

A Roadmap for American Churches and People of Faith: W.W.J.D. (What Would Jesus Do?)



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Stewardship Calling

CHAPTER 6. Summary Of Legal Duties Of Parish Leaders.

There is another key element that I want to share briefly that is required by operation of U.S. law. If you are a parish council member (e.g., a board of directors member of an incorporated entity), you have three specific additional legal duties. They are generically referred to as 1. the Duty of Care, 2. the Duty of Loyalty, and 3. the Duty of Obedience. To be sure, law schools spend weeks on each of these legal duties. Time and space do not permit such depth here. However, if you are a leader of your parish, a short, high-level summary will alert you to their presence, and you should follow up with your parish legal counsel.

THE FOLLOWING IS NOT LEGAL ADVICE (which I am required to say at this point since I am only licensed in the State of Georgia and you and I have not established an attorney-client relationship.) As a result, I strongly recommend that each parish council (church board) receive more detailed instruction from a lawyer licensed in your State with the requisite expertise. You should also meet with a licensed insurance professional to help you understand what actions might be covered by your officers and directors' insurance and other insurance policies your parish must acquire, as well as what is not covered and leaves you exposed.

Duty Of Care.

You are to act in good faith and diligently. This means you must act with "reasonable care" to make prudent decisions and avoid causing any injury or harm. Indeed, the law creates what is called the "prudent man" standard, which says you should do what a reasonably prudent person would do in each situation. In short, this duty means making thoughtful, informed decisions for the good of your parish by being reasonably diligent and using good judgment.

For example, before your parish acquires something significant, due diligence research should be conducted that might include costs and benefits, alternatives, and multiple providers, and ensure it is a wise investment that fits within the parish budget. Similarly, you should consider what is reasonable and prudent to avoid someone getting injured when they come on your premises or attend your events.

As a parish council member, you should understand the parish's business. Some of you are financially astute, while some of you are not so blessed. This does not necessarily mean you need to have the same expert level of understanding as your treasurer or accountant. However, as a leader of your parish, you are under the duty of care that gives you the obligation to at least: 1. understand the basic business of your parish, 2. ask questions, 3. actively participate in all the parish council meetings, and 4. provide strategic direction and oversee management.

You can consider this duty from a "3A" perspective:

1. Attend. You must attend parish council meetings and be prepared by reviewing all the information provided in advance. Be prepared to ask questions and discuss the best solutions.

2. Ask. It is OK not to know everything. It is not OK to avoid asking critical questions to understand what is presented to you. This is part of the due diligence necessary to make the most reasonable and best-informed decisions. If you do not understand financial statements, here is where you ask for explanations and seek additional training or guidance. If an important decision is being made, you must ensure the parish council asks the requisite questions to make the reasonably most informed decision. This may also mean the parish council brings in or hires an expert professional to answer your questions and provide advice.

3. Analyze. A parish council member has a critical responsibility of oversight. This requires thoughtful analysis of the advantages and disadvantages of every decision and inquiry about alternatives. This duty starts with making sure you have the right and reliable data, the answers to all the appropriate questions, and the consideration of the parish's situation and alternatives and priorities, after which you can evaluate the best decision.

I cannot overemphasize asking questions, securing facts, and then using your own best judgment in decision-making. I appreciate the pressure that you may feel in a parish council meeting where nobody wants to raise their hand and challenge whoever is presenting. However, suppose you do not understand something being discussed. In that case, you are not exercising your duty of care by sitting silently or just going along with everyone else (including those who demonstrate great confidence in a particular decision). If there is something that you do not understand, the legal duty of care requires you to ask questions and, in appropriate significant cases, to seek independent professional advice. You do not have to know everything, but you cannot hide behind your ignorance and what you do not know. Attend, Ask, and Analyze.

Duty Of Loyalty.

The second duty of loyalty should come easy for Christians. It requires you always to put your parish first and act in the parish's (not your own) best interests. This means that if there is a decision to be made about something in which you or a family member might directly or indirectly benefit, you must "recuse" and not participate in any way in the discussion or decision on that matter. Any actual or potential conflict of interest must be avoided. In my legal world, we add that one should avoid "even the appearance of a potential impropriety." That means you cannot participate in that decision-making process in any way where your interests or those of any family member might be implicated.

