



The Metropolitan Council

Council Member's Handbook

**Orthodox Church in America
Metropolitan Council**

COUNCIL MEMBER'S HANDBOOK

December 2009

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**by
The Council Development Committee**

Orthodox Church in America Metropolitan Council

COUNCIL MEMBER'S HANDBOOK

Overview

The purpose of this Council Member's Handbook is to provide information and reference material to help both current and new Metropolitan Council (MC) members to better understand and fulfill their responsibilities, especially regarding governance, both generic for non-profit organizations and specific for New York State and the OCA Statute. It is also intended as a "one-stop-shop" for information regarding the functioning of the Metropolitan Council. Suggestions for improvement from MC members are invited.

The first chapter reviews certain elements of the responsibilities of Metropolitan Council members. The introduction provides an overview of the responsibility of the MC according to the OCA Statute, the New York State Charter of the OCA, and general governance responsibilities per the Attorney General of New York State. A brief discussion is provided of the MC competencies per OCA Statute Article V as well as the OCA Best Practice Principles and Policies for Financial Accountability. Expectations of Metropolitan Council Members are described in some detail.

The second chapter presents the roster of Metropolitan Council members, their Diocesan affiliation, and their contact information. The third chapter discusses the committee structure of the MC and lists the membership of the committees and their charters/ job descriptions.

The fourth chapter provides the entire Article V of the OCA Statute "The Metropolitan Council." The fifth and sixth chapters give links to the minutes of previous MC meetings (minimum of the past three) and to recent financial reports.

The seventh chapter presents a detailed article written by the OCA General Counsel, Thaddeus Wojcik, on "Fiduciary Responsibilities." The article expands greatly on the duties of MC members vis-à-vis the Introduction and is highly recommended reading.

Several appendices provide links to background and pertinent reference material including the New York State Charter of the OCA, the OCA Statute, minutes of the last All-American Council, as well as general material on non-profit governance, IRS regulations and other information on finance and planning.

The intention of the Council Development Committee is to maintain this Handbook in electronic form and update the material from time to time as needed. Suggestions from MC members on additional content are always welcome.

Orthodox Church in America Metropolitan Council

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Chapter 1

Responsibilities and Expectations of Metropolitan Council Members

Introduction

According to the OCA Statute's Article V, Section 1, "the Metropolitan Council is the permanent executive body of the Church Administration which exists for the purpose of implementing the decisions of the All-American Council and continuing its work between sessions." Further, by design of its makeup according to the Statute and as summarized in the OCA Best Practice Principles document, "the Metropolitan Council is representative of the whole Church, with its chair being the Metropolitan, who also chairs the meetings of the Holy Synod of Bishops, two representatives from each diocese (one priest and one lay person elected by the Diocesan Assemblies), three priests and three lay persons elected by the All-American Council, as well as the Chancellor, the Secretary, and the Treasurer."

It is important to note that the Metropolitan Council (MC) is limited to executive actions while the All-American Council (AAC) may deal with legislative matters as well, i.e., the AAC is "the highest legislative and administrative authority within the Church." (Statute Article III, Section 1) In fulfilling these executive responsibilities, the MC is expected to implement the decisions of the AAC and the Holy Synod of Bishops and also assist the Metropolitan and the Holy Synod in implementing decisions, with the caveat that these decisions are to be within areas of the MC's competence (see Section 4 of Article 5 – also listed below). As well, it should be noted (Statute Article V, Section 2) that "the decisions of the Metropolitan Council shall become effective upon approval of the Metropolitan or Holy Synod, depending on the nature of the decision."

Two critical issues arise. First, a very close cooperative, collaborative, and communicative relationship must exist between these individuals and groups to enable smooth and effective decision implementation. Second, the areas of competence need to be clearly understood by all to ensure proper delineation of responsibilities and to avoid either turf issues or needed actions falling through the cracks. For this reason, combined meetings of the Holy Synod and the Metropolitan Council are vital to maintain the proper spirit of unity and openness. As well, attendance by the Lesser Synod at all Metropolitan Council meetings is extremely helpful in this regard.

In addition to the above general executive authority, the MC is charged with fiduciary responsibility for the Church, including being "entrusted with responsibility for the proper and effective use of all assets for the administration and operation of the Church." (cf. "Best Practice Principles", p. 5). This responsibility is underscored by the fact that the MC acts as a Board of Directors within the context of New York State Law, as

provided in the Charter of the Orthodox Church in America given by the State of New York (L.1972, Ch 519, dated May 24, 1972) which designates the MC as the “permanent executive body” of the OCA.

The New York State Attorney General provides several guides regarding charities organized in the State, as listed in the link below. Of particular interest to MC members is the guide entitled “*Officers’ and Directors’ Duties.*” This guide should be read by all incoming Council members and reviewed by continuing members from time to time.
<http://www.charitiesnys.com/pdfs/Internal%20Controls%20-%20Final%20-%20Small%20Type.pdf>
<http://www.charitiesnys.com/pdfs/Right%20From%20the%20Start%20Final.pdf>

The Attorney General’s Guide “*Officers’ and Directors’ Duties*” discusses the Board members’ duty of care, loyalty and obedience: “The duty of care requires a director to be familiar with the organization’s finances and activities and to participate regularly in its governance.... Directors and officers are charged with the duty to act in the interest of the corporation. This duty of loyalty requires that any conflict of interest, real or possible, always be disclosed in advance of joining a board and when they arise.... A board has a duty of obedience to insure that the organization complies with applicable laws and regulations and its internal governance documents and policies.” The Guide goes into each of these duties in great detail and gives numerous examples. It is imperative that each MC member review this Guide to understand his / her own fiduciary responsibilities. In addition, the General Counsel of the OCA has written the article on “Fiduciary Responsibilities” included as Chapter 7 in this Handbook which refers extensively to New York State law.

