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**CASE MANAGEMENT SOCIETY OF AMERICA  
BOARD OF DIRECTORS**

*"TEN THINGS THE BOARD*

*MUST KNOW*

*.... FROM A LEGAL POINT OF VIEW"*

**Presented By**

**Terrence Hutton  
Howe & Hutton, Ltd.**

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## INTRODUCTION

### WHERE WAS THE BOARD?

- A. "Black Eyes"/Ongoing
- B. Where Was/Is The Board? Where Were/Are You?

### **"TEN THINGS THE BOARD MUST KNOW...."**

#### **I. KNOW YOUR ASSOCIATION**

- A. Structure - Today As Opposed To Yesterday
  - 1. How does it work
  - 2. Categories - Nature of the Beast
    - a. Members
    - b. Associates
    - c. "Wannabes"
    - d. "Don't Wannabes"
  - 3. Governance Aspects
    - a. Articles of Incorporation
    - b. Bylaws
    - c. Policies
  - 4. Who's Inside/Outside
    - a. Staff
    - b. Consultants
    - c. Key Players
      - 1) Financial
      - 2) Service providers
      - 3) Legal
- B. Purpose
  - 1. Mission (Ten Words or Less)
  - 2. Plan
  - 3. Programs
  - 4. Constituency(ies)
- C. Accountability

1. Board
2. Members
3. Staff
4. Outsiders You Rely On
5. Public
6. Government

## **II. KNOW YOUR RESPONSIBILITIES/DUTIES**

- A. Standards of Conduct
- B. Duty of Care
  1. Diligence
  2. Judgment
  3. Informed
    - a. Get It
    - b. Demand It
    - c. Protect It
  4. Attendance
- C. Dependence on Others
  1. Inside
    - a. Staff
    - b. Other Directors
    - c. Members
  2. Outside
    - a. Attorney
    - b. Accountant
    - c. Others
- D. Delegation
  1. As a Board
  2. As an Individual
  3. As the Law Allows
- E. Role of Director vs. Staff Role
  1. Policy
  2. Implementation

- F. Compliance with the Duty of Care
  - 1. Meetings
  - 2. Information
  - 3. Know the Rules
  - 4. Know the Legal Limitations
  - 5. Business Judgment
- G. Conflict of Interest/Loyalty
  - 1. Basics
  - 2. Disclosure
  - 3. Nature of the Interest
  - 4. Legal Requirements
  - 5. Deprivation/Exploitation of Opportunity
- H. Confidentiality

### **III. KNOW YOUR RIGHTS**

- A. Overall
  - 1. Access
  - 2. Notice
  - 3. Minutes
  - 4. Programs
  - 5. Books and Records
- B. Illegal Activities
  - 1. Responsibility to Disclose
  - 2. Refusal to participate/condone
- C. Divided Loyalties
- D. Ownership
  - 1. Work for the Organization
  - 2. Work You've/Someone Else Has Done

### **IV. KNOW YOUR RISK**

- A. Overall Exposure
- B. Avoidance
- C. Indemnification
  - 1. By Statutory and Case Law
  - 2. By Agreement
  - 3. By Insurance
    - a. Losses Covered
    - b. Exclusions
    - c. Application
- D. Relationship to Legal Counsel
  - 1. Who's the Client
  - 2. Limitations
  - 3. Utilization of Counsel
  - 4. Legal Annual Report/Audit

**V. KNOW YOUR TAX STATUS / GOVERNMENT REQUIREMENTS**

- A. Tax Issues
  - 1. Basics
    - a. The Exemptions -- 501(c)(6) and 501(c)(3)
    - b. The Limitations
      - 1) UBIT, especially advertising, sponsorship and publications
      - 2) Lobbying
  - 2. Special Rules
    - a. §501(c)(3)
      - i) Federal
      - ii) State
    - b. §501(c)(6)
    - c. Disclosure
    - d. Form 990's/ Exemption Request
  - 3. Minimize Tax Costs to Members
    - a. Programs/Educational
    - b. Meetings and Conventions
- B. Governance

