

The logo for Kent County Senior Millage features the text "Kent County" in a black serif font above "Senior Millage" in a larger, bold black serif font. A stylized graphic of a green and blue swoosh is positioned behind the text, curving around the "Kent County" line.

# *Kent County Senior Millage*

## Maximizing the Effectiveness of Your Board of Directors

Thursday, March 26, 2009

8:15 a.m. – 8:30 a.m.	Registration and Continental Breakfast
8:30 a.m. – 9:00 a.m.	SESSION 1 Welcome and Introductions Board Recruitment and Orientation Communicating with your Board
9:00 a.m. – 9:30 a.m.	SESSION 2 Legal Roles and Responsibilities for Boards
9:30 a.m. – 9:40 a.m.	Break
9:40 a.m. – 10:30 a.m.	SESSION 3 Fundraising with your Board Building Board Leadership Question and Answer
10:30 a.m.	Adjourn

### Presenters:

Jeffrey DeVree, Attorney  
Clark Hill PLC

Matthew Downey, Resource Development  
Johnson Center for Philanthropy & Nonprofit Leadership  
Grand Valley State University

Al Lyons, Director  
Johnson Center for Philanthropy & Nonprofit Leadership  
Grand Valley State University

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at Grand Valley State University

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**AAAWM Executive Coaching Session**  
March 26, 2009  
Topic:  
***Empowering your  
Board of Directors to achieve maximum  
Impact, Leadership, and Oversight***

Established in 1992, the Dorothy A. Johnson Center for Philanthropy and Nonprofit Leadership is an academic center for growing the greater good.

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Welcome to the Johnson Center

This Morning's Panel:

Jeffrey A. DeVree, JD, Clark Hill, PLC

Alvin Lyons, PhD, Director of Resource Development  
Johnson Center for Philanthropy

Matthew Downey, Development Consultant  
Johnson Center for Philanthropy

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**Agenda**



- Session 1 (8:35-9:00)**
  - Board Recruitment & Orientation
  - Communicating with your Board
    - Q & A
- Session 2 (9:00-9:30)**
  - Legal roles and responsibilities for Boards
    - Q & A
- Break (9:30-9:40)**
- Session 3 (9:40-10:30)**
  - Fundraising with your board
  - Building board leadership
    - Q & A




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**Session 1**



**Board Structure, Recruitment & Orientation**

- **Board Structure: Some Alternatives and Considerations**
- **Effectively Recruiting Board Members - To be Effective!**
- **Board Orientation Approaches that Work**




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**Session 1**




**Board Structure: Some Alternatives and Considerations**

**WHAT DO YOU WANT THE BOARD TO DO?**

- The "Traditional" Board Structure
- Using Sub-Committees
- Flexible Board Structures
  - Use of Task forces
  - Involvement Beyond the Board
- Using Additional Advisory Committees?

*Look at similar "successful" organizations – and those orgs that are now where you would like to be!*




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Session 1 

**Board Structure: Some Alternatives and Considerations**

**A (hopefully?) Helpful Hint**



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Session 1 

**Effectively Recruiting Board Members — To be Effective!**  
**IDENTIFY THE ORGANIZATION'S NEEDS**  
**— AND RECRUIT TO THOSE NEEDS!**

- Recruit for:
  - Skills
  - Connections
  - Image
- Identify YOUR Gaps
- DON'T Recruit to the Board – Recruit Directly to the Need
  - Recruitment is part of the Orientation Program and Board Operation



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Session 1 

**Effectively Recruiting Board Members — To be Effective!**

**A (hopefully?) Helpful Hint**



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**Session 1** 

**Board Orientation Approaches that Work**

- Use Recruitment to Begin the Orientation
- Asking Prospective (and New) Board Members: "What Do You Want to Know?"
- Using Board Meetings and other Opportunities for Continuing the Orientation Process

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**Session 1** 

**Board Orientation Approaches that Work**

- **HAVE YOU ORIENTED NEW (and OLD!) BOARD MEMBERS TO:**
  - The Organization
  - Their Overall Role
  - Their Specific Role
  - The Overall Organizational Field
    - Your Partners
    - Your Competitors
  - The Nonprofit and Voluntary Sector

