



BoardLink

Your connection to effective bar governance

Understanding What Your Board's Role Is and Isn't

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Even the rookie board members among us can recite [a few roles that are applicable to all boards of directors](#). The board has the ultimate authority and responsibility for the organization. The board is responsible for setting direction. It is responsible for hiring and supporting the executive director, if the bar has one. However, these roles play out differently depending on a number of factors: the bar's maturity, its budget, and the size of its staff. It also plays out differently depending upon the roles of other entities and individuals within the bar such as the executive committee, the finance committee and the executive director.

How well do we stop to acknowledge that boards of different organizations operate differently? And even in the same organization, roles evolve. The roles that existed fifteen years ago have shifted. We'd be well served if we found some time to discuss and define what our expectations are of our boards, especially relative to the other entities within the bar.

How do we do that?

An [effective board orientation](#) and a [schedule of authority](#) are terrific tools to help your board better understand its role. We also can learn a great deal from other boards' experiences, and that's what we'll focus on here. Confusion about the board's role crops up repeatedly in the same kinds of situations, so we've highlighted four of these situations for your consideration.

Would your board agree on how each of these scenarios should be handled? We hope you'll incorporate them and the attached questions into discussions at a future board meeting.

Situation #1: During the budget approval process, a board member asks, "Why are we spending \$1,000 on supplies for our law-related education programs?"

Half the board thinks: "Joe is exercising his fiduciary duty and is trying to ensure the effective allocation of the bar's resources." The other half of the board thinks: "We have important, high-level work to do. Why is Joe getting so bogged down in the details?"

In fact, both positions are right. The board is responsible for ensuring resources are used appropriately. However, most boards let a finance committee work through budget details so that the board can focus on broader questions like: How much of our budget should we devote to member services? Are we putting enough resources behind our communications efforts? Are we receiving the desired return on investment of resources in the public education area? Are we allocating our resources appropriately, or are we spreading ourselves too thin?

Governance expert, Karen Nason, of the Association Management Center, suggests that we think about the board's work in terms of magnitude. If your board only meets for one hour a month or four hours a quarter, what's the magnitude of issue you want to be spending your time on?

So, what topics meet your board's "importance threshold?" What can the board otherwise delegate to a finance committee, an executive committee or to other staff? Here's a fiscal example. A \$1,000 expenditure at a bar with a \$100,000 budget may be an appropriate topic for board discussion, but what if the organization's budget is \$1 million? Can the board identify and delegate items that fall under the importance threshold so that it's able to devote its time to high-impact issues like: How should our association respond to this rapidly changing legal economy? How can we ensure our members are well equipped in this environment? How do we ensure that the needs of the community are served?

Situation #2: A board member observes, "We're sort of floundering right now. Our executive director really needs to step up and help us figure out where we should be going."

I suspect most board members recognize that strategic thinking and planning is one of the board's most important responsibilities. While the executive director should actively participate in these endeavors, planning requires a diversity of voices and views. Most governance experts suggest that 25-50% of a board's time should be spent thinking about the organization's near- and longer-term future.

This scenario also raises a broader issue that we often take for granted: our understanding of the board's and executive director's roles. Executive director roles do vary from organization to organization. Executive directors take the lead on some issues, work in partnership with the board on others, and sometimes serve in a more supporting role. For example, the executive director might be responsible for recommending the appropriate staffing structure or new technology necessary to support the bar's initiatives. That same executive director might work in partnership with the board to develop the bar's strategic plan, and provide support to the board as it debates a policy position by contributing context and historical perspective.

Since boards are more effective and less likely to micromanage when they understand where authority has been delegated, it's worth exploring the following questions: Does your board understand where the executive director historically has taken the lead? Where he works in partnership with the board? Where he supports the board? Do these historical expectations continue to make sense in today's environment? When expectations of the executive director evolve over time as they inevitably will, do the board and executive director have a forum to talk and ensure those expectations are clear?

Situation #3: A board member confides, "A bar staff member mentioned that his supervisor gave him a negative review for abusing the bar's flex-time policy and constantly coming in late. He's always going above and beyond for my committee, so it's hard for me to imagine he's such a performance problem. I gave him some suggestions about how he might handle this, and told him to call me if it comes up again."

