

# **Checklists for Excellence in Bar Management and Governance**

# **ABA Division for Bar Services: Connecting Leaders & Resources**

## **In a post-Enron world, bar leaders keep close eye on funds**

By Robert J. Derocher

As the newest member of the Board of Directors of the Westmoreland Bar Association last year, Jim Whelton began asking questions like, “What do we do with our investment income?”

While Whelton didn't believe anything improper or illegal was happening at the 485-member bar in southwestern Pennsylvania, “I didn't think we had all the t's crossed or the i's dotted,” he says.

Whelton's questions eventually led to the bar hosting a community seminar/CLE event this summer led by a financial planning expert. The seminar's title: “Protecting Yourself and Your Board From Fiduciary Liability in a Post-Enron World.”

“It's a timely issue,” Whelton says. “I take very seriously the fact that this is membership money I'm responsible for. This is the money for the future of our organization.”

The post-Enron world is certainly a world of caution, responsibility, and regulation for America's publicly traded companies. The financial debacles of Enron, WorldCom, and others have led to tighter financial and auditing controls—much of those spelled out in the federal Sarbanes-Oxley Act of 2002, an attempt by Congress and President Bush to avoid repeats of those failures.

That regulation—and general fiduciary concern—are also working their way into the world of not-for-profit organizations such as bar associations and foundations. While some bar leaders are unsure if state and/or federal laws will foist more requirements on their organizations, they would not be surprised if it happens.

Although many leaders don't believe the bar world is rife with financial abuse, the post-Enron climate is prompting some organizations to take another look at how they handle and account for money and the responsibilities of their leaders, making changes where necessary. It's a prudent course, they say, to assure their members—and potential regulators—that bar leaders are responsibly safeguarding the assets of their organizations.

“The days of, ‘We're here. Everything's OK,’ are gone,” says Whelton, referring to the fairly routine work of tracking budgets, audits, and investments for some bar and foundation directors, before anyone put the words Enron and fraud in the same sentence. “I think there are a lot of organizations out there that think they're doing things OK, but maybe they aren't.”

### **Changes on the horizon?**

Among other provisions, the Sarbanes-Oxley Act forces publicly traded companies to implement more stringent rules governing independent audits. It also places more responsibility in the hands of boards of directors and audit committees, and requires at least one member of an audit committee to be a “financial expert.”

While Sarbanes-Oxley currently is limited to public companies, many businesses are seeing a “cascade effect,” with private companies implementing many of the act's provisions on their own in anticipation of going public or being bought by public companies.

As for nonprofits, “A Sarbanes-Oxley-type act is on the horizon,” predicts Guy Sodano, director of administration for the North Carolina Bar Association and the bar’s Foundation Endowment. “I think it is just a matter of time before some of the noncriminal provisions become a requirement for nonprofits.”

And if the federal government doesn’t implement some of those provisions, individual states might do it instead. In New York state, Attorney General Eliot Spitzer has proposed that nonprofits with annual revenues of at least \$250,000 be required to demonstrate the independence of audit committees that certify financial statements and that they are free of contracting relationships with the organization.

It also might not be the state or federal governments that drive changes in fiduciary responsibility. Insurers that provide directors and officers liability insurance and other coverage are in a position to adjust their rates depending on how an association or foundation keeps its financial records and sets fiduciary policy.

The company that provides insurance coverage for theft and employee dishonesty for the Oklahoma Bar Association has recently requested copies of the bar’s audit report and management letter, says Craig Combs, the bar’s director of administration. “They’ve started asking more questions about our internal controls,” he says.

### **New preventive measures**

So what’s a bar association or foundation to do in this new era of fiduciary **oversight**?

For many, it’s a review of existing policies and procedures and making changes where necessary. In North Carolina, for example, the voluntary bar’s executive director and director of administration now provide the board of directors with written certification that the financial statements provided to auditors “fairly present” the operations and financial conditions of the association and foundation, Sodano says.

Additionally, the annual commitment letter to the auditors that was previously signed only by Sodano was delivered to and signed by the chair of the Audit Committee, a position held each year by the bar’s president-elect. That procedure is “more in the spirit of the Sarbanes-Oxley Act,” Sodano says.