The article in the link below provides additional insight into the liability taken on by Directors of a non-profit organization. The OCA carries Directors and Officers Insurance arranged by the Secretary of the OCA. MC members should review this policy to see if it sufficiently covers the liability which they are willing to assume. The individual purchase of a personal umbrella liability policy is also a possibility which is, of course, up to each MC member to consider given one’s own personal situation.
<http://www.npcny.org/info/oi2.htm>

MC Competences per Statute Article V

The OCA Statute, which can only be amended by the decision of an All-American Council, describes the following competences of the Metropolitan Council:

- a. Implements the decisions of the All-American Council and of the Holy Synod in the areas of its competence;
- b. Assists the Metropolitan and the Holy Synod in Implementing decisions within the areas of its competence;
- c. Establishes the budget for the operations of the Church and examines all financial reports of the Church;

- d. Supervises the collection of the assessments and fees established by the All-American Council and determines the allocation of such funds;
- e. Organizes plans for obtaining voluntary contributions for the satisfaction of the needs of the Church;
- f. Provides for the maintenance of the central administrative bodies of the Church and for the allocation of the general Church funds;
- g. Decides on the purchase, sale, or mortgaging of property of the Church, except in cases covered in Article X, Section 8;
- h. Maintains an inventory of all properties of the Church;
- i. Provides for the establishment and maintenance of institutions of charity and education, as well as for publications for the propagation of the Orthodox Faith;
- j. Determines the forms and books necessary for the keeping of records and statistical data by the dioceses, requiring all statistics necessary for reports;
- k. Appoints officers and committees on matters within its competence;
- l. Initiates, prosecutes, and defends all legal matters affecting the interest of the Church;
- m. May receive reports from any department in areas within the competence of the Metropolitan Council.

In addition, the Metropolitan Council recommends to the Holy Synod of Bishops the appointment “of the Chancellor, Secretary, Treasurer, and other officials whose competence and service extend beyond the boundaries of a single diocese.” (Article II, Section 7m)

The full text of Article V is given in Chapter 4 of this handbook and at the link: <http://www.oca.org/DOCstatute.asp?SID=12&ID=5> . The following paragraphs provide a brief overview of the MC’s statutory responsibilities.

Provisions [a] and [b] have been already discussed in the Introduction section above on executive authority. Many of the remaining provisions pertain to routine financial oversight (e.g., examination of financial reports [c], maintenance of property inventory [h], determination of forms and books [j]).

However, a significant portion of the MC’s assigned responsibilities pertain to governance and policy. On a financial level, these include establishing the budget [c], allocating funds [d], supervising collection of assessments [d], property acquisition and disposal [g]. These decisions must also take into account the present [f, m] and future [i] needs of the Church and priorities need to be established. Again, a collaborative relationship is indicated here, as the Statute states that “overseeing the missionary, educational and social programs of the Church” is “within the jurisdiction and competence of the Holy Synod.” (Article II, Section 7t)

The MC is also called upon to take responsibility for developing other sources of funds outside of the normal assessments as established by the AAC [e]. Finally, the Council is

empowered to “initiate, prosecute and defend all legal matters affecting the interest of the Church.” [1]

OCA Best Practice Principles and Policies for Financial Accountability

On June 12-13, 2007, members of the Metropolitan Council of the Orthodox Church in America voted unanimously to approve "Best Practice Principles and Policies for Financial Accountability."

The document's policies are both broad and specific, covering general guiding principles for good management, as well as specific structures and processes concerning ethics, conflict of interest, whistleblowing, internal audits, donor rights, and document retention.

It is critical that all members periodically review the document and understand the various policy provisions. In fact, the document includes specific statements that each MC member must sign on an annual basis, specifically on ethics policy, conflicts of interest and whistleblowers. In particular, members agree in writing to comply with each Policy and to immediately inform the Chair of the Metropolitan Council Ethics Committee in the event of any non-compliance with the respective Policy.

The Ethics and Conflict of Interest Policies are to be reviewed by the MC at least every three years, with any amendments to be endorsed by a two-thirds majority.

The complete document may be accessed via the following link:

http://oca.org/PDF/finances/Best_Practices_Policy_v2.pdf

Expectations of Metropolitan Council Members*

MC membership is an honor and privilege. It is an honor because an invitation to serve is an affirmation that the Church, whether expressed by the Dioceses or the All-American Council, is willing to entrust a significant part of its future to the judgment, work and resources of the persons elected. The Church can bestow no greater honor than to offer such a trust to an individual it deemed worthy. It is a privilege because the opportunity to help ensure the future of the Church is offered to very few outstanding men and women.

Honor and privilege carry with them many serious obligations. The following paragraphs review the expectations of the members of the OCA Metropolitan Council.

To Understand and Implement the Mission of the OCA in One's Own Life

The mission of the Church as expressed in the Holy Gospel and Holy Tradition should be understood and constantly brought to mind by each Council member as his/ her own personal mission in life. Communion with God, nurtured through liturgical worship and participation in the sacramental life of the Church, is an essential aspect of Council

membership. Members should grow in their knowledge of the faith, being involved in the educational life of the Church, and live in accordance with the Gospel.

To Attend Meetings Faithfully and to Serve on Committees Effectively

In agreeing to serve on the MC, a Council member should pledge a considerable investment of interest, time and energy. Members should come to all meetings and plan to stay for the entire meeting. Preparing for Council and committee meetings results in a more effective and efficient Council. This should include periodic review of the OCA Statute and documents, as well as reading minutes to determine whether they faithfully represent the proceedings and decisions as you recall them.

It is essential that all Council members give their committee assignments a high priority. Members should serve in leadership positions or undertake special assignments willingly and enthusiastically when asked. Chapter 3 of this Handbook describes the committee structure of the MC and provides rosters and job descriptions for each Committee. Committee chairs should take an active and cooperative role with the OCA Secretary in setting the agenda for Metropolitan Council meetings. In particular, Committee reports should be sent out to MC members well in advance of the meeting so that valuable time is not taken up with routine reporting. Rather, the Committee chairs should use the opportunity of the MC meeting to discuss critical and strategic issues with the entire Council and lead effective discussions on these issues.

Council members should ask appropriate, timely and substantive questions at Council and committee meetings, while supporting majority decisions on issues decided by the MC. Members should suggest agenda items periodically for Council and committee meetings to ensure that significant policy-related matters are discussed.

To Ensure Financial Accountability and Secure Financial Support for the OCA Mission

Council members are responsible for supervising the financial affairs of the Church. In addition to assuring donors and contributors of the Administration's adherence to high standards of financial accountability, Council members must work together to develop plans for attracting contributions necessary for the sustenance and growth of the Church. As such, the members must serve as advocates of the church's programs and fund-raising efforts to Dioceses and other organizations, individuals and foundations.