This duty of loyalty requires that every decision be made objectively and that confidentiality be respected. The confidentiality aspect may sound strange, given my continued preaching of the critical importance of "ITA" (**Integrity, Transparency, and Accountability**) in all parish endeavors. However, there are some things that you, in

your role as a “board member,” are required to keep confidential. An easy example involves any personnel matters or the financial stewardship contributions made by individuals. Of course, the clergy has the added responsibility of the “priest-penitent” privilege and confessional confidentiality obligations. Thus, ITA should be the default norm except where a legal or religious duty of confidentiality imposes a higher standard of privacy.

CAUTIONARY NOTE: I am intentionally not discussing the critical issues regarding the various State and Federal laws that require disclosures of certain things, such as the stated desire to commit a future crime, child endangerment/molestation, etc. These serious items have legal requirements of disclosure to appropriate law enforcement personnel that vary State by State, notwithstanding any priest/penitent or other confidentiality privilege. Given the critical importance of these legally mandated disclosure obligations, ALL clergy, youth workers, and parish leaders must receive appropriate legal education about the duties your State, religious Jurisdiction (and in many cases, Federal law) impose on you.

The acronym to remember when considering your duty of loyalty is “**CATCon.**”

1. **C**onflict **A**voidance requires one to avoid any situation where one’s personal interests (either directly or indirectly) might be implicated or interfere with the best interests of your parish. When in doubt, recuse (excuse) yourself and do not participate in discussions or decisions.

2. **T**ransparency in this context requires fully and completely disclosing any potential personal or conflict of interest you or a family member might have before you recuse yourself. As a U.S. Supreme Court Justice famously said: “Sunlight is said to be the best of disinfectants” (Brandeis, 1914). So, shine the light on any conflicts and then avoid participating in the decision.

3. **C**onfidentiality does not extend to the overall financial statements of the parish, which should be publicly available as part of your ITA. However, there are those pieces of confidential information (usually involving individuals) that should not be shared publicly. In my Greek world, the humorous old saying about violating confidentiality and this Duty of Loyalty is “telegram, telefax, tell-a-Greek.”

Duty Of Obedience.

This third critical legally imposed duty requires one to ensure the parish complies with all applicable Federal, State, and Local laws, its Charter/Articles of Incorporation, Bylaws, other legal governing documents, and any mandates of its religious Jurisdiction. In other words, follow all the laws and rules.

While probably not yet part of the legal duty of Obedience, I submit parish council members should always adhere to the parish’s WHY, Core Values, and Mission. Thus, I believe that parish leaders should ensure that their decisions are aligned with the fundamental foundational principles of the parish.

Many parish leaders do not always know that it is likely incorporated under state law and thus has a legal document they filed with their Secretary of State. This document that forms the parish is usually either called Articles of Incorporation or a Charter. It forms a legal covenant of the parish that must be followed. Also, states require that legal entities have a set of Bylaws that cover the more detailed operations of the parish and impose legal duties and obligations.

ALL parish council members must receive copies of the Articles of Incorporation/Charters and Bylaws when they begin service. Indeed, the first meeting each year should briefly review all applicable laws and the specific parish critical legal documents, and amend the later parish documents if something has changed. In addition, the best practice is to actually post these critical legal documents on the parish website or some other place where all parishioners have access to them.

Best practices parishes have personnel and other policy manuals developed by the parish council. These, too, must be followed under the Duty of Obedience. They also should be periodically reviewed and updated by the parish council and posted for everyone to see. In addition, I highly recommend that each ministry of a parish have a comprehensive operations and training procedure manual and handbook. This document describes what they do and how they do it, including any processes, procedures, rules, regulations, and limitations. The ministry policies should also anticipate possible interruptions or issues that might arise and have contingency plans for dealing with such occurrences.

