Bar Governance that Meets 21st Century Demands

March 14, 2019
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Association Management Center
Rate of Change….

1) …for the practice of law?
2) …for the capacity to make timely, consequential decisions for your Bar association?

“Tomorrow’s speed of change will make today look like we’re crawling.”

Peter Diamandis, Singularity University
How has this (Σ of ▲) impacted the way you spend your F2F time as a Board?
Got Gov…?

- Legal description
- Chait & colleagues
- Modified Chait
Audience Survey

- **Scope**
  - City/State/Region/Specialty/Other

- **Structure**
  - *Who* has *What* decision authority? (Board, Council, Membership, Other?)
    - Amend bylaws
    - Elect officers
    - Elect directors
    - Approve budget
    - Approve dues change

- **Influence (Strong, Moderate, Low)**
  - Past Leaders
  - Emerging Leaders
  - HOD/General Assembly/Membership
  - Board
Why are associations looking at governance?

1. More timely & nimble
2. To be entrepreneurial
3. Increasingly competitive environment
4. Limited resources (time, talent & treasure)
5. Generational

“Feedback from younger members indicated that they are discouraged from being more involved in leadership because it is viewed as a long and bureaucratic process.”
Governance Trends:

• Structures are being designed or reconfigured for flexibility
• Moving away from the traditional, hierarchical array of governing bodies
• Reconfigured to better leverage volunteer resources
• Realigned structures that are less political and more knowledge- and skills-based.
• Multi-year commitments are declining.

• Association Forum of Chicagoland Professional Practice Statement
Governance Trends:

- Governing bodies are becoming less procedurally rigid.
- **Representative** forms of governance are replaced by more direct member input.
- Staff is viewed as a governance partner.

*Association Forum of Chicagoland Professional Practice Statement*
Impediments to Change….

1. Has your governance structure *led* or *lagged* the rate of change to adequately advance policies and programs?
2. What are the obstacles to changing the capacity to make decisions
From...

Command & Control
- ABA
  - Founded in 1878
  - Bylaws & Constitution
  - House of Delegates

To...

Distributing Authority
- Plenty of Committees & TF’s
  - But, who has what authority to advance strategy?
High Performing Boards

- Duty of Loyalty
- Board Effectiveness
- Board Engagement
- Strategic Framework
- Board Selection Process
- Culture and Trust
- Transparency and Decision Making
Duty of Loyalty

• Be faithful to the organization
• Put aside personal or business agendas
• Act in good faith
• Avoid and disclose conflicts of interest
• Avoid expropriation of business opportunities
Potential Conflict

Duty of Loyalty to State

Duty of Loyalty to affiliate or region
Duality of Interest

• Loyalty is owed *equally* to both the State and the affiliate or division.
• Fiduciary duties are not “hats” to be removed or exchanged.
• If Governors don’t feel this tension….they probably should.
Board Effectiveness

- Drivers of organizational performance
- Board effectiveness factors
- Board/staff partnership
- Individual board member responsibilities
Boards curate strategy and embrace a culture driven by strong interpersonal relationships - Will Brown

“Foster a Board culture that promotes trust, teamwork, candor and constructive conflict.” - Nancy Axelrod
Board Effectiveness

Board Dynamics
- Team Performance
- Clarity of acceptable board behavior

Director Engagement
- Meeting preparedness
- Board’s effectiveness in addressing underperforming directors

Board/Staff Partnership

• Two Elements, One Team
  – Board focuses on governance, vision, strategically moving forward
  – Staff influences vision and enables success
  – Staff manages the day to day operations
  – Consider it a partnership, alliance, collaboration between board and staff to identify, articulate, and achieve goals of the organization
A Board Member’s Responsibility

Prepare
- Read and Understand Materials
- Determine Expectations

Engage
- Attend
- Participate (Constructive Inquiry)
- Respect Opinions

Decide
- Support Decision

Follow Up
- Meet Deadlines/Assignments

Support
- Ambassador/Advocate
Board Engagement

• Dumb down decisions
• Styles
• Ability to respectfully disagree/courageous conversations
• Unity in command
• Oversight and the capacity for micro-management
Problem of Practice

• Active board member participation is difficult and important.
• Implications of limited engagement
  – Poor oversight
  – Inferior strategic choices.
• Result is weak and ineffective organizations.
Good Governance Requires Engagement

Effective governance by most nonprofit boards is rare and unnatural. Seldom do they “...harness the collective efforts of accomplished individuals to advance the institution’s mission and long-term welfare.”