To Make Final Decisions on Executive Policy Matters

The Council has final executive authority according to the Statute in areas of its own competence. In making any decision, the Council members should consider what is best for the Church. Once the Council reaches policy decisions, then all members should support such policy. Please note that, according to the Statute, the decisions of the Council become effective upon approval of the Metropolitan or Holy Synod depending upon the nature of the decision. Members should maintain the confidentiality of the

Council's executive sessions and speak on behalf of the Council only when authorized to do so.

However, should a Council member believe that a decision made by the Council, or overturning of such a decision caused by lack of approval by the appropriate hierarchical authority, results in a violation of the OCA Statute, Ethics Policy, or any applicable law or regulation, the Council members should report such potential violation in accordance with the OCA Ethics Policy, i.e., to the Chair of the MC Ethics Committee.

To Recommend and Support the Administrative Officers of the OCA

From time to time, it becomes necessary to search for and to recommend to the Holy Synod various members of the Administration of the OCA. Enthusiastic and committed service on search teams is a critical component of Council membership. Equally important is support for the Administrative team members and the provision of input, as appropriate, to their performance evaluation.

Council members should recognize the separate nature of general policy making and oversight and day-to-day administrative responsibility. Members should expect professional performance by the Administration and should ask critical questions in a respectful and polite manner, recognizing the cooperative and collaborative nature of the Council – Administration relationship.

For communications efficiency, questions outside of a particular committee or Council meeting are recommended to be addressed to the Administration and the Chair of the particular Committee impacted by the subject matter of the question. The Administration and Committee Chairs in turn should keep the rest of the Council advised of critical issues and key developments.

To Assess Regularly Their Own Performance as Council Members

Believing that the most effective measurement of performance is self-assessment, Council members should be in constant review of their individual contributions of time, talent and resources to the Council and their colleagues. A willingness to exercise critical self-evaluation is an expectation in which all members should take comfort and pride. Periodic review of the Council's performance, as a whole, provides an example to members of the Administration and the Church at large.

*Much of the material in this section is adapted from the Trustee Handbook of St Vladimir's Orthodox Theological Seminary and is used by permission and with thanks.

Chapter 2

Metropolitan Council Committees

Charters/ Job Descriptions

CHARITY COMMITTEE

- Charter/ Job Description (*approved by MC in Fall 2010 Meeting*)
The Charity Committee makes grants to eligible applicants from designated and budgeted appeals funds. In doing so, the Committee proposes guidelines for grant-making to the Metropolitan Council for approval. In general, consideration is given to benefiting local OCA charities, to helping individuals in need, to providing assistance across jurisdictional and geographic lines and to providing emergency relief. The Committee solicits applications for grants, ensures the applicant(s) meet the approved criteria and determines which grants are made (either in part or in full). Grantees are expected to provide the Committee with an end-of-grant report detailing how the funds were used and with what success. Members of this committee are asked to have specialized training in administering funds for a 501 (C) 3 non-profit organization. They may call on experts in the field as consultants.

CRISIS MANAGEMENT COMMITTEE

- Charter/ Job Description (*approved by MC in Spring 2013 Meeting*)
The function of this Committee is to develop a comprehensive crisis management plan, developing and adopting a policy of immediate action within the Church, and a commitment to provide effective communications with members of the Church, while problems, issues, and crises are being addressed. They may meet regularly with the Crisis Management Team which consists of a member of the Lesser Synod, officers of the Church, General Counsel and other experts called in as consultants.

ETHICS COMMITTEE

- Charter/ Job Description (*approved by MC in Fall 2012 Meeting*)
According to the Best Practice Principles and Policies document (which all those working in central church administration, including bishops and Metropolitan Council members are expected to read and sign a statement agreeing with said policies), the “Metropolitan Council Ethics Committee is responsible for investigating and making recommendations for resolving all reported complaints and allegations concerning violations of the Ethics Policy and shall advise the Chair of the Metropolitan Council and work with the Metropolitan Council until the matter is resolved. The Chair of the Metropolitan Council Ethics Committee is required to report to the Metropolitan Council at least semi-annually on activities.” The Ethics Committee is required to investigate any or all reports of violations of these Best Practice Policies. All “supervisors and managers” are required by Best Practices to report violations to the chair of the Ethics Committee who reports the Committee’s findings to the Chair of

the Metropolitan Council. All employees may report ethics violations to the Chair of the Ethics Committee though they may opt instead to report the violations to someone in a managerial position.

The Ethics Committee is to be elected each year by the Metropolitan Council. The activity of the Committee is determined by the number of cases brought to it for investigation. Upon investigating a complaint the Committee makes a recommendation to the Metropolitan Council for action to be taken.

FINANCIAL DEVELOPMENT COMMITTEE

- Charter/ Job Description (approved by MC at Fall 2010 Meeting)
The Financial Development Committee offers guidance, suggestions and support to the central administration for annual, major, and planned giving programs. It assists the Metropolitan and Giving Officers/ Staff in identifying, cultivating and soliciting donors to the OCA. It reports to the MC, presenting appropriate recommendations for action concerning the OCA's fund-raising policy and activity."

FINANCE AND INVESTMENT COMMITTEE

- Charter/ Job Description (approved by MC in April 2, 2008 Meeting)
Purpose: The Finance Committee (Committee) will assist the Metropolitan Council in its oversight responsibilities relating to fiscal management. In furtherance thereof, the Committee will:
 - Review and recommend approval of an annual operating budget;
 - Regularly review financial results;
 - Ensure the maintenance of an appropriate capital structure; and,
 - Oversee the management of organization-wide financial assets.

In addition, in order to assist the Church in the proper and prudent management of its financial resources the Committee will ensure that the management employs personnel and systems capable of providing timely and accurate financial information to key decision-makers.

Committee Membership: It is anticipated that the Committee will always include some members of the Metropolitan Council (MC). It may also include members who possess skills in the disciplines of accounting, investment management, and capital structure/finance. The Committee will have a minimum of three members. In cooperation with the treasurer and other management staff the Committee will ensure that important financial topics are reviewed in sufficient depth by the MC. The MC will appoint the Committee at its first meeting each year. The Committee will add additional members as needed.

