Bar Financial Management
A Basic Guide
Foreword

Too often, books about the financial health of your bar can be hard to understand and frustrating to read. To solve these problems, the Division for Bar Services is pleased to present Bar Financial Management: A Basic Guide which gives practical, simple advice and guidelines for topics ranging from credit card use to budgeting and everything in between.

This book is not meant to be a definitive guide to financial management, but rather a starting point for discussions between bar staff and elected leaders. We hope that by providing this book, a bar’s board of directors, its president and its staff can begin to have an honest dialog about their bar’s financial health. Some issues, such as expense policies, may be basic to someone with a lot of association experience, but it may be a good start for less experienced volunteers and new staff members. Other topics, such as fiduciary duty and financial reporting, are excellent resources for any skill or experience level. 2002 has seen the demand for transparent financial accounting procedures in the for-profit area, and it will inevitably be demanded of all organizations, including nonprofits.

One constant theme in all of the essays presented is that the hiring of an outside financial manager is highly recommended. Whether that manager helps with investment strategy or getting a bar’s financial records in order, it will probably help in the long run to have an outside presence look at a bar’s books and policies. There might be some short-term pain in terms of getting a bar’s books in order, but it will be worth it in the long run. Inevitably, the bar will have to answer to its members about the state of the bar. We hope that this book will begin the process. Some chapters talk about nonprofits in a general sense; others are more specific to bar associations, but the message is still applicable.

The Division for Bar Services would like to thank the following people for their contributions to the publication. For more information regarding the authors of the individual chapters, please consult the last page of each chapter, which contains a brief biography and contact information.

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Also, thanks go to the Division for Bar Service staff members who helped edit this compilation – Pam Robinson, Elizabeth Derrico, Roseanne Lucianek, and Joanne O’Reilly.

Daniel Rubin
Editor
December 2002

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For the fiscal year ended June 30, 2023, the annual report for 2023.

SAPSEL STATE BEAR ASSOCIATION

APPENDIX D20
Chapter One
Investment Management

In this chapter, the complex topic of investment management is discussed. First, Susan Stevens, an expert in nonprofit money management, gives an overview of financial policy vocabulary and policy.

David Blaner, executive director of the Allegheny County Bar Association (ACBA), then outlines a hands-on approach for bars with a collection of checklists every bar president and/or executive director should follow. Blaner’s presentation also includes detailed overviews of the ACBA’s investment strategies. Blaner provides an overview of two types of funds — general bar funds (operating accounts, reserve accounts) and designated fund accounts.

To round out the chapter, Pat Melvin, an accountant with experience auditing nonprofit groups, outlines general reserve policies and the effect of capital accumulation, which is also briefly addressed by Stevens in her introduction.
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**Note:**
For the six months ended June 30.
Smart Savings:
Making the Most of Your Excess Cash
By Sue Stevens, Principal, LarsonAllen Public Service Group

One of the questions nonprofits most frequently ask financial management consultants is “How can we establish an endowment?” When probed a little more, what they are really asking is “How can we generate an extra $10,000, $20,000 or $30,000 for our annual operating budget?” Faced with the definition of an endowment—a permanent investment, contributed by an outside donor, whose earnings alone are available for annual operations—most organizations agree that it’s not an endowment they want. Rather, they’re looking for unrestricted extra cash.

Endowments may not be for every nonprofit. But as a financial instrument, they legitimize two concepts that every nonprofit can use: savings and investing. On an individual level, we all know how important savings are to our financial future. No matter what our income or age level, most of us find ourselves saving for one goal or another. You’d be surprised, however, to find a college student saving for retirement or a retiree saving to buy a home. Likewise, the financial goals of nonprofits typically fall into a pattern consistent with their own financial life cycle.

Start-up nonprofits are generally income focused—it’s tough to save when you can’t make ends meet. Growing nonprofits need cash reserves to stem their cash flow and receivables problems. Established nonprofits are more frequently able to invest funds for a longer period of time, and for some, endowments are just what’s needed to perpetuate their services over the long term.

This chapter is about smart savings techniques that go beyond your local bank’s passbook savings accounts. For a nonprofit that consistently has trouble bringing in enough money to cover its operating expenses, it makes little sense to develop plans for a cash reserve or endowment. As in any other type of goal setting, you have to start with where you are, not where you wish you were.

Setting Financial Goals

Financial goals are an abstract way to think about your organization’s overall financial needs. Most nonprofits don’t have much trouble creating income and expense plans for their annual operating budgets. Too few, however, set overall financial goals that supersede a one-year time horizon—goals such as eradicating a $60,000 deficit over the
next five years by bringing in an extra $12,000 a year in operating revenues, or saving
$50,000 over the next three years to publish a commemorative “Twenty-Year Report.”

Setting and achieving financial goals is an important part of a nonprofit board’s fiduciary
responsibility. Goal setting starts with a thorough review of the financial condition of
your organization. Most boards know how to take defensive measures to ensure that their
organization is operating with fiscal prudence. With the help of their auditor or other
outside financial professionals, they establish internal control procedures for record
keeping, check signing, and other internal fiscal transactions.

But what’s defense without offense? Fiduciary responsibility should prompt nonprofit
boards to set overarching financial goals for their organizations as well—goals that are
achievable and in the best interest of the overall financial health of the organization.

The key thing to remember, especially if you are doing this for the first time, is that by
definition financial goals are both tangible and intangible. They require your
commitment—and commitment means you’ll need to plan ahead, write down your plan,
and begin to save accordingly.

Surpluses and Fundraising

Before examining the various savings tools at your disposal, let’s side step into the
question that many people have once they realize endowments aren’t in their current
financial picture: “Will having a surplus hurt our chances for fundraising?” The truthful
answer is both yes and no.

Will having a surplus hurt you as you set out to raise funds? There is still an ambivalence
in the philanthropic community about surpluses. On the one hand, funders like the idea
that nonprofits are behaving responsibly and have the internal capacity to create their
own financial cushion. On the other hand, some funders use the existence of excess funds
as a reason to deny a grant. If they have their own funds, why do they need us?

These funders are not criticizing you; they are affirming your good financial
management! Nonetheless, this attitude can be a significant disincentive toward savings
and general fiscal fitness.

Surpluses are even more difficult for government funders to deal with. Nonprofits on per
diem contracts with public entities often find next year’s contract cut by the value of their
prior year’s surplus. This happens even when annual financial performance exceeds that
which was expected.

In the long run, surpluses are essential to your financial health, and smart nonprofits will
plan for them accordingly. As dollars get tighter and more nonprofits clamor for the

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A9
philanthropic dollar, contributors will invest in organizations that have a chance to be around awhile, not those who financially run on empty.

Understanding the Savings Sequence

Up until now, we’ve used the terms “surplus” and “savings” as generic catchalls to describe what to do with excess income. In reality, an actual sequence applies to how excess cash is generated and the types of savings instruments in which it is invested.

In broad terms, “surplus” refers to the cash remaining once annual expenses are subtracted from income. More specifically, however, the excess cash generated by nonprofits can be classified into four categories: interim funds, operating surplus, cash reserve, and endowment. Each of these is a legitimate tool for creating financially healthy nonprofits. Your own organizational life cycle will dictate which one of these tools is best for you now and in the future.

Interim Funds

Definition: Interim funds are cash in the bank right now, waiting to be spent on operating expenses. It may be excess for the moment, but it’s not a surplus. Nonetheless, it’s still a valuable commodity and worthy of some type of investment beyond earning minimal or no interest in your checking account.

Role: Interim funds can be deceiving for nonprofits that don’t understand their cash flow requirements. The presence of a hefty bank balance can trick you into thinking that there are no obligations against these funds. Be careful. One too many nonprofits can tell you its headaches over a snap decision made because there was “money in the bank” that was actually meant for a designated future activity.

Operating Surplus

Definition: This is the classic definition of surplus – you spent less last year than the income you brought in. There is money left over. Operating surpluses are generated in two ways: either planned or unplanned. Planned surpluses are built into the budget while unplanned surpluses occur due to circumstances.

Role: It is possible for operating surpluses to work for or against you.

How might an operating surplus work against you? We’ve already mentioned the problems some nonprofits with surpluses encounter when raising funds from private or public funders. In the extreme, nonprofits generating mega-surpluses may fall under IRS scrutiny as well, but this generally happens only if these surpluses accumulate year after year and are never reinvested in mission-related activities.
How can a surplus work for you? There are three ways nonprofits generally put their surpluses to use: they spend them on an occasional or one-time expense; they save them for unexpected emergencies or opportunities; or they fritter the surplus away as happens to the best of us when we leave extra money sitting too long in our checkbooks!

If your financial plans call for developing annual surpluses as part of a long-term stabilization strategy, your board may want to establish a separate fund into which the surplus may be transferred periodically or at the end of the year. Once you or the board strategically sets these funds aside, your surplus becomes a cash or operating reserve.

Cash Reserve Funds

Definition: Surpluses that have been strategically set aside by management or board designation are known as reserve funds. Nonprofit reserves can take several forms.

Cash reserves are set aside to provide an internal line of credit for periodic cash shortfalls.

Operating reserves are designated for unexpected events.

Repair and replacement reserves are funded by building depreciation into the expense side of the operating budget that's designated for future building or equipment repairs.

Role: For whatever purpose the reserve is created—and it can be all three—there is a common theme: Reserves are planned; they don't just happen. They are part of your savings offense. They won't happen unless you strategically think out your needs and your strategy, and then physically segregate these funds from the general operating account. Because of this, reserves are sometimes called " quasi-endowments" because they provide a certain amount of financial stability like an endowment. Unlike endowments, however, they are not permanent, and if self-generated, they are not considered restricted.

Reserve funds have one further advantage over surplus: they provide a shield of protection for excess funds. The safest way to create this shield requires board involvement prior to the close of your fiscal year. If you have planned for, or otherwise foresee, closing the year with a surplus, have the board approve a motion to designate all or a portion of the surplus as a board-designated reserve, to be recorded on the audited balance sheet at fiscal year end. Provide these minutes to your auditor and have him or her set up a "board designated reserve fund" for general purposes or one of the purposes mentioned above, and there you have your shield.

Is this shield bullet proof? No. Will it ward off problems explaining unprotected surpluses? Yes. Does it demonstrate magnificent financial acumen and fiduciary

Credit Card Usage Policy

TO: [staff name]
FR: 
DA: August 14, 2001
RE: Policy on Association Credit Card Use

This memo is to clarify our policy on the use of association credit cards. Any card credit obtained by association for business use by an employee is for association business use only. Cardholders may not, under any circumstance, use the credit card for personal purchases not for guaranteeing any type of personal reservations (hotel, rental cars, etc.) nor for any other non-association business use.

Any personal use of an association business credit card will be grounds for disciplinary action, up to and including termination.

Association credit cards are generally be used for business travel. Because of the lack of documentation, it is always preferable to request a check in advance for your purchases as it provides a better audit trail.

For any business purchases you make using the association credit card you must obtain a receipt for the purchase and attach it to your credit card statement when submitting it to the bookkeeper for payment. If you use your credit card to pay for a meal, you must indicate on the receipt, persons in attendance and the purpose of the meal. If you permit other staff members to use your credit card for approved purchases, it is your responsibility to obtain from them a receipt for the charge. All monthly statements for credit card accounts must go directly to the accounts payable manager and not to the individual cardholder. H/SHe will then give you the statement to reconcile and approve. Failure to approve statements promptly may result in late payment charges, which, in turn, may be passed on to you. Repeated failure to approve statements in a timely manner may result in forfeiture of your card.

I understand the above policies regarding association business card use and agree to abide by these policies.

Signature ____________________________ Date __________

Employee Signature ____________________________

Credit Card Policy.doc

Association Efficiency Symposium @ 2002 - R. Harris 850. 570. 6000

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responsibility on the part of your management and board of directors? Most definitely yes!

**Endowments**

**Definition:** Endowments are funds contributed to a nonprofit institution by outside supporters who stipulate that the principal value of their gift remain invested for perpetuity.

Unless otherwise stated, the earnings from the investment may be used for operating expenses.

**Role:** Endowments are neither created by nor managed like surpluses. In fact, they have nothing to do with a nonprofit’s operating budget except for the once-a-year interest they generate for operations. Accounting standards require endowments to be set up in a separate fund outside the general account since they are permanently restricted.

Because the nonprofit financial vernacular is so imprecise when referring to extra cash, we take this opportunity to point out once again that the endowment’s value to the operating budget is only by way of the earnings it produces off its corpus or principal investment.

**Investment Options**

Now that we’ve discussed the value of surplus and savings, let’s look at the many investment options available through various financial institutions that will want your business once you have something to invest. For nonprofit managers not familiar with the world of investments, the options can be mind-boggling.

Your own circumstances will dictate which savings plan is right for you. Whether you have $500 or $500,000 to invest, you’ll have two primary investment options: cash instruments—checking and savings accounts, money market investments, certificates of deposit, and Treasury bills; and financial assets—stock and bond funds. Knowing which of these investments is right for you will depend on your investment goals, your time horizon, and how much risk you can afford to take while staying within the bounds of fiscal prudence.

Speaking of prudence—for years nonprofits have taken the defensive approach to fiscal prudence, particularly when investing. Wary of losing their hard-won funds, many nonprofits venture no further than their local bank’s passbook savings account, from which they receive maybe 2 percent interest. Passbook accounts are certainly preferable to keeping all your cash—interim funds and surpluses included—in a non-interest bearing checking account.

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But when choosing a savings vehicle for even their smallest investment, smart nonprofit managers take inflation into account. (Remember, the less you have, the more you need to make of it.) Smart savings doesn’t mean you’ll earn 15 or 20 percent on every investment. It does mean, however, that you earn the maximum amount possible for the amount of time and risk you can afford.

What’s inflation? Inflation refers to an increase in the amount of money in circulation, resulting in a fall in its value and a rise in prices. In practical terms, inflation means that the dollars you save today will be worth less in the future than they are now. For example, from 1999 to 2001, the inflation rate hovered around 2 percent to 3 percent. This means that you need a return greater than those percentages to have as much earning power the day you liquidate your investment as you did the day you put it in.

How about risk? How much risk can a prudent nonprofit afford to take with its funds? The concept of investment risk is not unlike taking any calculated risk in life. The first step is to know what you’re getting into. The more you know about an investment product, the more you’ll understand what you’re doing.

The investment risk curve has two sides. On the one hand, you take the chance that your investment will sell at a lower price than what you originally paid for it. In that case, investing in stocks and real estate can be risky investments. On the other side, however, “safer” investment choices—such as bonds and cash instruments—run the risk that they won’t keep pace with inflation.

Here is where the services of a financial consultant may come in handy. These professionals understand the history as well as the risk and reward of various investment products. Although some of us are closed “investment junkies,” retaining a professional consultant or investment manager is a prudent idea, especially if you have significant permanent or long-term investments.

Let’s look at the overall range of savings instruments common in the nonprofit marketplace:

**Cash Investments**

**Definition:** In addition to passbook savings accounts, cash investments include money market investments and certificates of deposits (CDs), all available through your local bank. Money market investments and CDs typically offer a higher rate of return than passbook accounts.

**Role:** Cash investments allow you to “park” your money on a temporary basis. That’s their main advantage. They’re also more liquid—that is, more quickly converted to cash—than the other savings vehicles we’ll discuss, so you can generally get your money out faster and with less penalty than longer-term investment products. Certificates of
deposit will have a time frame attached, however, so be sure your cash flow matches their time requirements.

**Fixed-Income Investments**

**Definition:** Although cash investments are technically considered fixed-income investments, most people are referring to bond funds when talking about fixed-income investments. When you buy a bond, you are loaning your money to a corporation, government or local municipality with the guarantee that they'll repay your principal along with a fixed rate of return.

**Role:** Bonds can be a very good investment for a nonprofit. They range from the ultra-safe U.S. Treasury Bills to the super risky junk bonds. Bond funds are influenced by time. The shorter the term, generally the safer the investment. But like any investment, an inverse correlation exists between safety and return. The safer the investment, the less it will pay.