In New York, the 70,000-member New York State Bar Association responded to its auditor’s concern this year by requiring double signatures on all checks, says John Williamson, associate executive director of the country’s largest statewide voluntary bar. For checks of higher amounts, at least one of those signatures must be from a bar officer.

The Sarbanes-Oxley Act requires companies to perform annual quality reviews of its auditors and rotation of lead auditors at least every five years, and it is in that vein that the NYSBA is now putting its auditing services out to bid after working with the same auditor for more than 15 years. “It’s just a sense that it’s a good thing to do,” Williamson says. “We have a heightened sense of staying on top of details, particularly as it pertains to financial items ... and that’s a good thing.”

There is a similar sense of heightened awareness at the Connecticut Bar Association, where three new handbooks for bar leaders were developed and delivered last fall, says Janis C. Jerman, bar counsel and director of administration and **finance**. One handbook is targeted at bar officers, a second at the Board of Governors, and a third at statewide delegates. The handbooks go into greater detail about fiduciary expectations, as well as meeting attendance requirements.

“We try to impress upon them their responsibility and accountability in regard to the finances of the organization,” Jerman says. She thinks the post-Enron message is being heeded, adding that “for the first several meetings, people brought their handbooks with them and were looking things up.”

The Washington State Bar Association is reviewing qualifications for a new auditor this year. The bar's executive director, Jan Michels, took a different step in that process by rejecting auditors upfront who had "subsidiary businesses they could hook us into," she says. "They would probably love to steer us to their consulting business."

The WSBA has also established a separate Sarbanes-Oxley subcommittee that has been charged with exploring how the act affects Washington lawyers and their Rules of Professional Conduct. The subcommittee will likely draft additional rules that deal with the act, Michels says, and she says the bar itself will abide by those rules (see "ABA, states, and SEC hash out lawyers' responsibility in corporate settings," page 6, for more on how this act affects lawyers).

Sarbanes-Oxley and Enron were "in the back of our minds," says Jane Curran, executive director of the Florida Bar Foundation, when a program was developed this year that immediately alerts foundation directors if there is a large up- or downswing in certain accounts. "It sets up a system of bells and whistles if staff was messing around," Curran says.

### **The role of the audit**

Along with the tweaks and changes to fiduciary policy over the last two years, bar associations and foundations still rely on tried-and-true methods of keeping track of finances. The independent outside audit is the backbone of that effort for many organizations, although even the audit is seeing some changes.

The latest audit performed for the New York State Bar Association included a new disclaimer, spelling out precisely what the auditors did and didn't do, Williamson says. That is a liability and responsibility by-product of the overall climate of the last two years, he explains.

Many bar associations and foundations, including the New York state bar, have a **finance** or audit committee that receives the report, reviews the findings, and reports out to the full board. In many cases, bar and/or foundation staff are asked to leave when an auditor makes a report to a board or committee, allowing auditors to address any potential concerns about staff actions.

Some organizations, such as the Washington state bar, also have an internal audit performed every four to six years to ensure staff accountability. "It says to our members, 'We're not pulling anything. We're not taking any extravagant trips,'" Michels explains. She also maintains an open records policy, inviting members to review financial documents at any time.

While audits can be costly, they can go a long way toward alleviating any fears that association members might have about how the organization's finances are handled. This can also alleviate some stress if the Internal Revenue Service comes calling—either as part of its ongoing market segment study of (c)(6) organizations, or for a standard audit. Knowing that an independent audit had been done was a relief to the Westmoreland bar when the IRS performed two audits of its own over the last few years, says Diane Krivoniak, the bar's executive director.

"It's a little bit frightening when they're here," Krivoniak says. "But [the IRS auditor] was very impressed by how organized we were. We were really OK."

A yearly audit helps board members of the Alaska Bar Association feel more comfortable, says Deborah O'Regan, the bar's executive director. There was a move a few years ago—ironically, at the suggestion of its auditor—to reduce the frequency of audits at her bar to every other year. The idea was rejected by board members. "They thought [the yearly audit] protected the board members and protected the staff," she says.