Key Responsibilities: To fulfill its purposes, the Committee shall:

- Review and Approve an Annual Operating Budget: Annually, the Committee will review the proposed annual operating budget for the ensuing fiscal year as presented by the Church management. After the review and amendment, if necessary, the Committee will recommend a final operating budget to the full MC (or to the All American Council) for approval. The approved operating budget formally confers spending authority for operating costs to management, subject to the policies and procedures adopted by the Church. The operating budget may be amended, as appropriate, for new or adjusted line items as long as funding for said items is secured at the time. The Committee shall have authority to spend up to \$10,000.00 beyond budgeted items.
- Review the Financial Results: Monthly, members of the Committee will receive and review financial statements consisting of the then current year-to-date: 1) statement of financial position, 2) income statement, 3) operating statement, 4) key financial performance benchmarks that the committee deems relevant from time-to-time. These financial statements will be accompanied by a narrative from management highlighting any financial issues and, where necessary, management actions related thereto.

In addition, at its regularly scheduled meetings, the Committee will also review the status of the Church's financial condition and discuss, in detail, issues that emerge for review.

Maintenance of an Appropriate Capital Structure: From time-to-time, the Committee shall direct the management to undertake longer term financial planning to evaluate future financial needs. The Committee will review the underlying analyses and assumptions, as well as the methodology utilized. The Committee will then recommend a capital structure that best meets the Church's needs, generally in the context of personnel costs, ministries and capital expenditures.

Oversee Organization-Wide Assets That Fall Under the Responsibility of the Central Church: This would include all Stavropigial institutions and any other lands or assets held in the name of the Central Church.

Timely/Accurate Financial Information: The Committee will continually review and advise the management regarding the form, content and frequency of financial information necessary for it to fulfill its responsibilities described herein. Further, to the extent necessary to inform decision-makers, the Committee may advise management regarding key financial information and performance indicators necessary to evaluate the various internal Ministries of the Church.

GOVERNANCE COMMITTEE

- Charter/ Job Description (approved by MC in Spring 2013 Meeting)
The OCA Best Practice Principles and Policies document mandates the establishment of a broadly defined Governance Committee from the membership of the

Metropolitan Council. The Governance Committee is to be independent and its members are to receive no compensation. The Governance Committee has two major functions, one relating to finances and one to governance.

The Governance Committee has also merged with the Council Development Committee and takes on their responsibilities. It assists Metropolitan Council (MC) members in identifying and utilizing their talents and strengths in both general and specific areas of Council service. It maintains a Council Member Handbook in electronic form, with information and reference material to help both current and new members better understand and fulfill their responsibilities, especially regarding governance, both generic for non-profit organizations and specific for New York State and the OCA Statute.

The committee assists the Metropolitan Council in assigning members to specific Council committees and provides guidance to the Metropolitan and, as appropriate, the Holy Synod, on any expertise gaps impacting the performance of the Council. It provides instruments for evaluating the performance of the Council as a whole, as well as its individual committees and members, with the aim of improving the effectiveness of Council activity and service. It presents appropriate suggestions and recommendations to the Council concerning Council internal organization, procedures and policies.

As relates to finances the Committee is charged to:

- ensure that the audit of the annual financial statements of the OCA central administration is conducted by an external independent certified public accountant or accounting firm experienced in such audits,
- review and discuss the annual financial statements of the Church as regards any deficiencies in internal controls identified by the external auditor during the course of its audit,
- address all reported concerns or complaints regarding corporate accounting practices, internal controls or auditing,
- have authority to call upon and pay outside advisors to provide financial and other expertise as deemed appropriate,
- file an annual report to the Metropolitan Council which contains a review of the audit controls, and a statement on any suspected fraud, security or litigation issues,
- provide the Metropolitan Council with independent insight into the internal controls, operations, accounting policies, and financial reporting of the OCA.

As relates to governance, the Committee is charged to:

- review internal OCA policies regarding:
 - + Conflict of interest,
 - + Ethics and receipt of confidential complaints,
 - + Resolution (whistleblower) policies,
 - + Internal delegation of authority manuals,

- + Compliance with internal policies,
- + State regulations as well as with governmental laws,

and recommend changes to the Metropolitan Council as necessary.

- schedule and conduct internal audits of compliance to policies and procedures and makes sure all policies and procedures are readily available.
- receive any reports of violations of Best Practices, and refer any violations to the Ethics Committee for resolution.

In fulfilling its responsibilities, the Governance Committee has direct access to any and all administrative or staff personnel. The Governance Committee may recommend to the Metropolitan Council the granting of authority to it for conduct of investigations deemed necessary to fulfill its responsibilities.

HUMAN RESOURCES COMMITTEE

- Charter/ Job Description (*approved by MC in Fall 2009 Meeting*)
The Metropolitan Council Human Resources Committee, consisting of at least three members, shall assist the officers of the Church in formulating and implementing human resources policies. They will periodically review all human resource material and ensure the human resources handbook is up-to-date and accurate. They may also be called upon to assist in reviewing and interviewing candidates for open positions in the Chancery and working through requirements for hiring. They also will assist in writing and reviewing job descriptions for all chancery positions.

LEGAL COMMITTEE

- Charter/ Job Description (*approved by MC in Spring 2008 Meeting*)
The Metropolitan Council Legal Committee, consisting of at least three to five members, shall between meetings of the Metropolitan Council act for and on behalf of the Metropolitan Council to discharge its legal responsibilities. The Legal Committee shall work in conjunction with the General Counsel and members of the Central Administration. Responsibility for major policy and legal decisions, such as initiation of litigation and settlement of litigation, shall be retained by the Metropolitan Council as a whole. They may call upon additional consultants with expertise in certain areas of law to assist the Church in legal issues.

The Legal Committee shall fully and promptly report to the Metropolitan Council its activities and decisions between meetings. The Legal Committee shall act by majority vote. The Legal Committee may act by telephonic meeting or consent evidenced in writing or e-mail, or such other means that the Legal Committee shall determine to be useful or appropriate.