Over the last two decades, bond funds have outperformed cash investments and have beaten inflation by several percentage points. They tend to be good investments for your near-term or longer-term surpluses, cash reserve, or endowment funds—since they themselves come in the form of long-term, intermediate, and shorter-term instruments. Your investment advisor can help you choose the right fixed-income vehicle for you.

**Equity Investments**

**Definition:** This type of savings instrument allows you to invest in the stock of large and small corporations. Like bonds, some equity investments are riskier than others. Blue-chip, dividend paying stocks of “large cap” companies are the least risky equity investments.

The stock of “small cap,” or smaller companies fall on on the other side of the risk scale.

**Role:** Historically, stocks have outperformed bonds in terms of their investment yield. However, only nonprofits with endowments can generally afford to ride out the volatility that comes along with equity investments. If you need your cash out quickly, you don’t want to be invested in the stock market.

**Mutual Funds**

**Definition:** With this type of savings instrument, your money is pooled with other investors into a professionally managed, mixed portfolio of stocks, bonds and cash investments. The mix of the fund will depend on its investment objective, which can range from aggressive growth (the stocks of highly volatile small companies) to less risky

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municipal bond funds (bonds issued by state and local municipalities for public works projects).

**Role:** Buying mutual funds may help you diversify your risk, but they don’t relieve you of your responsibility to understand what you’re getting into. Be sure to read the prospectus. If you don’t understand it, ask your broker or call the company’s representative. That’s why they are there.

Mutual funds are a popular investment tool for individual and nonprofit investors. Most nonprofits use mutual funds to hold their employees’ 403(b) or 401(k) retirement funds, so they’re among the more familiar investment vehicles for the industry. Mutual funds offer diversity and, depending on their investment strategy, can also offer some degree of safety for your longer-term reserves and endowment assets.

One more thing about mutual funds: How and where you buy them will determine whether or not you’ll pay a commission on the purchase. “No load” funds mean no commission will be charged, but watch out for hidden costs such as multiple fees and/or high operating costs.

**Conclusion**

Our intent in this chapter is to get you thinking about where surplus, reserves, and endowments fit into your long-term financial goals. As a nonprofit, you have multiple savings and investment options that go well beyond traditional passbook and money market savings accounts. To make smart use of these savings options, set your financial goals and determine the amount you have to invest, the amount of time available until your cash will be needed, and the amount of risk you can take prudently.

**Editor’s Note:** Susan Stevens is a principal at the LarsonAllen Public Service Group which provides consulting, training, audit and accounting services to nonprofits, foundations, educational institutions and government entities. It was created through the merger of The Stevens Group, a consulting and training firm for nonprofits and foundations, and the nonprofit and government divisions of Larson, Allen, Weishair & Co., LLP, a diversified professional service firm.

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**ACBA INVESTMENT POLICIES - AUGUST 2001**

| Equities | 65% |

The following additional limits shall also apply:

- **Equities:**
  - *no more than 10% of total equity investments may be with any one issuer*
  - *no more than 20% of total equity investments may be with any one industry group*

- **Fixed Income:**
  - *no more than 20% of total fixed income securities shall be invested to mature in any one month (except for short term maturities invested for liquidity purposes)*
  - *no more than 10% of debt securities may be with any one issuer (except the U.S. Government and its Agencies which may be without limit)*

5) **Investment Authorities** -

   The Board shall delegate to the Director of Finance the authority to monitor management of the Fund within its approved parameters described above. Reporting shall be to the Finance Committee on a regular basis with full reporting to the Board quarterly.

6) **Investment Procedures** -

   Investment activity shall be monitored at meetings of the Finance Department. At those times, the Director of Finance shall review reports covering the current status of the Fund. These reports shall include:

   a) current investment asset reports for the Fund
   b) current cash needs projections for the Fund
   c) current maturity schedules of those Fund
   d) current investment yield curve data and summary of financial market trends
   e) current reports of deposits by financial institution
   f) current financial institution fee reports (as appropriate)
   g) current data on actual and comparative current yield of the assets

7) **Procedures for Receipt of Funds**

   (see attached ACBA Funds Disbursements Policy)

8) **Procedures for Disbursement of Funds**

   (see attached ACBA Funds Receipts Policy)

9) **Procedures for Approval of Financial Institution Service Provider**

   (Approved List maintained by Finance Department.)
Investment Policies for Bar Associations and Bar Foundations
By David A. Blaner, Executive Director, Allegheny County Bar Association

Why does your bar association need an investment policy?

- To help guide your organization as it makes investment decisions.
- Help measure your progress.
- Control risk.
- Define duties and responsibilities.

How can bar associations get started on investment policies?

- Analyze your cash and expense flows per month for three to five years. Graph the results.
- Review your accounts payable and accounts receivable process.
- Review and analyze the balances in your checking and savings accounts.
- Review current investments.

Locating Excess Cash for Investment

- Change your bill paying cycle to once every 30 days.
- Strengthen your collection policies.
- Reduce the amount of money that is maintained in your checking accounts.
- Consolidate checking and savings accounts when possible. Also consolidate funds when appropriate.
Locating Excess Cash for Investment: (cont.)

- Consider using lockbox services for collections.
- Accept credit card payments.
- Pool funds for investment purposes and track interest income through accounting functions.

Developing Investment Policies

- Get help from your banker or investment advisor.
- Determine the organization’s level of risk.
- Determine how soon the organization will need to use money.
- Identify your objective: income, growth, or income and growth.

Fund Types and Investment Guidelines

- Unrestricted Revenues – Operating funds, low risk investments. (CDs, commercial paper, money market, treasury bills).
- Temporarily Restricted Revenues – Low to moderate risk (long term CDs, commercial paper, money markets, treasury bills).
- Permanently Restricted Revenues – Moderate to high risk. (Equities: stocks, bonds, mutual funds).

Monitor Progress

- Analyze investment policies and returns at least quarterly.
- Use an investment index to measure returns; DJIA, S&P 500, Russell 2000, Mid Term UST Index, Short Term UST Index and Lipper Index.

ACBA INVESTMENT POLICIES - AUGUST 2001

DEVELOPMENT and RESERVE ACCOUNT

Investment Objective - The Board of Governors of the Allegheny County Bar Association have designated the Development and Reserve Account to serve as a major source of funding for future capital needs. It therefore is meant to provide not only adequate liquidity for such currently budgeted or anticipated capital needs, but also the potential for long term growth to meet those future needs. As such preservation of principal and long term growth of assets shall be of primary importance.

The ACBA wishes to create from these funds a pool of assets capable of providing a consistent source of income to assist in loss prevention. As such it is the investment objective of the ACBA for these funds to maximize long term total returns on these assets without exposing them to unacceptable risk while at the same time providing a liquidity pool adequate to meet short-term anticipated needs. To monitor and measure the investment performance of these assets to be sure that objectives are being adequately met, growth and total return will be compared with general stock and bond performance indexes (i.e.-DJIA; NYSE; SLOBF).

1) Approved Investments

   CASH
   FIXED INCOME
   U.S. Treasury Securities
   U.S. Agency Securities
   Bankers Acceptances
   Certificates of Deposit
   Repurchase Agreements (approved commercial bank)
   Commercial Paper (A-1-P)
   Bank Deposit Accounts - (approved banks)
   Money Market Mutual Funds (those investing in the above)
   Fixed Income Mutual Funds (those investing in the above)
   EQUITIES
   NYSE and NASDAQ Listed Equity Securities
   Equity Mutual funds (those investing in approved equity securities)

   OTHER
   None

2) Maturity

   No more than 10 years maximum maturity
   No more than 36 months average maturity

3) Credit Quality

   All assets shall be of Investment Grade

4) Allocation of Assets

   overall policy ranges

   min.  max.

   Cash    10%-100%
   Fixed Income  0% - 90%
   Equities    0% - 75%

2001/02 policy targets

   Cash    5%
   Fixed Income  30%
Revise Policies

- Policies are not carved in stone.
- Review policies annually to ensure that they are consistent with the organization’s goals.
- If the economy is unstable review your policies and investments quarterly.

Hire an Investment Advisor

- Investment advisors should be independent.
- Hire someone that has a history of working with non-profits.

Ask questions. Don’t assume that your advisor knows your organization.

Examples of Allegheny County Bar investment policies can be found in Appendix A
Reserve Policy Outline for Bar Associations
By Pat Melvin, C.P.A., Owner, Patrick W. Melvin & Associates

Reserve Basics

1.) Reserves = Equity = Net Assets

2.) Investments
   a) Liquid investments
   b) Current investments
   c) Non-current investments, including equipment and other fixed assets

3.) “Rule of Thumb”
   d) Reserve should be about six months to one year’s worth of operating expenses
      when there is no strategic plan.

Equity Accumulation

IRS Concerns

1.) Not for profit generally refers to not providing private benefit to an
    individual or organization, not equity accumulation. Too much equity could
    create a problem, however:
    a.) The general principle of a not for profit organization is that it must be
        operated primarily for its exempt purpose.
    b.) Equity and investment accumulation is generally not a problem when
        the accumulation is done to establish an economic base from which to
        operate.
    c.) Rev. Ruling 64-182: An exempt organization’s activities must be
        commensurate in scope with its financial resources. Our approach is
        that this ruling could apply to C-6 organizations as well as C-3
        organizations. It is also a good business practice.
    d.) It is important to document long-term plans to justify the need to
        accumulate equity.

ACBA INVESTMENT POLICIES - AUGUST 2001

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<td>Fixed Income</td>
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<tr>
<td>Equities</td>
<td>60%</td>
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The following additional limits shall also apply:

EQUITIES:
   *no more than 10% of total equity investments may be with any one issuer
   *no more than 20% of total equity investments may be with any one industry group

FIXED INCOME:
   *no more than 20% of total fixed income
      securities shall be invested to mature in any
      one month (except for short term maturities
      invested for liquidity purposes)
   *no more than 10% of debt securities may be with
      any one issuer (except the U.S. Government and
      its Agencies which may be without limit)

5) Investment Authorities
   The Board shall designate an investment manager(s) for the Loss Prevention Fund assets. It shall
   delegate to the Director of Finance under the supervision of the Executive Director the authority to
   manage the Fund within its approved parameters described above. Reporting shall be
   to the Executive Director and the Finance Committee on a regular basis with full reporting to the
   Board quarterly.

6) Investment Procedures
   Investment activity shall be monitored at meetings of the Finance Department. At those times, the
   Director of Finance shall review reports covering the current status of the Loss Prevention Accounts.
   These reports shall include:
   a) current investment asset reports for the Funds
   b) current cash needs projections for the Funds
   c) current maturity schedules of those Funds
   d) current investment yield curve data and summary of financial market trends
   e) current reports of deposits by financial institution
   f) current financial institution fee reports (as appropriate)
   g) current data on actual and comparative current yield of the assets

7) Procedures for Receipt of Funds
   (see attached ACBA Funds Disbursements Policy)

8) Procedures for Disbursement of Funds
   (see attached ACBA Funds Receipts Policy)

9) Procedures for Approval of Financial Institution Service Provider
   (Approved List maintained by Finance Department)

ALLEGHENY COUNTY BAR ASSOCIATION
Equity Accumulation (Cont.)

Strategies and Long-Term Planning

Reasons for Accumulating Equity

1.) Programs and service needs
2.) Cushion to avoid “Hand to Mouth” operation
3.) Minimize borrowing needs
4.) Physical plant (office) and equipment needs
5.) Risk management
6.) Unanticipated financial crisis

Evaluate planning criteria in terms of expected cash flow, discounted or adjusted at a rate allowing for risk and inflation factors.

Action After Planning

If equity accumulation is sufficient to meet long-range goals – is a dues reduction in order? Organizations with significant equity accumulation may want to evaluate future needs as noted above and begin discussions of pricing structure and other programs and services

On the other hand, if equity accumulation is not sufficient, consider raising dues and/or reductions in staff and programs.

Editor’s Note: Pat Melvin is owner of Patrick W. Melvin & Associates, LLC. His firm specializes in the rendering of accounting, audit, tax and consulting services to tax-exempt organizations. He can be reached at (708)423-5116, pmelvin@melvincpa.com or through the firm’s Web site at www.execusite.com/melvincpa.
ACBA INVESTMENT POLICIES - AUGUST 2001

ALLEGHENY COUNTY BAR ASSOCIATION

LOSS PREVENTION ACCOUNTS

Investment Objective - The Board of Governors of the Allegheny County Bar Association have designated the Loss Prevention Funds to be used to promote and provide the ACBA's malpractice protection. Since regular anticipated flows of funds are available for most projected operating needs in providing malpractice protection, the funds in the Loss Prevention accounts are meant to generate longer term excess protection. As such preservation of principal and long term growth of assets shall be of primary importance.

The ACBA wishes to create from these funds a pool of assets capable of providing a consistent source of income to assist in loss prevention. As such it is the investment objective of the ACBA for these funds to maximize long term total returns on these assets without exposing them to unacceptable risk. Protection against loss of principal, consistent long term growth as well as ability to generate future income are all primary investment objectives for these assets. Liquidity and current income shall rank second to these primary objectives. To monitor and measure the investment performance of these assets to be sure that objectives are being adequately met, growth and total return will be compared with general stock and bond performance indexes (i.e.-DJIA; NYSE; SLGBF).

1) Approved Investments

CASH

FIXED INCOME
U.S. Treasury Securities
U.S. Agency Securities
Bankers Acceptances
Certificates of Deposit
Repurchase Agreements (approved commercial bank)
Commercial Paper (A1-P1)
Bank Deposit Accounts - (approved banks)
Money Market Mutual Funds (those investing in the above)
Fixed Income Mutual Funds (those investing in the above)

EQUITIES
NYSE and NASDQ Listed Equity Securities
Equity Mutual funds (those investing in approved equity securities)

OTHER
None

2) Maturity
No more than 30 years maximum maturity
No more than 60 months average maturity

3) Credit Quality
All assets shall be of Investment Grade

4) Allocation of Assets

overall policy ranges

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2001/02 policy targets
Chapter 2
Short-Term Cash Management and Internal Controls

Long-term investing is important for the future of your bar organization, but short-term cash management is key to making sure your bar runs smoothly on a day-to-day basis.

In the following two articles, a basic guideline for short-term cash management is discussed. Susan Stevens begins the chapter by discussing the effects of cash flow on organization and provides tips on how to keep your organization running efficiently and smartly.

In the internal controls section, Larry Gill, owner of Association Management Partners in Florida, goes on to discuss proper internal controls and procedures that will ensure that expenses, expenditures and other accounting issues are handled in the proper way.

A common theme between investment management and internal controls is the need for an organization to have written policies and multiple oversight points, ensuring that the organization's financial well being is receiving the proper supervision from its staff and elected leaders.
ACBA INVESTMENT POLICIES - AUGUST 2001

3) Credit Quality
   All assets shall be of Investment Grade

4) Allocation of Assets
   Assets shall be invested 100% in cash and approved fixed income securities, taking strict account of
   scheduled cash disbursement projections. Special attention shall be paid to avoid risk of excessive
   concentration in specific maturities

   overall policy ranges
   
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   2001/02 policy targets
   
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<td>Fixed Income</td>
<td>75%</td>
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<tr>
<td>Equities</td>
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</table>

5) Investment Authorities -
   Under the supervision of the Executive Director, the Director of Finance shall have the authority to
direct management of the General Fund Accounts within the parameters approved by the Board's
policies. Reporting shall be to the Executive Director monthly and to the Finance Committee on a
regular basis at least quarterly.

