

Plan to Give

Session 2:

Client Focused Service and
Questions of Conflicts

September 2018

Presented By:

Richard T. Bowser

Daniel Hicks



The Assembled Team

Prospective Donor + Other Team Members

- Formal Advisors
 - Charitable Organization and Major Gift Officer
 - Institutional Intermediary (NCF)
 - Client's Investment Advisors
 - CPA
 - Lawyer
 - Institutional Counsel
- Informal Advisors
 - Family Members
 - Long-term and newly-minted friends
 - Business Partners/Associates



Thinking About Conflicts

The Team Goal:

To Accomplish the Donor's Desires Efficiently

“Embodied” Competing Interests Give Rise to
Conflicts About the Donor's Goal or the Donor's
Selected Means



Thinking About Conflicts

Conflicting Goals

- Formal Advisors
 - Conflicts at an Institutional Level “Give here, rather than there” are Expected and Permissible UNLESS they include some tortious conduct.
 - Conflicts at a Personal Level also exist: There can be a conflict between serving the Donor’s interest and serving the Advisor’s personal interest.
 - Still subject to punishment if the advisor’s action involves tortious conduct.
 - Also subject to review under Rules of Professional Conduct set by the Advisor’s professional body.



Thinking About Conflicts

Conflicts Over the Means

- Informal Advisors
 - the situation is just the same as it is with conflicts regarding goals
- Formal Advisors:
 - Consider how the conflict might arise at an institutional level:
 - Charitable Organization v. Donor Regarding Form: Restricted or Unrestricted Gift
 - Charitable Organization v. Institutional Intermediary: Who Manages and Controls the Assets and the Timing of Gifts



Thinking About Conflicts

Donor v. The Individual Formal Advisor: Consider which advisors are more likely to have a personal interest in the choice of form – favoring one form over another

- Conflicts at an Institutional Level “Give here, rather than there” are Expected and Permissible UNLESS they include some tortious conduct.
- Conflicts at a Personal Level also exist: There can be a conflict between serving the Donor’s interest and serving the Advisor’s personal interest.
 - Still subject to punishment if the advisor’s action involves tortious conduct.
 - Also subject to review under Rules of Professional Conduct set by the Advisor’s professional body.



Thinking About Conflicts

Conflicts Over the Means

- Formal Advisors:
 - Conflicts at an Institutional Level “Give here, rather than there” are Expected and Permissible UNLESS they include some tortious conduct.
 - Conflicts at a Personal Level also exist: There can be a conflict between serving the Donor’s interest and serving the Advisor’s personal interest.
 - Still subject to punishment if the advisor’s action involves tortious conduct.
 - Also subject to review under Rules of Professional Conduct set by the Advisor’s professional body.



Lessons to be Learned and Practiced

- **Be on the lookout for**
 - the abuse of power or
 - the use of deception
 - by formal and informal members of the Donor's team.
- **Be cognizant of a temptation to personal interest without being paralyzed.**
 - Mutually beneficial transactions do happen all the time.
 - The test is not a "pure" motive but Donor's interest.
- **Lawyers and Accountants**
 - A heightened responsibility to ensure that the Donor's true objectives
 - Not Free from the risk of personal interest influencing Donor's choices