We receive innumerable requests for assistance and advice in dealing with situations where the board or individual board members are involved in staff management issues. While these situations can indeed be complicated, a few fundamental points are worth reiterating:

1. The executive director is the board's one employee.
2. The executive director is responsible for hiring, firing and managing the rest of the staff.
3. To assist the executive director with that management responsibility, the board should support the bar's internal processes for dealing with conflict or performance problems.

Since the aforementioned situation was not a serious grievance, the accepted wisdom is this: 1) the board member should first encourage the employee to discuss the issue with his supervisor; 2) if the employee is uncomfortable doing so, the employee should be encouraged to bring the issue up the chain of command, either to that person's supervisor or to the executive director. If the issue is a serious grievance, the employee should be instructed to speak immediately with the executive director, or to otherwise follow the

grievance procedures that are outlined in the bar's employee handbook. There are few situations when it is appropriate for a board member to intervene on an employee's behalf. What are your board's protocols?

While board members are generally not involved in hiring, firing and employee management matters, there are exceptions. Occasionally, volunteer leaders may be asked to help screen candidates for high level positions like bar counsel or journal editor. On the other side, some bars make it a practice to have a bar officer or bar employment counsel sit in on termination discussions. If board members have concerns about how the executive director is handling a staff management matter, those concerns should be raised immediately and directly with the executive director.

So, does the board have any regular role in human resource matters? Yes, it does. The board or a board committee may have a role in establishing or recommending:

1. Personnel policies and the employee manual
2. The annual salary and increase pool (in cooperation with the finance committee)
3. Salary ranges for each position
4. A competitive benefits package
5. A grievance process for serious employee matters

An excellent and thorough discussion of The Nonprofit Board's Role in HR can be found [here](#).

What is your board's role relative to human resources issues?

Situation #4: A board member remarks, "I don't know why we even have a board. All we ever do is rubber stamp Executive Committee proposals."

As the speed of business has accelerated, executive committees have become an important part of the efficient functioning of bar associations and foundations. Most executive committees were established to handle pressing business that arises between board meetings. How we define "pressing business" is always the topic of debate. The executive committee must constantly evaluate what decisions are appropriate for it to make, and what decisions go before the board. Much of the time, the arrangement works well.

However, if the delineations of authority aren't discussed from time to time, tensions can arise. Some executive committees – perhaps like the one in our scenario – establish the board meeting agenda and, appropriately, try to make efficient use of the board's time. But their means for doing so – orchestrating the discussion and presenting vetted options or recommendations – can circumscribe and sometimes preclude open and dynamic discussion. With little to do but ratify, boards like these tend either to disengage, or to engage in political, rather than problem-solving, sorts of behavior.

The executive committee derives its authority from the board. As such, the board should periodically revisit in which areas the executive committee is empowered to make decisions, if only to re-establish the board's own role and ensure it remains engaged. Tools like [Great Boards' Executive Committee Charter](#) and Bob Harris' [Schedule of Authority Kit](#) are great resources to guide that conversation, along with the following questions:

Given the bar's vision and strategy for the next 3-5 years, what kinds of decisions should the executive committee be empowered to handle? What sorts of issues would benefit from the more diverse range of opinion and perspectives that exist on the board? How does the executive committee communicate its discussion and decisions to the full board of directors? Are those communications provided within a timeframe that's appropriate?

In Conclusion

We can do our best to understand the general roles and responsibilities of boards, but the lines of responsibility aren't always clear. And what is true today may not be true tomorrow. So, we board members have a responsibility to talk about where the lines are for our organization. That sometimes means interrupting a substantive discussion to ask, "Is this question really in the board's purview?" or "Is this issue really the best use of our time?"

Finally, use a [board evaluation tool](#) to evaluate how well the board is staying on task and doing the work the organization needs it to do. Not the work the finance committee can do. Not the work the executive director can do. But the work that only the board can uniquely do. If we stay attentive to this, we'll all raise our game.