## Other methods

Not every association has an outside audit done, but that doesn't mean there aren't sound fiscal policies or controls in place. Helena Henderson is the executive director of the 2,600-member New Orleans Bar Association. She has a master's degree in business administration and uses a certified public accountant and a payroll service on a regular basis.

"The accounting function is spread out, so the checks and balances are there," she says. "I'm only authorized to sign checks up to \$500. I'm playing with other people's money here. It's not mine."

Henderson has spent 13 years at the New Orleans bar, and like many veteran executive directors, she combines her knowledge of her members with existing bylaws to help keep steady hands on the association's finances.

"I like to keep people around [on the board] for five years," says Beverly Mondin, executive director of the 2,900-member Bar Association of Montgomery County (Md.). She is also the executive director of the Montgomery County Bar Foundation.

While Mondin utilizes an audit, she also uses an established system that keeps financially experienced members in audit and **finance** positions for both organizations for several years. For example, the foundation's assistant treasurer sits on the budget committee for the foundation and association, becoming treasurer the next year and then chairman of the budget committee the third year. The association's president and budget committee chairman eventually take on roles with the foundation's 21-member Board of Directors.

"There are people on the foundation board that are often there for five, 10, 15 years," Mondin says, adding that familiarity with budget and **finance** issues is "really important when you have a volunteer organization."

Knowing that there are association members who have a wide range of expertise, including **finance**, Jerman of the Connecticut bar says staff quizzes members on their strengths and seeks to match them with the appropriate committees.

## Communication is key

Communication and education are also key components of financial responsibility for bar associations and foundations. For Jane Curran in Florida, the communication begins with her staff.

"You have to make sure your staff knows what the ethical standards are and have them in writing," Curran says. "My auditor would blow the whistle on me in a minute, and we've been together for 20 years. You have to give staff permission to do the right thing."

Helena Henderson puts the onus on her board members: "I tell them, 'Don't trust me. Ask questions. Your job is to ask questions.'"

Henderson also says she supplies board leaders with extensive financial documents at every meeting, providing as much detail as members need. Curran and many other bar and foundation executives do the same.

"Our attitude is to keep the board informed," says North Carolina's Sodano. "The only place they can get into trouble is not knowing what's going on financially."

Communication among members is also vital to good, open discussion about association finances, Sodano adds.

The North Carolina Bar Association's **Finance** Committee reports quarterly to the full board. Those reports include a narrative from the president-elect and the director of administration, as well as copies of statements of position, statements of activities, a capital expenditures report, and an investment committee report.

As for education, many associations and foundations start with orientation sessions for new committee or board members, making them aware of handbooks and bylaws that lay out their responsibilities, ranging from meeting attendance to material review.

"We've done a number of educational programs, including a presidential summit, and CLE designed to educate our members," Williamson says.

### **Investment know-how**

The Foundation for Fiduciary Studies, which is based in Sewickley, Pa., and affiliated with the University of Pittsburgh, says the term "fiduciary" includes more than 5 million people "who have the legal responsibility for managing someone else's money." That includes trustees and investment committee members of a wide range of organizations, including bar associations and foundations.

Yet, according to foundation President Donald Trone, there is a vast lack of knowledge about what processes fiduciaries should follow to properly manage that money. While many organizations have an investment policy, he says, "I would guess that 98 percent of the investment community would find one or more shortfalls in the policy. Investment advisory work doesn't receive the same recognition as other work being done."

To help trustees and directors navigate through the maze of responsibility, the foundation—in conjunction with the American Institute of Certified Public Accountants—has developed *Prudent Investment Practices: A Handbook for Investment Fiduciaries*. Information on the handbook, as well as related information on fiduciary responsibility, can be found at the foundation's Web site at [www.ffstudies.org](http://www.ffstudies.org).

Realizing that lack of knowledge in Westmoreland—and not just in his association—Jim Whelton asked more questions that led the bar to develop its fiduciary seminar, in conjunction with similar associations in the community. Neighboring bar associations were invited to the one-day event, which also provided four CLE ethics credits for attending attorneys. "Hopefully," says Whelton, "they walked away with some knowledge of what they need to do to fulfill their legal and ethical responsibilities."