6) Investment Procedures -
   Investment activity shall be directed at weekly meetings of the Finance Department. At those times,
   the Director of Finance shall review reports covering the current status of the General Fund Accounts.
   These reports shall include:
   
   a) current investment asset reports for the operating funds
   b) current cash needs projections for the General Fund Accounts
   c) current maturity schedules of those funds
   d) current investment yield curve data and summary of financial market trends
   e) current reports of deposits by financial institution
   f) current financial institution fee reports (as appropriate)
   g) current data on actual and comparative current yield of the assets

7) Procedures for Receipt of Funds
   (see attached ACBA Funds Disbursements Policy)

8) Procedures for Disbursement of Funds
   (see attached ACBA Funds Receipts Policy)

9) Procedures for Approval of Financial Institution Service Provider
   (Approved List as maintained by Finance Department.)
Managing Cash Flow
By Sue Stevens, Principal, LarsonAllen Public Service Group

Several years ago, a television commercial featured a young, freckle-faced child with a ready-to-eat hamburger in one hand and a full but uncooperative bottle of ketchup in the other. With Carly Simon’s “Anticipation” playing in the background, every viewer could relate to the child’s frustrated wait for the stubborn ketchup to pour from the bottle.

In its most elemental form, this commercial serves up the perfect metaphor for understanding cash flow—a term that relates to time and means having sufficient income when needed to meet expenses. Just like the commercial’s hamburger and uncooperative ketchup, nonprofits often find themselves with ready-to-be-paid expenses waiting for confirmed but delayed revenues.

When it comes to cash management, your job as a nonprofit manager is a little like weighting a teeter-totter. You need to anticipate, plan, and balance the flow of cash into your organization against the flow of cash out of your organization. Why? To enable you to have enough cash when you need it and to make the most of excess cash.

First, however, let’s look at the difference between negative cash flow and a deficit, a common point of confusion among nonprofits.

Defining Negative Cash Flow

Many nonprofits have trouble distinguishing cash flow problems from operating deficits. What’s the difference?

Negative cash flow occurs when your demand for cash is higher than the amount of cash you have on hand—a situation that, although disruptive to smooth operations, shouldn’t be confused with running a deficit. Negative cash flow assumes that, within the course of the year, there will be enough money to handle all budgeted financial obligations. The problem is that the receipt of funds will be slower than the time period in which bills must be paid. Like the slow-flowing bottle of ketchup, negative cash flow is a timing issue.

A deficit on the other hand, occurs when nonprofits overspend their operating income. Naturally, when organizations spend more annually than they receive, there will be cash flow problems. But in such cases, negative cash flow is a symptom of the deeper deficit problem. Here’s an example of the difference.

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ACBA INVESTMENT POLICIES - AUGUST 2001

ALLEGHENY COUNTY BAR ASSOCIATION

REVISIONS TO ACBA INVESTMENT ASSET ALLOCATION POLICIES

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<td>% fixed income</td>
<td>75.00%</td>
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<tr>
<td>% equity</td>
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ALLEGHENY COUNTY BAR ASSOCIATION
GENERAL FUND OPERATING ACCOUNTS

Investment Objective - The General Fund Operating Accounts of Allegheny County Bar Association represent those cash flows, which enable the Association to function on a daily basis. While the ACBA operates under a balanced annual budget, receipts and disbursements for each particular month of the operating year may not be in equilibrium. The timing of cash receipts and disbursement of these funds will fluctuate seasonally during the course of the year. Since it is the objective of the ACBA to render its disbursement obligations on a timely basis, liquid availability of General Fund Account assets will be of primary importance. Therefore, safety of principal and liquid availability of the funds shall be the primary investment objective. Within these parameters, however, the ACBA wishes to maximize the return available on these funds before their disbursement without exposing them to unnecessary risk. This will necessitate the control of disbursements timing as well as coordination of investment maturity in conjunction with available rates of return.

1) Approved Investments

CASH

FIXED INCOME
U.S. Treasury Securities
U.S. Agency Securities
Bankers Acceptances
Certificates of Deposit
Repurchase Agreements (approved commercial bank)
Commercial Paper (A-1-P1)
Bank Deposit Accounts - (approved banks)
Money Market Mutual Funds (those investing in the above)

EQUITIES
None

OTHER
None

2) Maturity
No more than 12 months maximum maturity
No more than 6 months average maturity

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Anticipating Revenues and Expenses

Cash flow projections are an important management tool for nonprofits that experience ebbs and flows in income. Your goal in projecting cash flow is to accurately anticipate the sources and timing of cash income and to balance each against a projected schedule of disbursements. Unlike the budgeting or fundraising process—which often encourages an optimistic approach to income—cash flow projections take a hard, realistic look at when your income and expenses will come in and go out.

Cash flow projections answer the questions “When?” and “How much?” Accurate projections are important in anticipating cash flow. This is not the place for wishful thinking. Instead, it is your opportunity to take a hard look at the timing of potential receipts and disbursements with the goal of avoiding potential cash short falls. Here is where good record keeping pays off.

Historical data can tell you when certain payments have been made in the past, or when income has been received. In the absence of historical records, last year’s check register can be used to re-create comparative receipt and disbursements patterns, adding in new expenses and income sources on a best-guess basis.

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Projecting Cash Flow

To project your organization’s cash flow, begin by listing confirmed budgeted income sources into the months you anticipate their receipt. Be conservative! If income has been promised for January but you know from experience that it will come in March, list it in the March column. This is also the time to think through whether certain funding comes in a lump sum or whether it is paid in installments.

To project expenses, first identify those budget items that occur monthly and whose amounts are constant. Divide these expenses by 12 and place them into each of the monthly expected expense columns. Place expenses that vary from month to month, or require one annual payment, in the month you anticipate their payment.

Having realistically determined the timing of income and expenses for each month, a series of calculations will tell you whether there will be sufficient cash in each month to meet expense requirements. But before putting pencil to paper (or setting up your formula in your computer spreadsheet file), add in the beginning cash balance—the amount of cash available at the beginning of the projection period. From there it is a series of steps in addition and subtraction. The formula looks like this:

\[
\text{Cash Receipts} - \text{Disbursements} = \text{Excess Cash (Shortfall)} \\
+ \text{Beginning Balance} = \text{Ending Cash Balance}
\]

Note that each month’s ending cash balance becomes the following month’s beginning balance. If the ending monthly balance is positive, there is enough money to meet that month’s expenses without adjustment. If the ending monthly balance is negative, steps must be taken to increase that month’s income or decrease its disbursements.

Remember that cash flow projections are internal documents done for your own benefit. They allow you to be alert and prepared for the reality and timing of your organization’s projected income and expenses.

Payables and Receivables

Every nonprofit, irrespective of size, has bills to pay. Along with those bills, many nonprofits collect receivables, pledges, or fundraising proceeds from a variety of sources. Just like your small business counterparts, nonprofits need a good payables and receivables management system which tracks what you owe and what others owe you.

Few nonprofits would dispute that the goal of a good payables systems is to pay bills according to schedule. All too frequently, however, nonprofits need to be convinced that the goal of their accounts receivable system is to collect what is owed to them in the shortest time possible. Some nonprofits are so service-oriented they forget they are in
business. Meanwhile, they experience severe cash flow problems that threaten their organization's existence. Too often, if they could collect what is owed to them, their own cash problems would disappear.

On the payables side, your goal is to balance the amounts you owe with how much cash is available to spend. Certain bills carry the option to be paid over time. Where that option exists, nonprofits with chronic cash flow problems should take full advantage. From a credit standpoint, it is better to make partial payments on all bills than to pay some in full and nothing on others.

There are also times when there is sufficient cash to fully meet that month’s expenses, but to do so would jeopardize the ability to make ever minimum payments on next month’s obligations. Here again, cash stability dictates that minimum payments be made in the first month, so that money can be saved for the following month’s expenses. This is a difficult concept to grasp for those of us raised with the notion that bills must be paid in full and interest expense avoided at all costs.

One last word on payables and receivables. Many nonprofit managers leave all decisions about receivables, payables, credit, and collection policies to their business managers. In cash poor organizations, these should also be executive management decisions.

Too often, bookkeepers and accountants are the last people in the organization to know about certain management decisions that will put a strain on cash flow. They fulfill their obligation by paying the monthly bills, only to find out that management has recently contracted for a new brochure or an annual report, authorized a pay raise or out-of-town seminar for an employee, or in some other way obligated the organization’s cash. Some managers find it hard to understand that just because “it’s in the budget” doesn’t mean there is cash available at that moment to cover all budgeted obligations. If your nonprofit tends to be short of cash, communicate with your financial staff before creating obligations. In that way you will avoid needless cash flow problems.

Planning Ahead

Sometimes, despite your best efforts at pursuing collections or limiting spending, you project that two months from now your organization will run short of cash.

When you find yourself in these circumstances, a short-term working capital loan or line of credit from the bank may be just what’s needed for stabilizing cash flow. Smart nonprofit managers understand the benefits of occasional cash flow loan to balance out revenue-timing problems. The more experienced managers also know that the time to approach the bank is now, when their organization is in a stronger cash position.

Bankers, like the rest of us, appreciate foresight. Your ability to anticipate upcoming cash flow needs will give the loan officer plenty of time to understand and process your loan.

Editor’s Note: Douglas A. Boedeker is a senior audit manager at Tate and Tryon in Washington, D.C. He can be reached at (202) 293-2200 x 310 or dbodiedeker@TateTryon.com. The Web site for Tate and Tryon is www.tatetryon.com/index.shtml.
Federal and State Payroll Tax Returns

The task of preparing, filing, and paying the variety of federal and state payroll taxes can be quite onerous. Therefore, most associations utilize the services of an outside payroll company to handle these matters. The use of an outside payroll company is a common business practice. In fact, the cost of the payroll company is often quite minimal when compared to the potential late filing and late payment penalties many organizations are subjected to when they prepare and file their own payroll tax returns.

State Sales & Use Tax Returns

One area of taxation that is commonly overlooked by associations is that of sales & use taxes. Most association managers are familiar with the concept of collecting and remitting sales tax for sales made by the association. However, many managers are not familiar with the concept of use tax. Simply put, use tax must be paid by an organization if it is not charged the applicable state sales tax by the vendor when a purchase is made. For example, assume that an association based in Maryland orders a new computer over the internet from a vendor based in Texas. The Texas-based vendor might not charge the association Maryland sales tax. Even though the Texas vendor did not charge the applicable Maryland sales tax, the association has received tangible property and is using it in Maryland. Therefore, the association is subject to Maryland use tax - which in effect functions as a surrogate sales tax. The association must file a sales & use tax return with the state of Maryland, listing the purchase price of the new computer and the sales tax amount that should have been charged by the vendor. The association must then remit this calculated use tax amount to Maryland.

A common misconception is that as a result of the federal Internet tax moratorium, purchases made over the internet are exempt from state and local taxes. This is not correct. The federal Internet tax moratorium primarily applies only to the provision of Internet access services; thus, purchases of equipment and the like over the internet are still subject to use tax. In other words, for purposes of sales & use tax, an association should treat purchases made over the Internet just as they would treat purchases made through a mail order catalog.

It is relatively cheap and easy for states to conduct periodic sales & use tax audits of businesses registered within their jurisdictions. If an association has not been diligent in monitoring its purchases for exposure to use tax, it runs the risk of being assessed with a large, unexpected use tax bill as the result of a state audit. Hence, in order to avoid nasty surprises, an association's management team should be certain to understand the sales and use tax regulations of the state in which it operates.

Concluding Thoughts

As can be seen by this preliminary overview, the concept of financial reporting covers a wide range of issues. However, the common theme underlying all financial reporting topics is that of accuracy. Whenever financial reports are prepared - whether they are for internal or external use - the question of basic accuracy must always be addressed. That is to say, one must always consider whether the values presented within the report make sense based on the current business request. Better yet, it will encourage the bank to see your potential loan request as part of a financing plan—something you anticipated—rather than a crisis that caught you off guard.

On the other hand, one of the side benefits of projecting monthly cash flow is that your organization will sometimes find itself in a positive cash position. When that happens, excess cash can become its own mini-profit center. Unless specifically prohibited by a funder, there is no reason why you can’t put excess cash to use just as you would any other resource.

However, having excess cash is no time to let your “management guard” down. In fact, excess cash calls for the same amount of prudence and management as when you don’t have enough cash. In these days of diminishing unrestricted income, a nonprofit foregoes $50 for every $1,000 sitting “idle” in a zero-interest checking account (assuming a 5 percent return). Accurate cash forecasts and active cash management can substantially increase your cash position.
Seven Ways to Improve Cash Flow

Set up an "aging" system that separates outstanding invoices (receivables) by how long they've been overdue; i.e., 30, 60, 90, 120 days or longer.

Identify and contact slow-paying customers with a proposed game plan to accelerate payment.

Don't be embarrassed to pursue delinquent accounts.

If you rely on contracts or fees, establish a regular billing cycle and don't deviate from it. Too often the billing process gets put on the back burner. The shorter you are on cash, the higher should be the priority placed on your monthly billing process.

Explore taking payment via credit card. The attendant usage fee can be a small price to pay when the cost of collecting delinquent accounts is factored in.

Consider a collection agency if the age and amount of outstanding receivables warrants it.

Initiate a write-off policy when a receivable gets to be a certain age, or you have given up hope of collecting.

Editor's Note: Susan Stevens is a principal at the LarsonAllen Public Service Group, which provides consulting, training, audit and accounting services to nonprofits, foundations, educational institutions and government entities. It was created through the merger of The Stevens Group, a consulting and training firm for nonprofits and foundations, and the nonprofit and government divisions of Larson, Allen, Weichair & Co., LLP, a diversified professional service firm.

The IRS assesses penalties for the late filing of a Form 990 based on the number of days that the return is overdue. Late filing penalties can be substantial and accumulate quickly, so it is imperative to file the return by its original due date or follow the proper procedures to obtain a valid deadline extension.

One of the most important aspects of the 990 is the fact that the bulk of it is open to public inspection. By law, any member of the general public can request from an association a copy of its three most-recent 990s. The association may charge reasonable fees to cover report reproduction and postage costs, but in general, the request for the 990 copies must be fulfilled in a prompt manner. If an association posts an exact replica of its 990 on a freely-accessible internet page, it may simply direct interested parties to the internet site. In this instance, copies do not have to be provided. Please note that under no circumstance does an association have to provide copies of Form 990's Schedule B, "Schedule of Contributors," to the general public.

Federal Form 990-T
Exempt Organization Business Income Tax Return

The Form 990-T is used by nonprofit organizations to calculate the amount of income tax owed to the federal government as a result of revenues generated by activities that do not relate to the organization's exempt purpose. Such revenue is subject to "unrelated business income tax" (UBIT). Because the laws and regulations governing what types of revenue are subject to UBIT are extremely complex, an association should always seek the advice of a qualified tax advisor to ensure that revenues from new activities are being properly included or excluded from the Form 990-T. Unlike the Form 990, the Form 990-T is treated like any other corporate income tax return. Thus, the 990-T is not open to public inspection and may be treated by an association as a confidential document. Members of the general public may not request copies of an association's 990-T.

State Income Tax and Information Returns

Most states do not require nonprofit organizations to prepare an annual information return similar to the federal Form 990. However, certain states do have their own nonprofit organization annual information returns that must be completed and submitted. In addition, certain states require nonprofits to submit a copy of the federal Form 990. Charitable and educational organizations affiliated with associations are often required to file certain reports regarding charitable solicitation within a given state.

In general, if a state has a corporate income tax, it will require an association that files a federal Form 990-T to prepare a state income tax return. Most states do not require the preparation of a state income tax return if the association does not file federal Form 990-T.

The filing requirements and deadlines for the state income tax and information returns vary greatly. Associations should always consult with a qualified tax advisor regarding their specific state requirements.
department. Thus, management will most likely have received the unaudited, internally
generated, year-end financial statements by the time the audited financial statements are ready.
Therefore, the primary purpose of the audited financial statements is to give management and the
board of directors assurance that the accounting information generated by the association is
reasonably accurate. That is to say, if the audited financial statements present values and results
that are significantly different from those shown on the association's internally-generated
statements, it should alert management to the possibility that the monthly financial statements
they have been receiving may not be correct. It is imperative that management discuss such a
situation with the outside auditors to determine what corrective actions are necessary to ensure
the accuracy of internally-generated financial statements.

