

Welcome

Our Presentation

Will Begin at 12 noon

- All viewers are muted. Audience cameras cannot be turned on.
- Who's with us today? Feel free to share your nonprofit's name in the chat box.



BakerHostetler

Building a Better Board:
*Strong Boards Have
Strong Policies*

Janine A. Bowen, Esq.
Partner

jbowen@bakerlaw.com

404-946-9816

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Mission of Pro Bono Partnership of Atlanta

To provide free legal assistance to community-based nonprofits that serve low-income or disadvantaged individuals.

We match eligible organizations with volunteer lawyers from the leading corporations and law firms in Atlanta who can assist nonprofits with their business law matters.

PBPA Learning Center for Georgia Nonprofits

www.pbpatl.org/resources

ARTICLES

WORKSHOPS



WEBCASTS

PODCASTS

Client Criteria

In order to be a client of Pro Bono Partnership of Atlanta, an organization must:

- Be a 501(c)(3) nonprofit.
- Be located in or serve the greater Atlanta area.
- Serve low-income or disadvantaged individuals.
- Be unable to afford legal services.

Visit our website at www.pbpatl.org to apply.

Legal Information

This webinar presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.

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Agenda

- The Fiduciary Obligations of the Board
- Some Policies & Procedures Necessary for Strong Governance
- The Board Governance Structure to Implement Policies & Procedures

What Qualifies Me to Talk with You?



Georgia State University

1 yr 7 mos

- **Member, Board of Trustees, Georgia State University Foundation**
Jul 2023 - Present · 4 mos
Atlanta, GA
- **Member, Board of Visitors, College of Law**
Apr 2022 - Present · 1 yr 7 mos
Atlanta, Georgia, United States



Member, Board of Directors

Atlanta Community Food Bank

Jul 2022 - Present · 1 yr 4 mos

Atlanta, Georgia, United States · Hybrid

As one of the largest members of the Feeding America network, the Atlanta Community Food Bank works with more than 700 non-profit partners to distribute over 67 million meals to more than 1 million people ea...see more



Past Chair, Board of Directors, Goodwill of North Georgia

Goodwill of North Georgia

Jul 2014 - Jun 2022 · 8 yrs

Greater Atlanta Area

As the largest non-profit/social enterprise in Georgia, Goodwill's mission is to put people to work.



Clemson University

14 yrs 10 mos

- **Member, Board of Visitors**
Jul 2022 - Present · 1 yr 4 mos
Clemson, South Carolina, United States
Member, Legislative Committee
- **Member, Board of Advisors - Clemson Career Workshop**
Full-time
Jun 2018 - Present · 5 yrs 5 mos
Hybrid
Chair, Governance and Nominating Committee
- **Immediate Past Chair, Board of Advisors - College of Engineering, Computing & Applied Science**
2009 - Present · 14 yrs 10 mos
Clemson, SC
Advisory board to the Dean of the College of Engineering, Computing, & Applied Science.
Past Chair - Nominations/Board Development
- **Board of Directors, Clemson University Foundation**
Jul 2013 - Jun 2022 · 9 yrs
Clemson, SC

A Fiduciary - Generally

- “Fiduciary” is derived from the Latin word for ‘trust’
- A fiduciary:
 - has the duty to act for the benefit of someone or something else.
 - must show loyalty towards the entity or person to which the duty is owed.
 - We, in our capacity as directors owe this duty to CUF.
- The 2 primary fiduciary duties are:
 - Duty of Care
 - Duty of Loyalty



Responsibility

Duty of Care

- Must be employed by each of us as directors when making decision or acting on behalf of the organization
- Requires that we as directors act with the care that a person in a like position would reasonably believe appropriate under similar circumstances.



Duty of Care – But I didn't know!

- Neither ignorance nor absence is an excuse
- Inaction provides no protection
- Should you have known?
- Would a person who was reasonably diligent have known?



Duty of Care – But
I knew all I could
reasonably know!

- The court doesn't like to impose liability when the view in hindsight shows the errors in judgment
- The process used in decision making is important
- Business Judgment Rule

Business Judgment Rule



- Presumption that the board acted:
 - on an informed basis (reasonable reliance on experts is okay)
 - in the honest belief that the action was in the best interest of the organization (conflicts of interest will derail this)
 - and in good faith (decision making process must be substantive, and not a mere rubber stamp)

Duty of Loyalty

- Requires directors to act in good faith for the benefit of the organization
- Decisions or transactions involving conflicts of interest are not protected by the business judgment rule





Okay, what did she just say?

- Show Up
 - Physically (be here)
 - Mentally (be engaged)
 - Emotionally (care about what happens)
- Pay Attention
- Listen to Your Spidey Sense
- Don't be Tricky (conflicts of interest)

Policies



Why are Policies Necessary?

- Policies are essential for maintaining consistency and helping the board achieve its goals.
- They represent the board's voice when it is not around, and regular review is critical if they are to succeed.