1. Political
  - a. Lobbying
  - b. Compliance
2. Corporate
  - a. Status
  - b. Compliance
3. Other Staff Governance Issues
  - a. Employment Policies
  - b. Americans With Disabilities Act and Other Mandates

**VI. KNOW YOUR CONTRACTS / OBLIGATIONS**

- A. For the Organization
  1. Short Term
  2. Long Term
- B. For the One Employee for Whom the Board Has Responsibility

**VII. KNOW YOUR FINANCES**

- A. Budget
  1. Nature
  2. Accrual
  3. Cash Flow
  4. Financial Reports
  5. Internal Controls
  6. Encumbrances

- B. Investments
  - 1. Prudent
  - 2. Policy on Investments and Oversight
  - 3. Monitor
- C. Audit
  - 1. Traditional
  - 2. Management Letter

**VIII. KNOW YOUR ANTITRUST LAWS**

- A. Policy
  - 1. Basics
  - 2. Recognize Programs
    - a. Membership
    - b. Discipline
    - c. Codes of Conduct / Ethics
    - d. Nonmember services
    - e. Standards, Certification, Credentialing, Licensing
    - f. Statistics
    - g. Meetings
      - 1) Official
      - 2) Unofficial
- B. You Should Practice Preventative Law
  - 1. Policy
  - 2. Legal Counsel's Role
  - 3. Procedures
    - a. Agenda
    - b. Minutes
    - c. Record Retention

**IX. KNOW YOUR COMMITTEES**

- A. Basics
- B. Types
  - 1. Ad Hoc
  - 2. Standing
  - 3. Executive
- C. Procedures/Responsibility
- D. Special
  - 1. Nominating
  - 2. Audit
- E. Ownership
  - 1. Committee Activities
  - 2. Publications
  - 3. Other

**X. KNOW YOUR TECHNOLOGY**

- A. Big Time / Byte Time
  - 1. Understanding
  - 2. What You Are / Want To Do
  - 3. Access By Board / By Others
  - 4. Protection
- B. Watch It
  - 1. Time Line
  - 2. Liability Line

**XI. KNOW YOURSELF**

- A. Recognize Responsibilities
  - 1. It's Not Individual
  - 2. It's Collective
  - 3. Commitment
- B. Ask Why You Are Here -- Beware the Deadly Sins



- C. Ten Questions To Ask If A Board Member Wants to Move On Through  
The Chairs to Chairman or President – See Separate Addendum

## **XII. CONCLUSION**

Terrence Hutton is a founding partner of HOWE & HUTTON, LTD., a law firm with offices in Chicago, Illinois, St. Louis, MO and Washington, D.C. representing clients worldwide, which specializes in the complete representation of not-for-profit organizations, including trade associations, professional societies, charitable and other related organizations and also individuals, firms and organizations in the travel, tourism, hospitality, incentive and meetings industries.

## **ADDENDUM A**

**These are 10 items that any volunteer\* should ask himself/herself:**

1. Why do I want to be president? What is my objective in doing this?
2. Am I willing to sacrifice the time, the money, the effort, the energy and other goals in order to fulfill that office?
3. Will my health, my age, my spirit withstand the barrage that most assuredly is going to follow at some point? In other words, am I secure enough with myself that I can do the job and I can do it without becoming a basket case?
4. Can I identify with, work with the staff as a team effort?
5. Am I emotionally prepared to withstand the judgment, sometimes critical, of my peers towards what I am doing? Can I make the bed and lie in it?
6. Can I take disappointment without passing the buck?
7. Can I communicate effectively on behalf of my association?
8. Can I subordinate my personal biases in order to respond to the entire constituency that I represent?
9. Do I have enough adequate support in my own backyard from any employers, from my spouse and from my family to make the kind of effort that's going to be necessary?
10. Can I deal with being a past president? (My favorite question. A lot of people can't.)

\*Courtesy of Jonathan T. Howe, Howe & Hutton, Ltd., in connection with his year serving as the President of the National School Board Association, circa 1986.