When reviewing the audited financial statements, management and the audit committee of the
board should always be sure to inquire of the independent auditors as to the nature of any audit
adjustments that were proposed as a result of the audit procedures. This inquiry will provide
valuable insight into areas that the association's accounting department needs to focus on for
future improvement.

Many associations also publish their audited financial statements in an annual report that is
distributed to the general membership. The audited financial statements give the membership an
annual "big-picture" view of the association's financial situation and allow the members to see
how their dues dollars are being spent. The audited financial statements also give assurance to
the members that an independent accountant has examined the financial statements and agrees
with their presentation.

Governmental Information and Tax Reports

Even though they are classified as tax-exempt organizations, associations are still required to file
numerous federal and state tax and information returns. A complete discussion of the filing
requirements for these reports is beyond the scope of this publication. Rather, presented below
are brief outlines of the more common types of reports filed by associations:

Federal Form 990

Return of Organization Exempt From Income Tax

This form is classified as an "information return" because no taxes are paid with it. Rather, the
990 is used by the federal government to collect a wide variety of financial and operating
information related to not-for-profit organizations. One of the main functions of the 990 is to
show the federal government how the not-for-profit has fulfilled the primary purpose that
qualified it for exemption from income tax. The deadline for filing the form with the IRS is the
15th day of the fifth month after the end of the association's fiscal year. For example, if the
association's fiscal year ends on June 30th, its 990 is due on November 15th. The filing deadline
can be extended by up to six additional months if the association files the necessary extension
requests with the IRS in a timely fashion.

Internal Controls

Running A Secure Non-Profit

By Larry Gill, Owner, Association Management Partners

Internal controls are processes within an organization designed to provide management
reasonable assurance of the following primary objectives:

- The reliability and integrity of financial information
- Compliance with laws, regulations, policies and procedures that relate to the
  organization
- Safeguarding of assets
- Efficient operation of the organization
- Accomplishment of established objectives and goals of the organization

These "controls" direct activity toward achieving the primary objectives of an
organization. For most organizations, this direction is found in the "Accounting Policy
and Procedure" manual.

The following aspects of internal control will be discussed in this chapter:

- Staff Expenses
- Corporate Credit Cards
- Maintenance Billing
- Receipts
- Dealing with Independent Contractors
- Fraud Prevention
- Invoice Review
- Accounting Software
- Contract Signing Authority
Staff Expenses

Travel, meals and lodging for most organizations are areas that require constant attention to ensure adherence to the organization's policies and goals. Specifically, controls can make certain that expenditures fall within the organization's budget for the year and that the expenditures incurred by staff are reasonable and necessary. An expense control mechanism should include:

- Approval process
- Documentation of expenditures
- Review of expenditures
- Final approval for payment

Approval Process

The approval process begins when a request for travel and lodging is initiated. The travel request should state the purpose for the travel and lodging and the amount estimated to be expended. Approvals should be made considering (a) the purpose of the trip and (b) the budgeted amount for travel and lodging. The person requesting the travel and lodging should be made aware of the limitations on the expenses incurred and whether amounts over and above the approved amount will be born by the person traveling or the circumstances, if any, where the organization will bear the additional expenses.

Expense Reports

Expense reports should be submitted to the appropriate person with corroborating documentation and receipts attached for the expenditures shown on the expense report. The person receiving the report should review the receipts and determine appropriateness of the expenditure and whether the expenses were of the nature requested in the original request. The expense report should show both cash expended and amounts charged on corporate or personal credit cards so the reviewer of the report will be able to determine total expenditures.

After the review process is completed and the reviewer has determined the expenses fall within the parameters established in the original request, the report can be approved for payment. See Appendix B for a sample expense report.

For organizations paying per diem amounts, much of this review process is eliminated since the person traveling will be paid a certain sum depending upon predetermined average expenses in the locale where the travel is taking place.

When reviewing the statement of financial position, management must assess the quality of the assets being presented. This assessment is done by asking questions such as:

- How old are the customer balances within the accounts receivable total - are these balances still collectible?
- Is the inventory balance comprised of goods that are readily saleable - does it contain old or outdated items that very few people will want?
- Are we presenting our investments at current market value as required by GAAP? What methods are we using to determine the market value of these investments?
- Do we maintain a roster that details the individual pieces of furniture and equipment contained within our fixed assets balance? Do we still own all of these items? Are we depreciating the fixed assets in a rational manner?

Management must also be sure to understand the nature of the liabilities presented on the statement of financial position. Things to consider when reviewing the liabilities of an association are:

- Are we current with our payments to our vendors?
- Do any of the liabilities shown represent amounts owed to related parties?
- How do we record and track deferred membership dues and meeting registrations?
- What assumptions were used to calculate the liabilities for defined benefit pension plans and postretirement benefit plans? Do they make sense?
- Have we recorded the liability for executive deferred compensation plans?
- What contingent liabilities, such as potential or actual litigation, does the association face? Should an estimated liability be recorded in order to account for the losses that would stem from a negative outcome?

As with the monthly P&L, managerial review of the statement of financial position can serve to enhance the accuracy of the accounting information generated by the association.

Annual Audited Financial Statements

Although annual audited financial statements are widely considered to be a tool used in the management of an association, that is not the primary purpose of those statements. Because of the amount of time needed to complete a proper audit, most audited financial statements are not issued as quickly as the monthly financial statements prepared by the association's accounting
operating department or program maintained by the association. The purpose of these P&L reports is to present to management the revenues and expenses attributable to each functional unit within the association. Using this information, management can then assess whether the association is utilizing its resources in an effective manner.

Each manager should receive the P&L for his or her department no later than the tenth working day after the end of each month. Managers should be encouraged to review their P&Ls and to question revenue and expense items that they do not understand. Quite often, routine accounting errors can be quickly identified and corrected as a result of managerial review.

In addition to current-month and year-to-date information, it is important that a departmental P&L present current-year budget data and prior-year actual data. Since the comparison of budget to actual results is the primary yardstick by which the financial performance of association managers is judged, it is essential that they have monthly access to information regarding their budget versus actual performance.

The presentation of the prior year's actual data is important as well. Prior-year actual data provides management with the ability to quickly assess where the association has been and where it is going.

Appendix E1 provides a sample reporting format that can be used for a monthly departmental P&L.

Monthly Total-Association Financial Statements

This set of financial statements is designed to present the financial position and performance of the entire association. Because of its broad perspective, it is generally distributed only to the association's senior management team. As with the departmental P&Ls, the total-association financial statements should be received by the tenth working day following the end of the month. Appendix E provides a sample reporting format that can be used for a total-association P&L.

The monthly total-association financial statements present the combined totals of the departmental P&Ls. In addition, a statement of financial position for the association as of the last day of the month should also be presented. It should be realized that most associations do not prepare departmental statements of financial position. This is due to the fact that it is often difficult to attribute assets and liabilities to specific departments. Therefore, associations usually make it a practice to issue a statement of financial position that encompasses the entire organization. Departmental managers typically receive only a P&L for their department.

While senior management will naturally gravitate towards a review and analysis of the association's revenue, expense, and net income, the necessity of reviewing the statement of financial position should not be overlooked. It is only through a review of the statement of financial position that senior management can gain an understanding of the assets controlled and liabilities owed by the association. Furthermore, the statement of financial position allows management to track the levels of the association's reserves (also referred to as "net assets.")

Corporate Credit Cards

While corporate credit cards are an efficient way to track and pay for employee business-related expenses, they are, according to recent reports, widely abused. To help curb abuse before it happens, cards should be issued to specific employees for specific purposes.

Guidelines for corporate credit cards:

- An organization policy
- Control over cards issued
- Operational controls
- Obligation of cardholder

Organization Policy

Organizations should have written policies outlining intended use, the personnel who should carry, and the process for requesting corporate cards.

In addition, this policy would clearly lay out the limitations of use imposed by the organization and the limitations imposed by the card issuing entity. This information would be included in an organization's "Accounting Policy and Procedure Manual" and could contain the following provisions:

- Corporate credit card use is limited to organization purposes and uses that would allow employees to efficiently fulfill related duties.
- Description by job title/description or role of personnel to whom cards should be issued, i.e.,
  - Employees with unique needs to fulfill their job position and duties,
  - Employees required to travel on a frequent basis, and
  - Employees with responsibility to purchase office supplies where urgency of purchase may be a factor.
- Whether over the telephone and online usage is acceptable.
- A description of transactions where the corporate credit card should not be used should be set forth, such as:
  - Purchases of a personal nature,
  - Cash advances, except in specific circumstances with the advance approval of the organization, and
  - Dollar limitations that exceed certain amounts for specific types of transactions; for example, office supplies exceeding a certain amount.
Employee Responsibility

Employees issued cards should be informed they are in a position of trust and will be held subject to penalties for violation of that trust, including disciplinary action and/or criminal prosecution. Organizations can keep track of corporate cards by:

- Maintaining, at minimum, the following records to maintain control and security over the credit cards issued:
  - Name and position of the person receiving the corporate credit card,
  - Credit card number and PIN number,
  - Expiration date, and
  - Credit dollar limit; only authorized personnel should have the ability to increase credit limit.

- Ensuring that credit card statements are sent to the association office:
  - Cardholder should reconcile statements in the office and then approve for payment.
  - Documentation, in the form of receipts, should be submitted with the reconciled credit card statement.
  - Approval documentation should include sufficient explanation and proper coding to ensure proper accounting procedures.
  - Organization should not allow cardholder to make payments against charges.

Maintenance Billing

Maintenance billings can encompass several areas depending upon the size and diversity of the organization’s accounts payable. The objective is to assure that the organization is paying for services rendered related to the organization’s accounts and that the cost is reasonable. In addition, cash management policies dictate that bills be structured in accordance with strategic short-term goals. Paying bills immediately can reduce the amount of cash sitting in interest-earning accounts; therefore, it is essential to know deadlines and to not pay bills too early. See the earlier section in this chapter for more information regarding short-term cash management.

Typically maintenance billing would involve the following types of property: buildings and grounds, office equipment and vehicles.

Throughout the course of this chapter, the following terms will be used interchangeably:

Statement of Financial Position and Balance Sheet

Statement of Activities and Profit & Loss Statement

Internal and External customers

As with any business function, the accounting function must meet the needs of an organization’s internal and external customers. Internal customers would include management and the board of directors. A bar association’s external customers would include the membership, the federal government, and state and local governments. It is through the financial reporting function that the accounting department seeks to satisfy the interests of these different customer bases. Because each type of customer has its own particular set of interests, different financial reporting vehicles are utilized depending on the nature of the customer in question.

The following table presents the financial reporting vehicles typically issued to internal and external customers:

<table>
<thead>
<tr>
<th>External Customers</th>
<th>Internal Customers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual audited financial statements</td>
<td>Annual audited financial statements</td>
</tr>
<tr>
<td>Federal Form 990 – Return of Organization</td>
<td>Monthly departmental profit &amp; loss statements</td>
</tr>
<tr>
<td>Exempt From Income Tax</td>
<td></td>
</tr>
<tr>
<td>Federal Form 990-T – Exempt Organization Business Income Tax Return (if applicable)</td>
<td></td>
</tr>
<tr>
<td>State income tax and information returns</td>
<td>Monthly total-association financial statements</td>
</tr>
<tr>
<td>Federal and state payroll tax returns</td>
<td></td>
</tr>
<tr>
<td>State sales &amp; use tax returns</td>
<td></td>
</tr>
</tbody>
</table>

As the table above shows, the financial reports issued by an association can be separated into two broad categories - (1) financial performance reports and (2) governmental information and tax reports.

Financial Performance Reports

Monthly Departmental Profit & Loss Statements (P&Ls)

The monthly departmental P&Ls are the most detailed type of financial report generated by an association. These reports are not generally intended for distribution outside of the association’s management team and board of directors. A separate P&L should be prepared for each distinct
Financial Reporting Considerations for Bar Associations

By Douglas A. Boedeker, Senior Audit Manager, Tate & Tryon

At its very heart, the accounting function of any association is charged with two primary tasks. The first and most basic task is the duty of safeguarding the association’s assets from theft or loss - commonly referred to as “the stewardship function.” The second, and more advanced, task is that of providing interested parties with accurate and timely information regarding the financial position and performance of the organization - commonly referred to as “the financial reporting function.”

The stewardship and financial reporting functions work hand-in-hand. That is to say, without an effective control system over organizational assets, it becomes extremely difficult to generate accurate financial reports. Likewise, if management does not receive accurate information regarding the organization’s financial position and performance, there is a greater likelihood that theft, misappropriation, or loss will occur. Thus, in order for management to fulfill its fiduciary obligations, it is critical to arrive at an understanding of the stewardship and financial reporting functions.

In this chapter, we will discuss the concepts underlying financial reporting for state and local bar associations.

Basic Financial Statements of Not-For-Profit Organizations

Before exploring the nature of the financial reporting function, it is important to define what is meant by the term basic financial statements. Quite simply, the basic financial statements mandated by the U.S. Generally Accepted Accounting Principles (GAAP) for not-for-profit organizations are as follows:

1. The Statement of Financial Position (aka The Balance Sheet) - This statement presents the total assets, liabilities, and reserves of an association as calculated at one specific moment in time.

2. The Statement of Activities (aka The Profit & Loss Statement) - This statement shows the total revenues earned and expenses incurred by an association during a certain length of time (such as one year, one quarter, or one month).

3. The Statement of Cash Flows - This statement shows an association’s sources and uses of cash during a certain length of time.

Real Estate

The executive director or delegated personnel is responsible for initiating and approving maintenance of the property. Maintenance billings for the property should be explicitly documented, e.g., they should include the name and addresses of contractors and should identify the nature of the repair or maintenance work performed with dates and times.

Office Machines and Equipment

Many times office equipment is purchased with monthly service agreements. The staff member responsible for the purchases of office equipment should ascertain the efficiency of purchasing a maintenance contract at the time of the equipment purchase.

Vehicles

Maintenance and repair on owned or leased vehicles should be vehicle-specific. In addition to a description of the repairs performed, the repair invoice should show VIN number, tag number, and vehicle mileage as well as make and model of the vehicle.

Receipts

In the typical accounting situation, internal contro of receipts is best accomplished by separation of duties. Separation of duties involves delegating various tasks to different personnel to lower the risk of theft or embezzlement. However, many organizations do not have sufficient staff members to fully accomplish a separation of duties. The primary goal is to separate the actual receipt of payments, of whatever type, from the recording and reconciliation functions in the accounting system. Areas involved in the separation of duties relating to receipts are:

- Billing/invoicing of member dues, fees or registration payments
- Physical receipt of cash, checks or other payments
- Posting receipts/credits to accounts receivables
- Reconciliation of bank statements

Billing/Invoicing member dues and fees - organizations should not have the person preparing billing/invoicing also posting receipts or credits to the accounts receivable records. If one person is allowed to both prepare billing/invoices and post payments to the accounts, without good review procedures, this person could erroneously post billings and/or payments and incorrectly record items in the accounts receivable and thus distort the integrity of the accounting records. Theoretically, that person could intentionally post credits that are incorrect and divert funds to his/her use.

Physical receipt of cash, checks or other payments - where possible, when payments are received by mail, it is best if the payments are opened and logged-in by someone other than the person responsible for posting to the accounts receivable or performing the bank reconciliation. This person could also prepare the deposit bank ticket. This lowers
the risk that receipts can be diverted to personal use when someone records receipts that does not have responsibility in the accounts receivable area. At this point, two or more people would need to be involved in diverting funds. The more people involved, the less chance everyone will cooperate.

Posting receipts/credits to accounts receivable – staff responsible for posting payment/credits to accounts receivable records should not open and log in the payments. Nor should this person be responsible for reconciliation of the bank accounts. While these duties seem to overlap, separation of duties provides some assurance that one person does not have an excessive amount of control over the entire accounts receivable function.

