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Scammer Deception - Transcript

[Speaker 1]

As I record this, it's May 2020 and everybody is feeling a little vulnerable. This is really just a prime time for donors and nonprofits to get taken advantage of. Can you trust that your donation is actually going to charity?

Should you be suspicious of someone who seems overly excited to collect donations on your organization's behalf? How can your nonprofit keep tabs on who's using your name and your reputation? My guest today is ethics attorney Eric Cooperstein.

We talked about some juicy lawyer scandals that relate to nonprofits and reflect on these topics and more. Stay tuned. Welcome to Charity Therapy, a podcast from Birken Law about building better nonprofits.

I'm your host, Jess Birken.

[Speaker 2]

My name is Eric Cooperstein. I have a small private practice in Minneapolis where I represent lawyers in ethics matters. All my clients are lawyers, and I mostly defend ethics complaints.

I also give lawyers advice on issues and do some expert work. And then in all my spare time, I serve on several nonprofit boards.

[Speaker 1]

Which is such a nice thing to have you around on those boards, I'm certain.

[Speaker 2]

Well, there's a lot of nonprofits think, oh, I really want a lawyer on my board. And that's great. And lawyers are very proud of themselves for thinking that they think differently than everyone else.

And they like to say that they're going to apply their training. And I think in some respects, that really is true. I think particularly around strategic thinking, I think that good lawyers tend to be able to think about what's going to happen next and what's going to be able to, what's going to happen next after that thing that just happened next.

And so that type of strategic thinking can also can often be helpful to a board. Sometimes people think that the lawyer is going to answer all their legal questions and serve as the attorney for the nonprofit. And that typically is not going to be true.

And it's the lawyers who really have to know what their boundaries are and express them. So I agree, it's good to be a lawyer on a board, but you have to be careful how you interact with the board on different issues.

[Speaker 1]

You're preaching to the choir there for sure. You know, and you mentioned lawyers being strategic. And I think that the reason I said, oh, Eric, come do this episode with me is because we had, you know, I've saw on Twitter, a couple of lawyers who are being a little too strategic in their practices.

And that's, you know, one of the things I wanted to talk about with you today was sort of this couple of cases that I saw about lawyers who got mixed up in some nonprofit dealings and, you know, ended up having bad professional consequences for them. Are you up for talking about those today?

[Speaker 2]

Yes, absolutely.

[Speaker 1]

The first situation was an attorney in Rochester, New York named Cheryl, or maybe it's Cheryl. Do you want to tell a little bit about what happened to this attorney?

[Speaker 2]

Of course, I don't practice in New York, but this is a New York decision. And I would say that I don't think lawyers get in trouble that often for dealings with nonprofits. So that's why it might pop up on your radar.

And she had a bunch of problems. She neglected some client matters. So she had a whole mess of things that were going on.

But one of the things that they cited her for was that they said that she was making false or misleading statements on her law firm website. And the decision is pretty short. But what it says was that this lawyer used her law firm website, I'm quoting from the decision, to solicit donations to a fund entitled Law Firm Support Fund for Indigent Clients and Attorneys, and that any such donations would have been deposited into her bank account in her own name.

Now, it's not clear from the, that's the end of the quote, but it's not clear from the way that's pled whether or not she said on the website that the funds were going into her own account or that she failed to say that the funds were going into her own account. I think it's probably the latter. Because if you were going to solicit funds as a lawyer on your website, you would want to tell people where the money was going.

So if we were to assume the best about this lawyer, she got suspended for three years, and she didn't respond to the complaint either. And so the facts that were alleged end up being deemed true, even though the facts may have been way more complicated. But I have run into lawyers before who say, you know what, I have these clients who can't afford to hire me, and I'd like to raise money to represent these clients.

I'd like maybe solicit donations. And so there's a couple of issues with that. One is that, of course, a lawyer is not typically a 501c3 nonprofit.

[Speaker 1]

No.