While responsibility and accountability are vital to being a fiduciary, Whelton adds, he also believes that most bar association and foundation members are up to the task—no matter their financial background. "I think you can be a good fiduciary without being a market analyst," he says.

### **A better level of comfort**

With increasing talk of greater accountability, liability, and governmental regulation in the nonprofit world, there is also increasing concern about what effect this shift will have on the organizations and their volunteers.

While Curran likes the idea of regularly seeking new auditors, "the cost to the foundation for a new auditor is very, very high."

If federal or state legislation similar to Sarbanes-Oxley is extended to nonprofits, some say smaller bars and foundations with no outside auditing function might have to spend money for a service that might not be particularly useful to them.

And if organizations don't have sufficient financial controls and policies in place to please insurers, they may find themselves paying higher insurance premiums—if they can get coverage, Trone says.

Then there are the volunteers themselves. Will members be willing to put in the time needed to keep abreast of finances, while potentially exposing themselves further to being held liable for those financial decisions?

“I haven't seen it inhibiting anyone,” Curran says, “but I do occasionally hear them kidding about it, saying, ‘Don't forget you're accountable.’”

Bar leaders say the situation merits watching, as public companies now work to come into compliance with regulations and as people continue to ask more questions about fiduciary responsibility.

They also say that might not be such a bad thing for bar associations and foundations.

“Nonprofits ought to embrace something that gives donors and members a better level of comfort,” Curran says.

## **Louisville bar faces real-life test of fiduciary mettle**

How much money to spend on the year-end holiday party? That's the kind of question Louisville (Ky.) Bar Association trustees can handle pretty easily.

What to do with more than \$1.5 million in stock from an insurance company going public? That was a different matter—and one that offers a good case study on how to keep fiduciary responsibility in mind when the unexpected pops up.

The dilemma arose in the fall of 2001 when Anthem Insurance announced it was moving from a mutual organization (owned by subscribers) to a publicly traded company. That meant the LBA, which offered life and health insurance via Anthem, would become a holder of 24,000 shares of stock.

But who owned the shares—the association as the master policyholder, or its members who bought insurance? Would they get stock, or would the stock have to be sold? Would tax have to be paid? What liability did board members have as they made these decisions? Those were just some of the questions the LBA board faced.

“The board was not prepared for the scope of the issue. These weren't typical items,” says LBA Executive Director Kimberly Farmer. “We did not realize what type of fiduciary role we had.”

As Anthem's stock price soared from about \$30 a share to more than \$70 a share in less than a year, it became clear that the LBA needed to act. The board hired expert counsel in Employee Retirement Income Security Act (ERISA) issues, sought advice from the ABA and spent many hours in discussion about what to do. “Our counsel told us that each decision we made put us more into the position of fiduciary,” Farmer says. “We needed to protect the association from a potential lawsuit.”

With that threat hanging over the LBA, the association filed an interpleader lawsuit in U.S. District Court, asking a judge to step in and help sort out the complicated proceedings. While the LBA is now the trustee of the stock account, a court-approved investment manager was hired and the association now takes all direction from the court, Farmer says.

Nearly two years after the LBA found itself in a fiduciary pickle, it is still in court as it tries to sort through issues involving the IRS, ERISA, stock sales, and officer liability. While the headaches have been frequent, Farmer says,

she adds that the issue has probably helped the LBA in the long run as it has asserted its role in handling finances for a 3,200-member volunteer organization.

The LBA board was careful to keep all association members apprised of the situation through regular newsletter and Web site updates, Farmer says. Board members and staff also learned a thing or two about insurance and fiduciary responsibility.

“It’s been really healthy, because it gives us more discussion about financial issues now. We’re much more aware of the liability of the board now,” she says. “I don’t think we see financial issues as mundane any more.”

—Robert J. Derocher

## **Good Governance: In a new day, bars move toward new controls and policies**

By Robert J. Derocher

Teresa Schmid has spent more than two decades in a variety of positions at several bar associations, often working closely with lawyer members on a number of financial issues. In her current post as executive director of the State Bar of Arizona, Schmid oversees more than 100 employees and a \$10-million-dollar budget for the 18,000-member organization.