Reconciliation of bank statements – if the person reconciling bank statement(s) also prepares billings/invoices, receives payment, records payments/credits and then reconciles the bank’s statement, without good review procedures, funds could conceivably be diverted for personal use. Personnel that reconcile the bank statement may have other duties in the accounts receivable area, but best practices dictate that they not have total control of the accounts receivable function.

When separation of duties cannot be accomplished due to staff size limitations, then it is incumbent that either members of the Board of Directors or an outside accountant assume responsibility for reviewing these areas on a frequent basis. Notwithstanding the internal controls that are in place, organization personnel handling monies should be bonded. Additionally, the board should require audited financial statements annually. While a concerted effort to embezzle funds will not necessarily be found with a review or audit, it is an effective deterrent.

Independent Contractors

The Internal Revenue Service does not look kindly on employers with independent contractors, primarily because they are skeptical that the independent contractor is anything other than an employee in disguise. If the IRS establishes that, in fact, the independent contractor is an employee of the organization, the employer organization then becomes liable for payroll taxes: FICA, Medicare and federal income taxes required to be withheld, state unemployment taxes and - if the organization is in a state with income taxes, the state income taxes required to be withheld. Penalties and interest are also a possibility. Sometimes these penalties and interest are equal to the payroll taxes due. Most states follow the Internal Revenue Code and once the IRS finds you have an employee for federal purposes, it follows that you have an employee for state purposes.

The term "employee" must be distinguished from an "independent contractor" for paying payroll tax obligations. Generally, an employer does not have to withhold payroll taxes on payments to "independent contractors." In addition to the common law definition that focuses on the control that is exercised over what is done and how it is done, the IRS has developed a 20-factor test to determine whether an organization has "independent contractors." The factors are:

In addition to providing more credible numbers, developing this business plan as a part of the planning and budgeting process provides staff and management with a blueprint for implementation and the Board with a method of evaluation.

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organization and an additional useful planning tool for management and policy makers is the pro-forma balance sheet.

This will show the impact of capital budgets, changes in policies as they may relate to collections and billing, and allow for a better use of ratios in predicting the impact of budget and programming decisions on the association. Looking at various ratios gives the readers of financial documents a way of interpreting the numbers and attaining a better understanding of their potential impact on the operations of the association. It allows you to benchmark your association against others that have similar constituencies and missions. It also allows you to have a better understanding of where you stand today compared with the past and possibly help project where you might go in the future.

Some ratios to consider calculating and analyzing can be gleaned solely from a profit and loss statement. Others that are useful will use a balance sheet as well.

The following items are some ratios to consider for a bar association:

- **Dues revenue** - tells you what percentage dues is used to cover your operating expenses; calculated by dividing gross dues income by total expenses.
- **Non-dues revenue** – tells you what percentage non-dues revenue programs (e.g. conventions, education, publications, etc.) is used to cover operating expenses; calculated by dividing each category of non-dues revenue by total expenses.
- **Personnel expenses** – tells you how labor intensive your association is; calculated by dividing total personnel costs (salary, benefits, etc.) by total expenses.
- **Net profitability** – gives you the bottom line profitability as a percentage of total income; calculated by net profit divided by total income.
- **Current ratio** – tells you the association’s ability to pay its current bills; calculated by dividing current assets by current liabilities so that a proportionate ratio is calculated.
- **Reserves** – gives you an idea of how much of your reserves are available should the worst case scenario occur; calculated by dividing unrestricted reserves by total expenses.

**Business plan approach to budgeting**

Budgets must result from the accumulation of data about the costs of programs including those currently offered and those that may be offered in the future. However, to truly evaluate the cost and income of a program or activity, one must know a number of things about the program. For example, the association must have a good idea of what the product or service to be offered is. The association team must analyze and research the marketplace to determine the need for the program, unique selling points and its potential sales of the product or service. It must have in mind the marketing and sales approach which includes information about the cost of producing the product or service, what type of personnel will be needed, availability from existing human resources, and how will the product or service be delivered, etc.

In other words, each initiative, program or service, requires that a mini business plan be developed in order to truly know the financial impact it will have. In order to put a credible number into a budget, this business plan must have been prepared.

- Employee compliance with instruction required
- Training
- Integration of worker’s service into the business
- Services are rendered personally
- Ability to hire, supervise and pay assistants
- A continuing relationship
- Set hours of work are established
- Full time is required
- Work performed on business’ premises
- Services performed in a set order or sequence
- Oral or written reports required
- Payment by the hour, week or month
- Payment of business and/or travel expenses
- Tools and materials furnished
- Worker performs services for more than one business at a time
- Worker invests in the facilities
- Worker can realize a profit or loss
- Worker makes services available to the general public
- Business has the right to discharge worker
- Worker has the right to terminate the relationship

Not meeting these requirements can cause the organization’s “independent contractor” to become an “employee.”

Should the organization have independent contractors to whom they pay over $600 in a calendar year, they must file Form 1099- MISC with the IRS reporting the name of the person paid, address, social security number/Federal Identification Number, and amount paid the independent contractor. Organizations not filing these information returns will be fined for each Form 1099 not filed in a timely manner.

IRS Rev. Rul. 87-41 is the definitive literature on independent contractors. Anyone wanting to read the details of the revenue ruling can go to www.medlawplus.com/legalforms/instruct.revru17-41.htm.

Additionally, IRS Publication 1779 (Rev. 12-99) available at www.irs.gov addresses the independent contractor issues in a very generic context from the contractor’s side of the issue. If you read both, you will have an idea as to what the IRS will be looking for from both parties prior to employing independent contractors.

Should your organization consider using independent contractors, you should have in your library, **Association Tax Compliance Guide** by Jeffrey S. Tanenbaum, available through ASAE. The book has a “Model Consulting/Independent Contractor Agreement” in the appendix.
Fraud Prevention

Fraud usually occurs due to theft of check stock, bank account number and information or corporate credit card and/or credit card account information. Safeguards for prevention of employee abuse of credit cards has been discussed earlier.

Bank Accounts and Checks – Sequencing and Signing

Checks should be pre-numbered sequentially if sequential numbering is not a function of the check writing system. Check stock should be stored in a secured area with access limited to few personnel. When check stock is received, a log of the check numbers received should be recorded. When check stock is removed from the secured storage area, the check sequence removed should be recorded, as well as the date and personnel removing the check stock. Personnel removing the check stock should be careful to remove the check stock so that it will be used sequentially. If blank check stock is used by the organization, this should be stored in a secured area as well.

For the actual writing of checks, ensure that checks over a certain amount require more than one signature. When setting up an account, banks will ask for the procedures you wish to follow regarding check signers.

The same principle holds for bank account information. Do not allow one person to transfer large sums of money out of the account. In addition, bank account information should not be readily available to all members of an association.

Invoice Review

Internal control of purchases is administered in many ways but primarily through the authorization of the purchase from inception. The life-cycle of a purchase that flows through various departments or people can ensure that purchases are made on budget and are appropriate.

Enable Personnel

An organization should determine the personnel that will be designated to make purchases. Larger organizations may have a purchasing agent who keeps abreast of pricing in areas of concern. Most organizations are not this large and these duties are assigned to others within the organization. This person should be extremely familiar with the operational and budgetary aspects of the organization, as they will be responsible for ensuring that purchases fall within operational and budgetary goals.

Pre-Purchase

Purchase orders may be used in organizations of any size. When a purchase is contemplated, the personnel initiating the purchase prepares a purchase order describing

As a result, at any given time the budget is a living document that continues perpetually for the organization.

Zero-based budgets

The easiest way to budget is to look at this year’s budget, this year’s actual results along with last year’s actual results, and then project some percentage of change for the coming year. Unfortunately, such an approach (over-simplified as it is) doesn’t force staff, management or the Board to focus on the programs of the organization and justify the continued allocation of resources to those programs.

Many times, programs continue for the wrong reasons. Many programs should continue to be supported even if it is a financial drain. For example, government affairs activities of a bar association are not profit generators and typically take significant financial and human resources. However, they may further one of the strategic initiatives of the organization and so the investment is justified.

This is a decision that the Board should make about all programming of the organization and using zero-based budgets to accomplish this is a tool that forces all involved to consider how programs further the strategic initiatives of the association.

Strategic planning budget

Much like zero-based budgets, using the association’s strategic plan to allocate resources is another excellent tool to force management and the Board to determine the best way for the association to further its goals.

Usually the strategic plan contains four to six major goals for the association. Each goal typically contains several strategic initiatives for accomplishing the goal. Because it is difficult if not impossible to accomplish everything in a given time period, the Board should have gone through strategic initiatives and prioritized them. Those that should be accomplished over the next six months or the following fiscal year should be agreed upon by the Board. In this way, management and staff have clear directions and the Board has a way to evaluate progress towards meeting the goals.

The budget should therefore be organized and presented in much the same way. Rather than being structured around cost centers or activities, it should paint a clear picture for management and the Board of how many resources are allocated to accomplishing each goal and strategic objective and where more or less should be allocated.

Financial statement budgets (pro forma statements) and use of ratio analysis

When budgets are presented to the finance committee and Board, they are usually presented in the form of a pro-forma profit and loss statement. A more telling picture of the future of the
Personnel budgets can be particularly useful in identifying the hidden costs of transitioning and training required when staff turnover occurs. Associations tend to devote a high percentage of their operating expenses to personnel costs. Unanticipated costs relating to turnovers can wreck any budget.

**Operating Budget**

Most association staff and governing boards are familiar with the operating budget. This is what is typically provided to the finance committee and the board for approval on an annual basis. It identifies revenue sources and cost centers. Normally it is the budget over which staff has the most control and must take the most responsibility.

**Allocation of overhead and personnel**

It is important to allocate overhead and personnel costs within the budget. Difficult as it may be, the association must determine a method for identifying, tracking and allocating these costs. Consideration must also be given to the cost of accumulating the data. However, it will allow management and policy makers to determine the true cost of an activity or a program.

This is not to say that any program that isn’t contributing enough to overhead and indirect personnel costs should be dropped. Rather, it allows policy makers enough information to make an informed decision about whether a program is strategically important enough to receive support from the organization even if it doesn’t contribute towards overhead and indirect personnel costs.

**Types of Budgeting Approaches**

In addition to different types of budgets there are various ways to approach the budgeting process itself. Following are some examples of new trends in the budgeting process:

**Continuous Budgets**

Most organizations’ budgeting process is as follows:

Typically, the board is presented with a recommended budget that has been reviewed by the finance committee and adopts it a couple of weeks before the start of the fiscal year. Everyone gives a great sigh of relief and avoids thinking about changing the budget until about four months before the end of the year.

A new trend in budgeting is to create perpetual or continuous budgets. Rather than updating a budget annually or when a crisis hits the association, many groups are now updating budgets quarterly or even monthly. Among the advantages is that management is continually invested in the budget process. In this way, the changing internal and external conditions can be addressed on a more timely basis. A crisis isn’t necessary for the budget to be considered.

the item(s) to be purchased and the purpose of the purchase. If the product is being assigned to a particular project, the project job code should be included. Most importantly, note if a purchase is included in the entity’s budget. If it is not, the reason for exception should be noted for approval. A purchase order is then submitted to the personnel authorized to approve the purchases. Once approved, the order is then placed.

**Delivery of Item**

When items are delivered, the designated personnel will review the goods and ascertain that the items ordered are the items actually received, in number and price. The goods are then distributed to the staff member who requested the purchase. The invoice is signed off by the approving personnel, indicating that the appropriate items were received, and, if purchase orders are used, the purchase order is matched with the invoice and submitted for payment.

When checks are prepared, the check signer should have the documentation attached for review. With documentation in hand and verification completed, the check signer has little to do but sign the check for payment.

**Accounting Software**

Maintaining the integrity of the accounting system is absolutely essential. Most accounting software packages have different modules within which various personnel can work. The typical software package has the following modules:

- General ledger
- Accounts receivable
- Accounts payable
- Payroll
- Depreciation
- Inventory

The vast majority of organizations will use the general ledger, accounts receivable, accounts payable and payroll modules. Appendix D at the end of this book shows which types of systems are popular among state bar associations. The three most popular pieces of software, according to 2002 Bar Activities Inventory (from the ABA’s Division for Bar Services) are Great Plains, QuickBooks, and Peachtree.

**General Ledger**

General ledgers record all transactions of the organization, usually by account number and name. The scheme of account numbers and names is called the “Chart of Accounts,” which is determined by each organization but must have a similar ordering of accounts.
Accounts receivable

An accounts receivable line-item tracks what has been billed by the organization to members/customers and is used to determine how much is owed the organization and by whom. Accounts receivable is usually bundled with billing/invoicing, and the revenue side of project or job cost. Coupled with the cash receipts portion of the program, these groups are transferred to the general ledger on at least a monthly basis, either by the software package itself or by journal entries created by staff members. If the organization has project or specific job revenue, this would be tracked through the accounts receivable by entry of the project or specific job when the billing/invoicing is prepared. The accounts receivable detail total should be reconciled to the general ledger account to which it relates monthly and any discrepancies should be resolved on a current basis.

Accounts Payable

Accounts payable areas track expenses incurred and post them to the general ledger by account name and number and where applicable by project or job costs. The payables module combines check writing function and paid vendor invoices and takes them out of accounts payable. The accounts payable detail total should be reconciled to the general ledger monthly and any discrepancies resolved on a current basis.

Payroll

The payroll module is used to prepare payroll checks based upon the organization’s payment schedule, i.e., weekly, bi-weekly, monthly, etc. The payroll module computes payroll taxes depending upon the employee’s marital status and exemptions claimed, other deductions, such as insurance, disability, garnishments, etc., and the employee’s net check. The payroll module will typically compute and accrue employee payroll taxes such as FICA, Medicare and federal and state unemployment taxes. These accruals are posted to the general ledger by the system or journal entries prepared by staff.

Access to Software Modules

In each of these accounting areas, specific personnel have specific duties. The accounting software packages allow an administrator, who should be an officer or manager, to grant certain permissions to various personnel. The person responsible for accounts receivable might only be given permission to work solely in the accounts receivable module, where the person responsible for accounts payable might be given permission to work in both accounts payable and payroll. The point is, blanket access to the accounting program should not be the norm. Access should be given based upon job description and whether this person requires access to areas in which they do not work or should the server be replaced? Examine the accounting package as well. How often should business applications that aren’t specific to the association be upgraded (e.g. Word, Excel, etc.)?

- Decide how often workstations should be replaced.
- Look at the association management software and plan for replacements in the future.
- Consider whether integrating the Web site with the association management software is important.
- Review hosting of the Web site and the underlying technology. Also look at the style and navigation to determine how often changes should be planned.

Cash Budget

What drives any business - including a bar association - is cash. Typically, much of a bar association’s revenue comes from dues of its members. Unless the bar association bills dues on an anniversary date basis, the flow of cash is not even throughout the organization’s fiscal year. Generally, large amounts of cash are received within a couple of months after the initial dues billing. While some members pay only after a second, third or final notice, most of the cash from dues is received typically within the first quarter of a fiscal year.

The challenge faced by bar association staff is to manage cash flow so that the organization doesn’t run out of cash before the end of the year. Knowing when cash will be needed will impact how the funds are invested. You certainly don’t want to be forced to sell long term investments, potentially at a loss simply to address a short term cash need. An inadvertent delay of a week or two in getting the dues bills in the mail could create a major cash flow problem. For more information regarding short term cash flow management, please see Chapter 2 – “Short Term Cash Management.”

Often, the timing of expenditures doesn’t correspond neatly with the receipt of revenue. For example, you may be required to make a deposit with a hotel for a convention that won’t be held for one or more years. Registration revenue won’t start flowing in until three or four months in advance of the event. By that time, you will not only have made substantial deposits upon the hotel and meeting spaces, but also significant investments in speakers, promotional material and other conference-related expenditures.

In addition to allowing you to identify peaks and valleys of cash flow, a cash budget can help identify severe cash problems. It is possible, through an analysis of the cash flow trends over a period of years that management may discover that it has been effectively borrowing its cash from anticipated dues revenue for the following year or make ends meet at the end of the current fiscal year.

