

## Nathan Courtney Interview Transcript

Keenan Loder: Hi everyone, my name is Keenan Loder, a 2L at Albany Law School and I'm here with Nathan Courtney an Assistant Attorney General with the Charities Bureau in Albany, New York.

Keenan Loder: The charities Bureau is one of the parties that is authorized, under the not-for-profit corporation law to approve not-for-profit mergers and consolidations. He's here to answer some questions for us. Mr. Courtney, to begin, could you just describe the role of the Charities Bureau in mergers and consolidations?

Nathan Courtney: Sure thanks for having me Keenan.

Nathan Courtney: I am part of two sections within the Charities Bureau. We have a transaction section and trusts and estates section, we also have an enforcement section and a registration section, but what we'll be talking about today is the transaction section, and there we are reviewing mergers, consolidations, and sales of assets by not for profit corporations that are charitable and religious corporations, we look at the solutions in the transaction section. And also, when a not for profit is changing its corporate purposes that's another thing that that we will review.

Keenan Loder: That's great, that's very helpful. Just by way of background, about how many not for profit, mergers and consolidations are there any given year?

Nathan Courtney: You know, unfortunately I don't have that information available to me right now. I can tell you that we've been receiving a steady stream of them and we do these public outreach lectures across the state, and we are hearing that, from not for profits in New York, that more mergers and consolidations are in the works. During COVID there's been a lot of additional pressure--financial pressure--put on not for profits and we're expecting that there's going to be more of them in the near future as not for profits try to take advantage of economies of scale to consolidate operations.

Keenan Loder: That makes sense and then, when these nonprofits to seek approval for mergers and consolidations, are they generally approved?

Nathan Courtney: Yes, they are.

Keenan Loder: What would be some common mistakes in an approval?

Nathan Courtney: Well, we have a booklet on our website [charitiesnys.com](http://charitiesnys.com) on mergers and consolidations and I always encourage practitioners to take a look at that before they reach out to us. Typically, we will receive a proposed merger petition in draft form, so that we can identify any deficiencies.

Nathan Courtney: And typically what we see in a transaction in a merger proposal that we do not approve is that there's something missing.

Nathan Courtney: You know, of course, both boards of both merging organizations need to approve the transaction. And some charitable corporations are actually membership corporations. Prior to 1969 all not for profits were membership corporations and so some of the older ones, still have members, and so, for those you need a membership vote, as well as a board vote to approve the transaction.

Nathan Courtney: And there's a lot of other documentation and financial reports that the booklets talk about and so typically, we will indicate that we're not in a position to approve a transaction because there's some documentation of the merger that's missing.

Keenan Loder: And so, not for profits that that shouldn't be viewed as a rejection, it would just be more so an opportunity to cure the defect.

Nathan Courtney: We'll get to it later if we come across a transaction that we don't feel comfortable approving because we don't think it's in the best interests of one or the other, or both, not for profits will indicate that it'd be more appropriate for the not for profits to go to court and put us on notice and then we'll get an opportunity to object, but the not for profits may well convince the Court that that it is in their best interests.

Keenan Loder: Okay, and so along those lines, would you ever recommend that a not for profit petition the New York state Supreme Court without seeking AG approval first?

Nathan Courtney: I believe the booklet has a list of circumstances when it's more appropriate for court approval, I think it was in 2014 that the Attorney General was first authorized to approve mergers administratively. Prior to that, it was always a court approval on notice to the Attorney General, and so we would we would conduct basically the same review prior to 2014 as we do now, in terms of seeing that the requirements of the Statute are met. But, there are circumstances where we don't feel comfortable approving like I said before, if we don't think the merger is in the best interests of one or the other, or both organizations. Insolvency of one or the other organization would be another reason for the Court to be involved, because the Court can act almost like a bankruptcy court, and you know if they are insufficient assets to pay creditors, then the Court can make those tough determinations. Often a not for profit will approach us in connection with a merger where they are insolvent, but if they can convince creditors to take less than 100 cents on the dollar, we will we will nonetheless consider the approval. It's only when there's creditors who are unwilling to consent to whatever is being proposed, it has to go to court. Also, sometimes, successor organizations or the other partner in the merger will take on liabilities and that's another circumstance, where we will consider approving the merger, even if one of the organizations is insolvent, but if there's a situation where creditors are going to go unpaid or get less than what they're owed, that's a situation where the court needs to be involved. Another situation is where there are parties that object

to the merger if there's a division within the board or the membership of one of the organizations.

Nathan Courtney: Those types of determinations are best decided by the courts, they can hold a hearing we don't have a methodology for holding a hearing and so that might be another situation where the Court would be involved.

Keenan Loder: That's very helpful. As far as the approval process with the Attorney General in particular, how long can a nonprofit anticipate this process taking?

Nathan Courtney: You know, it really it depends Keenan, if they've studied our booklet and they've gone through our checklists and everything is ready, it can be done very quickly. But, if the practitioners are familiar with our procedures that also helps. But if they're unfamiliar with our booklet or they're unfamiliar with the procedures, we will often get transactions that need a lot of work and so those are the ones that are going to take additional time.

Keenan Loder: That makes sense. Thank you so much, Mr. Courtney, I really appreciate you providing us with all this valuable information.

Nathan Courtney: You're welcome, good luck.