Taylor, Chait, & Holland, *New Work of the Board, HBR*
Learning Styles

**EXTROVERT**

- Good conversation skills
- Greater risk-taking
- Eager to put a personal stamp on others' ideas
- Energized by people
- Reward-sensitive
- Have a wider circle of contacts considered as friends
- Use small talk to find commonalities on which to build connections

**INTROVERT**

- Good listening and questioning skills
- Careful thinking
- Reflective
- Energized by solitude
- Downplay rewards
- Have fewer but deeper relationships
- Dislike small talk
“(People) decide far more problems by hate, love, lust, rage, sorrow, joy, hope, fear, illusion, or some other inward emotion, than by reality, authority, any legal standard, judicial precedent, or statute.”

Cicero
Encourage Diverse Viewpoints; yet…

Diversity in Council, unity in command.

Cicero
Having Courageous Conversations

1. Frame a generative issue
2. Identify key points/assumptions in drafting a recommendation
3. Challenge the assumptions
4. Prepare a list of qualms
5. Divide qualms into cognitive and affective categories
6. How likely/how important
7. Celebrate a wise, consequential decision
What Boards Should Do

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<tr>
<th></th>
<th>Program</th>
<th>Finances</th>
<th>Risk Management</th>
<th>Legal and Moral</th>
<th>Evaluation of ED</th>
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<td>Mitigation</td>
<td>Ethical Practices</td>
<td>Support</td>
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<td>Evaluate</td>
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<td>Investments</td>
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Stewardship
What words or phrases would you use to describe the role of ‘oversight’ for the board?

- Micromanaging
- Responsible/Accountable
- Trust but Verify
- Collaborative/Consensus Building
- What did we miss?
- Visionary
Questions:

– What characterizes a great board meeting?
– What things detract from an effective board meeting?
– What are the biggest influencers of decision-making in your boardroom?
– How do we maintain our accountability as a Board and yet release control to staff?
MCA Vision: Metal is the construction material of choice for the building envelope

1. CALL TO ORDER – John Miller, Chairman (8 am)

2. WELCOME AND OPENING REMARKS – Miller


4. GENERATIVE DISCUSSION
   - Implications of Commercial Construction Rebound in 2019
     Where is MCA vulnerable with the forecast of another year of no growth in the market: membership, trade show, and other programs? What are the implications of no growth to member companies?
   - Projected Skilled Workforce Shortage
     Impact on member companies – their employees, their customers’ workforce? In five years will there be enough skilled workers to install our high-end products?

5. STRATEGY
   - ADVOCACY/PUBLIC POLICY
     MCA is the recognized leader influencing public policy affecting the use of metal in the building envelope.
     Legislative Issues – Committee chair & staff liaison
     Action: Discuss and approve position statement on energy tax credit
     Research and Code Initiative – Committee chair & staff liaison
     Action: Discuss strategy for 2019 code meetings
   - MEMBERSHIP
     MCA’s membership has grown in quality and engagement through penetration of new and existing industry segments
     Membership Discussion – Committee chair & staff liaison
     Action: Discuss and approve new membership category
     Communications Strategy Discussion – Committee chair & staff liaison
     Action: Discuss and approve messaging strategy

6. COUNCIL AND COMMITTEE INITIATIVES
   Issues requiring Board direction or decisions.

7. 2020 BUDGET DISCUSSION/APPROVAL

8. RECAP OF DECISIONS MADE

9. CONSENT AGENDA
   a. Approval of Minutes – May 11, 2018
   b. Committee Appointments
   c. Trade Show Report
   d. Committee Reports
   e. Future Board Meetings Schedule

10. ADJOURNMENT – John Miller, Chairman (11:30 am)
What Boards Should Do

Stewardship

- Program
  - Confirm
  - Monitor
  - Evaluate

- Finances
  - Budget
  - Statements
  - Audit
  - Investments

- Risk Management
  - Mitigation
  - Compliance
  - Cyber Security

- Legal and Moral
  - Ethical Practices
  - Conflicts of interest
  - Social Media Policy

- Evaluation of ED
  - Support
  - Assess
  - Compensate
What words or phrases would you use to describe the role of ‘oversight’ for the board?