[Speaker 2]

Right. I mean, well, there are, I mean, no, legal aid and locally here we have the volunteer lawyers' network. I mean, you can have a professional firm organized to practice law that is also a nonprofit, but that is not the way most law firms are set up.

So that's the first issue is though, so there would have to be some disclosure to folks that to the extent they're making donations to support, you know, maybe the lawyer wants to do immigration work, for example, that's, you know, it's been a big topic lately and still is. And, you know, so you have indigent clients. So the lawyer would like to raise money so they can fund this work because they can't just do everything for free.

Well, you'd have to let people know that you're making a contribution towards something, but you're not making it toward a 501c3. So it's not tax deductible for the donor. So that'd be the lawyer's first obligation.

And the second obligation would be, well, what's going to happen to that money? How's it going to be used? Is the money going to go into a trust account?

Is it going to go into the lawyer's personal account? You know, it's, it's a little, it's a little dicey because a lawyer who accepts fees before the work is done, as opposed to billing the client after the fact, a lawyer who accepts fees before the work is done needs to put that money in a trust account. And usually when you put money in a trust account, it's for a particular client.

And so, you know, whose money it is. And if the matter ends, you give them back the money and you know, when you bill it, but if this is a general kind of collection, there's a problem in just dumping all that money in the trust account and then really know it, not knowing whose money it is or when it's earned. So the lawyer who wants to do that just has a couple of hurdles to get over.

It actually would be much better if a lawyer wants to do pro bono work, but, or get, you know, or do low fee work or however it is, raise money to get paid for representing poor people. It actually would be much better to find a nonprofit that also supports those same goals and set up a program through the nonprofit where people can contribute to the nonprofit. And then

the nonprofit would kind of try to set the terms by which the lawyer is paid for doing certain types of work.

[Speaker 1]

And I have to believe that exists in Rochester, New York. I mean, I didn't do that research, but there are so many public interest nonprofits around that there's, there's got to be some of those in the state of New York that this attorney could have partnered with.

[Speaker 2]

Oh, I agree. But you know, you know, the world has changed so much, you know, the idea that you can create, for example, GoFundMe sites or whatever other similar sites are out there to just raise money. So people will contribute a lot of money to these things.

And sometimes the GoFundMe site is a 501c3 and sometimes not. I don't know what the obligations are of other people to disclose whether or not, but a lawyer certainly I think has an obligation. If a lawyer is going to be raising money, then the lawyer has really, I think, has an obligation to disclose exactly what's going on.

[Speaker 1]

Right. And I mean, don't forget that the state's, you know, Attorney General or whatever agency is sort of in charge of policing charitable solicitation, or fundraising in their state has an interest in people who are just holding it out as if they are raising money for charity when they're not. I mean, here in Minnesota, we have an Attorney General's office that has, you know, very clear standards on whether you can be soliciting charitable donations or not.

And I think part of the problem with this lawyer's website, and now, I did try and look in the Wayback Machine to figure out what their website actually showed, but I just couldn't figure out what her law firm was. There was just no way to find that out. So I couldn't see it exactly.

But I think that it was basically saying like, donate money to, you know, help me- Keep my law firm afloat. Yeah.

[Speaker 2]

Which is- Actually, you know what, I think you could do that too. I think you could do that. I think you could say, you know what, I really want to represent poor immigrants, but I don't have paying customers.

And so I just want you to give me donations so that I can keep doing what I'm doing. And I just think the lawyer needs some disclosures, such as, you're actually paying my salary. This money is going into my personal account.

And the money I raise is going to be basically to pay my salary and to pay my office overhead. And this is not a charitable contribution because I'm not a charity. But if you want me to keep doing this good work, please send me money.

[Speaker 1]

Yeah. It literally says the fund was called Law Firm Support Fund. So it's a law firm support fund for indigent clients and attorneys, which, yeah, exactly.

It's like, hey, give me money so I can go do the good work for justice. But yeah, you have to explain to people that this is not a charity.

