

Quadrennial
Benefits
Conference



Policies and Practices to Help Keep You Out of Court



Wespath
BENEFITS | INVESTMENTS

Policies and Practices

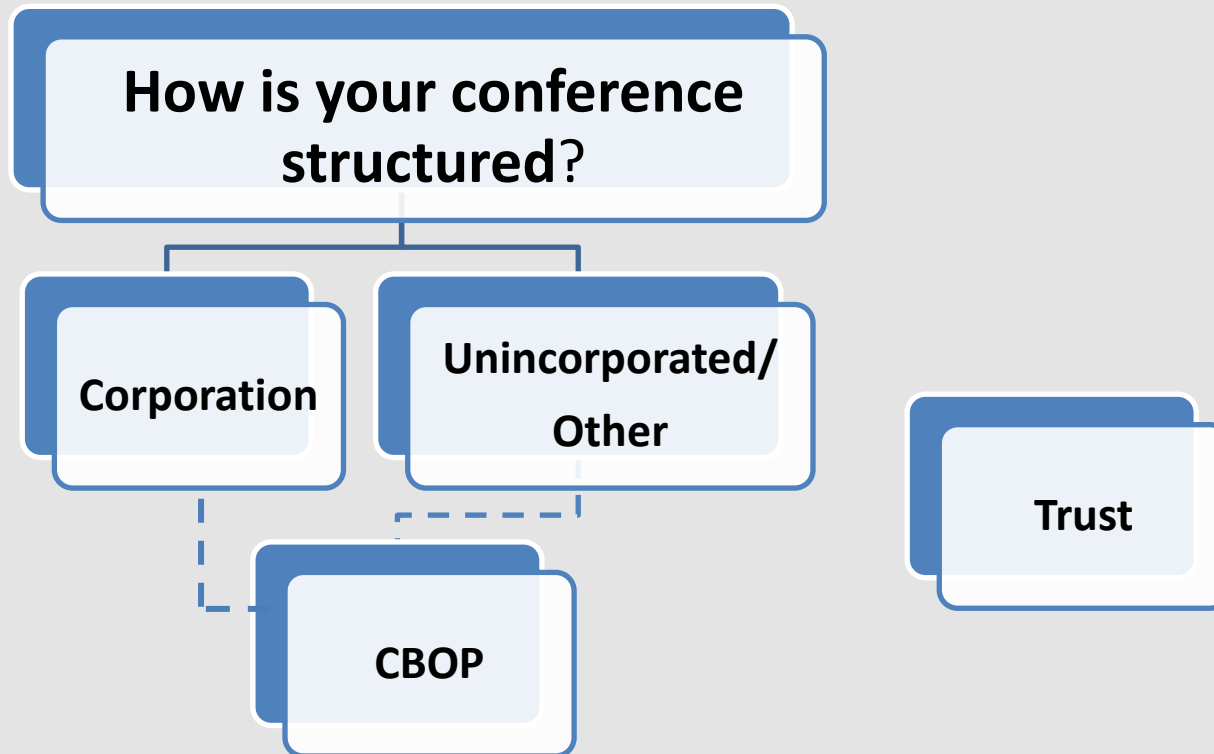


Protecting the conference

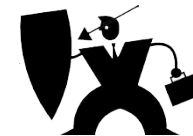


Protecting decision-makers

Organizational Structure



Piercing the corporate veil



Best Practices



Select the right individuals—if elected ...