So, imagine her surprise a year or two back when the bar’s **Finance** Committee asked her to leave the room during a discussion with the bar’s independent auditors.

“That sent chills to your spine,” Schmid says. “This is an entire change of the existing mindset. You ask, ‘So, what is the relationship between the board of directors and the executive director?’ ”

That question and others related to a bar’s finances and operations are being raised more often as nonprofit associations face greater scrutiny from federal and state regulators. The increasingly long arms of the Sarbanes-Oxley Act and the Internal Revenue Service are prompting nonprofits to adopt tighter operating controls, ranging from conflict of interest plans to stricter policies on budgets, audits, and fundraising.

Bar associations are no exception. While many bars have had such control policies in place, others have not, and many are taking second looks in light of the increasing interest from the government. Many bar leaders say they’re confident in their organization’s approach to good governance but are open to ideas on how to improve, since nobody is really looking to make themselves a target of a Securities and Exchange Commission investigation or an IRS audit.

### **Increased attention on nonprofits**

Congress and President Bush crafted and approved the Sarbanes-Oxley Act in 2002, just a year or so after the spectacular scandals at former corporate titans such as Enron, WorldCom, Arthur Andersen, and Tyco, among others. That didn’t give nonprofits a lot of time to figure out just how the legislation might or might not affect them.

As a result, many companies—both public and private—as well as nonprofits, have been struggling to determine their responses to the legislation, according to Jim Quaid, a certified public accountant and a director of the Chicago accounting firm of Ostrow, Reisin, Berk & Abrams. He has more than 15 years’ experience working with nonprofits, and serves on the Illinois Attorney General’s Charitable Trust Advisory Council.

Currently, there are just two provisions in Sarbanes-Oxley that directly affect nonprofit associations, Quaid says: They must provide for retention of electronic documents and must not alter or destroy them for a period of time, and they must provide whistle-blower protection and not retaliate against any employee who reports potential illegal activity.

While Sarbanes-Oxley applies specifically to publicly traded companies, many provisions of the act have had a cascade effect, working their way down to privately held firms and nonprofits wary of similar provisions applying to them in the future. The negative press and resulting backlash generated by financial irregularities at nonprofits such as the United Way and the American Red Cross have also contributed to the increased concern, Quaid says.

Additionally, Quaid notes, many bar associations have members who either work for or who do business with large, publicly held companies that are well versed in Sarbanes-Oxley and the need for compliance.

“Many of the 175 members of our house of delegates are Sarbanes-Oxley experts,” says Jim Ayers, treasurer of the New York State Bar Association, and former chair of a special committee that looked at Sarbanes-Oxley’s impact on the association. “They deal with this stuff all the time.”

Also of growing concern to nonprofits is public accessibility of information, says Cynthia Richers Rowland, chair of the ABA Section of Business Law Committee on Nonprofit Corporations. GuideStar, a nonprofit information clearinghouse on nonprofit organizations, regularly posts IRS Form 990 filings on its Web site ([www.guidestar.org](http://www.guidestar.org)) detailing salaries, benefits, and expenses of nonprofits. It’s been particularly noted by bar foundations, she says, which do a lot of charitable work and fundraising in the community.

“That’s been the biggest watershed for charities. What had been closely held information became available for the world to see on the Internet,” she says. “Nonprofits are ‘owned’ by the public, so they are expected to be transparent.”

The IRS itself has added to the level of scrutiny by stepping up examinations and audits of nonprofits, Quaid and others say. This year, the IRS began requiring nonprofits to state on the 990 form whether they had a written conflict of interest policy in place.

“If you check, ‘No,’ “ Quaid says, “you’re more than likely going to get a letter from the IRS saying, ‘Why not?’ They’ve been on the warpath with many nonprofits. They’ve increased their personnel on the tax-exempt side of the house. They are taking a closer look at the 990 [forms], especially in the area of executive compensation.”

