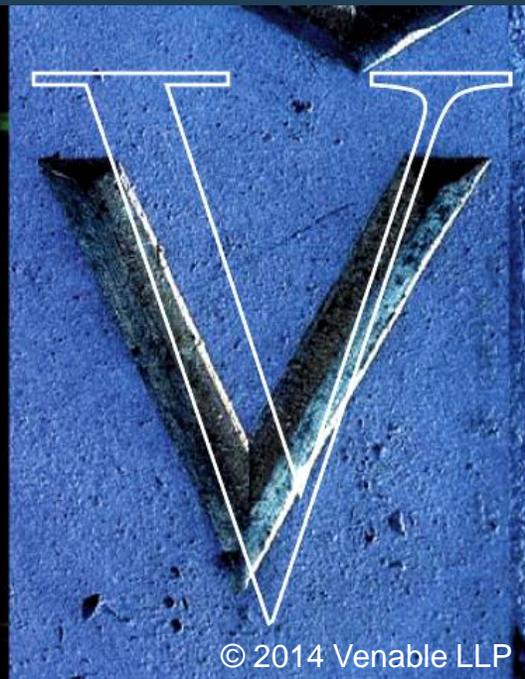
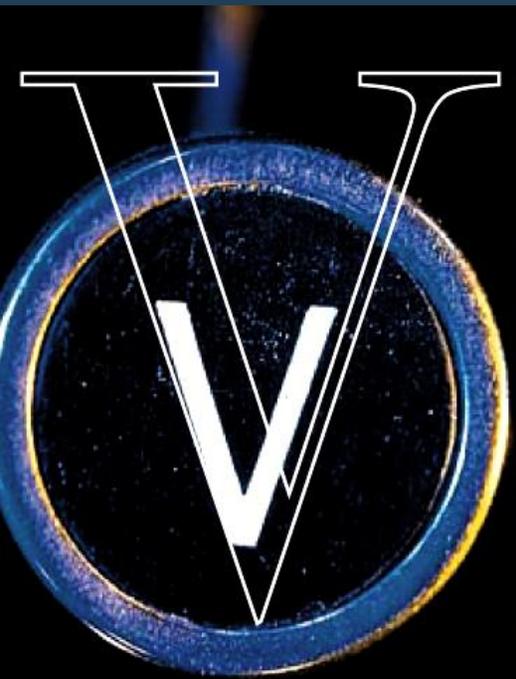


## *Second Annual Nonprofit Executive Summit:*

Bringing Nonprofit Leaders Together to Discuss Legal, Finance, Tax, and Operational Issues Impacting the Sector

Thursday, October 2, 2014  
Venable LLP  
Washington, DC





# Nonprofit Executive Summit Agenda

**Panel 1. Fraud and Embezzlement: The Executive Team's Role in Detecting, Reporting, and Preventing Fraud**

**Panel 2. Executive Employment Contracts: Getting Compliant and Creative**

**Keynote. Midterm Landscape 2014**

**Panel 3. Nonprofit Tax Issues: Where the IRS Is Today, and Where Congress Is Headed**

**Panel 4. Best Practices for Enhancing the Nonprofit Governance Model**



**PANEL 4**

**Best Practices for Enhancing  
the Nonprofit Governance Model**



*Moderator*



***John P. Langan, CPA***  
Managing Partner  
Public Sector Group  
CliftonLarsonAllen



***Michael F. Curtin, Jr.***  
Chief Executive Officer  
DC Central Kitchen



***George E. Constantine, Esq.***  
Partner  
Co-Chair, Regulatory Practice Group  
Venable LLP



***Sarah Curfman***  
Managing Consultant  
Public Sector Group  
CliftonLarsonAllen





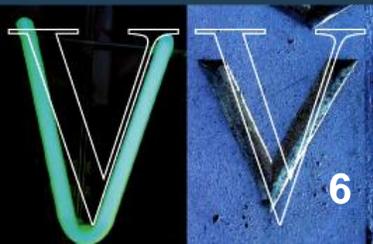
# Legal and Practical Considerations





# Legal and Practical Considerations

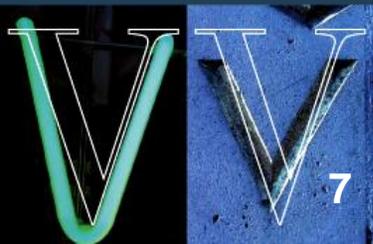
- Governance basics
  - Nonprofit vs. tax-exempt
  - Corporate protection
  
- Nonprofit corporate hierarchy of authority
  - Nonprofit corporate law (statute and common law)
  - Articles of incorporation
  - Bylaws
  - Policies





# Governance Legal Issues

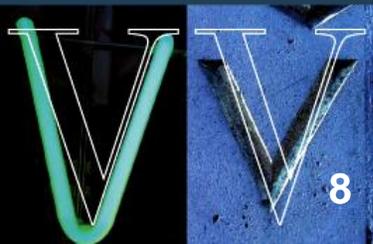
- Board is generally only permitted to act in a meeting (but UWC, telephone meetings)
- State of incorporation governs, regardless of location of headquarters (but note foreign corp. filings)





# Governance Hierarchy

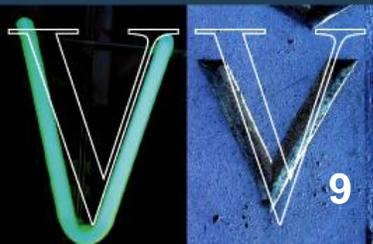
- Board of directors
- Executive committee
- Other committees of the board
- Advisory committees, task forces, etc.
- What about staff?
- What about officers?
- What about individual directors?