POST CONCILIAR COMMITTEE

- Charter/ Job Description (*approved by MC at Spring 2012 Meeting*)

The role of the Post-Conciliar Committee (PoCC) is to provide oversight and coaching to the Implementation Teams (ITs) actually implementing the Strategic Plan. Each of the eight major goals in the plan has a PoCC Coordinator and an Implementation Leader and Team associated with it. The role of the PoCC Coordinator is:

-To provide oversight of the implementation: periodically check in with the Implementation Team leader to see that the implementation team actually develops a plan, that it seems to make sense, that it is communicated in an effective way, and that they are making reasonable progress in implementing it. If you think that for some reason the plan is going in the wrong direction work with the Implementation Team leader to resolve this.

-To provide nudging where needed: periodically check in with the Implementation Team leader to see whether the projects are on track? if not, why not? and what can be done about it?

-To help overcome barriers: the Implementation Team leader and team will undoubtedly encounter barriers -- all programs and projects do. It is always helpful to have a well connected, experienced, champion of the program, i.e. the PoCC member, who can help them overcome barriers -- whether in communication, funding, 'politics', relating to the MC and HS, etc.

-To provide encouragement when needed: all programs/projects hit low points. It is nice to have a champion who reminds you that what you are doing is important and reminds you that all programs hit snags and that all we need do is our best and God will do the rest.

Chapter 3
Article V of the OCA Statute
“The Metropolitan Council”

Article V - The Metropolitan Council

Section
1 **Organization**

The Metropolitan Council is the permanent executive body of the Church Administration Which exists for the purpose of implementing the decisions of the All-American Council and continuing its work between sessions. It shall consist of the Metropolitan as Chairman, the Chancellor, the Secretary, the Treasurer, two representatives from each diocese, one priest and one layman to be elected by the Diocesan Assemblies, three priests and three laymen elected by the All-American Council. Vacancies occurring among diocesan representatives are filled by the respective dioceses. Two alternates are to be elected by the All-American Council, one priest and one layman, to fill vacancies occurring among members elected by the All-American Council. All elected members, whether representing the several dioceses or those elected by the All-American Council, may succeed themselves in office for one term only. The Metropolitan Council may, between meetings, delegate a committee consisting of the Chancellor, Secretary, Treasurer, and two other members to meet in conjunction with the Lesser Synod of Bishops upon their invitation, to discuss normal church administrative procedures. This committee shall report back to the Metropolitan Council concerning all actions and decisions.

Section
2 **Quorum and Voting**

A majority of the members of the Metropolitan Council will constitute the quorum. All matters of the Metropolitan Council are decided by a majority of votes of those present; in case of a tie, the deciding vote shall be cast by the Chairman. The decisions of the Metropolitan Council shall become effective upon approval of the Metropolitan or Holy Synod, depending on the nature of the decision.

Section 3 **Periodicity**

The Metropolitan Council shall meet at least twice a year.

Section 4 **Competence**

The Metropolitan Council:

- a. Implements the decisions of the All-American Council and of the Holy Synod in the areas of its competence;
- b. Assists the Metropolitan and the Holy Synod in Implementing decisions within the areas of its competence;
- c. Establishes the budget for the operations of the Church and examines all financial reports of the Church;
- d. Supervises the collection of the assessments and fees established by the All-American Council and determines the allocation of such funds;
- e. Organizes plans for obtaining voluntary contributions for the satisfaction of the needs of the Church;
- f. Provides for the maintenance of the central administrative bodies of the Church and for the allocation of the general Church funds;
- g. Decides on the purchase, sale, or mortgaging of property of the Church, except in cases covered in Article X, Section 8;
- h. Maintains an inventory of all properties of the Church;
- i. Provides for the establishment and maintenance of institutions of charity and education, as well as for publications for the propagation of the Orthodox Faith;
- j. Determines the forms and books necessary for the keeping of records and statistical data by the dioceses, requiring all statistics necessary for reports;
- k. Appoints officers and committees on matters within its competence;
- l. Initiates, prosecutes, and defends all legal matters affecting the interest of the Church;
- m. May receive reports from any department in areas within the competence of the Metropolitan Council.

Chapter 4

Minutes of Previous MC Meetings

All minutes and reports of the Metropolitan Council meetings may be found at the OCA website at: <http://oca.org/about/metropolitan-council>

It is recommended that new member read the last three years' of minutes and reports prior to their first Metropolitan Council meeting.

Chapter 5

Financial Reports

All financial report and audits may be found in the Metropolitan Council reports. Posted financial reports and audits may be found at the OCA website at: <http://oca.org/about/accountability>

It is recommended that new member read the last three years' reports prior to their first Metropolitan Council meeting.

Chapter 6

Fiduciary Responsibilities

by Thaddeus Wojcik, OCA General Counsel

No man can serve two masters: for either he will hate the one, and love the other; or else he will hold to the one, and despise the other. Matt 6:24 (KJV)

This article presents an overview of certain legal responsibilities every person assumes, whether they know it or not (and whether they like it or not) when accepting the duty and honor to serve on the Metropolitan Council of the Orthodox Church in America. The same principles apply also to the Holy Synod of Bishops and also to those who serve at the All American Council. This article is not exhaustive, but does illustrate the nature and scope of the serious responsibility to secular law that goes with serving in such capacity. Neither is this article academic, but is intended to be “non-lawyer-friendly,” while still serious. Accordingly, with one exception, no citations to specific statutory or case law are included.

Church, Not Corporation

The Orthodox Church in America (the “OCA”) is the local presence in America of the Universal Church, the mystical Body of Christ to which God sent his Holy Spirit on Pentecost. The OCA, then, is the One, Holy, Catholic and Apostolic Church – She is not an organization or institution as such, and She certainly is not a “corporation.” Accordingly, She can and does trace Her existence organically to the outpouring of the Holy Spirit in an upper room in Jerusalem in or around 33 A.D, and not to the filing of a certificate of incorporation in Albany or to the passage in the early 1970’s of a law by the New York legislature.¹

Although in the world, the Church is not of the world. Although mystical, the Church is also locatable in space and time by reference to her bishops and those who are in communion with the bishops in and through the Church’s sacramental life. And, although mystically the Church’s members are citizens of the heavenly Jerusalem, so long as they are still pilgrims in the world, the members of the so-called “Church militant” are called to obey the secular authorities other than where to do so would be to sin. So, when it seemed good at one time (*e.g.*, 1972) to the members of the Church in America to agree with the State of New York to form and operate a corporation (the New York corporation homonymously named *The Orthodox Church in America*) to administer and effectuate certain temporal aspects of its mission to the world, it became a duty of those Church members who from time to time are set apart to operate this corporation to comply with all applicable laws (except, of course, where to do so would be to sin).