Some bar executives are also noticing more direct comments from their auditors, questioning some practices and pointing bars more toward the need to follow the intent of Sarbanes-Oxley provisions.

“A big thing that’s new is fraud in the organization,” Schmid says. “Now you hear from your auditors, ‘What are the opportunities for fraud? How will you address them?’ ”

In her role as associate executive director of the Connecticut Bar Association, Janis C. Jerman has worked closely with the bar’s auditors—and she has noticed their caution in regard to Sarbanes-Oxley. “In the past few years, I’ve seen the comments change to, ‘You really need to do this,’ whereas before, it was, ‘This would be a really good idea if you did this,’ ” she says.

Judy A.C. Edwards, executive director of the Multnomah Bar Association in Portland, Ore., has more than 20 years of experience working with nonprofits. She, too, has noticed the increased focus, and what that means for her and her employees.

“I think the financial reviews we’ve had ask a lot more questions and put more demands on our staff—which I think is good,” she says. “Whenever you handle other people’s money, you have to be careful.” The bar recently arranged to have monthly bank statements faxed to the homes of the bar association and bar foundation presidents to make sure they are kept up to date on bar finances.

At the New York County Lawyers Association and Foundation in New York City, a code of conduct policy was adopted for all staff and members in light of the recent nonprofit scandals, along with a record retention and whistle-blower policy.

“None of the policies created difficulties for staff; we held training sessions to educate them about why the policies were adopted and how they worked in practice,” says Marilyn Flood, counsel to the NYCLA and executive director of the NYCLA Foundation. “No volunteer leader or member has expressed any concern with the policies. Rather, we are proud that we have a portfolio of good governance documents, and encourage other bar associations to follow suit.”

All this attention means that “nonprofits are definitely taking things more seriously,” Rowland adds. “It’s certainly made them more conscious of what they need to do.”

### **An eye on the trends**

Whether they view it as a necessity or just a best business practice, many bar associations are making changes to their financial policies and conflict of interest provisions, while also keeping a close eye on trends and talking with colleagues.

A year ago, the Connecticut bar formed a task force on governance whose work included a complete review of the bar’s rules and bylaws, with an eye toward changes geared to satisfy some of the intent of Sarbanes-Oxley. As a result, the bar’s house of delegates in June approved the changes that establish a whistle-blower provision and a conflict of interest policy for staff, as well as a separate audit committee.

“I think they understand that the provisions of Sarbanes-Oxley affect us,” Jerman notes. “It’s one of the pluses of having attorneys as members.”

After a year-long special committee review of the effects of Sarbanes-Oxley, the NYSBA this year laid the foundation for establishment in 2008 of a separate audit committee that will appoint and oversee the bar’s independent auditor, review and oversee internal financial controls, and establish and oversee a whistle-blower provision.

The special committee, chaired by Ayers, also tightened the bar’s chain of command and emphasized the need for the bar’s executive committee to take a greater role in overseeing the bar’s financial affairs.

“I think most people felt that the review process was a very beneficial one for the association to go through,” Ayers says. “I think it’s a very healthy exercise—and bar associations are well suited to undertake this review.”

Also in New York, the NYCLA issued a report outlining a series of “best practices” recommendations for all nonprofits to follow. The association already follows many of those practices, such as having an audit committee and a conflict of interest policy, Flood says.

The State Bar of Arizona adopted a new financial policy manual in 2005 under the guidance of former bar president Helen Perry Grimwood, a certified public accountant. The bar also has a conflict of interest policy in place.

The Delaware County (Pa.) Bar Association in suburban Philadelphia recently created a committee specifically to oversee the quarterly financial reviews done by the DCBA's accounting firm, according to Executive Director Elizabeth Price. "It makes us sit up and listen," she notes.

At the Multnomah bar, the board's bylaws were revised last year to include conflict of interest provisions. Additionally, all nominees for the bar's board of directors must sign a document agreeing to "prepare for and actively participate in board and committee meetings, including reviewing and being knowledgeable about all materials mailed to you," a provision aimed at making sure board members know their fiduciary **oversight** responsibilities, Edwards says.