[Speaker 2]

I think what a nonprofit has to think about if they want to get into this idea of, yes, that's what we want. We want lawyers to represent people. But it could be any range of nonprofit that's doing good work.

It could be a housing organization. And they occasionally run across somebody who's being evicted, and they need a lawyer. And when they contact, when they refer the person to legal aid or someplace else, it turns out that that person doesn't fit within those other organization's guidelines.

So they really want more control over themselves. They want to be able to have lawyers themselves. Well, you know, it can't be a lawyer who works for their organization, most probably.

And of course, people should also know that the laws are different in all the states, right? So you really have to know something about your state laws. But there is a thing about an organization being deemed a professional firm to practice law.

And so your ordinary nonprofit is not going to be organized that way. And so they can't have a lawyer on staff that then goes and represents other people. Some nonprofits do.

It's a little bit hazy. In some places, the unauthorized practice of law statute doesn't apply to nonprofits because there's no pecuniary gain. But so that's the first thing to think about is, OK, so they may or may not have a lawyer who's going to come on staff, but they're going to hire someone on a contract basis.

And if they're going to do that, they have to have some idea of, well, how much are we going to pay and what are the guidelines? And they also have to know that they may not get any information about the representation after the lawyer is hired. A lawyer can be paid by a third party to represent someone, but that third party doesn't become the client.

And the third party isn't entitled to any of the confidential information going on in the case. The client could authorize that. But so the nonprofit could be paying money to a lawyer, and they may not get a lot of information about what's going on unless the lawyer's client authorizes it.

So that's a big thing for nonprofits to think about.

[Speaker 1]

Yeah, and I think there is actually like a nugget of a cool program idea here. And she just didn't go about it in the right way. Because this sort of reminds me of, there's an organization here in Minnesota that was just honored at the Minnesota Council of Nonprofits Conference with an Innovation Award, where they were sort of inspired by Philando Castile, who was shot by police officers here.

And Philando had been, you know, he's a Black man who had been stopped 49 times for minor traffic violations, you know, just taillight out, blinkers not working, whatever. And so being inspired by this situation, that organization said, how can we provide these services so that cops can do something other than give a ticket? Like, can we actually give these people a micro grant, so that they can just go get their car fixed.

And so what they did is they wrote a grant, and they got funded. And then they basically gave they partnered with police officers, and the police officers give out a voucher. And they have partner mechanics that are also like, okay, yes, we will take these vouchers.

And we know we will get paid x every time we get a voucher that has been given to us. So instead of writing a fix-it ticket, the officer says, here's a voucher, go get your taillight fixed. And the driver has the opportunity to get the service that they need.

And the mechanic gets paid for that. Cheryl could have done something like that here.

[Speaker 2]

Yeah, that actually raises a very interesting point. I mean, that's another program a nonprofit could start, would be to help people who are waiting for their lawsuits to be completed. So lawyers cannot lend money to clients in connection with a case.

They can advance court costs that may or may not be paid back later. If it's a poor person, they can pay the court costs, and they don't have to be reimbursed. But they can, for example, pay the client's rent, or give the client gas money.

And it may be that the lawyer is suing on behalf of the client for a big pot of money, but it's going to take six months, or a year, or a year and a half, or longer for that case to be completed. And in the meantime, there's some low settlement offer on the table, and the client just can't take it because they can't pay their rent. So the lawyer in some states could guarantee a loan, but the lawyer can't actually lend the client money, or give the client money for the rent, or for food, or for gas.

Like a microgrants program, you could have a nonprofit that tries to support people who are in litigation, like if they have a civil rights case against the police department. You could have a program that sets up parameters for paying people's personal expenses, and that'd be a way of supporting the person who has a claim without either hiring the lawyer or paying the lawyer directly for anything.

[Speaker 1]

Well, then I think that Cheryl was probably ultimately in that case trying to not rip people off, which is completely different than our other guy.