*Orient Board Members to Your Role in the Community – and THE NEED YOU FILL*

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**Session 1** 

**Board Orientation Approaches that Work**

**A (hopefully?) Helpful Hint**

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**Session 1** 

**Some Views on Board Structure, Recruitment & Orientation**

- From the academic perspective
- From the Consultant perspective
- As an Executive Director
- As a Board Member

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**Session 1** 

**Communicating with your Board**

- The Board is a strategic tool for executives
  - Executive director must proactively engage board members
- The Board chair is the executive director's ally
  - Communicate regularly
  - Jointly develop meeting agendas and committee structure
- Tensions and frustrations with board members are natural
  - Address them head on
  - Keep lines of communication open

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**Session 1** 

**Questions?**

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Session 2 

Clark Hill Presentation

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10 Minute  
Break

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Session 3 

Fundraising with your board

- Recruiting for Fundraising
- Training for Fundraising
- Organizing for Fundraising

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Session 3 

Recruiting for Fundraising

- Look for those who have done it!
- Recruiting Fundraisers directly to the board
- Recruiting Fundraisers to Sub-committees
- Recruiting Fundraisers to a Separate Development Council

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Session 3 

Recruiting for Fundraising

A (hopefully?) Helpful Hint

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Session 3 

Training for Fundraising

- What's involved with "Fundraising Training?"
- Should we include Training in Board Meetings?
- Holding separate orientation programs
- Using Outside Expertise

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Session 3 

Training for Fundraising

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Session 3 

Organizing for Fundraising

- Developing Fundraising Plans and Goals
- Annual Efforts vs Campaign vs Planned Giving
- Using a campaign structure – for all efforts?
  - Pre-campaign - Preparation
  - “Silent Phase”
  - Public Phase
  - Clean-up and Recognition

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Session 3 

Organizing for Fundraising

A (hopefully?) Helpful Hint

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**Session 3** 

**Some Views on Fundraising with your board**

- From the academic perspective
- From the Consultant perspective
- As an Executive Director
- As a Board Member

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**Session 3** 

**Building board leadership**

- Vice Chair is your "Chairperson-in-waiting"
  - Vice Chair should shadow current Chair for one year
  - This builds the individual's skills and facilitates a smooth transition
- Treat the board officers (Exec Committee) as your "cabinet"
  - This is the executive's sounding board; communicate with them regularly
  - Executive Committee should meet regularly, generally in the days prior to a full board meeting

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**Session 3** 

**Building board leadership**

- Continuing board member education
  - A primary role of the Board Development Committee is to build member skills
  - Dedicate 5-10 min of every meeting to educate on one governance topic, i.e. fundraising or fiduciary responsibilities
- Facilitate substantive conversations at board meetings
  - Make certain that every board member participate

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Session 3 

Questions?

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**For More Information:**

Nonprofit Good Practice Guide  
*Promoting the power of shared knowledge.*

[www.NpGoodPractice.org](http://www.NpGoodPractice.org)

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## The Responsibilities of Service



### A Guide for Directors of Nonprofit Organizations in Michigan

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## The Responsibilities of Service

Community leaders who serve as nonprofit board members assume special responsibilities - both to the organizations they serve and the public they represent. Nonprofit organization directors are charged with furthering the organization's mission and, in the process, improving civic life. They shape both organizations and communities as they fulfill the duties of board membership.

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## The Responsibilities of Service

### Introduction

- o Boards of nonprofit organizations, unlike boards of business corporations, usually consist of a relatively large number of directors who are not compensated for their services. Directors of nonprofit organizations often serve uncontested and for long periods of time compared with directors of business corporations. Additionally, nonprofit boards face the continuing challenge of gathering resources in the form of donations and/or volunteers.

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The Responsibilities of Service

- o Under Michigan law, a nonprofit organization may exist either as a corporation created under the Michigan Nonprofit Corporation Act or as an unincorporated association. In addition, private foundations are sometimes organized as trusts under state law. While unincorporated associations are not subject to the statutory requirements of the Nonprofit Corporation Act, in general, directors of corporations and of unincorporated associations are held to similar standards.

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The Responsibilities of Service

- o My introductory comments have three purposes:
  - (1) to explain how nonprofit boards function;
  - (2) to describe the duties, responsibilities, and potential liabilities imposed upon nonprofit directors; and
  - (3) to suggest how a nonprofit organization can shield its directors from personal liability.