Personnel Budget

Creating regular personnel budgets can help the association identify how well its human resources assets are being allocated. Personnel budgets help project additional needs as new projects are contemplated by staff, management and the board.
Types of Budgets

Although often we tend to think of the budget as simply the profit and loss statement with some hoped for and presumably attainable numbers, there are several types of budgets that can and should be prepared in order to provide the organization, its management and policy makers with the type of information needed to best manage the association’s future.

Capital Budget

Even though most bar associations tend not to use resources heavily for attaining large amounts of property or equipment, they nonetheless do make periodic capital investments.

For example, investment in technology has become a significant source of capital expenditure and one that must be planned and budgeted for on an ongoing basis. This is even more important now that the utilization of the Internet has become even more crucial in offering services to members. Without planning, the growth of the association’s hardware, software, internet presence and support networks will be the result of reaction to internal and external pressures on an ad hoc basis. There will be no well thought out goal and direction.

Another benefit of creating a capital budget is that it will allow the association to see what significant investments will be required well beyond the end of any given fiscal year. In this manner, the association can plan for how the funds will be generated to pay for those improvements.

Some of the considerations to take into account when creating a capital budget for technology include:

- Analysis of how the association’s strategic initiatives will impact its use of and need for technology.
- Determination of the time frame for a technology plan (usually two to three years).
- Analysis of the current state of technology within the association.
- A statement about what is to be achieved through new technology.
- Return on investment analysis and how that ROI is to be evaluated and measured.
- Analysis of what technology is available currently, anticipated over the life of the plan and a cost analysis:
  > New technology acquisitions
  > Interfaces needed with current technology
  > Phasing out obsolete technologies
  > Staff training
  > Developing evaluation mechanisms
  > Ongoing assessment of continued applicability and adequacy of technology
  > Continual updating of the plan
- Determine how often the infrastructure and operating system should be upgraded. This would include deciding how long after the release of a major operating system upgrade would the bar association plan to conduct its own upgrade. How often

have knowledge. This is particularly evident in payroll. Payroll access should be limited to chief staff officers, human resource personal and/or personnel responsible for preparation of payroll. Casual dissemination of this information usually causes considerable tension and disruption within an organization.

Contract Signing Authority

Each organization should determine what it considers to be in the nature of a contract and, after that determination is made, assign to the appropriate person the responsibility for contract signing. Within an organization, there may be different levels of contract signing authority. Certain personnel may be authorized to sign any contract under a certain duration and annual dollar amount while the executive director retains the authority to sign contracts over a certain duration and dollar amount. Longer duration and large dollar contracts will normally be submitted to and approved by the organization’s Board of Directors.

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Budgets: A Key Tool for Bar Associations
By Max G. Moses, President, Member Media

The Budgeting Process

Until fairly recently, the creation of an association’s budget was the responsibility of the finance department. Budgets involved numbers and numbers were generated, reported, and understood by the accounting types in the organization. It was not uncommon for the CEO of the association or the volunteer leaders (including those or the finance committee) to have little understanding of the story that the numbers were telling.

As questions began to be raised about the “why” of the numbers, a more inclusive process of developing the budget came into play. Department heads, who were responsible for developing and selling the association’s products and services, were asked to provide data and recommendations. The availability and easy use of powerful spreadsheet software made the numbers easier to crunch and made “what if” scenarios easier to create and take into account.

Typically, budgets are prepared annually. The budget “season” usually starts three to four months prior to the start of the new fiscal year. The budget is presented to the association’s finance committee or governing board for approval shortly before the start of the new fiscal year.

Often, the association’s culture, policy statements, and in some cases its bylaws, required that a balanced budget be presented.

The budget formalizes the association’s goals and objectives, allocates the resources needed to attain the strategic initiatives of the group, and provides guides to management and policy makers to gauge how well the association is meeting these goals.

However, the world is changing at a faster pace than before. The success of associations requires the ability to respond more frequently to changes than annually. The demands of increased competition from sources that were unknown just a couple of short years ago is making the budgeting process much more global and strategic in nature than has been the case in the past.

As a result, the budgeting process needs to change to meet these new demands. For example, continuous or perpetual budgets are gaining favor. Rather than being updated annually to coincide with an organization’s fiscal year or when a crisis occurs, these budgets are updated quarterly or even monthly.

In this way, management is consistently involved in the budget process so that changing external or internal conditions can be addressed, while policy makers are better positioned to evaluate the data upon which policy decisions are based.
Chapter 3
Managing Risks: Liability and Duty of the Board

Risk management is an area of bar administration that often gets overlooked. In this chapter, material from the Nonprofit Risk Management Center focuses on the need for clear cut risk management polices as well as practical advice on how to deal with insurance carriers and potential lawsuits against your organization.

The fiduciary duty of a board and its executives is perhaps the most crucial issue facing the U.S. business community in recent years. While these scandals and issues seem far removed from the nonprofit world, in fact they are not. Nonprofit boards and executives face the same responsibility toward their organizations as they would if they were operating a for-profit organization. Jeannie Frey, a member of the Nonprofit Corporations Committee of the ABA’s Business Law Section, discusses in this chapter how bar leaders and executives can effectively fulfill their fiduciary duty.
Chapter 4
Budgeting and Financial Reporting

Budgeting and financial reporting are all about putting all your financial reporting skills together. To successfully establish a budget that allows your bar to grow and be flexible, bar leaders and executives must have a firm grasp on organizational structure and the culture in which it operates. The traditional model of budgeting a year in advance is being challenged by new ideas of budgeting including continuous, zero-sum and business plan budgeting.

Max Moses, a C.P.A. who worked at a specialty bar for more than 20 years, gives an overview of the different types of budgeting models and describes the components of a successful budget.

Financial reporting is key to providing a transparent view of your organization. Financial reporting acts as the ultimate internal control – its creation and review by association staff, elected leaders, government agencies and members allows the association’s financial health to be examined. Doug Boedeker, senior audit manager at Tate & Tryon, CPAs, gives an overview of financial reporting essentials. Mr. Boedeker is a C.P.A and C.M.A. as well.
III. LIABILITY ISSUES

As any bar association leader will appreciate, no discussion of legal duties would be complete without at least a brief reference to potential liability arising from the breach of such duties. Claims against officers or directors of bar associations under the Duty of Care may include claims of negligent hiring or supervision of employees or volunteers under circumstances that resulted in harm to the organization or a third party. In the Duty of Loyalty context, bar leaders (like the leaders of other organizations) can be held personally liable for breaches of such duty that result in loss or harm to the organization. In addition, responsible directors and officers can also be held personally liable if the organization fails to comply with certain legal requirements, such as those relating to payment of certain taxes, anti-discrimination requirements and antitrust matters.

Claims of breaches of the Duty of Care that are made by or on behalf of the association may be potentially shielded by the business judgment rule (a defense in litigation by members or in other "derivative" actions brought on behalf of the association, under which a court will refrain from second-guessing board actions, unless bad faith, fraud, willful misconduct or other "bad facts" are alleged). Directors may also be protected from liability by state "shield" statutes or by the federal Volunteer Protection Act. Shield statutes vary from state to state, but generally offer protections from liability for directors (and sometimes officers) of tax-exempt organizations, unless a certain high level of misconduct is present; however, such statutes typically often cover only Duty of Care claims, and not claims of a breach of the Duty of Loyalty. Many shield statutes, like the federal Volunteer Protection Act, only protect organization leaders who receive no compensation for their service. The indemnification provisions of the association’s bylaws, as well as D&O insurance, may also provide protection against losses due to suits filed against an association leader. However, indemnification or insurance coverage may not be available for matters involving Duty of Loyalty claims. Beyond liability concerns, of course, bar association leaders will recognize that satisfying their fiduciary and related duties with respect to the organization will help assure that they are doing their best to promote the association’s success and fulfillment of its mission.

Risk Management

By the Nonprofit Risk Management Center

What is a Risk?

Simply speaking, a risk is any uncertainty about a future event that threatens your organization’s ability to accomplish its mission. Although your “fund balance” may be minimal, and equipment may be second generation, your agency has vital assets at risk. Generally, nonprofit assets fall into the following categories:

- **People** - board members, volunteers, employees, clients, donors, and the general public.
- **Property** - buildings, facilities, equipment, materials, copyrights, and trademarks.
- **Income** - sales, grants, and contributions.
- **Goodwill** - reputation, stature in the community, and the ability to raise funds and appeal to prospective volunteers.

What is risk management?

Risk management is a discipline for dealing with the possibility that some future event will cause harm. It provides strategies, techniques, and an approach to recognizing and confronting any threat faced by an organization in fulfilling its mission. Risk management may be as uncomplicated as asking and answering three basic questions:

- **What can go wrong?**
- **What will we do (both to prevent the harm from occurring and in the aftermath of an"incident")?**
- **If something happens, how will we pay for it?**

Large organizations may have a risk management department responsible for answering the three basic questions. In addition, the department may manage litigation, coordinate safety programs, and undertake the complex analyses required to set monetary reserves for future claims. In small, community-based nonprofits, the risk management function is more likely to focus on issues such as:

- **Screening volunteers to protect children from harm;**
- **Checking motor vehicle records for all staff and volunteers who are driving on the nonprofit’s behalf;**
- **Developing board orientation and training materials;**
- **Coordinating the development and consistent use of employment practices; and**
- **Negotiating the availability of bank credit and purchasing property and liability insurance.**

Developing a Risk Management Program

- **Establish the purpose of the risk management program.** The program’s purpose may be to reduce the cost of insurance or to reduce the number of program-related injuries to staff members. By determining its intention before initiating risk management planning, your agency can evaluate the results to determine its effectiveness. Typically, the executive director of a nonprofit, with the board of directors, sets the tone for the risk management program.
Assign responsibility for the risk management plan. The second step is to designate an individual or team responsible for developing and implementing your organization’s risk management program. While the team is principally responsible for the risk management plan, a successful program requires the integration of risk management within all levels of your organization. Operations staff and board members should assist the risk management committee in identifying risks and developing suitable loss control and intervention strategies.

Insurance and Risk Management
For most nonprofits, insurance is a valuable risk financing tool. Few agencies have the reserves or funds necessary for complete self-insurance of their exposures. Purchasing insurance, however, is not synonymous with risk management. In the nonprofit sector, practicing risk management is living the commitment to prevent harm. In addition, risk management addresses many risks that are not insurable - such as, the potential loss of tax-exempt status, public goodwill, and continuing donor support.

Liability Basics for Nonprofit Organizations
At one time, nonprofit organizations operated without the fear of liability for the injuries they caused under the doctrine of "charitable immunity." The erosion of charitable immunity beginning some thirty years ago has required nonprofit organizations to assume legal and financial responsibility for their activities. The advent of limited immunity for volunteers at the state level - and most recently at the federal level - has created additional confusion about the potential liability of a nonprofit for wrongdoings caused by its actions or by its failure to act. A basic understanding of the key concepts in nonprofit liability is an appropriate starting point for nonprofit managers and board members considering their agency’s potential liability for harm. Many nonprofit managers and volunteers do not fully understand the extent of their potential liability for injuries occurring in the operation of their organizations. Under tort law, an injured person may recover monetary damages from the person(s) and/or organization(s) that caused or contributed to the harm.

What is a tort?
Simply stated, a tort is a private or civil wrong or injury other than a breach of contract for which the law provides damages. The principal objectives of the tort system are to:
- compensate injured parties; and
- foster due care and diligence by requiring the party causing the harm to pay for the damage.

To achieve these objectives, damages are based on the extent of loss, including such non-economic aspects of the loss as pain and suffering. When an injury becomes the basis for a legal claim, the tort system places the parties in an adversarial relationship which is governed by highly formal rules. The “plaintiff” seeking recovery and the “defendant” contesting the claim square off with the assistance of their lawyers.

(e) Use or Appropriation of Organization Assets. Both to satisfy tax-exemption prohibitions against private inurement and general Duty of Loyalty principles, directors should not use or take any organization asset - whether confidential or other proprietary information, empty office space, or company resources (personnel or other) - for the director's personal use or for any purposes other than those of the association. Depending on the circumstances, however, such use or taking may sometimes be done consistently with tax-exemption and general Duty of Loyalty principles, such as when a use is pre-approved by a majority of disinterested directors and the director pays reasonable compensation for the asset or its use.

2. Bar Association Officers and Key Management Personnel. For bar association officers, the Executive Director and any other key managers, Duty of Loyalty issues may arise in both similar and different contexts than for directors. Following the guidelines below can assist bar association officers and other management leaders in avoiding any Duty of Loyalty problems:

(a) Disclose Actual and Potential Conflicts. Bar association officers and other key management staff should fill out any annual or other periodic disclosure statements required under the association’s conflict of interest policies. If no such disclosure statement is required, or for conflicts that arise between disclosure statement dates, the officer or manager should advise the board Chair or other board representative of any actual or potential conflict of interest. It is the board’s duty to determine whether a conflict actually exists, and then to determine what actions are appropriate to avoid the organization being harmed or detrimentally affected by such conflict.

(b) Dualities of Interest and Non-Competition Requirements. Dualities of interest may be less common for a full-time, paid Executive Director or other management leader of a bar association than for a director or unpaid officer who is a practicing attorney. However, any dualities of interest that do or may exist for any officer or management leader should be disclosed to the association board. To the extent an association officer’s or management leader’s duality of interest - or any other interest - appears to directly conflict or compete with the interests and activities of the association, the officer or other leader should either resign or ask the board to determine how to best deal with the issue.

(c) Usurpation of Association Opportunities. Like directors, bar association officers or other management leaders may learn, in the course of their service to the association, of opportunities that the organization would likely be interested in pursuing, but which would also be advantageous to such individual or an affiliated organization. Unless the association has been fully informed of the opportunity and declined to pursue it, any action by an association officer or other leader to take advantage of the opportunity personally or through an affiliated entity may breach the Duty of Loyalty.

(d) Use or Appropriation of Organization Assets. The standard described above for directors applies equally to association officers and other management leaders. Moreover, the association board should consider whether effective controls are in place to discover any inappropriate personal use or appropriation of association assets.
(b) Dualities of Interest. Many bar association directors will have affiliations with other bar associations or similar organizations. Such other organizations may be "specialty" bars that are based on geographic area, practice area, age, gender, ethnic background or other criteria. In some cases, the director’s service on the board of one bar association may be a result of appointment by another association to a board seat designated for representatives of such other association. Such directors thus have what is often referred to as a "duality" of interest, in that they serve simultaneously in fiduciary roles with respect to similar organizations. Generally, such dualities do not pose conflicts, although potential conflicts may arise. For example, an individual may be a director of "Association A," which sponsors a certain event or program that is primarily lucrative or successful from a public relations perspective for Association A. This same individual may serve as a director for Association B, which proposes to establish an event or program similar to that of Association A. The dual director may be concerned that Association B’s activities will result in less support for the existing program or event, or diminish the goodwill value of Association A’s activity. Although such conflicts may be resolvable, especially with input from the "dual interest" director, it is important that any affected director disclose such a dual interest, and make sure the other board members are aware of any potential conflict.

(c) Non-Competition. As a fiduciary, the director of a bar association should not engage in any activity which directly competes with the activities of the association. However, because of the nature of a bar association as a nonprofit enterprise that supports the legal profession and the professional and community activities of lawyers in general, attorney involvement in certain activities that are directly competitive with the association’s activities, and which might raise serious conflict issues in a for-profit context, generally do not raise concern in the context of a nonprofit bar association. For instance, a director or officer of a bar association that has an extensive publishing division may write books on legal topics that are published by a university press or publisher other than that of the association; such writings would not generally raise a competition concern from the association’s perspective. Similarly, directors of bar associations are generally not deemed to be precluded from belonging to or being active in other bar associations that address the same geographic, practice or other segment of the legal profession. Simultaneously holding leadership roles in both organizations would fall under the "duality of interest" category discussed above, and could result in conflicts from time to time. In some limited cases, holding comparable dual roles of particularly visible and/or time-consuming nature (such as simultaneously serving as President of two directly comparable organizations) may appear improper and raise questions as to where an individual’s "true loyalties" lie. As in other conflict situations, disclosure and discussion of any potentially "competing" interest is the key step that allows the other board members to determine if there is any conflict issue and if so how to best address such issue.