What are Corporations and What Rules Govern Them?

¹ In fact, one need not even look as far back as Pentecost to note a distinction between ecclesiastical body and corporation: autocephaly was granted to *The Orthodox Church in America* two years before her members began to operate a corporation known by the same name.

In New York, a corporation is typically formed when one or more individuals determine to file a properly drafted charter document (called a “certificate of incorporation”) with the Secretary of State and the filing is accepted by the State. For various reasons, however, the OCA was formed in an atypical manner by a special act of the New York legislature. By whatever mechanism formed, however, in a certain respect one can understand a corporation to be no more than a set of papers on file with the relevant governmental authority within the jurisdiction under whose laws it was formed. This understanding, of course, is as impractical as it is insipid. So, the law applies a legal fiction by which a corporation is treated as a “person,” having an existence separate and apart from that of its “members” (however defined) and separate and apart, even, from those natural persons who serve as its officers and directors and act on its behalf. As a person, a corporation has legal rights, interests and obligations; and by and through the decisions and actions of its officers and directors, a corporation may generally buy and sell property, enter into contracts, sue and be sued on those contracts and on other legal rights, be held criminally culpable under certain circumstances, and engage in other activities and enjoy other rights and be subject to other responsibilities.

For purposes of the remainder of this article, references to “the Church” will mean the local presence of the Body of Christ known canonically as *The Orthodox Church in America*; and the term “the OCA” will mean that corporation, having the same name, which was formed in 1972 by the New York legislature and is now operated by members of the Church.

In New York, there are different types of corporations, including business corporations and not-for-profit (“NFP”) corporations. All New York NFP corporations are governed by the *New York Not-for-Profit Corporation Law* (the “NFP Law”). New York also distinguishes among types of NFP corporations, and in particular recognizes religious NFP corporations to the extent of having enacted a distinct set of statutes, codified in the *New York Religious Corporations Law* (the “Rel. Corp. Law”), which apply to those NFP corporations that are formed for religious purposes. The NFP Law and the Rel. Corp. Law both apply to the OCA (with certain exceptions), and to the delegates at its All American Council and to the Metropolitan Council members, and even, when acting in their capacity as trustees of the corporation, the Holy Synod of Bishops. Also applicable is a body of case law that has developed over time by the courts of New York construing and applying the NFP Law and the Rel. Corp. Law in various situations to various religious and other NFP corporations.

In addition to the NFP Law, the Rel. Corp. Law and relevant case law, the OCA is subject to the provisions of the OCA’s charter document (that is, the special act of the New York legislature that brought the OCA into existence) and by-laws (which are denominated as the OCA’s *Statute*), both of which provide additional internal governance rules applicable to the decision-making processes and actions of the OCA and its “fiduciaries.”

Who are “Fiduciaries” and What Are Fiduciary Duties?

Because a corporation, being a legal fiction, cannot actually do anything on its own, its rights are exercised, its interests protected and its obligations satisfied by individuals who serve as its officers and directors, acting in such capacity in the name and on behalf of the corporation. Generally, directors of an NFP corporation (often called “trustees” in the context of a religious corporation), have responsibility for (among other things) the “strategic” oversight of the corporation, including setting corporate policy and long-term goals, approving extraordinary actions and appointing officers, in each case consistent with the corporation’s charter document, its by-laws and all applicable law. Officers, in general, are charged with the day-to-day conduct of the affairs of the corporation consistent with the resolutions of the corporation’s board of trustees, as well as its charter, by-laws and all applicable law.

Officers and trustees, by virtue of their positions, stand in a “fiduciary” relationship with the corporation; that is to say, they are in a position of trust. This means that, when taking actions or making decisions pertaining to the affairs of the corporation, they are strictly held to a rather high standard of care embodied in the law, legally obligating them to place the interests of the corporation before any interests of any other person, including their own.

NFP Law Section 717(a), which applies to the OCA and its fiduciaries, provides that “[d]irectors and officers shall discharge the duties of their respective positions in good faith and with that degree of diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions.” (This rule is similar to, although different from, the correlative rule codified in the New York Business Corporation Law, which may be familiar to some, which applies to business corporations rather than NFP corporations or religious corporations.)

This general rule, of course, has many specific applications. But, the underlying principle can be understood, in a sense, as the foundation on which not only several specific duties rest, but also on which is established the greater portion of the Rel. Corp. Law and the body of case law construing the Rel. Corp. Law and the NFP Law in the context of religious corporations.

Who Are the OCA’s Fiduciaries?

The OCA’s charter document and its Statute (or by-laws) provide a tri-partite internal governance structure for the OCA that is somewhat unique among corporations. The Holy Synod is its “supreme canonical body,” the All American Council (“AAC”) is its “highest legislative and administrative body,” and its Metropolitan Council is its “permanent executive body.”

It is on the shoulders of the Metropolitan Council that much of the decision-making and deliberating responsibility for the OCA falls (even though its decisions ultimately require approval by the Holy Synod), including many important legal and financial responsibilities. The OCA’s by-laws enumerate these duties and, while no decision of the

Metropolitan Council is effective unless and until blessed by the Holy Synod (or the Metropolitan, in some instances), neither the Synod nor the Metropolitan has the legal right or authority to initiate action in any matter that is among the enumerated responsibilities of the Metropolitan Council.

While the authoritative nature of the Holy Synod within the context of the Church necessarily pertains to things canonical, the Statue of the OCA also provides the Holy Synod (or, under some instances, the Metropolitan) with the duty and right to approve the corporate decisions of the Metropolitan Council that are within its competence before any OCA fiduciaries may act upon such decisions. For this and other reasons, the Holy Synod is as subject to the law concerning its decisions and actions as trustees, as are the OCA's other fiduciaries.