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The Responsibilities of Service

Purpose of the Board of Directors

- o The overall purpose of the directors of a nonprofit organization is not to manage the day-to-day activities of the organization, but to monitor the results of day-to-day managers. Directors assume this responsibility by exercise of two general functions: taking action and gathering feedback.
- o The responsibilities of the directors can be separated into three major areas:
  - Defining the mission of the organization
  - Planning the budget and other financial aspects of the organization
  - Selecting and overseeing the organization's staff

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The Responsibilities of Service

**Mission**

- o The board is responsible for the initiation, periodic review, and refinement of the mission statement and developing related strategies to accomplish the organization's goals.

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The Responsibilities of Service

**Financial Planning**

- o The board of directors is also responsible for financial planning. A principal function of many nonprofit organizations is raising funds.
- o Fund-raising not only requires detailed financial planning, but also attention to fiscal integrity.

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The Responsibilities of Service

**Staffing**

- o In selecting staff leadership, the board must seek individuals who are able to execute approved policies and maintain the organization's integrity. The board also must ensure that the administrative staff is capable of providing board members with the information necessary to monitor the organization's activities.

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The Responsibilities of Service

Board Operation

Governance Structure

- There are essentially two governance structures available to Michigan nonprofit corporations: directorship and membership. The articles of incorporation must specify whether the corporation is organized on a membership or directorship basis.
- Most nonprofit corporations find that corporate governance can be streamlined by organizing as a directorship corporation with a single governing body. A directorship corporation may still have members, but they would be non-voting members.

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The Responsibilities of Service

Meetings

- A board conducts the business of a nonprofit corporation in one of two ways: through formal action adopted at a board meeting, or by unanimous written consent.
- Michigan law provides a further incentive for directors to attend board meetings. In some circumstances, a director is assumed to have consented to action taken by the board during his or her absence.

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The Responsibilities of Service

- Michigan law does not require that directors attend meetings in person. A member of the board or a committee may participate in meetings by conference telephone or other means of remote communication. Participation in a meeting constitutes presence in person at the meeting, whether the director is physically present or participating by conference telephone or other remote communication. Unlike members, however, directors do not have the option of voting by proxy or otherwise delegating their discretionary authority.

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The Responsibilities of Service

- o When it is impractical for directors to hold a formal meeting, they take action instead by signing a consent in writing, including an electronic communication, which contains resolutions or other board action. To be effective, the written consent (or a duplicate) must be signed, which includes by electronic means, by all of the board members then in office. This is often referred to as taking action by "unanimous written consent."

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The Responsibilities of Service

Officers

- o Michigan law requires that the officers consist of a president, secretary, and treasurer. If desired, the board may elect a chairperson of the board, one or more vice presidents, and any other officers as outlined in the bylaws or determined by the board to be necessary.
- o The president is generally the chief executive officer and has the responsibility of supervising and controlling the activities and affairs of the nonprofit corporation. The president may be a volunteer board member or may be an employee of the organization.
- o Nonprofit organizations sometimes give the chief operating officer the title "executive director." This title may indicate that the position is a staff position rather than one with policy-setting authority.

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The Responsibilities of Service

Committees

- o While specific tasks of the board are often delegated to corporate officers, committees of the board are instrumental in developing and executing corporate strategy. Although Michigan law allows for the extensive use of committees, there are limits to the board's ability to delegate authority.
- o There are three major types of committees which may be designated by the board: standing committees, advisory committees, and ad hoc committees.

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The Responsibilities of Service

Individual Director Duties

- o As individuals, directors of nonprofit corporations have several duties to the corporation. These duties are applicable to directors of both business corporations and nonprofit corporations. These duties are of care, of loyalty, and other fiduciary duties.

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The Responsibilities of Service

Duty of Care

- o Michigan law provides that a director of a nonprofit corporation must discharge the duties of that position in good faith and with the same degree of diligence, care, and skill which an ordinarily prudent person would exercise under similar circumstances in a like position. This obligation, which is set forth in a state statute, is commonly known as the "duty of care." The duty of care contains a number of elements.

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The Responsibilities of Service

Duty of Good Faith

- o A director must act in good faith. In general, good faith can be defined as honesty of intention, openness, and fair dealing. Since this is a very subjective standard, courts must look for some objective evidence in assessing whether or not good faith was present in a director's actions.