[Speaker 2]

Right. Well, yeah. And just the last word about Cheryl is that because I see that she neglected some cases, and failed to keep clients informed, and didn't cooperate in the discipline process, I get the sense that she was struggling in her practice, which is pretty common, was just looking for money to stay afloat.

[Speaker 1]

Yeah.

[Speaker 2]

And so did something, and maybe never even got very much money, because they don't say in the decision that she ever got any money off of the deal. They're just saying it was on her website. So that's probably a pretty sad case of somebody who either couldn't make a go of it, could even have had depression or mental health issues, because oftentimes it's associated with neglect, and not cooperating with a discipline investigation.

[Speaker 1]

Yeah.

[Speaker 2]

So we don't have to assume that she was an evil person.

[Speaker 1]

Oh, no. Yeah. And she was just trying to make a go of it.

Right. Unlike our other actor in our radio play here today, who managed to steal 1.4 million from the charity that he helped create. Now, this one was convoluted.

I actually did try and pull on the string of this, and try and figure out exactly what had happened here. So I'm going to give a little spiel here to explain what happened. Essentially, there was a charity called Fisher House Foundation.

This was in Connecticut. And Fisher House Foundation is kind of like a Ronald McDonald House for military families. So if you have a veteran or a member of the military who's going through an extended medical issue, the Fisher House Foundation provides housing and services for their families while they are maybe at the VA for a long time.

Along comes attorney Kevin, who helps found a friends group that was called Friends of Fisher House, Connecticut, Inc. Kevin puts on his website very prominently all over their website that they are underwriting this charity. And when you go to the Friends of Fisher House website, it says right on the charity's website that they are underwritten by this law firm, which my poor law clerk did just it boggled his mind what that even meant.

And I had to laugh because I was like, I think it means nothing. It just sounds fancy. What did you think about all of that?

[Speaker 2]

I think this person is just a thief.

[Speaker 1]

I agree.

[Speaker 2]

And he just has one particular way of trying to steal money. You know, I have a longstanding joke in my practice about how lawyers screw up stealing money. So the rules of misappropriation, in my mind, there's two rules.

The first rule is steal a lot of money. Because if you're going to get disbarred, no one wants to be disbarred for stealing \$10,000. It's not enough money.

So the first rule is steal a lot of money. Now, this lawyer managed to get the first rule right. He stole 1.4 million. Some people would consider that a lot of most people consider a lot of money. I don't know that it's enough to sacrifice your law license and your career over, but he was 67 already. So maybe he figured he didn't have long to go.

The second rule is, and this is the rule the lawyers almost always can't get right, is have an exit strategy. No exit strategy, right? So he gets caught and now he's done.

So he's just, I mean, so he's just a thief. I mean, I don't think that, you know, thieves make for amusing discussions, but ultimately, they're not that instructive, at least for lawyers. I mean, in terms of nonprofits, a lesson is if a nonprofit finds somebody who seems eager to raise money for them in an odd way, maybe nonprofits need to Google themselves periodically to see where their name is coming up.

You know, maybe there are some, you know, I mean, we all have to apply a certain radar based on our life experiences to people who enter into our orbit, right? And sometimes, you know, just the way someone behaves, someone goes, I recently had a client that we represented and there's just, can't quite put my finger on it, but I just know, you know, so people, people can't, can't see on the podcast that I have hardly any hair left. So I've been doing this for a very long time and there's just something about this person that I just said, there's a, no, there's a problem here.

There's a mental health issue. And I had asked, I'd asked, is there anything else? Do you always get so anxious over things like this?

And it was a pretty serious situation, but somehow, you know, so anyway, so, so I just thought there was something wrong. And I think we all have to develop that instinct. And it's harder when you're just out of college to have that instinct as opposed to when you've been working in the world for 10 or 20 or 30 or 40 years.