For example, when the SARS-CoV-2 pandemic hit the United States and parishes were required to close, those that were not prepared ended up scrambling to figure out what to do. In contrast, some parishes I worked with in Florida and elsewhere had procedures manuals and contingency plans for what they would do if a hurricane hit their parish. Thus, when the government-mandated closures occurred, these parishes and their ministries merely pulled out their contingency plans and manuals and started executing the plans they had methodically prepared before the emergency. They hardly skipped a beat.

Another time, I was preparing to deliver my Igniting The Flame retreat at a parish when a church in that area was the victim of an anti-Christian terrorist bombing. Before I arrived, I inquired of the parish council President about what contingency plans they had in place. This parish council President (a former law enforcement officer) had his parish well-prepared with three well-trained and licensed law enforcement parishioners who had concealed carry firearms and a well-rehearsed security protocol to protect the safety of the parishioners. Whenever planning a highly visible religious event (including ethnic food festivals), ensuring there is enhanced security and protection is an investment well spent.

Parish leaders should systematically think about what they need to do in different situations and build a contingency plan and manual when they can calmly consider the facts and alternatives before an urgent crisis arises. Also, when a new leader takes over a ministry, providing them with these planning documents ensures they can get up to speed quickly and do not have to reinvent the wheel.

The Duty of Obedience also extends to the best and proper financial integrity policies and practices. This includes rules like having background checks performed on all parish employees, parish council members, finance ministry personnel, youth ministry workers, and other leaders. This also extends to best practices like (without limitation):

1. ensuring two different people must sign every check or disbursement,
2. complete separation of authorities to make sure that there is financial oversight,
3. ensuring the same person who counts any money is never the person who deposits it,
4. having financial dashboards publicly posted for complete Integrity, Transparency, and Accountability,
5. maintaining a formal written Corporate Delegation of Authority (CDA) Document that specifies who has what authority to sign which agreements at different thresholds and make investment decisions and expenditures, to name a few elements in such a CDA document,
6. formal “prudent man” investment guidelines for all parish funds that are periodically reviewed with strict compliance of all investments with such guidelines,
7. proper legal review of all contracts or agreements,
8. multiple checks and balances for all financial transactions, matters, and contracts, and
9. regular audits.

Best practices strongly recommend that each parish has a regular (hopefully annual or no less frequent than bi-annual) independent financial audit. I recognize that many parishes feel they cannot afford an independent audit from a financial professional and, therefore, rely on internal audits by parishioners who have some accounting expertise and no conflicts of interest. However, even an occasional independent audit will go a long way to ensure the parish is using the best financial practices, properly accounting for everything, and ensuring the various legal duties are being honored.

Ecclesial Governing Documents.

Many hierarchical churches have ecclesial governing documents that parish councils/boards/elders, etc., must also follow as duties of their leadership. They vary widely by church jurisdiction, so I will use my Greek Orthodox Archdiocese as an example since we have a significant number of these ecclesial governing documents.

The Orthodox Church has Canons that have been adopted by Ecumenical Councils or various Bishops since the founding of Christ’s church. These Canons govern the parishes and their leaders, although there are precious few Canon scholars to help

with interpretation when Canons sometimes seem to conflict. Clergy receive limited education in this field, and the seminary professors of Canon law can be consulted from time to time after graduation.

The Greek Orthodox Church in America also has an ecclesiastical Charter granted by the Ecumenical Patriarch (in addition to a State incorporation charter) that must be complied with. In addition, the Greek Orthodox Archdiocese has a document called its “Regulations” (formerly known as the “Uniform Parish Regulations”) that govern quite a few areas of parish life and operations.

I will not review all of the Parish Regulations in my Roadmap; however, in the parish council training program I routinely offer throughout the Greek Orthodox Churches and Metropolises, we review some of the most critical Regulations. Of relevance is Article 29 of the Greek Orthodox Archdiocese Regulations, which enumerates seventeen specific duties of parish council members they must all become aware of and follow. The first four such duties I will call out due to their importance (without suggesting the others are unimportant):

1. You should attend the Divine Liturgy regularly.

(And this means more than standing in the narthex attending to welcoming and other parish business matters. This Regulation is there to ensure the elected leaders are serving as trustworthy role models by actually partaking in the liturgical services.)