(d) Usurpation of Association Opportunities. In the course of serving as a director of a bar association, the director may learn of business or organizational opportunities that may be of great interest or use to the director’s own firm, company, or other affiliated organization – for instance, a lead on a favorable office lease in a desirable location. It is a breach of the Duty of Loyalty for the director to take action that would cause such opportunity to be lost to the bar association because it is "taken" by the director or an affiliate acting on information provided by the director.

Categories of liability under tort law
Liability may be classified as direct (the organization is held responsible for its actions or failure to act), vicarious (the organization is held responsible for harm caused by persons acting on its behalf), or strict (responsibility is automatic and a finding of negligence or misconduct is not required).

Most tort cases involving nonprofit organizations and volunteers generally concern one of the following categories within the realm of torts: negligence, strict liability, or intentional misconduct.

Negligence
Negligence is defined in a number of ways, including the failure to do an act which a reasonable person would do or the doing of something a reasonable and prudent person would not do. Gross negligence includes, among other things: carelessness which is in reckless disregard for the safety or lives of others.

While organizations and individuals have a duty to take reasonable steps to deliver services and perform their functions in a safe and responsible manner, the law does not require perfection. To prevail in a tort case alleging negligence, the plaintiff must establish the following:
- Duty - that the individual or organization had an obligation to act with a certain standard of care.
- Breach - that the organization or an individual acting on its behalf breached a duty owed (was the defendant negligent in meeting its duty of care?).
- Direct or proximate cause - that the violation of the duty resulted in the injury at issue, either directly or through a chain of events made possible by the breach of duty (did the defendant’s negligence cause the injury in question?).
- Injury - that the incident caused a compensable loss (were there damages to property, medical expenses, loss of wages or significant psychological trauma?).

If a claim is made against someone acting in a professional capacity - even as a volunteer - a higher standard of care based on the proper practices of the profession may apply. In such cases, the individual’s qualifications may influence the standard of care applied. To determine the proper standard, the parties may call expert witnesses to testify about prevailing practices.

Little about the tort system is automatic or invariable. At the outset, causing harm or failing to prevent harm does not necessarily result in legal liability. In most instances, tort law imposes liability only if the party who caused the harm was negligent, that is, failed to act with the care that a reasonable person would have exercised in the same situation.

The nature of the required standard of care in a nonprofit organization depends on the interaction of settled law and ad hoc determinations about what is reasonable. Furthermore, none of these factors is static: courts render literally hundreds of new decisions each day, legislatures enact new laws every year, and programs continually improve their practices. Community standards of what is "reasonable" vary over time.
Strict Liability
Strict liability results in the imposition of liability regardless of whether negligence has occurred. It arises principally when an organization has a duty to make an inherently unsafe or ultra-hazardous condition safe and to protect persons who may come into contact with the condition.

Under workers’ compensation laws, an employer is responsible for injuries to a worker even though the worker’s negligence may have caused the injury. Other areas of strict liability include, for example, child abuse reporting laws that make organizations liable for harm to a child if the organization fails to comply with laws mandating the reporting of suspected abuse.

Direct vs. Vicarious Liability
A nonprofit is liable for its own actions (direct liability) and may be responsible for the actions of an employee or volunteer acting within the scope of employment by or service on behalf of the organization (vicarious or indirect liability). The latter form of liability is justified on the grounds that the entity that directs and benefits from an individual’s actions should bear the costs of any resulting harm, and is based on the legal doctrine of respondeat superior ("the master will respond"). Under the doctrine of respondeat superior, if a "servant" acts negligently and causes some damage while performing his or her assigned work, then the "master" is legally liable for that damage.

Things to remember:
- Volunteers’ authority may be granted or merely apparent (to third parties).
- The fact that an action taken by an agent is expressly forbidden by the nonprofit or contrary to organizational procedures will not necessarily allow the nonprofit to escape responsibility.
- Nonprofits may be held liable even when an agent was clearly acting outside the scope of his or her duties (although this is not always the case).

The Role of the Risk Management Committee
A risk management committee oversees the execution of the five-step risk management process:

1. **Acknowledge and identify risk.** The operation of every nonprofit involves some degree of risk or uncertainty about future events. The first step in managing those risks is to identify them. Some are generic and inherent to the operation of virtually all organizations - the possibility that a visitor will slip on a wet floor, that an employee will embezzle the agency’s funds, or that a former employee will allege violation of his civil rights. Other risks are unique to your organization - the possibility of animal bites, drowning, vehicular crashes, or copyright infringements. No matter how improbable a risk may seem, if you can envision it happening in your organization, you should list it during the first stage of the risk management process.

2. **Evaluate and prioritize risk.** Under this step, the committee assesses the probability of each risk becoming reality and estimates its possible effect and cost to the agency. An organization should look at its past accidents and near misses and check with similar

1. **Bar Association Directors.** To fulfill the Duty of Loyalty, the bar association leader must act in good faith and in the best interests of the organization, rather than in the leader's own interest. Bar association directors are responsible both for individually acting in compliance with the Duty of Loyalty and for collectively ensuring that appropriate procedures are in place to avoid or deal with potential breaches of the Duty of Loyalty by other association directors or officers.

(a) **Proper Procedures for Disclosing and Dealing with Conflicts:** Good corporate practice recommends that each bar association adopt a conflict of interest policy. In light of the numerous high-profile conflict of interest issues raised recently in both the for-profit and nonprofit arenas, from Enron to the United Way, bar associations may wish to be particularly scrupulous in the conflicts area. The IRS has developed a model conflict of interest policy for tax-exempt healthcare organizations that contains many provisions considered "state of the art" in this area and which thus may be worth consideration by bar associations.7 However, like many conflict policies, the IRS model policy defines "conflicts" only in terms of "self-dealing" transactions, in which a director or officer is on the other side (directly or indirectly) through a relative or affiliate of a transaction with the organization – such as when the organization is considering a material contract with a company of which a board member is affiliated. Best practice recommends (and some state laws require) that an interested director or officer not participate in the board meeting considering any self-dealing matter. Directors should also ensure that the provisions of the association’s conflict of interest policy relating to self-dealing transactions are consistent with state law requirements under which contracts involving self-dealing may be treated as void or voidable, unless certain conditions are met.

Directors may also experience conflicts between their personal interests and those of the organization in contexts other than self-dealing, such as when the director will be personally affected by proposed board actions. For instance, a proposal to bolster declining association revenues by increasing membership fees for judges would cause association directors who are also judges to have an "interest" in the matter that may conflict with the interests of the association. Similarly, a policy statement mandating the acceptance of electronic filings by certain courts and agencies may negatively affect the family income of an association director whose spouse was a co-owner of a filing service. A comprehensive conflict of interest policy for the association should require disclosure of all such conflicts. Depending on the circumstances, it may be useful for the board to allow an interested director to participate in the board discussion of the proposal, particularly when the director is part of a class of association members who will be adversely (or positively) affected. However, when the interest is of a more individual nature, it may be advisable to preclude the interested director from participating in the board discussion and/or being present during the vote. If the director’s presence might be likely to inhibit candid discussion by other directors, the interested director should not be present during the general discussion, other than to provide relevant information. If such interested director appears incapable of voting in a way that he or she reasonably believes to be in the best interests of the organization, apart from the director’s own interest in a matter, such director should not vote on the applicable matter.

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7 See Lawrence M. Brauer and Charles F. Kaiser, tax-exempt Health Care Organizations, Community Board and Conflict of Interest Policies; to find on the Web, go to: www.irs.gov/pub; then click on irs-utl, then on topic-c.pdf.
2. Bar Association Officers and Key Management Personnel. For bar association officers and other management leaders, satisfaction of the Duty Of Care may be evidenced by the following conduct:

(a) **Expend the Amount of Time Necessary and Appropriate for the Position.** The organization’s bylaws and historical practices often provide a good overall sense of the scope of an officer’s or other key manager’s position and the amount of time expected to fulfill the duties of such position. In addition, certain activities are generally associated with certain positions – for instance, the Treasurer is usually expected to oversee all financial activities of the corporation, including preparation of periodic financial reports and communications with auditors. In comparison, the individual holding the position of Secretary is usually expected to maintain, or cause someone else to maintain, the corporation’s minute book containing the corporation’s organizational documents, all amendments thereto, and minutes of board and committee meetings.

(b) **Oversee Employees and Employee Matters.** In light of the fact that employee-related claims have become an increasingly significant amount of all claims against nonprofit organizations, the officers and key management staff of the corporation should act to ensure that the organization follows appropriate procedures with respect to the hiring, firing and general oversight of employees. Since volunteers of nonprofit organizations can also trigger organizational liability (because of actions done by or to the volunteers), the organization’s management should ensure that procedures are in place to minimize volunteer-related liability.

(c) **Provide the Board with Timely and Material Information.** As noted above, the directors of a bar association cannot do their job without receiving timely and complete summaries regarding material aspects of current and proposed association operations. It is therefore the duty of the association officers and other management leaders to ensure that directors are provided with accurate and complete information on a timely basis. Such information will consist both of written information and oral reports at board and committee meetings.

(d) **Implement Board Decisions and Recognize the Directors as the Ultimate Decision-Making Body with Respect to Material Policies and Actions.** Bar association officers and other management leaders are responsible for implementing board policies and decisions, even decisions with which such officers or managers may disagree. Although association management can and should provide board members with their recommendations on significant issues, officers and other managerial staff ultimately must defer to the board’s determinations.

Key officers, such as the President, should not use their power to intimidate non-management board members into approving management’s recommendations without independent evaluation.

B. **Satisfying the Duty of Loyalty**

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1 Most bar associations have Executive Directors, and sometimes other high-level management staff, who are not officers but function in positions equivalent to that of persons who would be considered senior officers in a for-profit corporation, such as chief executive officer, chief operating officer and chief financial officer. For purposes of this discussion, we assume that some non-officer management staff are among the “management leaders” who owe fiduciary and other duties to the association.

nonprofits in developing probability and cost estimates. Also consider the possible public reaction to an adverse event. Priority areas of concern will include those risks that are most likely to occur and are expensive when they do happen - such as an accident or water-related injury at a community pool. Lower priority risks are those that seldom occur and are not likely to cost as much when they do happen - such as a slip in the agency’s well maintained offices.

3. **Decide how to manage your risks, using risk management strategies.** The risk management committee’s next task is to develop a written plan. The plan outlines how the agency will manage its major risks. The plan describes the suggested strategy, or combination of strategies that the nonprofit will employ. The four basic strategies for controlling risk are:

- **Avoidance.** Do not offer or cease to provide a service or conduct an activity considered too risky.
- **Modification.** Change the activity so that the chance of harm occurring and impact of potential damage are within acceptable limits.
- **Retention.** Accept all or a portion of the risk, and prepare for the consequences.
- **Sharing.** Consider sharing the risk with another organization. Examples of risk sharing include mutual aid agreements with other nonprofits, purchasing insurance, and sharing responsibility for a risk with another service provider through a contractual arrangement.

(Note: In traditional risk management texts, the purchase of insurance and use of contractual arrangements to allocate risk are categorized as methods of "risk transfer." This term is misleading, however, as it is virtually impossible for a nonprofit to fully transfer risk. For example, when a nonprofit purchases a general liability policy, the insurance carrier agrees to defend and pay for losses incurred by the nonprofit for certain causes of loss. The insured nonprofit, however, retains risk for the loss of its reputation in the community and reductions in the pool of volunteers available to serve the organization. No currently available contract of insurance will restore a damaged reputation or replenish a pool of capable and enthusiastic volunteers.)

4. **Implement your risk management plan.** Once the appropriate governing body or management personnel has reviewed the plan, the agency should formally adopt and implement it. A risk management plan placed on a shelf in the executive director’s office is a waste of time. Implementation begins with the risk management committee distributing and explaining the plan to everyone affected by it. While every staff member should have the opportunity to comment on the plan and its implementation, some special training may be required. Certain employees and volunteers may need training to enable them to meet their specific risk management responsibilities.

5. **Review and revise the plan as needed.** Nonprofits are dynamic organizations that must adapt - on an ongoing basis - to new client needs, funding constraints, and service delivery challenges. The dynamic nature of your agency requires that risk management strategies be revisited at least annually. The committee should evaluate the risk management plan to ensure its continued relevance, comprehensiveness, and effectiveness. Have your risks changed due to the addition of new services or curtailment
of programming? Are greater or fewer resources available for controlling risks? Having a risk management committee that meets periodically can help ensure that the issue of risk management receives ongoing attention. The risk management committee also needs to evaluate the strategies it implements. Have the risk management techniques had the desired impact? Were injuries or accidents reduced? Did insurance premiums go up or down at renewal? Is the plan having the desired impact or do you need to make some revisions?

Myths About Nonprofit Liability and Risk Management

Nonprofit organizations hold a certain mystique for many people. After all, these organizations were founded for charitable or educational purposes, and their ultimate goal is to improve the quality of individual or community life. Thirty or forty years ago, nonprofit organizations benefited from charitable immunity, under which the courts held nonprofit organizations immune from all tort actions. Charitable immunity stemmed from a belief that a charity’s resources should go to fund good works, not to pay for someone’s injuries. Over the years, the courts have abolished charitable immunity in most states, and today, the legal system requires that nonprofit organizations take responsibility for their actions and for the actions of their agents — people acting on the organizations’ behalf, such as employees, volunteers, and, sometimes, clients.

Many people who work or volunteer for a nonprofit agency believe that nonprofits still operate under some form of charitable immunity. This and other misconceptions about nonprofit liability may jeopardize the success of nonprofits that fail to take appropriate steps to protect themselves and their stakeholders from harm. Dispelling the myths about liability is a first step in managing risk in a nonprofit organization.

Myth #1 - Buying insurance is practicing risk management

For many nonprofits, insurance is a critical component of a risk management program, but buying insurance is no substitute for engaging in the practice of risk management. Risk management incorporates strategies and techniques for recognizing and confronting any threat or danger that may cause harm and hinder the organization from fulfilling its mission.

When losses do occur, organizations must pay for them somehow. Insurance is one of many methods available for financing losses. However, insurance does nothing to prevent a loss from occurring. The least costly accident in terms of time, money, and morale is the one that never happens.

Any mistake — an auto accident, the abuse of a service recipient, theft of the agency’s funds by an employee or volunteer, or other event that brings negative attention to the organization — can have a lasting impact on an organization’s ability to fulfill its mission. The success of most nonprofits depends on the support of the public (donors, members, volunteers), and risk management is an effective way to help maintain the public trust.

(c) Understand and Evaluate Information Provided. The director should evidence understanding of written information and oral reports provided to the board, and ask questions to clarify issues and evaluate the accuracy and completeness of information provided. If necessary, the director should request additional information before making a decision, and/or make general suggestions for changes in the quantity, quality or timing of information provided to the board, consistent with the organization’s resources.

(d) Make Decisions Independently and Based on Opinions and Recommendations that Appear Reliable. The director is not simply a “rubber stamp” to approve recommendations of management or the board leadership. Thus, each association director should be able to demonstrate, such as by notes of questions and votes at board meetings, that she had independently considered and evaluated matters presented to the board. Under both accepted corporate practice and the express provisions of many state laws, directors are permitted to rely on the opinions and other information provided by the following classes of persons, acting within the scope of their respective responsibility and/or expertise: (1) officers and employees of the corporation; (2) experts retained by the corporation; and (3) board committees — unless the director has information that makes such reliance unwarranted. However, as the Enron matter and other recent high-profile corporate bankruptcies illustrate, board members are well-advised to exercise a healthy skepticism, even when dealing with experts and executives.