While somewhat more removed from these concerns than are the members of the Metropolitan Council and Holy Synod, those serving at the AAC, when making decisions for and on behalf of the OCA, are also fiduciaries of the OCA – trustees, in fact, subject in their decisions and actions to all New York laws applicable to fiduciaries of religious corporations.

The “Business Judgment Rule” – What Is It and Does It Apply to the OCA?

The decisions of directors of corporations, including religious and other NFP corporations, are generally given deference under a principle often called the “business judgment rule.” One important implication of this rule is that courts will not generally substitute their own judgment for the judgment of a corporation's board of directors/trustees. Instead, they acknowledge a presumption favoring the decisions of such boards. However, even the application of this rule requires the absence of self dealing by the trustees. The rule will not be available as a defense for decisions and actions of trustees where they acted other than in good faith and in a manner consistent with (or at least not opposed to) the best interests of the corporation. In other words, put simply (albeit in a rather circular fashion), trustees must act in accordance with their fiduciary duties.

Some Specific Duties

One can categorize or delineate fiduciary duties in a number of ways. However, it may be helpful to view specific duties that are imposed on a person who accepts the responsibility to serve as a corporate officer or trustee as falling within one of two broad, well-known categories of fiduciary obligations: the duty of care and the duty of loyalty.

In the context of the OCA, the duty of care requires members of the Metropolitan Council and the Holy Synod and delegates to the AAC, in general, to exercise diligence and otherwise to make herself or himself aware of all relevant information available before making a decision, and to obtain and use the requisite skills relevant to the actions to be taken by them on behalf of the OCA. The duty of care subsumes certain specific obligations, or specific applications of that duty, in various circumstances. One specific

application that is illustrative of the duty of care is the duty to not waste corporate assets, which would include (but certainly not be limited to) over-compensating employees, overpaying for property, approving unnecessarily lavish corporate retreats, and perhaps even agreeing to a loan with an unjustifiably above-market interest rate. In each of those cases, failing to be properly informed in approving such an action or to obtain relevant skills in effecting such an action would result in a use of corporate funds in excess of that which was necessary and which otherwise would not have been expended.

The duty of care does permit members of the Metropolitan Council to rely on information presented by the OCA's officers, other trustees or employees if she or he believes (reasonably) that the person on whose information the Metropolitan Council member is relying is both reliable and competent in the matter with respect to which the information relates; such reasonableness would, of course, preclude relying on someone known to have an interest in the matter. Members of the Metropolitan Council may also rely on legal counsel, public accountants and other professionals in matters which they believe (reasonably) to be within the scope of the expertise of such professionals. And, further, a member of the Metropolitan Council may rely on committees of the Metropolitan Council on which such trustee does not serve regarding matters pertaining to the authority of such committee.²

The duty of loyalty comprises a number of other distinct duties, but may generally be understood as requiring the Metropolitan Council (and Holy Synod and AAC) members to be loyal to the OCA (the corporation) above all others and to its temporal interests above all else (subject to the Christian duty to not sin, of course). Implicit in this is a duty to avoid self dealing in transactions involving the OCA or its assets, to not usurp corporate opportunities, and to not divert corporate assets to the personal use of anyone (regardless of motive, intent or "good will").

Also implicit in the duty of loyalty is a duty to avoid conflicting interests and conflicting duties – in other words, to avoid serving two masters. In the event that a Metropolitan Council (or Holy Synod or AAC) member would otherwise be involved in a decision-making process, or in carrying out a decision or otherwise acting on behalf of the OCA, concerning a matter as to which she or he would have (or even may possibly come to have) a personal interest, then that member must recuse herself or himself from such process or decline to otherwise act in such matter, and may be required to disclose the actual or potential conflict. Similarly, if such a member, by acting on behalf of the OCA in a certain matter, would necessarily be in breach of a duty to another corporation, that member would be required to recuse herself or himself from the decision-making process and from acting on behalf of the corporation concerning the matter.

A conflicting interest, by the way, need not be monetary; it can be any other matter in which a person has any personal, financial, reputational, or other private interest distinct from the specific interest of the OCA that would (or might) impair independent judgment

² A trustee would not be deemed to be acting in good faith if she or he has knowledge concerning the matter in question that would cause reliance on any such officer, director, employee, professional or committee to be unwarranted.

or otherwise influence decisions made or actions taken regarding the affairs of the OCA. It might include, for example, a refusal by a trustee to cooperate in an investigation in which the OCA has an interest due to her or his desire to avoid publicity, or even to avoid personal inconvenience, or a decision made in order to avoid embarrassing oneself or even another (however understandable or compelling the urge to do so may be). In any such case, the person with the conflict must recuse herself or himself from the decision making process or from taking such action, and perhaps disclose the nature of, or even the details concerning, the conflict. Where a conflict is ongoing or a given conflict was resolved in favor of one other than the OCA, resignation or removal of the individual with the conflict might even be appropriate.

With respect to the duty of care, the OCA's fiduciaries should bear in mind that there is a clear distinction between errors in judgment and willful or even negligent blindness. Mere errors in judgment would likely not constitute a breach of the fiduciary duty of care. But, a Metropolitan Council member would arguably not be excused from a breach for failure to have known or discovered that which was reasonably knowable to or discoverable in the diligent discharge of her or his duties. Turning a blind eye is, perhaps, an obvious example; but, failure to know that which would have been known had a person done what she or he was called to do (for example, attend meetings regularly or read the minutes of meetings not attended or become familiar with the substance of the OCA's charter and by-laws) results in a breach of duty to the OCA as well.

Similarly, good faith is not synonymous with a "godly" motive or altruistic intent. In fact, good faith – which seems, at first, to be a purely subjective concept – is limited. The feelings or desire to do good are not necessarily sufficient to constitute good faith. Instead, good faith is determined by reference both to the individual's belief as well as to the nature of the relevant action. For example, the intent behind the use of some funds whose donation was known to have been dedicated for the renovation of the iconostasis in the Chancery's chapel in order to pay a local priest's salary, or to fix the Chancery roof or pay its utilities, or to help a local soup kitchen, or to pay an indigent's medical bills, would be immaterial to the issue of good faith – the use of the funds itself other than for their dedicated purpose evidences a lack of good faith with respect to their wrongful allocation. The reason, of course, is that dedicated funds do not belong to the Metropolitan Council or to Metropolitan or the Holy Synod or the Chancellor or treasurer or other officer or anyone else; in fact, one can understand that they belong to the OCA only to the extent they are used in accordance with the donor's wishes. The donor's faith in the OCA and trust of those charged with conducting its affairs were the reason the donor gave up her or his money in the first place.

