

# Want to Join a Nonprofit Board and Have a Rewarding Experience? Increase Your Odds with Due Diligence

~ Michael J. Wilson

**Membership on a nonprofit board can require a big investment of both time and money, so make sure you are a good fit with the organization.**

Our clients join nonprofit boards for a variety of excellent and well-intentioned reasons. They are passionate about a particular cause, type of art, or the school that their children or grandchildren attend. They want to do good and give back. They want to become involved in their community and connect with their peers. However, sometimes the expectations of a board member are significantly different from what he or she experiences, and this can lead to a very disappointing board experience. So how does a prospective board member know if a particular nonprofit organization will be a good fit?

Let's assume that an organization in which you have an abiding interest has asked you to join its board. If you are thinking about accepting a position as a member of a nonprofit board, before taking the plunge, you should consider several issues and ask yourself and the nonprofit organization a number of questions to ensure that your board service will be as rewarding and fulfilling as you hope, as well as beneficial to the organization. In short, you should conduct due diligence not unlike what you would do if you were switching employers or making an investment. After all, the nonprofit organization will require a significant investment of your time—and usually of your money.

## **Size and Structure**

Not all nonprofit organizations and boards are alike. They have different resources and structures and make different demands on their board members. For example, larger nonprofit organizations typically have a large professional staff; therefore, as a board member, you may have less control and less direct involvement, and you may be relied upon more for fundraising and more detached oversight. On the other hand, smaller nonprofit organizations may require you and their other board members to roll up your sleeves and take on functions and activities that would otherwise be handled by staff in the larger nonprofit organizations. While this may not be appealing to some, others may relish a more “hands-on” role. Neither structure is right or wrong, but one may appeal to you more than the other.

Some boards have a large number of board members and are unwieldy as a consequence. This may result in a feeling of detachment and the sense that you don’t have enough impact on the organization. In an attempt to remedy the unwieldiness of a large board, the members may choose a subgroup to serve on an executive committee that can reach consensus more readily. Although this approach may streamline decision-making, if not handled appropriately, you and other board members who are not part of the executive committee may feel even more detached from the organization than before.

## **The Board’s Role in Fundraising**

Securing donations is an integral part of board service. From a board recruitment standpoint, access to funding can be a top priority, in addition to having board members who are good stewards for the organization. To quote the CEO of a large, local nonprofit organization, “no money, no mission.” The nonprofit’s CEO or executive director can often provide the best insight into the fundraising expectations placed on board members, including how much you are expected to donate individually.

As a prospective board member, you should consider how much of an impact your donations will have on the organization. A \$5,000 gift to a smaller nonprofit organization is certainly going to have a much greater impact on that organization than an identical gift to a much larger nonprofit organization. It may come down to the question of whether you want to be the “big fish in a small pond” or whether you prefer not to draw the attention of a “big donor,” contributing to an organization where your donation will be relatively modest. How you view this issue may be a significant factor in whether you seek to join a smaller organization or a larger one.

It is also a good idea to attend at least one of the nonprofit organization’s fundraising events before joining the board. This can better illustrate the nature of the organization’s fundraising efforts and your expected role as a board member in fundraising activities.

### **Time Commitment**

As a prospective board member, you should attempt to understand how much of a time commitment board service will require. How long are the board terms? How often are board meetings held? Are they held every month or every other month, with committee meetings in between? How many committees are board members expected to join? Are there annual board retreats and, if so, when are they usually held and for how long?

Participation on a board committee can have a significant impact on your time commitment, and the time commitment for committee members is rarely smooth throughout the year. For example, a marketing or gala committee is generally going to be busiest during the season and less busy during the summer months. Likewise, an audit committee will be busiest after the organization's fiscal year-end, because that's when the annual audit will be conducted and the organization's income tax return will be prepared and filed. Since staff is busy during the season with marketing and fundraising efforts, the fiscal year-end is often June 30 or September 30.

If you expect to be absent from Florida for all or large parts of the summer, you should inquire as to whether board and committee meetings are regularly held during the summer months. Another good question is whether participation by telephone is permitted.

### **Financial Information**

You should always conduct some financial due diligence regarding the organization. A first step is to review the most recent copy of the organization's audit report, including the financial statements (income statement, balance sheet, and cash flow statement) and "management letter." Be sure not to overlook the notes to the financial statements, as these are oftentimes a critical component of the financial statements. The notes often address issues that are not obvious from the figures in the main portion of the financial statements.