# Governance Legal Duties

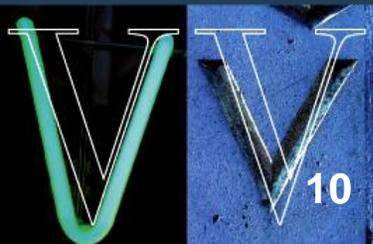
- Duty of Care
- Duty of Loyalty
- Duty of Obedience





# Duty of Care

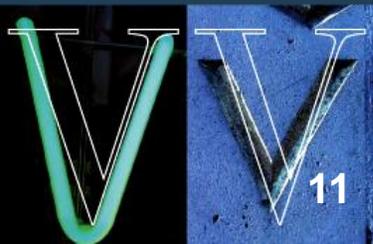
- Duty of care standard is that of “ordinary and reasonable care,” or, what would an ordinarily prudent person do in the same or similar circumstances?
  - Very subjective
  - Tied to reasonableness
- Business judgment rule—bad decisions are more easily defended than ignorance





# Compliance with Duty of Care

1. Review all materials provided in advance of meetings.
2. Ask questions.
3. Avoid actions/discussions outside the formal meeting setting.
4. Be familiar with organizational documents (policies, bylaws, articles).
5. Maintain confidentiality.





## Compliance with Duty of Care (cont'd)

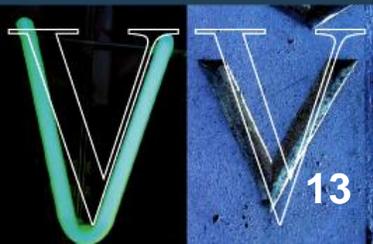
6. Directors may rely on experts when appropriate (but must understand such reliance cannot be absolute).
7. Directors should ascertain that all minutes (particularly recorded votes and attendance) are accurate.
8. Encourage directors to attend meetings regularly, read publications, and be involved.
9. Work with chief elected officer to encourage best practices/compliance with duty of care.





# Compliance with Duty of Loyalty

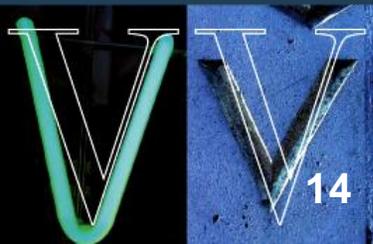
- Keep in mind that the organization's interests come first.
  
- Adhere to conflict of interest policy.
  - Disclose actual, apparent, and potential conflicts of interest through regular disclosure statements (and at each meeting as appropriate).
  - Deliberate as a board or through a committee to determine whether conflict exists.





# Duty of Obedience

- Obedience to nonprofit mission
- Follow terms of articles of incorporation, bylaws, policies, and procedures
- Applicable laws and regulations must be followed





# Policies to Consider and Implement

- Form 990
  - Conflict of interest policy and annual disclosure
  - Record retention
  - Whistleblower
  - Joint ventures
  - Compensation review
  - Form 990 review
  - Auditor selection and review
  
- Others
  - Board member roles and responsibilities
  - Director agreement





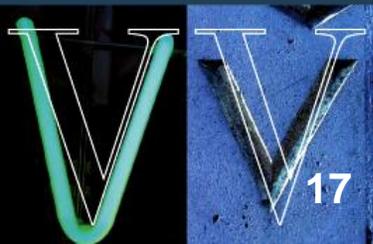
# Case Studies and Examples





# Discussion and Examples

- Considering the legal framework just discussed, panelists will offer examples of strategies that have been successful in enhancing board governance.





Questions?





# Contact Information

**John P. Langan, CPA**  
**Managing Partner, Public Sector Group**  
**CliftonLarsonAllen LLP**

[John.Langan@CLAconnect.com](mailto:John.Langan@CLAconnect.com)

t 703.403.8296

**Michael F. Curtin, Jr.**  
**Chief Executive Officer**  
**DC Central Kitchen**

[mcurtin@DCcentralkitchen.org](mailto:mcurtin@DCcentralkitchen.org)

t 202.334.0707

**George E. Constantine, Esq.**  
**Partner and Co-Chair of the Regulatory Practice Group**  
**Venable LLP**

[geconstantine@Venable.com](mailto:geconstantine@Venable.com)

t 202.344.4790

**Sarah Curfman**  
**Managing Consultant, Public Sector Group**  
**CliftonLarsonAllen LLP**

[Sarah.Curfman@CLAconnect.com](mailto:Sarah.Curfman@CLAconnect.com)

t 612.376.4808



# Upcoming Venable Nonprofit Legal Events



# Upcoming Venable Nonprofit Events

## Register Now

October 21, 2014 – [Fundraising 201: An Update on Managing the Legal Risks of Nonprofit Fundraising](#)

November 19, 2014 – [Enhancing the Nonprofit Governance Model: Legal Pitfalls and Best Practices](#)

December 11, 2014 – [LGBT, Religion, and Diversity in the Nonprofit Workplace](#)





# Thank You!

**Jeffrey S. Tenenbaum, Esq.**  
**Partner and Chair of the Nonprofit Organizations Practice**  
**Venable LLP**

[JSTenenbaum@Venable.com](mailto:JSTenenbaum@Venable.com)

t 202.344.8138

**John P. Langan, CPA**  
**Managing Partner, Public Sector Group**  
**CliftonLarsonAllen LLP**

[John.Langan@CLAconnect.com](mailto:John.Langan@CLAconnect.com)

t 703.403.8296

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