given;
- To receive appropriate acknowledgement and recognition;
- To be assured that information about their donations is handled with respect and with confidentiality to the extent provided by the law;
- To expect that all relationships with individuals representing organizations of interest to the donor will be professional in nature;
- To be informed whether those seeking donations are volunteers, employees of the organizations or hired solicitors;
- To have the opportunity for their names to be deleted from mailing lists that an organization may intend to share; and,
- To feel free to ask questions when making a donation and to receive prompt, truthful and forthright answers.<sup>3</sup>

### **J. Grantmaker Guidelines**

Organizations that are grantmakers have particular responsibilities in carrying out their missions.<sup>4</sup> These include the following:

- They will have constructive relations with grantseekers based on mutual respect and shared goals;
- They will communicate clearly and on a timely basis with potential grantees;
- They will treat grantseekers and grantees fairly and with respect;

- They will respect the expertise of grantseekers in their fields of knowledge;
- statements will be posted on the organization's website or otherwise available to the public. All solicitation materials accurately represent the organization's policies and practices and will reflect the dignity of program beneficiaries. All financial, organizational, and program reports will be complete and accurate in all material respects.

# **An Ethical Organization For An Ethical Profession:**

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## **Your Facilitator Jack Marshall, Esq.**

Jack Marshall is the president and founder of ProEthics, Ltd., and the primary writer and editor of The Ethics Scoreboard ([www.ethicsscoreboard.com](http://www.ethicsscoreboard.com)). He has taken the experience gleaned from a diverse career in law, public policy, academia and theater and applied it to the field of legal, business and organizational ethics. He has developed more than 90 programs for bar associations, law firms, Fortune 500 companies, and non-profit organizations, and recently has worked to develop rules of professional responsibility for attorneys in emerging African democracies through the International Bar Association, and for the new judiciary of the Republic of Mongolia through USAID.

A member of the Massachusetts and D.C. Bar Associations, Mr. Marshall is also an adjunct professor of legal ethics at the American University School of Law in Washington, DC. He has recently co-authored, with a Pulitzer Prize-winning historian, a new book on Clarence Darrow that is scheduled for publication in Fall 2006.

Marshall is a graduate of Harvard College and Georgetown University Law Center. His articles and essays on topics ranging from leadership and ethics to popular culture have appeared in *The Federal Lawyer*, *Ethics Today*, *Everyday Law*, *Trial*, *The Settlement Strategist*, *The Weekly Standard* and numerous state bar publications. He has appeared on a variety of talk shows to discuss ethics and public policy, from the Montel Williams Show to Neil Cavuto's News Hour to PBS's "Religion and Ethics" program.

He is also an award-winning stage director, and is the artistic director of The American Century Theater, a professional non-profit theater company dedicated to producing classic American plays. He lives in Alexandria, Virginia with his wife and business partner, Grace Marshall, their son Grant, and their Jack Russell Terrier, Rugby. Like many who are interested in the nature of good, evil, justice, and chaos, Marshall is a lifetime fan of the Boston Red Sox.

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