Train fiduciaries on their duties

- Roles and duties
 - Expectations
-



Train fiduciaries on which laws apply to their conduct



Define policies regarding decisions, communication, assignment of duties

Best Practices



Ensure fiduciaries understand/follow written policies and procedures



Give fiduciaries access to relevant information for informed decisions

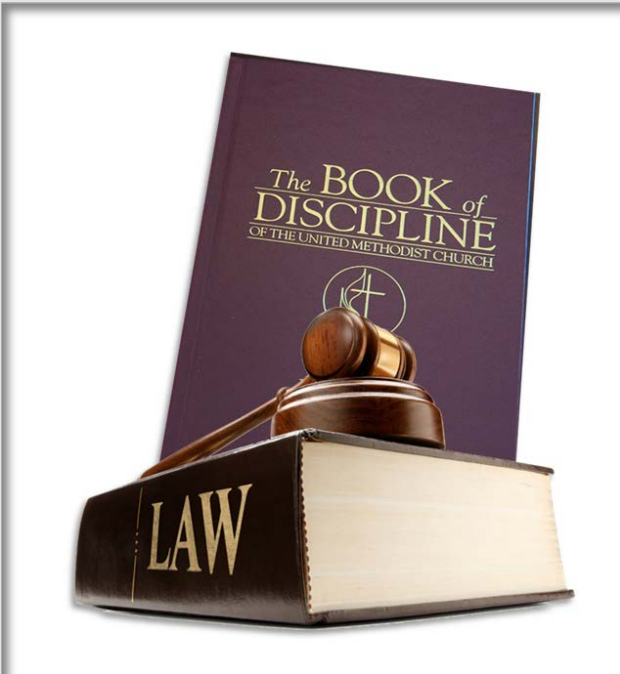


Train individuals who support fiduciaries, e.g., how to provide them with all relevant information



Document decision-making process, relevant factors considered, retain under records retention policy

Duties



Flow from:

- Federal law (Internal Revenue Code)
- State law (nonprofit corporate law)
- Corporate articles and bylaws
- *The Book of Discipline*
- Committee charters and policies
- Code of Ethics (*Discipline* ¶702.2)

Discipline—¶702.2

“Each organization, group, committee, council, board and agency of the general church shall adopt a code of ethics and policies that embody and live out our Christian values regarding conflict of interest, confidentiality, whistleblower protection, record retention and document destruction and nepotism applicable to both members and employees.”