Bar leaders say they are also actively talking with each other and watching other associations and organizations to learn more about future approaches. Schmid, for example, is monitoring actions in states such as California and New York, where Sarbanes-Oxley-type provisions governing nonprofits have been enacted. "We should expect to have similar attention to nonprofits in other states soon," she says.

Also keeping an eye on the news is the Connecticut bar's Jerman, who has been following this topic via the National Association of Bar Executives' online discussion groups and by using the ABA Division for Bar Services' Bar Cat online research tool.

"I've been to seminars with insurers and banks, and I've talked to law firms who have worked with nonprofits," Jerman adds. "There's going to be a lot of things that could affect us in the future."

### **More changes coming?**

Just what those things might be is still a matter of discussion, as state and federal regulators continue to assess and fine-tune legislation. Clare Golla, a former nonprofit executive who is now a nonprofit market strategist for ShoreBank in Chicago, thinks it is wise for nonprofits to emulate many Sarbanes-Oxley provisions.

"I think there's a general trend toward professionalization of the nonprofit sector," she says. "Now, it's big business."

More and more states are taking a closer look at nonprofits in the wake of financial scandals and, particularly, details of lucrative compensation packages for nonprofit executives, Quaid says. That trend, he adds, seems unlikely to abate.

Many bar leaders say they're preparing for the scrutiny, even if it means a change in the ways that things were traditionally done. "We're gradually becoming more comfortable with it," Schmid says. "We still work on the reporting roles, but that's because there aren't a lot of models out there."

But as long as IRS auditors, SEC investigators, and state attorneys general are out looking for impropriety—and since bar leaders are dedicated to rooting out such problems anyway—it seems likely that more good governance models will be emerging soon.

# Your CPA Is Here to Help: Learning About Bar Finances

By Robert J. Durocher

For nonprofits, if there is one absolute that has emerged from the Sarbanes-Oxley Act and the increased IRS scrutiny, it is this, according to CPA Jim Quaid: The buck stops at the boardroom.

“The board is ultimately the party responsible for the running of the organization,” notes Quaid, of Chicago’s Ostrow, Reisin, Berk & Abrams. “They’re the ones who would be held responsible.” No longer can board members sit idly by and not take an active role in the financial operations of the association, he says.

Key to that responsibility is to have active and knowledgeable audit and **finance** committee members who can make the board comfortable with the association’s finances, says Clare Golla, a former nonprofit executive, and now a nonprofit market strategist for ShoreBank in Chicago.

There are plenty of other things that board members and executive directors can do to protect against loose governing rules or a potentially damaging IRS audit, Quaid and others say.

“We strongly urge organizations to get an outside audit, even if they’re smaller,” Golla says. “It’s an added level of comfort.” It might also be a good idea to reach out to state and local CPA associations for assistance, she adds.

Audits can also be a money-saver, particularly for bar foundations that need to borrow money for special projects, such as buying or renovating their offices. “The number one thing lenders want to see is the last couple of years of audit statements,” she says. “If they don’t have any, that sends up a red flag.”

While Quaid is sympathetic to the added costs for such measures, he agrees with Golla that they can ultimately save money. “If there’s something an audit would have caught, I would hate to be on the other end of an IRS investigation,” he says.

Quaid adds that an audit firm can be a good resource for a bar association or foundation in ways that go beyond performing an audit. “Ask them to do a one-day training session with staff,” he suggests.

Cynthia Richers Rowland, chair of the ABA Section of Business Law Committee on Nonprofit Corporations, says it is critical for bars to have written conflict of interest, document retention, and whistle-blower policies in place. The committee currently has a working group looking at governance issues for nonprofits, with a goal of providing model acts and principles, as well as speaking out on legislation and regulations affecting nonprofits.

At press time, Rowland said the committee hoped to have a list of guidance policies by August. “We’d love to be a resource for local and state bar associations and foundations,” she adds.

