



BoardLink

Your connection to effective bar governance

The Board and Its Financial Oversight Role

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The board of directors' responsibility relative to finances is grounded in its fiduciary responsibility, which merits a quick review.

As we know, boards of directors operate differently from organization to organization. The bar's size and its number of staff both affect the board's role within the bar. However, there is one thing all nonprofit boards share: fiduciary responsibility. *Fiduciary* comes from *fiducia* which is Latin for trust. While members engage in board service voluntarily, fiduciary responsibility is nevertheless an obligation that volunteers are legally required to fulfill. According to BoardSource, "fiduciary duty requires board members to stay objective, unselfish, responsible, honest, trustworthy and efficient. Board members, as stewards of public trust, must always act for the good of the organization, rather than for the benefit of themselves. They need to exercise reasonable care in all decision making, without placing the organization under unnecessary risk."¹

A specific component of this duty is the board's responsibility to ensure that the organization uses its resources wisely. Part of this is a strategic question: Are we spending our money on the right things? And part of this is an operational question: Are we monitoring and protecting our cash and other assets?

If this all seems very uncomplicated and straightforward, the way it plays out often is not. So, we'd like to give you some real-world examples to illustrate how bar associations and foundations suddenly find themselves stuck, or worse, in trouble.

1. "Someone else is handling it" (aka the board that's not paying attention)

Perhaps you have a fantastically competent director of finance who handles the budget and manages the cash flow, and in whom you have complete trust. Perhaps you have a wonderfully experienced treasurer who has been kind enough to do the job for years – the one that everyone else dreads. Perhaps you're most interested in the bar's programs and you're just not that interested in the money. Perhaps you *are* interested in the budget, but you always seem to run out of time to look at the financial reports. Suddenly, no one is paying attention. This is exactly when surprises occur. Small declines are suddenly large decreases in revenue. A program goes dramatically over budget. Or, in the worst case, staff or volunteers are stealing from the organization.

So how do we avoid this problem?

- Board members should receive and review regular, timely financial reports
- Establish strong internal controls
- Have a finance committee that is responsible for budgetary "triage"
 - Ensure that the finance committee assists the board by closely monitoring revenues and expenditures and overseeing the investments
 - Ask the finance committee to identify questions relating to the bar's long-term financial health with which the board should be grappling

- Ask the finance staff and/or the treasurer to report on notable variances in the budget and specific problem areas so that the board knows where to focus its attention
- Have an annual external audit, and meet in executive session with the auditor

Be especially attentive to:

- Capital projects; building and technology projects are susceptible to overruns
- Financial controls, especially how cash is managed
- Periodically changing auditors
- Ensuring there is turnover in the treasurer position

**2. “Maybe we can get a better deal on office supplies”
(aka the board that gets stuck in the weeds)**

The board’s engagement with the finances is essential, but occasionally the board’s level of attention swings too far the other direction. How many times have we heard about a board that spends half the meeting on a seemingly miniscule line item?

At the board level, you should be asking yourself these sorts of questions:

- Does our budget match our priorities? In other words, are we spending our resources on the things that are most important to us?
- Did we budget appropriately? Were our variances generally within 10% and, if not, do we know why?
- Are we anticipating and addressing changes in the profession or in our environment that may affect our long term financial health?

If you have specific resource-saving ideas, we suggest giving them to your staff or finance committee to explore and integrate, as appropriate. These sorts of suggestions are typically less appropriate for full board discussions.

You may wonder if your bar’s revenues or expenditures are generally in line with similarly-sized bars. That’s a legitimate question. Ask for context from your finance staff or call the ABA Division for Bar Services for benchmarking information.

**3. “Let’s hire the college kid to redo our Website”
(aka the short-sighted board)**

This year, even the best-prepared bars had to react and adjust to the economic meltdown. Some bars were exceptionally strategic. Several bars took losses in CLE so that they could offer more free or discounted programs to members, building member loyalty in the process. Many bars dipped into reserves, recognizing that these were precisely the “rainy days” those funds were intended to support.

However, we also saw boards that let their concerns about the economy get the better of them. It indeed may be prudent to approach our organization’s finances conservatively, but be aware of the impulse to do everything on the cheap. You get what you pay for and, over time, you may end up spending more. Keep your board focused on the future and where the organization wants to end up. With the ends in mind, it’s easier to decide where the bar should be investing.

**4. “CLE should be making more money”
(aka the bar that lacks a governing philosophy relative to finance)**

Perhaps CLE *should* be making more money. But here’s what we see. As bar associations are feeling the economic crunch, programs are being squeezed to generate still more revenue. In the current environment, boards need to have the discussion anew:

- What are we providing to members as a service? What's revenue-driven? Where is the balance? For example, is CLE primarily a revenue producer or a service? What is our expectation? If the expectation for CLE changes (and, for example, we charge more or offer less), what's the likely impact on our members?
- Similarly, how much should dues subsidize events that are used by a small percentage of the members? For example, is it appropriate for the bar to take a \$20,000 loss on a social event that is attended by a quarter of its members? Or should social events be expected to break even? Again, what's the expectation?
- How much revenue do we want to receive from dues and from non-dues sources? What's the appropriate balance?

As a side note, few bar associations saw a precipitous drop in dues revenue this past year. Dues, in fact, were relatively stable. Where bar associations saw the greater drop was in event attendance, CLE, product purchases and other "extras." This is an important point to keep in mind as we ensure that our revenue streams are appropriately diversified.

5. "I know enough. This is just like every other volunteer experience I've had" (aka the board member who doesn't educate himself)

Assumptions get us into trouble. Make sure you attend your board orientation, if the bar association or foundation offers one. Ask questions. Avail yourself of the resources available to you, including:

- Your bar or foundation staff
- ABA Division for Bar Services
- Other bar colleagues

Other resources:

ABA Division for Bar Services IRS 990 Resource Page: www.abanet.org/barserv/infocenter

IRS Tax Information for Charities and Other Nonprofits: www.irs.gov/charities/index.html

Rubin, Dan, editor. *Bar Financial Management: A Basic Guide*. ABA Division for Bar Services, 2003.

McMillan, Edward J. *Budgeting and Financial Management Handbook for Not-for-Profit Organizations*.

American Society of Association Executives, 2000.

¹ "Fiduciary Responsibilities" from BoardSource *available at* <http://www.boardsource.org/Knowledge.asp?ID=1.265>.