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LITIGATION COMMITTEES ON BOARD OF TRUSTEES

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What Is A Special Board Committee?



In the business world, a board committee tasked with a specific subject matter area

Two types generally:

Standing committees

- Set up under bylaws or special board action
- Examples, audit committee, executive compensation committee, equity committee, IT committee

Special committees

- Generally set up by special board action and often tasked with a special, single purpose
- Transaction committee, litigation committee related to specific lawsuits or situations (ex. Shareholder derivative suit, class action litigation, data breach)

The *Book Of Discipline* Divides Authority On Monetary And Legal Issues

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The presiding bishop has “general oversight for the fiscal and program operations of the annual conference(s).” (BOD 415.2)

The treasurer has specific responsibility for handling the money, financial operations (spending per the budget and BOD) and administrative operations of conference staff. (BOD 619)

Committee on Finance and Administration prepares the conference budget, has supervisory authority over the treasurer, and makes borrowing recommendations (BOD 613)

The Board of Trustees has specific authority to “safeguard and protect the interests and rights of the annual conference anywhere an in all matters relating to property and rights in property...” (BOD 2512.4)

But, Then The **BOD Creates Confusion...**



BOD ¶ 2506. Conformity With Local Law—Church Corporations—

1. All provisions of the Discipline relating to property, both real and personal, and relating to the formation and operation of any corporation, and relating to mergers are conditioned upon their being in conformity with the local laws, and in the event of conflict therewith the local laws shall prevail...

BOD ¶ 2507. The Terms Trustee, Trustees, and Board of Trustees—

Trustee, trustees, and board of trustees, as used herein or elsewhere in the Discipline, may be construed to be synonymous with director, directors, and board of directors applied to corporations.

Closing The Circle Of Confusion



While a state non-profit corporation statute says a board of directors has wide authority to act on all matters, subject to the statute, that authority is also subject to limitations in the corporation's articles of incorporation.

BOD requires that all UMC entity articles of incorporation provide for governance per the Discipline.

See, BOD 2506.2 and 2506.4

Result-The Board of Trustees don't have authority over all things litigation. Narrow scope of authority limited to property issues.

Real World Examples



Authority to litigate or settle sex abuse cases involving clergy?

Authority to deal with general employment law claims of conference staff?

Hybrid litigation-trust clause dispute with breakaway church where church challenges the trust clause but also sues the bishop and superintendents claiming of fraud, breach of contract, etc.

Who is responsible for procuring insurance coverage for the annual conference?

How does the BOT spend money if it doesn't have authority?

Litigation accruals → Retainers → Settlements

Three Structures For Annual Conferences



See BOD 2512

The AC is incorporated and the Board of Trustees functions are the board of directors for the non-profit corporation- **This means one state statute is involved**

The AC is not incorporated but the Board of Trustees is separately incorporated as a non-profit corporation- **This means at least two state statutes are involved**

Both the AC and the Board of Trustees are incorporated- **One statute involved**

Recap Of The Relevant Legal Authority For Committees



The board of directors of a corporate entity, even non-profit, can generally set up committees to deal with specific topics, subject to:

- State statute-check non-profit corporation statute
- Bylaws of the entity
- The Book of Discipline (2020/2024 Ed.)
- Random annual conference actions
- Articles of Incorporation

State Laws



Check your state non-profit corporation statute

- Each state's law is different but generally statutes give boards of directors wide discretion to set up committees or operate within reasonable business judgment standards.
- Statutes sometimes limit the authority of committees
 - Can't spend money
 - Can't recommend mergers or transactions to the members of the non-profit corp.
- State case law may affect committee authority but generally uphold and protect the use of committees (at least in the business world)

The Point Of **Committees On A Board Of Trustees?**



Capture all the decision makers

- Make bishop, treasurer and assistant to bishop ex officio BOT members

Maximize information gathering

- Can gather and process information quickly

Focus expertise

- Put people with subject matter knowledge on committee

Maximize the time of the full board

- 12 voting members can't micromanage or react quickly. They need to make higher level decisions. Give them good information.

Litigation Committee



Authority can be as broad and binding as your state statute allows, articles of incorporation and bylaws allow:

- The committee can decide to institute litigation
- It can decide to settle claims or litigation
- It can hire counsel or consultants
- Recommendations for the full board to approve

Have a clear mandate from the board in forming the committee

Do you need annual conference approval?

My Experiences **With Committees In UMC BOT**



WNCC set up a litigation committee in 2016

- Bishop, Asst to Bishop, Treasurer, Trustee President, Trustee VP, Chancellor
- Capturing all the decision makers
- Limited authority. Full board has to approve big picture matters
- Discusses highly confidential information before it goes to full board

Insurance committee- limited purpose to review and make recommendations on conference insurance

Disaffiliation Committee (only worked when we had a low number of churches, not with high volume and tight timelines)

No One Size **Fits All**



I'm not giving you legal advice

Discuss advantages of litigation committees with your chancellor and conference officers.

State specific issues

Can you maintain attorney/client privilege?

Has your conference passed legislation requiring certain decisions be approved by AC delegates? Do they pass Judicial Council muster? Does this limit the authority of the trustees or limit use of committees?

Screen for conflicts of interest. Does a member have an interest in the litigation?

- But what if you Bishop is a defendant with separate counsel? The treasurer?

How To Run A Committee?



It needs a chair and vice chair (why WNCC makes sure the President and VP is on it)

Always have clear authority. Can the committee decide matters for the board and take action or is it advisory (info gathering)?

Can be as formal or as informal as you prefer except for written records

Have a written record of actions and communications, even if just emails. Most states require that the board and its committees keep written minutes or records of meetings.

If a litigation committee, always include the lawyers on communications and never bring outsiders into your email chains

Attorney Client **Privilege** Is Key



Always include your outside lawyers (if any) and chancellor on emails and label them “Privileged Attorney Client Communication”

Never bring people not on the committee into email chains (except outside lawyers)-this includes communications consultants, with some exceptions

- What about members of other boards, like CFA? Treasurer reports to them.

Think about how to store electronic documents so everyone can either review or work on them

- Consider carefully who gets access or has access

Goals



Get all the conference officers who are decision makers on the committee and in the loop



Quickly and efficiently make litigation decisions and recommendations



Accurately and rapidly relay decision making information to full board



Don't overwhelm the full board with information they don't need



In large, multi-party litigation, organization is key. Spreadsheets and project management software help.

Derivative Actions By **Non-Profit Corp Members**



Most state non-profit corporation statutes allow members of the corporation to bring a lawsuit on behalf of the corporation to redress wrongs committed by officers or directors or address inactions or breaches of fiduciary duty

Many states allow the corporation to appoint a special litigation committee to investigate the claims and the court has to stay proceedings while the SLC investigates.

Many state statutes also allow the corporation to petition the court to appoint a panel of directors to determine if it is in the best interest of the corporation to pursue a legal right or remedy. If they determine not, the court can dismiss the case.

Application To The UMC



The members of the annual conference are the individually elected delegates from churches, districts, the clergy, and select other parties

If your conference is incorporated, any one of these parties could bring an action against officers or trustees alleging a particular action should be taken to benefit the corporation and failure to act injures the corporation

In this case, you may be able to utilize a special litigation committee to get the case dismissed or stayed

Many of these statutes have cost shifting provisions. Good to know those.

WNCC is not incorporated so the AC members have no derivative suit rights

Red Flags **For Derivative Actions**



**Actions Around
Church Closures**

Disaffiliation

**Monetary
Allocations Or
Spending**

Failure To Insure

Church Mergers



Thank You!



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