- Micro-managing
- Responsible/Accountable
- Trust but Verify
- Collaborative/Consensus Building
- What did we miss?
- Visionary
Competence

• Caliber of CFO and Finance Staff
  • Scholastic/competence
  • Performance
• Caliber of/Review by Independent Auditors
• Competence of Investment Advisors
Process

- Budgeting process
- Audit process
- Communicating process
Board Selection Process: Advancing Performance in Associations

William Brown
Professor and Director Center for Nonprofits & Philanthropy
Bush School of Government & public Service
Texas A&M University

Mark Engle, DM, FASAE
Principal
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Cross-Cutting Themes

- Structure of NomCom
- Process
- Diversity
- Composition
- Candidate Evaluation
- Election Methodology
- Role of CEO/Staff
Competencies

Group Skills
- Team Orientation

Interpersonal Skills
- Communication
- Relational
- Influence
- Reputation

Personal Skills
- Strategic
- Innovative

Technical Skills
- Knowledge of the field & org
- Expertise & Experience

Personal Attributes
- Integrity
- Commitment
- Capacity

What composition mix does your board need?
## Evaluation Matrix

### Demographic Snapshot

<table>
<thead>
<tr>
<th>Organization</th>
<th># of Directors</th>
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<tr>
<td>International</td>
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<td>Retail</td>
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<tr>
<td>Office</td>
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<tr>
<td>Industrial</td>
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<td>Regional</td>
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<tr>
<td>Local</td>
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<table>
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<th>Asset Class</th>
<th># of Directors</th>
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<td>Residential</td>
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<td>Retail</td>
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<td>Office</td>
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<tr>
<td>Industrial</td>
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</table>

### Expertise/Experience

- Knowledge of the Field
- Experience
- Communication
- Influence
- Innovative
- Integrity
- Team Orientation
- Commitment
- "Future of Work" - Skillset of the future
- Technology
- Futurist for (the profession)
- "Community" Strategist
- Marketing Mindset
- Talent Development Mindset
- Credentialled

<table>
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<tr>
<th>Career Level</th>
<th># of Directors</th>
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<tr>
<td>Early</td>
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<tr>
<td>Mid</td>
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<tr>
<td>Senior</td>
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<tr>
<td>Director</td>
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<table>
<thead>
<tr>
<th>Gender</th>
<th># of Directors</th>
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<tr>
<td>Male</td>
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<tr>
<td>Female</td>
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### Candidate Name: Anita Sanchez

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<th>Criteria</th>
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<td>Out</td>
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<tr>
<td>In Prior</td>
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<td>3</td>
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<tr>
<td>Out Prior</td>
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</table>

Total Score: 27
Preliminary Recommendations

1) Role & Structure of NomCom
   a) Leadership Development Committee
   b) 3 appointed & 3 elected (3-yr terms), IPP chairs
   c) Authority
   d) Rigorous criteria to serve on NomCom

2) Process
   a) Detailed application w/Self-assessment
   b) Wide call for nominations
   c) Transparency/de-mystify
   d) Recruitment firm
   e) Consistency in process

3) Competencies
   a) Clarity and communication; expectations
   b) Identify gaps
   c) Align with organizational strategies

4. Diversity & Balance
   a) Demographics
   b) Contested & uncontested
   c) Re-nominations

5. Candidate Evaluation
   a) Scoring Matrix
   b) Interviews/background checks

6. Election Methodology
   a) Slate vs competitive/partial competitive
   b) IPP as Treasurer
   c) Wild Card

7. Role of CEO
   a) Input
   b) Matrix and process czar
   c) Communicator
   d) Long term perspective
Culture and Trust

Axelrod/Sonenfeld

Trusting Relationships Framework

Trust – Built on Competence & Relationship (McAllister)
The Strength of Trust
Trust and Control

CONTROL

Competence and Reliability
Care and Concern

TRUST

Negotiated Accountability
The Role of Transparency in Association Governance

- **Transparency in Gathering Information**
  - member needs assessments
  - program evaluations
  - environmental scans
  - committee/task force/staff recommendations

- **Privacy in Board Deliberations**
  - in a timely manner from the board as a body
  - to members and other stakeholders
  - about decisions made including rationale

- **Transparency in Communicating**
1. Being observed distorted behavior instead of improving it. (p 4)
2. Efficiency improves when transparency is limited. (p 6)
   
   In a hospital emergency department study, average patient time in the department fell by more than 40% with no decreasing quality by focusing transparency around smaller teams with a sense of private space as opposed to larger teams.