Other Relevant Concerns

While no Metropolitan Council or Holy Synod member or AAC delegate needs to become an expert on the entire substance of or the public policies underlying the NFP Law and the Rel. Corp. Law, it is helpful for them, as fiduciaries of a New York religious corporation, to bear in mind several specific principles, public policies and legal issues.

The primary purpose of the Rel. Corp. Law is to provide for the orderly administration of funds and other properties entrusted to the use of religious groups and to protect these funds from being diverted from the intended beneficiaries or otherwise exploited by those to whom they are entrusted. To that end, New York law provides in general that no individual acting alone, and no group of individuals – neither a Metropolitan Council member, nor the Chancellor, nor any other officer, nor even the Metropolitan or the Holy Synod itself – has the authority to make or authorize acts binding on the corporation. Only the board of trustees – the Metropolitan Council with the approval of the Holy Synod – acting as such, has the authority to act on behalf of the “OCA-as-corporation.” Moreover, relevant New York case law has provided that all persons are deemed to be on notice of this restriction on the authority of individual fiduciaries or groups other than the board of trustees; a person is not permitted the defense of having acted in good faith in any transaction that purports to have been negotiated on the apparent authority of, for example, a Metropolitan, or a Chancellor, or even the Holy Synod or any administrative, executive or finance committee. This imputation of notice is not limited to lawyers or other professionals or to officers and trustees but applies generally to everyone, whether they actually are aware of the limitation or not.

Certain exceptions to this rule do apply, however. For example, where, by resolution of the Metropolitan Council approved by the Holy Synod, a committee of the Metropolitan Council is formed for a specific purpose, that committee may bind the OCA to the extent permitted by the enacting resolution. As well, the day-to-day affairs of the OCA in the ordinary course of business require executive officers to act with a certain degree of binding authority, such as in retaining waste management or grounds-keeping services or for contracting for necessary repairs and maintenance of the Chancery property or for incurring necessary and reasonable travel expenses or paying for business telephone charges. It would not include, for example, the authority to retain legal counsel or to initiate or settle litigation or to purchase, sell or mortgage real estate. Authority to bind the OCA to obligations other than in the ordinary course rests solely with its board of trustees.

But, What About the Hierarchy? And Why Does the State Meddle in Church Affairs?

None of the principles discussed in this article do violence to the Orthodox understanding of hierarchical authority in the context of the Church, or to any First Amendment or other federal or state constitutional concerns. This, of course, is because the corporation formed by the Church’s members is distinct from the Church, pertaining only to those temporal aspects of the Church that its members determined to be appropriately administered by and through a corporate entity. New York recognizes this. No matter of spiritual discipline, worship, doctrine, custom, ecclesiastical protocol or other purely religious concern is subject to the State’s authority. However, because of the purpose of the Rel. Corp Law – to provide for the administration and protection of funds and properties entrusted to religious groups – and because of the agreement to operate a corporation to obtain certain benefits from the State, the conduct of the corporate (versus religious) affairs of the entity must be in accordance with applicable law.

But, Why So Complex?

Human nature has resulted in a complex labyrinth of laws in all aspects of human society. Where there is a will (to do wrong) there is a way (to skirt a law). So, while a simple, fundamental statement of ethics or morals would likely be sufficient for a well-intentioned person to act in a fiduciary capacity, such a simple structure would be readily circumvented by the charming, crafty and cunning. So, not only is there a rather detailed code of rules set forth in the NFP Law and the Rel. Corp. Law, there is also a regularly growing body of case law interpreting and applying those statutes in various circumstances. The law (just like self interest) is like a rubber band, being ever stretched to fit newly devised expressions of the timeless battle of right versus wrong. It is interesting to suppose, however, that at their heart, so many of the laws, rules, public policies, regulations, best practices and accountability standards that apply to religious corporations have their source in the same Lawgiver whose simple precepts we learned in Sunday School and during sermons: don't lie; don't cheat; don't steal; honor your promises; be wise as serpents but harmless as doves; and repent. It really is that simple, if you want it to be.

* * *

Let every person be subject to the governing authorities; for there is no authority except from God, and those authorities that exist have been instituted by God. Therefore, whoever resists authority resists what God has appointed, and those who resist will incur judgment. For rulers are not a terror to good conduct, but to bad. Do you wish to have no fear of the authority? Then do what is good, and you will receive its approval; for it is God's servant for your good. But if you do what is wrong, you should be afraid, for the authority does not bear the sword in vain! It is the servant of God to execute wrath on the wrongdoer. Therefore, one must be subject, not only because of wrath but also because of conscience.

Rom 13: 1-5 (RSV)

Appendices

1. The New York State Charter of the OCA
<http://www.oca.org/PDF/official/ocacharter.pdf>
2. New York Law: Religious Corporations: Article 5-c "Churches of the Orthodox Church in America"
<http://www.oca.org/PDF/official/ny-religious-corporations-5c-oca.pdf>
3. The Statute of the Orthodox Church in America (complete)
<http://www.oca.org/DOCindex-statute.asp?SID=12>
4. Minutes of All-American Councils
<http://oca.org/history-archives/aacs>
5. Generic Non-Profit Governance Responsibilities: "Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations"
<http://www.nonprofitpanel.org/>
6. IRS Tax Guide for Churches and Religious Organizations
<http://www.irs.gov/pub/irs-pdf/p1828.pdf>
<http://www.irs.gov/charities/churches/index.html>
7. Annotated Bibliography (Internet links)
 - a. Strategic planning
http://managementhelp.org/plan_dec/str_plan/str_plan.htm
 - b. Finance/ Accounting
http://managementhelp.org/finance/np_fnce/np_fnce.htm
 - c. Fund Raising
<http://www.archrespice.org/archfs6.htm>
http://managementhelp.org/fndrsng/np_raise/np_raise.htm
 - d. Creating a Strong Board Team
http://www.boarddevelopment.org/en/1/create_board.aspx