The management letter identifies those areas of operations or procedures that the auditor believes could be improved. The most common issues raised in a management letter deal with internal controls, which are the processes, systems, and internal procedures that help to ensure that all financial transactions are recorded properly. An important question is whether the nonprofit organization has implemented the suggested improvements contained in the previous management letter.

Although sometimes not legally required, most nonprofit organizations obtain an independent audit of their annual financial statements. A small nonprofit organization may not obtain an independent audit because of the cost and the scarcity of the nonprofit's resources. If a nonprofit organization does not have an independent audit, a prospective board member should ask why and understand the reasons for such a decision.

Other items you should examine are the recent annual income tax returns of the nonprofit organization. These returns can provide information not found in the financial statements. Nonprofit tax returns and other information can be found at [www.guidestar.org](http://www.guidestar.org).

### **Legal Obligations of a Nonprofit Board Member**

As a prospective board member, you should understand the legal obligations of being a board member of a nonprofit organization. Under Florida law, directors of a nonprofit organization serve in a fiduciary capacity and have two primary fiduciary duties that they owe to the organization.

The first fiduciary duty is the duty of loyalty. This duty requires you to act in the best interests of the organization rather than out of self-interest or self-dealing. You should inquire as to whether a nonprofit organization has a conflict of interest policy regarding transactions between the nonprofit organization and the organization's directors and officers and other key employees. The conflict of interest policy should require these insiders of the organization to annually certify their compliance with the policy. Effective July 1, 2014, amendments to the Florida Charitable Solicitations Act require most nonprofit organizations to have a conflict of interest policy with an annual certification requirement.

The second fiduciary duty is the duty of care. When voting on issues or otherwise making decisions as stewards of a nonprofit organization, the duty of care requires that you make decisions in good faith, with the level of care that an ordinarily prudent person in a like position would exercise under similar circumstances. Therefore, before voting on an issue, you should always obtain adequate information in order to make a reasonably informed decision. In discharging the duty of care, you are entitled to rely upon information prepared or presented by (i) the officers or employees of the organization; (ii) legal counsel, accountants, and other advisors to the organization; and (iii) other board members. As long as you are well-informed, without exhaustingly researching every issue, you will not be liable for an honest and reasonable decision.

You also have a legal obligation to make sure the nonprofit organization complies with applicable law, its mission, and the terms of its Articles of Incorporation and Bylaws. This obligation is sometimes referred to as the "duty of obedience."

### **Insurance**

It is important for you to inquire about whether the nonprofit organization has directors and officers ("D&O") insurance coverage, the type of coverage, and the coverage amount. D&O policies generally cover actual and alleged wrongful acts that constitute a breach of fiduciary duty, including employment-related claims (such as discrimination, harassment, and wrongful termination), mismanagement of assets, and misuse of grant funding (i.e., using grants inconsistently with the grant

requirements). D&O insurance generally does not cover bodily injury or property damage. Generally, your personal liability insurance, including umbrella coverage, is not going to cover the types of claims covered by a nonprofit organization's D&O insurance policy.

There are no standard D&O insurance policies, so you must evaluate each one separately. A few of the many issues to be considered are:

***Claims-Made Coverage.*** D&O insurance policies are typically "claims-made" policies, which means they cover lawsuits filed or claims made during the policy period, regardless of when in the past the alleged wrongful act occurred. This is generally different from other types of insurance policies, such as general liability, automobile, or workers' compensation insurance, which cover alleged wrongful acts incurred during the policy period, regardless of when the subsequent lawsuit is filed.

***Tail Coverage Issues.*** Because most D&O policies are claims-made policies, if the policy is canceled or not renewed and a lawsuit is subsequently filed, the policy will not cover the lawsuit. Therefore, when considering whether to cancel or non-renew a D&O insurance policy, the analysis should consider whether tail coverage (also known as "extended reporting period") can be purchased and, if so, for what period of time.

***Coverage Amount.*** You should give careful consideration to the insurance policy coverage amount. Most D&O insurance policies include the cost of defending a claim (which includes attorneys' fees) within the coverage amount. This means that the defense costs will reduce the amount of coverage available to settle the claim. Also, if more than one director is sued and directors start pointing their fingers at each other, then each director may need his or her own attorney, which can quickly dwindle the coverage amount available to settle the claim.

### **Conclusion**

The purpose of this article is not to scare you away from joining a nonprofit board. Instead, we hope it helps you make a better-informed decision and pick the best nonprofit organization for you. We hope your board service is a rewarding and fulfilling experience for you.



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