

and the interests of the corporation are actually or potentially in conflict. In bringing to the attention of the board the particular sensitivities and concerns of their constituency, directors may aid the whole board in fulfilling its duty of care, and add wisdom to the whole board's deliberations. Nonetheless, the director's duty of loyalty lies with the interests of the corporation, not to any constituent group. (See the discussion in the section "*The Duty of Loyalty*" below.)

Directors may give weight to the views of directors or others having special expertise, but must make an independent decision on any questions presented for board or committee determination. The reason for having more than one director is to ensure that differing viewpoints have the opportunity to be heard, and that directors with different talents, expertise, experiences, and perspectives share their views and together decide on what course of action is in the corporation's best interests. To this end, it is important that each director use any expertise he or she may have when serving in the role of a board member. In other words, it is important that directors not "check" their talents at the door of the boardroom.

At the same time, although it is natural, and often appropriate, for a director to seriously consider the viewpoints of another director who has special expertise or knowledge on a matter being discussed, it is part of each director's duty of care to evaluate all views and information presented to the board or board committee, and to make an independent judgment regarding the proper course of action.

The need for independent members of the board. Since the passage of the Sarbanes-Oxley Act and as a result of greater scrutiny of tax-exempt organization operations by Congress and many state attorney generals, the concept of independent directors for a nonprofit has received increased attention. Some states place limitations on the number of directors who can be "interested" directors.⁶

In the context of nonprofits, an independent director generally means a director who is not employed by the corporation and does not receive compensation from the corporation other than as a director. There is a concern that directors who are not independent might give too much deference to management, or that conflicts of interest may not be appropriately recognized and avoided, resulting in actions that are not in the best interest of the organization.⁷ Commentators have noted that independent and nonmanagement board members are an organizational resource that should be used to assure the exercise of independent judgment in key committees and general board decision making.⁸

The IRS requires nonprofits that file Form 990 to make certain disclosures about board member independence. In Form 990, the IRS defines "independence" differently than other legal sources and even from its own pronouncements in other contexts. For purposes of Form 990, a director who receives compensation from the organization as an officer or other employee or as an independent contractor exceeding \$10,000, or a director involved in any