The committee’s Web site is at [www.abanet.org/dch/committee.cfm?com=CL580000](http://www.abanet.org/dch/committee.cfm?com=CL580000). Other sites that might also offer some insight into association and foundation governance include:

Internal Revenue Service’s Good Governance Practices for 501(c)(3) Organizations:

[www.irs.gov/pub/irs-tege/good\\_governance\\_practices.pdf](http://www.irs.gov/pub/irs-tege/good_governance_practices.pdf)

Materials prepared by Quaid and Golla for a March 2007 ABA Bar Leadership Institute session:

[www.abanet.org/barserv/bli/2007/gollaquaidfiduciary.pdf](http://www.abanet.org/barserv/bli/2007/gollaquaidfiduciary.pdf)

New York County Lawyers Association standards of governance:

[www.nycla.org/index.cfm?section=About\\_NYCLA&page=Governance](http://www.nycla.org/index.cfm?section=About_NYCLA&page=Governance)

# How's Your Culture? Developing a Climate of Inquiry

By Marilyn Cavicchia

At the same time they're making sure all the relevant policies are up to date and on file, bars and other nonprofits should also take a hard look at their overall culture, said Nancy Axelrod, a consultant and principal at Washington, D.C.-based Nonprofit Leadership Services, who spoke at the ABA Bar Leadership Institute in March. Is the bar a place where elected leaders and staff are encouraged to ask questions—including the tough ones? Or is there a culture of “passivity and groupthink”?

The results of such “passivity and groupthink” can be devastating, she added, citing a study that found that companies such as Enron and Tyco had boards that met all the benchmarks that were then standard in terms of size, codes of ethics, and financial expertise.

Looking great on paper is not the same as doing a great job, Axelrod noted, adding that at these companies, it was possible to follow all the rules but not add much in the way of organizational intelligence (reliance on the organization's values and mission) and contextual intelligence (awareness of what's going on in the world, such as social changes).

“The problem is, we don't often tap that wisdom,” said Axelrod, recalling her own early experience on a college board. She was excited at first, but soon found herself wondering, “What material difference has my presence made at this board meeting?”

To the list of fiduciary duties—duty of care, duty of loyalty, and duty of obedience—Axelrod would like to add what she called a “fourth D”: the duty of curiosity. In trying to be polite and achieve consensus quickly, she said, many boards don't wholeheartedly invite or don't allow sufficient time for questions and dissent.

Ideally, the president will know how to run a meeting in which all the board members are engaged and participating—which is what the fiduciary duties require, and also what board members themselves often expect. The problem, said Paul Greeley, president of Ashburn, Va.-based Association Consulting Services, who also spoke at the BLI session, is that not every leader inherently has these particular skills.

“Just because you're outstanding in your field doesn't mean you'll be outstanding at running a board meeting,” he noted. This is one reason it's essential for the president and the executive director to have a strong relationship that includes honest discussion and a shared understanding of best practices, Greeley and Axelrod said: It helps set the tone for the rest of the bar, including the board and how it will work as a group.

Also important, they said, is to realize that getting a good grasp on proper governance practices and procedures is not a one-time task. With all the different issues that can come up, the dramatic ways the board can change from one year to the next, and the still-evolving understanding of best practices for nonprofits, board members need opportunities to revisit and refresh their knowledge throughout the year.

“Governance is a process,” Axelrod noted. “Keep learning.”

**Want to learn more? The materials from this BLI session are at [www.abanet.org/barserv/bli/2007/axegreeletgovernanceplenary.pdf](http://www.abanet.org/barserv/bli/2007/axegreeletgovernanceplenary.pdf)**

## **ABA Division for Bar Services: Connecting Leaders & Resources**

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Elizabeth Derrico celebrated her twenty-third anniversary as a bar executive last November. Currently she is the associate director for bar information and management in the ABA's Division for Bar Services, a position she has held for ten years. In this position she has management responsibility for the division's consulting services program, the field service program, clearinghouse and library, and marketing initiatives.

Prior to joining the ABA, she worked for the New York State Bar Association for nearly 11 years, first as the local bar services representative and then as the associate director of communications. She has no recollection of life before bar association work. Elizabeth received her undergraduate degree in Government from Wheaton College in Norton, MA, and a Master's in Public Affairs from the State University at Albany, NY. Her goal for '08 is to make the perfect pie crust.