3. Transparency curtails experimentation that is necessary for improvements. (p 8)
Questions?
Takeaways?
Thank you!

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Successful Approaches to Tackling Significant Governance Change

March 14, 2019
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Association Management Center
Governance: What is it and what does it look like?
Unusual Elements in Association Boards

- Planned, frequent turnover
- Subject matter experts
- Peers, collegial relationships (leaders and customers)

Even MORE Unusual Elements in Bar Association Boards

- Regulatory function
- Public Meetings
- Public Board Members
- Representational governance
- Complexity
- CEO Reporting relationship
- Limited Authority
Successes and Failures

• ASHA
• ACHE
• ....coming to a State Bar near you
• ABC 😊 😞
ASHA Case Study
Strategic Decision-Making Process of the Board

1. Strategic issue identified
2. ‘Charter ’approved
3. Task Force appointed
4. Consultant retained
5. Data collected
6. Analysis and Education
7. Options drafted & shared
8. Conflict identified, managed, and/or pre-empted
9. Final recommendation prepared
10. Vote Conducted
Methodology

Discovery
- Conduct review of ABC materials
- Engage in discussions with the staff and committee leaders to get their insight and perspectives on governance.
- Further clarify goals, deliverables and timeline for the project.

 Interviews
- Conduct interviews with key stakeholders, including current and past volunteer leadership, and staff to inform relevant issues for investigation.
- Conduct online quantitative survey of current and past leaders; include affiliate leadership as appropriate.

 Findings
- Prepare initial findings
- Compare ABC practices with best practices of effective Boards of Directors and Committees
- Review preliminary findings with governance committee and staff

Recommendations
- Present findings in which ABC practices are compared to best practices of effective boards
- Discuss implications with Board of Governors
- Present recommendations
Proposed Revised Principles

1. Change over time
2. Prioritize strategy over operations
3. Competency-based composition
4. Different skill sets of directors; delegate affiliate oversight?
5. Smaller board – 15 to 20
6. Minimize and manage duality of loyalty
7. Broaden representation of ____ by avoiding dual representation from the same affiliate
# Global Process and Composition

<table>
<thead>
<tr>
<th>Issue</th>
<th>Leading Practice/Best Practice</th>
<th>ASIS</th>
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</thead>
<tbody>
<tr>
<td>Nominating Committee</td>
<td>LDC</td>
<td>Phased in</td>
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<tr>
<td>• Composition</td>
<td>Immed Past Chair, 4-6 others (half current board, half elsewhere)</td>
<td>2 current board (chosen by board), 3 elected by membership; chaired by Immed Past Pres; 6 total members; chair votes only in case of tie; 3 year terms for elected</td>
</tr>
<tr>
<td>• Authority</td>
<td>Nominating Committee sole authority</td>
<td>Workstream to decide</td>
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<tr>
<td>Board Composition</td>
<td></td>
<td></td>
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<tr>
<td>• Officers</td>
<td>Chair, Chair-elect, Sec/Treas (ascension of 3)</td>
<td>President, P-E, Sec/Treas (ascension of 2)</td>
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<tr>
<td>• Officer terms</td>
<td>1 year each</td>
<td>1 year each</td>
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<tr>
<td>• Officer elections</td>
<td>Board</td>
<td>Board (competency based)</td>
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<tr>
<td>• Directors</td>
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<tr>
<td>o Number</td>
<td>12</td>
<td>9-13</td>
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<tr>
<td>o Terms</td>
<td>3 years, 2 terms maximum</td>
<td>3 years, 2 terms maximum as director</td>
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<td>o Paths</td>
<td>Related entities</td>
<td>1 NA board rep, 1 Europe board rep, Foundation Chair, other regional boards later, Pres of CSO Center</td>
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<tr>
<td>o Other</td>
<td>• Outside directors, competency based</td>
<td>5 at-large members, competency/need based, slated by NomCom and ratified by board</td>
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<tr>
<td>Fiscal Year additional</td>
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<tr>
<td>Issue</td>
<td>General Assembly</td>
<td>Council of Delegates</td>
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<tr>
<td>Example: Regional Budget</td>
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### Setting Direction

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<td>Vision (Where)</td>
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**Codes:** Inform, Refine, Lead, Decide, Implement
Questions?

Takeaways?
Thank you!

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