But if you get that inkling, like someone is really, they're too much of a volunteer or something. Well, you know, I don't know, but maybe, maybe, maybe nonprofits should check. I don't think, I mean, I don't know, Jess, is this a problem that nonprofits have with people using their name to, you know, do terrible things or raise or get money for themselves?

[Speaker 1]

Well, yeah, I mean, I think it raises a really interesting question for me about, did the national group know that this was happening? Because in the sort of news stories, it says that Kevin had started this chapter of the National Org. Did, were they aware that this chapter existed?

Were they even a chapter based organization? Or did, did this lawyer just sort of start a charity and call it the friends group? You know, it's just that part to me is very curious because if I'm a national organization and somebody starts a chapter, some of the things that I'm going to want to control as the, the mothership is like, well, we need to have a charter agreement.

We need to agree what your use of our logo and brand is going to be like. We need to know, you know, that you're going to run your satellite in a way that reflects well on us. What is, you know, what's your obligation?

Are you using our tax exemption? Are we under a group exemption with this chapter or are they obligated to get their own tax exemption? Because if we're under a group exemption, we are risking ourselves for these little satellites.

Right. So it was very like, I wanted more information about like, what was the relationship between the main organization and this little organization? Because basically sounds like the, this guy, Kevin didn't have a real board.

You know, it was basically just him and he obviously had control over where the money went and was able to withdraw large sums of money or maybe never even deposited them into a separate bank account. I don't know. So there's some questions to me, like, how are we supervising our satellite organizations or what sort of responsibility does my, my main organization have to sort of like have a Google alert every time somebody uses our name somewhere.

Like I would want to know if somebody was out trying to raise \$3 million for our cause, even just from a perspective of like, gee, I should, I should go meet that person, even if they were a saint. Right.

[Speaker 2]

Well, and that's a good, I mean, you are, you know, you're a, you're a big tech person, Jess. And I think, you know, Google alerts are one useful way to figure out whether somebody's using your name and that's, you know, a free thing that anybody can do for any purpose. And so you can set up Google alerts for the name of your nonprofit and just see, and actually, I mean, it doesn't have to be only for negative reasons, right?

A nonprofit might want to set up a Google alert to see when they're in the news as a nonprofit for good reasons.

[Speaker 1]

Yeah, absolutely.

[Speaker 2]

You know, there should be somebody, you know, if you have, you know, a number of staff people, there may be somebody who should be tracking when the organization is mentioned somewhere and that feeds into their social media campaign. Right. So, um, using something like a Google alert could have multiple purposes to it.

[Speaker 1]

Yeah. And I mean, it wouldn't have been hard to find, which makes me think that they knew because, you know, this was on the lawyer's website. This website, I was able to find in the Wayback Machine and, um, I can post links in the show notes so people can take a look at this very bad website.

Um, in true lawyer website form, it's awful. But, you know, this, this lawyer had a couple different incarnations. So first it was Newman and Creed.

And then that was in 2011. And then all the way, all the way through that time until 2017, when this lawyer was now Creed Law Firm, he had this on prominently displayed on the homepage, um, saying, you know, we're the proud sponsors of, of this project. You know, we're, we are involved with this charity, which I just think is, for me, that's weird because I'm a professional as, as far as I'm a lawyer and I'm a nonprofit professional.

So it's just very strange to me that a law firm would have this on their website, but, you know, it might not seem strange to other people, or it might seem like a good idea, um, to tout your charity involvement on your website. But I'm curious whether that's ethically a problem.

[Speaker 2]

Well, I mean, I don't think it's a problem for lawyers to say what charities and nonprofits they're a part of or what their favorite causes are or who they give money to. Um, but I mean, I think nonprofit boards, you know, a lawyer, if a lawyer is soliciting contributions for a nonprofit, the lawyer should, shouldn't be putting that money into their business account. There's in fact, also an argument, the lawyer shouldn't be putting the money into their trust account either, because it's not for client matter.