2. You are to participate in the sacramental church life.

(Recall the prior discussion about the five critical elements of exemplary leadership, which include leading by example. Parishioners must see their leaders participating in the sacramental life of the church.)

3. Parish Council members are to “assist” the priest in the administration of the parish ministries.

(The Proistamenos (head priest) is in charge, and the laity is there to assist and be his right and left arms and legs.)

4. You must establish the appropriate parish ministries.

(Later in Chapters 10 and 11 of my Roadmap, I will discuss the critical roles that such ministries play in the lives of the faithful.)

In addition to the Charter established by the Ecumenical Patriarch, the Regulations established by the Archdiocese, our Greek Orthodox Metropolises add some additional requirements and duties that parish councils must be aware of and follow. Much more can and should be said about adherence to ecclesial governing documents; however, for purposes hereof, I will leave it with the need for parish councils and other leaders to familiarize themselves with all such documents and rules to ensure they are fulfilling their fiduciary duties as parish leaders.

Selected Best Practices To Implement.

There are many other specific duties that parish leaders must execute with excellence, including my following top 10:

1. Vision setting and ensuring alignment with the parish WHY and Core Values,
2. Constantly focusing on the future Vision and what needs to change,
3. Strategic Planning,
4. Ensuring sufficient financial resources to operate the parish and its ministries,
5. Developing talent and volunteers, including recruiting, training, and mentoring,
6. Leading the ministry managers and team members in developing best practices, policies, and procedures,
7. Always being the positive face of the parish such that when people see you, they know your parish,
8. Constantly pursuing leadership training and development for clergy and laity,
9. Complying with all duties of care, loyalty, and obedience, and
10. Adhering to the various laws, rules, and regulations that govern your parish, conduct, and performance.

The above briefly summarized some of the critical legal and other obligations. I strongly recommend that every year, all parish leaders go through a training program to review these and other items.

Don't Forget Comprehensive Parish Insurance.

In today's litigious society, a parish must have professional assistance from a duly licensed insurance professional in your State. They should conduct a comprehensive audit of all your activities and operations and recommend the appropriate insurance coverage. I have no expertise in the insurance field and thus always defer to the appropriate insurance expert.

However, in over thirty years of serving on the legal committees at the Archdiocese, Metropolis, and parish levels, I have seen a lot of issues arise where the parish (or Diocese or national church) wishes they had appropriate or better insurance coverage. Thus, I believe every parish must have a comprehensive insurance review by an experienced professional annually. I am not covering every insurance policy that should be in place, but I submit at a minimum, your parish should have at least the following policies:

- (a) comprehensive property and casualty insurance,
- (b) full general liability insurance,

- (c) directors' and officers' insurance,
- (d) workers' compensation insurance, as required by State law,
- (e) health and medical insurance for employees,
- (f) youth protection insurance,
- (g) sexual misconduct insurance,
- (h) special events riders for your festivals, hall rentals, special events,
- (i) financial fidelity and financial integrity policies,
- (j) automobile insurance for any covered vehicles,
- (k) professional liability insurance if ministries require it,
- (l) specific insurance for any unique activities and operations and coverage required by the State of your jurisdiction.

Again, while I am not an insurance expert and cannot provide either legal or insurance advice in my Roadmap, I have always maintained a personal umbrella insurance policy myself. I recommend every parish leader personally acquire such an umbrella policy from the insurance company that provides your house or other personal insurance coverage. It can be added cheaply as an addition to a person's existing homeowners' policy. The right umbrella policy can provide additional personal insurance coverage in case something happens and the parish council/board members also get sued.

Finally, in addition to full officers and directors' insurance policies (D&O policy), every parish should make sure that its Articles of Incorporation/Charter and Bylaws have the most comprehensive indemnification protection for officers and directors to indemnify and hold them harmless from lawsuits against the parish unless they have any culpability. There is so much more a lawyer would like to discuss, but I sense the duct tape you wrapped around your head to keep it from exploding during a legal discussion is likely to break loose. Suffice it to say, always consult your lawyer!