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The Responsibilities of Service

- o A director must act with the same degree of diligence, care and skill which an ordinarily prudent person would exercise. In this circumstance, "ordinarily" does not mean "mediocre." It simply means that the director is not expected to possess any technical expertise or specialization.
- o "Prudence" means that the director is expected to possess and exercise sound practical judgment and common sense, and reach informed conclusions. Prudence, however, does not require excessive caution.

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The Responsibilities of Service

- o A director must exercise care. The concept of "care" incorporates both diligence and attention. Diligence requires an active interest - such as attending meetings, reading materials, and otherwise making an effort to learn about the corporation and its activities. Diligence is often viewed as an objective standard based on the amount of time dedicated to a task. Attention requires alertness and suggests anticipation of potential problems and issues.

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The Responsibilities of Service

- o A director's satisfaction of the duty of care is measured in comparison to individuals in similar circumstances in like positions. Comparing the performance of a director to others in a like position allows for flexibility based upon the uniqueness of the specific nonprofit corporation for which the director serves. Circumstances surrounding a decision at the time it was made are also a consideration. By viewing a decision within the context of similar circumstances, the standard takes into account the specific factors that shape decisions.

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The Responsibilities of Service

- o The statutory duty of care in Michigan allows for the director's reliance on experts both inside and outside of the nonprofit corporation, including accountants and attorneys.
- o Therefore, to the extent that nonprofit directors take rational actions in good faith, and without conflicts of interest, courts will be reluctant to question those decisions.

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The Responsibilities of Service

Duty of Loyalty

- o Directors of both business and nonprofit corporations have the duty of loyalty. The duty of loyalty requires the director's undivided allegiance to the corporation. A director of a nonprofit corporation may possess a substantial amount of power and information with respect to the corporation and its property. The duty of loyalty prevents a director from using such power or information for personal gain.

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The Responsibilities of Service

- o Duty of loyalty violations often are the result of a subversion of the nonprofit nature of the organization. Directors are required to put the interests of the organization ahead of their personal interests. A director who derives a personal benefit from an opportunity deprives the organization of the benefits of that opportunity. The most basic violations of the duty of loyalty result from conflicts of interest related to the personal financial interests of a director.

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The Responsibilities of Service

- o Michigan law provides specific guidelines to prevent potential conflicts of interest from resulting in violations of the duty of loyalty. The Michigan Nonprofit Corporation Act states that a contract or transaction between a nonprofit corporation and one of its directors, or between a nonprofit corporation and another corporation in which one or more of the corporation's directors has an interest, is not void (i.e., revoked) or voidable (i.e., revocable at the option of the organization) solely because of the common interest if one of the following conditions is satisfied.

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The Responsibilities of Service

Conflicts of interest can be avoided if:

- o Directors are financially disinterested from the organization to the greatest possible extent. Small, weak boards which are dominated by one or a few dominant directors are more likely to see conflicts of interest arising from the dominant director's or dominant group's ability to achieve personal gain.

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The Responsibilities of Service

- o All directors have a working knowledge of applicable IRS rules in order to recognize situations which may endanger the tax-exempt status of the organization as a result of private benefit or self-dealing.
- o A formal conflict of interest policy should be established to address potential conflicts as they arise.
- o A conflict of interest policy should be in writing and encompass three key elements: awareness, disclosure, and disinterested review.

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The Responsibilities of Service

Other Fiduciary Duties

- o A director of a nonprofit organization has a duty to maintain the confidentiality of the organization. Unless information has been released to the general public, a director should treat the information as private and confidential. A breach of this duty could jeopardize corporate opportunities and foster an environment of mistrust among the directors.

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The Responsibilities of Service

Liabilities of Directors

- o Generally, the board of directors of a corporation cannot be held liable for the actions of management and staff. The corporate entity is responsible for acts committed by employees, and corporate liability is usually limited to the assets of the corporation. However, in some situations, individual board members may be held personally liable for their actions as directors.

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The Responsibilities of Service

Trends in Nonprofit Activities and Regulation

- o Collaboration with for-profit organizations. Michigan law now provides for "low-profit" limited liability companies. The IRS still watches this carefully.
- o Increased government oversight. The new Form 990 return form requires much more information about procedures and activities. The Michigan solicitation act has been amended to require more financial information from large organizations.
- o Independence of governing board. Michigan law now requires at least three directors.
- o Electronic communications. The Michigan nonprofit corporation act has been amended to accommodate modern means of communication.

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## Thank You

Questions?

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