Sample of Policies Needed for Strong Governance

- Director's Commitments
- Bylaws
- Conflict of Interest
- Financial/Audit
- Code of Ethics
- Social Media
- Document Retention
- Whistleblower

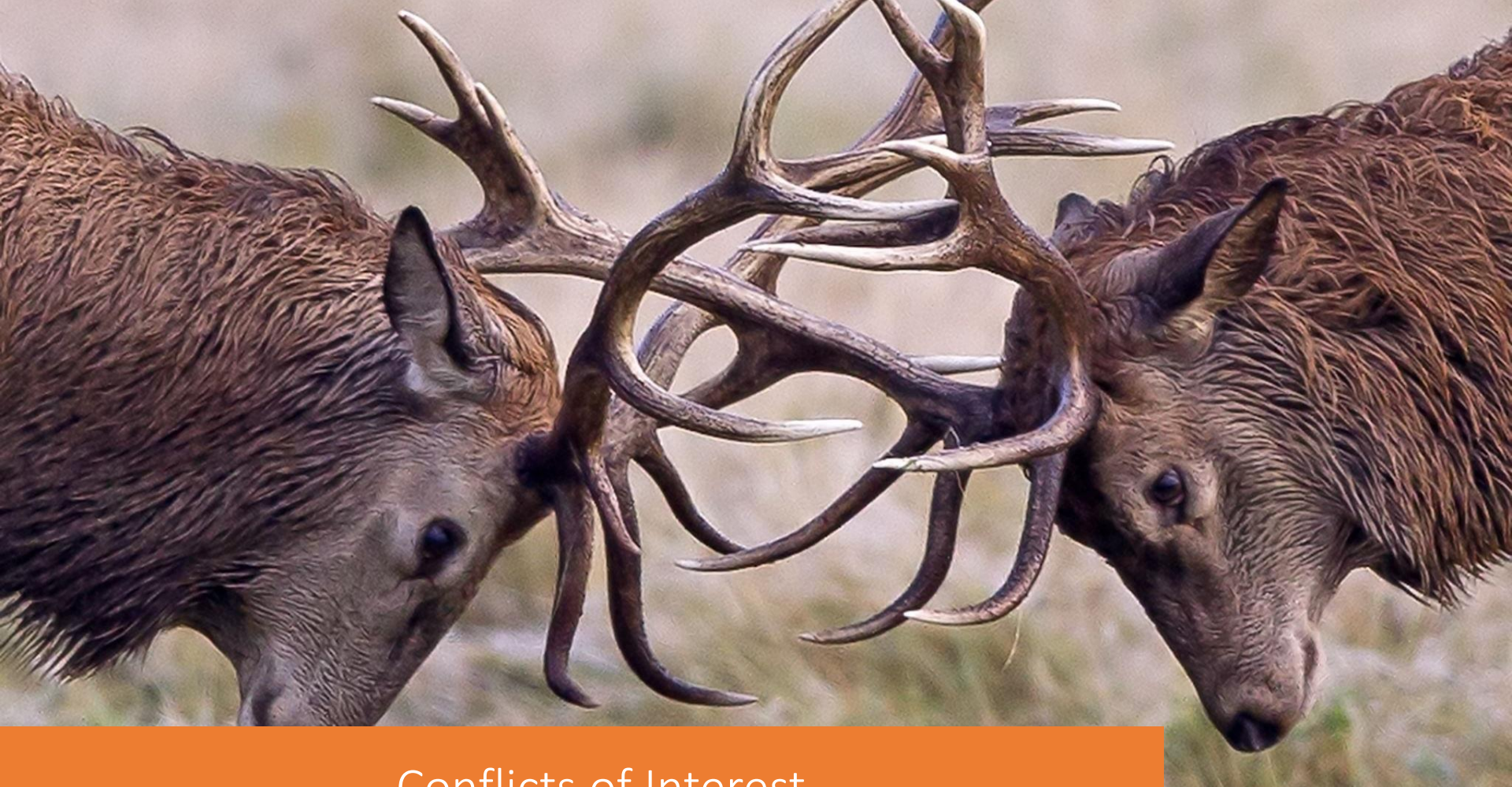


Director's Commitments

- Clarifies the obligations the director is making across multiple dimensions – examples include:
 - Committees
 - Attendance
 - Giving

Bylaws

- Your nonprofit's internal operating manual
- Contain the basic rules for the conduct of the corporation's business and affairs



Conflicts of Interest

- Intended to help ensure that when actual or potential conflicts of interest arise, the organization has a process in place under which the affected individual will advise the governing body about all the relevant facts concerning the situation
- Organization determines the action plan

Financial/Audit

- Clarify the roles, authority, and responsibilities for essential financial management activities and decisions
- Establishes the internal controls structures
- Ensures audits are undertaken to protect the tax-exempt status of the organization





Code of Ethics/ Code of Conduct

A set of principles or values that guide the actions of the organization and its people.



Social Media

- Outlines the goals, roles, rules, and best practices for using social media on behalf of your non-profit.
- It can help you protect your reputation, avoid legal issues, and foster a positive online community

Policies IRS Asks About

- Whistleblower Policy
 - Protects employees who report violations of law or other improprieties
 - Prohibits retaliation
 - Establishes procedures for employees to report concerns
 - IRS Form 990 specifically asks for this
- Document Retention Policy
 - Provides that records will only be retained for a specific amount of time and will then be destroyed
 - IRS Form 990 specifically asks for this
- Conflict of Interest

Committee Structures





Typical Committees

Executive

Nominating/Governance

Finance/Audit

Development/Marketing

Compensation (may be delegated to Executive Committee)

Questions?

Pro Bono Partnership of Atlanta

www.pbpatl.org

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