The way our rule is written in Minnesota, it says you should put funds in your trust account when they're associated with a representation. And so if you're simply on the board of a nonprofit, the money, you know, the lawyer should not be collecting the money. The lawyer can collect checks made out to the nonprofit and then forward on those checks.

Lawyers don't have any special status in terms of accepting contributions on behalf of a nonprofit. So if a lawyer is collecting the money and depositing it, well, when the lawyer, even if the lawyer turned that money over to the nonprofit, I assume a lawyer is going to, um, take the charitable deduction for all of that money, which that wouldn't be appropriate either.

[Speaker 1]

Right?

[Speaker 2]

Yeah.

[Speaker 1]

No, because the donor, the donor is no longer getting a deduction at that point.

[Speaker 2]

It should be a red flag to people. If a lawyer is saying, oh no, don't worry about it. I'll collect all this money.

And then also if the lawyer has any, you know, lawyers have, there are quite a few rules for lawyers around conflicts of interest. So if the lawyer is representing the nonprofit or doing work for the nonprofit, probably the lawyer should disclose that, um, before people start making contributions to the lawyer.

[Speaker 1]

Yeah. The crazy thing to me is that, you know, this, this guy didn't just solicit donations through a website. I mean, there were fundraising events at fairs and carnivals and supermarkets, a half marathon, a foot race.

Like there were so many extensive fundraising efforts for this charity that it seems crazy to me that this one guy had enough control over it that he was able to siphon off \$1.4 million. It just brings up a lot of questions in my mind around like nonprofit management and internal controls and like, who else was responsible here that didn't notice that much money disappearing?

[Speaker 2]

Well, yeah. I mean, at the point where someone's doing a fundraiser, I mean, that's a pretty public event. And so what was the nonprofit doing as far as figuring out whether money was being raised, what was being done with the money and so forth?

[Speaker 1]

Yeah.

[Speaker 2]

Somebody was, somebody was kind of asleep at the wheel.

[Speaker 1]

You know, there are some things that donors, like just people in the public, you know, I think either we look at lawyers, like respected professionals or the scourge of the earth, you know, there's kind of like two stereotypes. And it's unfortunate that donors are not better educated about how to do the due diligence to make sure you're giving money to a good organization. And I think that's, you know, a lot of times we see stuff in the news and, you know, you're being asked for a donation and it's really hard for people to understand when is it a good organization and when is it a bad organization.

And maybe being affiliated with a law firm felt like it was more credible, but you know, those are not, that's not one of the things I would point to for when you are looking to make a donation to a reputable charity.

[Speaker 2]

Right. Yeah. It shouldn't matter whether there's a lawyer involved or not.

I mean, so if you're going to go out raising your own money, you should make it easy for people to find the information. In fact, why not have a link on your website to GuideStar or to the Charities Review Council or the equivalent in your state. If you're a trustworthy organization, make it easy for people to figure that out.

And, you know, I mean, to the extent that other people are, you know, if you're going to put your name on other things, I think you need to be really careful about that. But I think they probably need someone more like you, Jess, than they need me to help them figure out, you know, ways to present their legitimacy and make sure all their funding streams are handled properly.

[Speaker 1]

Amen to that.

Eric, thanks so much for being here today, it was really fun to have you and any chance I get to have a conversation with you is always a good one.

[Speaker 2]

Yeah, it was a great fun, and I'm happy to do it again anytime.

[Speaker 1]

All right, folks, that's our show. Be sure to follow me on Instagram or Twitter at Jess Birken.

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About the Author



Hi, I'm Jess Birken.

I'm the owner of Birken Law Office, I help nonprofits solve problems so they can quit worrying and get back to what matters most – The Mission. I'm not like most attorneys, I actually have an outgoing personality, and – like you – I like to think outside the box. Most of my clients are passionate and have an entrepreneurial spirit. I'm like that too. My goal is to help you crush it. Getting bogged down in the minutia sucks the joy out of the important stuff. My clients want to do the work – not the paperwork.

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