As amended and approved by General Conference 2012

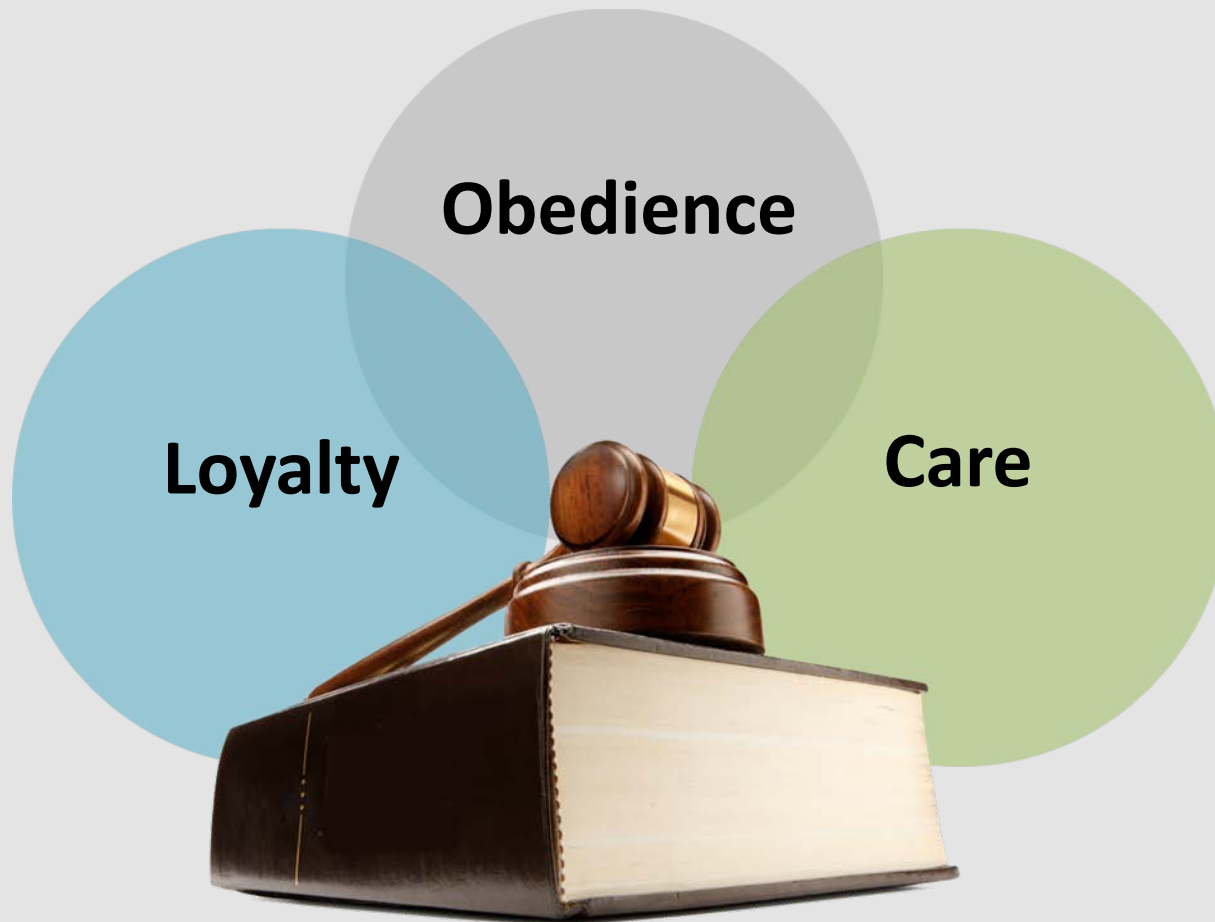
Duties

Flow to:

- Annual Conference
- The United Methodist Church
- Participants
- Others ...



Officers and Directors Fiduciary—Duties



Duty of Obedience

- Must not act beyond the scope of the corporation's powers and authority
- Must work to fulfill the corporation's religious purpose and maintain its tax-exempt status

Duty of Loyalty



- Act solely in **corporation's best interests**
- **Avoid conflicts of interest**
 - Financial or personal
 - Present or potential
 - Direct or indirect
 - Disclosure
 - Recusal when unavoidable
- Maintain **confidentiality**
 - Open/closed meetings (*Discipline* ¶722)

Duty of Care

- Reasonably informed
- Reasonably prudent
- Independent judgment



Legal Protections

Limited Immunity Statutes

Federal Volunteer Protection Act of 1997

- Applies to **uncompensated volunteer** for acts of ordinary negligence committed within scope of responsibilities
- States may enact similar statutes with greater protections

Legal Protections

Limited Immunity Statutes

State laws—e.g., IL Not for Profit Corporation Act

“No director or officer serving without compensation ... of a corporation organized under this Act ... shall be liable, and no cause of action may be brought, for damages resulting from the exercise of judgment or discretion in connection with the duties ... of such director or officer unless the act or omission involved willful or wanton conduct.”

Business Judgment Rule



Shields **nonprofit boards** from liability for decisions made **in good faith**, where the director is disinterested, reasonably informed, and honestly acting in a manner he or she believes to be in the best interest of the corporation.

— **Janssen v. Best and Flanagan,**
662 N.W.2d 876, 882 (Minnesota, 2003)

Insurance Coverage



“I don’t want to tell you how much insurance I carry with the Prudential, but all I can say is: when I go, they go too.”

—Jack Benny

Insurance Coverage

- Insure **directors, officers, certain others** against potential claims (despite legal protections)
- Amount based on risk assessment of organization
 - Amount and types of coverage—
appropriate in light of the potential risk
 - www.nonprofitrisk.org
- Directors may ask to see **certificate of insurance** that describes Directors and Officers (“D&O”) coverage

Indemnification

- A promise to **protect and defend directors and officers** from claims brought by third parties
 - Another important means for mitigating **impact of liability** for board members
- May be **mandatory or permissive**
 - Based on state law, or corporate or organizing documents
- Indemnity—only as good as the organization's ability to pay

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