With respect to board committees, directors should recognize that while they are entitled to rely on the findings and opinions of committees, such committees are nevertheless committees of the board, and subject to the board’s oversight. Although board members may be generally inclined to defer to decisions and recommendations of the Executive Committee or other committees of the board, the full board should nonetheless review and ask questions of such committees before routinely ratifying or approving committee actions or recommendations.

(e) Understand the Organization’s Mission and Purposes. Each association director should read and have available for reference the organization’s organizational documents — i.e., the Articles or Certificate of Incorporation (sometimes called the Charter), the Bylaws, the Mission Statement (if there is one) and material policy statements adopted by the board.

(f) Understand the Corporation’s Legal Environment. An association director should be generally aware of the range of state, federal and local laws and regulations to which the organization is subject. As a member of the board, the director should act to assure that sufficient procedures are in place to make sure the organization complies with applicable laws.

(g) Delegate Appropriately to Management. The director should demonstrate an appreciation for the distinction between appropriate oversight of officers and other managerial personnel, and micro-management. While a director should make sure that qualified personnel are operating the organization and implementing the board’s directives, the director generally should not use his or her role to become involved in daily operations.
Duties of Directors and Officers of Bar Associations

By Jeannie Carmellos Frey, Esq.

I. SOURCE OF DUTIES OF DIRECTORS AND OFFICERS

Most bar associations are formed as nonprofit corporations under state law. Many are also exempt from federal taxation under Section 501(c)(6) of the Internal Revenue Code (the “Code”). Thus, certain fundamental duties of officers and directors of bar associations flow not only from state nonprofit corporation law (both statutory and common law), but also from the Code and IRS regulations. In addition, specific laws and regulations that apply to a bar association’s activities may impose duties on officers and directors, which, if not satisfied, could result in liability to the association and/or directors or officers personally. This section focuses on the general duties applicable to directors and officers under state law; however, in many cases these duties encompass duties owed under the Code and IRS regulations, as well as more specific laws.

II. IMPLICATIONS OF STATUS AS FIDUCIARIES

Directors and officers of corporations are considered fiduciaries of the corporation they serve. That is, in discharging their leadership position, they are expected to act in furtherance of and in the best interests of the organization, and to favor the interests of the organization over their individual interests. In the corporate setting, the duty of fiduciaries has typically been defined, by state statute and/or the “common law” of judicial decisions, as being composed of two parts: the Duty of Care, and the Duty of Loyalty. The scope of such duties are discussed below.

Adhering to such fiduciary duties can also assure satisfaction of other legal duties. For instance, compliance with Duty of Loyalty requirements will help avoid situations that would be deemed to constitute private inurement that could result in “excess benefit” penalties or even threaten a bar association’s tax-exempt status.

A. Satisfying the Duty of Care

1. Bar Association Directors. The Duty of Care requires the bar association leader to use the same degree of care in discharging his or her duties as an ordinarily prudent person would consider reasonable under similar circumstances. For bar association directors, satisfaction of the Duty Of Care may be evidenced by the following standards of conduct:

(a) Stay Informed. Each association director should thoroughly review all materials provided to directors prior to board and applicable committee meetings.

(b) Actively Participate. All directors should regularly attend and participate in association board meetings and meetings of committees in which the director is a member. Association directors should also participate in other organization-sponsored events in which directors are expected to participate.

Myth #2 - Lawsuits against nonprofits are common

A popular belief is that the legal system is running amok. Sometimes it seems that everybody’s suing somebody and that multi-million dollar awards are common. The facts reflect a different reality. According to a 1988 study by the Insurance Service Office, lawsuits represent less than a third of total liability claims. Approximately 32 percent of all liability claims involve a lawsuit, and only 2 percent of all claims are settled by a jury or judicial verdict.

Also, consider the 80-20 business rule. For an insurance company, the 80-20 rule holds that 80 percent of its losses come from 20 percent of policyholders. In the nonprofit sector, this means that up to 80 percent of all organizations may never suffer a loss.

Unfortunately, no organization knows whether it will be a part of the 20 percent that has a claim. And although lawsuits are not that common, when they do occur, they can be devastating to an organization’s finances and credibility. No wonder the possibility of such action is on the minds of many nonprofit managers. One way to reduce the chance of being sued is to recognize and manage your organization’s risks. Nonprofits work to improve the quality of life, not endanger it. When organizations strive to protect their people and conserve their resources, they also reduce their chance of being on the wrong side of the 80-20 rule.

Myth #3 - Volunteers are more likely to suffer injuries than clients or employees

Anecdotal evidence suggests that volunteer injuries are infrequent and minor, and volunteers don’t appear to get hurt any more often or severely than employees. The low cost of volunteer accident insurance supports this premise. The perception of a high accident rate may exist because the number of volunteer claims against nonprofits may be higher than employee claims because the number of volunteers in most organizations greatly exceeds the number of employees.

A volunteer injury is a risk that an organization should consider, but not to the exclusion of other exposures. While any volunteer can suffer a debilitating or permanent injury while performing his or her volunteer activities, a greater risk may be that the volunteer harms another person, such as another volunteer, an employee, or a client.

In fact, the risk of client injuries requires greater vigilance than the possibility of injuries to volunteers. Organizations can be held liable if they do not meet an appropriate standard of client care and are deemed negligent in an injury to a client. A negligence claim can be more costly than the medical expenses for a volunteer’s minor injury.

Every nonprofit organization should be concerned about injuries to its volunteers. Each agency should take steps to reduce the chance of a volunteer being hurt. However, this is just one of many risks that a nonprofit must recognize and address. The process of risk management provides strategies for prioritizing potential risks.

Myth #4 - A “hands-off” approach to managing volunteers provides the best protection against liability

The basis of this myth is, first, the belief that a nonprofit organization is not responsible nor liable for the actions of its volunteers, and second, that by managing its volunteers an
Permission slips, like informed consents, must explain clearly and fully the nature of the activity. A trip to the zoo could include a visit to the animal petting section, and this may be important information to a parent of a child with allergies. The more parents know, the less likely they are to claim that "had I known, I would not have let my child participate."

**Disclaimers.** A "disclaimer" is an express disavowal, repudiation, or limitation of liability by one party to a transaction. Disclaimers differ from waivers in that they are unilateral; the injured party does not explicitly agree to the liability limitation. As such, they are of limited legal value. Their principal functions are to refute assertions about extra duties that a program has taken upon itself and to apprise potential claimants of relevant program limitations.

The disclaimer may indicate, for example, that the sponsor will not provide security personnel for an event. Therefore, the sponsor is not assuming a special duty of care for the safety of event volunteers. Similarly, a clearly posted disclaimer of liability for harm from using athletic equipment that an organization provides for its sports program may counter any assertion that the organization assumes a special duty of care for the safety of the participants. In this sense, a disclaimer is roughly equivalent to an advisory or warning of risks that an individual may choose to accept or avoid. Regardless of legal effect, disclaimers, like waivers, may deter claims.

**Summary**

Liability shields can be an effective risk management tool. The shields offer a legal and psychological deterrent for the participant to pursue legal actions. Although these transfer techniques may not protect the nonprofit from a lawsuit, they enhance communication and understanding between the parties. Another byproduct could be the use of other precautionary measures to safeguard the participants and the organization.


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Protecting Your Nonprofit and the Board

As community-serving nonprofits grow and many assume responsibility for social services previously delivered by governments, the need for committed, enthusiastic, and capable volunteer board members has never been greater.

While claims against nonprofit boards remain rare - most nonprofits will never be sued in their institutional lifetimes - the fear of liability continues to grow. This fear is fueled, in part, by widespread publicity surrounding celebrated cases. This publicity in turn leads to more claims. Nonprofit and corporate directors share a common concern: that of personal liability for serving on a board. At the end of litigation against nonprofits, nonprofit board members are rarely required to use personal funds to pay for harm committed by the board or organization, but the possibility remains. Some party or the nonprofit itself may charge the director with a breach of duty that he or she owed to that party.

Every nonprofit must work diligently to recruit and retain suitable board leaders. One strategy is to address the potential for personal liability by taking steps that substantially reduce the likelihood that a board member's personal assets will be exposed to loss. We suggest a three-part protection strategy for nonprofit boards as described below:

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organization accepts responsibility for their actions. Like all myths, these beliefs contain a grain of truth. Under the legal theory of vicarious liability, nonprofits can be found responsible for the actions of a volunteer (or employee) acting within the scope of his or her duties, even if the nonprofit is faultless. The courts and society justify vicarious liability on the grounds that the entity that directs and benefits from an individual's actions should bear the costs of any resultant harm.

This legal doctrine is called *respondeat superior* ("the master will respond"). The doctrine provides that if a "servant" acts negligently and causes some damage while performing his or her assigned work, the "master" is legally liable for that damage. Society imposes the liability whether or not the "master" was negligent or at fault in any way.

In order to determine (a) if a "master-servant" relationship existed and (b) if the servant's negligence caused the harm, the courts will consider the following factors:

- the degree of control the organization can exercise (whether it exercises this control or not) over the volunteer;
- the scope of the volunteer's position; and
- the benefit the organization derives from the volunteer's services.

Whenever a volunteer is deemed to be a servant, the nonprofit will be vicariously liable for the person's actions. A "hands-off" management approach does not nullify a "master-servant" relationship. If anything, the doctrine of *respondeat superior* underscores the need for the organization to oversee and manage the work of volunteers on its behalf in order to reduce the chance of an incident.
activity despite being aware of the risks, and therefore should not be permitted to receive damages. An organization should consider using a participant waiver in any event where the nonprofit can identify the persons participating in the activity prior to the event. However, often such waivers do not absolve the nonprofit from liability for injuries directly caused by its negligence. Furthermore, waivers are not an appropriate substitute for the careful supervision of an organization’s activities.

The validity of a waiver may depend on when the person executed it. Those executed before any actual damages occur are more tenable than those executed after an injury has occurred (commonly referred to as "releases"). Waivers written before any damages actually occur generally seek to establish that the individual recognizes the risks involved in a forthcoming activity and voluntarily consents to accept the consequences of those risks in exchange for the opportunity to participate. The circumstances of each case determine whether a court will enforce such a "before the fact" waiver. If the individual has no practical choice but to sign the waiver, it is unlikely that the court will uphold it.

Waivers executed after an injury are on much more solid legal ground because the value of the exchange is less speculative. Claimants often execute such a waiver in conjunction with a settlement arrangement. In either event, consult legal counsel when drafting such agreements. The law governing waivers varies widely from state to state and some states prohibit their use in certain situations.

**Informed consent.** An informed consent form does not attempt to excuse an organization from responsibility for its own negligence. Instead, the form seeks to relieve the nonprofit from liability for the inherent risks of an activity itself. An informed consent only relieves the organization for those risks that the organization reveals to the participant — there is no protection for risks not clearly identified in the consent form. Therefore, the form must apprise the participant or the parents/guardians in detail of the specific risks involved in the activity. The signer acknowledges that he or she has read and understood the risks involved and agrees not to bring suit for any harm resulting from the identified risks.

The keys to an effective informed consent are the identification and explanation of the risks inherent to the activity. An inherent risk is one that is essential to the nature of the activity. Skiing includes the inherent dangers of changing weather conditions, natural obstacles such as trees and rocks, and the possibility of severe injury resulting from a fall. An informed consent form would list these and any other recognized inherent risks of the activity. If the form does not identify a specific risk, the participant retains the right to seek redress from the organization for the harm caused by the unidentified risk.

**Permission slips.** Nonprofits should consider the use of permission slips for any activity involving a minor or other persons not legally competent to sign a waiver or informed consent. A permission slip does not absolve the organization of any liability but offers some protection. A well-drafted permission slip indicates the parents’ or guardian’s knowledge and consent for their child to participate in the activity. Also with a permission slip, the parent or guardian cannot claim convincingly that the organization infringed upon their authority, control, or custody over the child.

**Risk Control** - Every nonprofit should begin the process of reducing the potential of a director being held personally responsible by minimizing the risk. This effort begins with examining the board’s governance activities, and the common law duties owed by each and every board member. Do board members fully understand their legal duties? Do board operations reflect a commitment to fulfill these duties? What actions are taken when a breach of a fiduciary duty is suspected? Has the board established rules and procedures governing its operations? Are these procedures followed?

The process of identifying priority risks and implementing strategies to address them should continue with all major operational areas. Form a volunteer risk management committee to coordinate the process of risk identification and strategy development. Even the smallest nonprofit can and should establish a risk management committee. In smaller nonprofits volunteers will hold most of the seats on the committee, while in a midsize or large nonprofit the committee may consist principally of paid staff. The nonprofit should focus first on high priority risks - those most likely to occur and those with the greatest financial and other adverse impact on the organization.

**Indemnification & Volunteer Protection** - Most nonprofit bylaws include indemnification provisions - language that expresses the intent of the nonprofit to cover the expenses a board member might incur in defending an action and paying settlements or judgments related to his service on the board. There are circumstances, however, when indemnification is not available or becomes a hollow promise. These include:

- When the nonprofit does not have sufficient resources to pay the losses and expenses incurred by a director or officer;
- When state or federal law limits the protection that may be afforded through indemnification due to public policy considerations;
- When the board is unsympathetic to the plight of the director who has been sued and refuses to authorize the indemnification;
- When the organization decides that it is inappropriate to use the nonprofit’s financial resources to indemnify a director.

Every state has a volunteer protection law and the federal Volunteer Protection Act (VPA) became the law of the land in September 1997. The Volunteer Protection Act provides that, if a volunteer meets certain criteria, he or she shall not be liable for simple negligence while acting on behalf of a nonprofit or governmental organization. The VPA also provides some limitations on the assessment of noneconomic losses and punitive damages against a volunteer. The Volunteer Protection Act does not, however, protect a volunteer from liability for harm "caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer action." The Act does not prohibit lawsuits against volunteers nor does it provide any protection for nonprofits.

The state volunteer liability laws vary significantly. Some states only protect directors and officers while other states extend the protection to all volunteers, however, every volunteer protection statute has exceptions. The most common exclusions are for claims based on a volunteer’s willful or wanton misconduct, criminal acts, or self-dealing.
Risk Financing - Every nonprofit must consider how it will pay for injuries, damages, legal expenses and other costs that stem from the harm it causes. For some organizations, reserve funds are sufficient to pay for anticipated losses. For the majority of the nation’s 1.5 million nonprofits, reserves are inadequate. For this reason, a growing number of nonprofits choose to purchase insurance and pay an annual premium in exchange for the promise that funds will be available in the event a covered loss occurs.

Twelve D&O Buying Tips

1. Solicit competitive bids on your insurance program every three-to-five years. Competition is one way to determine whether you’re paying a fair price. However, be careful that the policies offer comparable coverage - a lower premium often means less coverage or the insurer may be "low-balling" to sign you up. Future increases may be necessary.

2. Allow sufficient time for an underwriting review - particularly with a carrier unfamiliar with your nonprofit.

3. Fully complete the carrier’s application and attach all requested supporting information. The information requested generally includes your bylaws, board roster, and audited financial statements or IRS Form 990. Some carriers request a copy of your employee handbook. Present your nonprofit in the best light and emphasize any activities underway to minimize losses, such as training supervisors on employment practices. Do not view the application process as a burdensome paperwork requirement, but as an opportunity to protect your nonprofit and conserve scarce resources.

4. Identify an insurance advisor - a broker, agent, or consultant - with experience working with nonprofits. A specialist can be invaluable as you try to understand the D&O options available to your nonprofit.

5. Be accurate and truthful in answering questions on the application. Misstatements on the application may void coverage if discovered upon the filing of a claim.

6. Respond to the underwriter’s questions (usually conveyed through your insurance advisor) promptly.

7. Fully disclose your nonprofit’s prior losses and provide details on corrective action taken to avoid future losses.

8. Remember that coverage and pricing terms are negotiable. If any specific terms are unacceptable, propose alternatives. For example, if coverage for employment practices is excluded, inquire about purchasing coverage via endorsement. Or, if the policy indicates that the insurer has sole authority to appoint defense counsel, inquire about the possibility of a policy form that allows the insured to participate in the selection of counsel.

9. Review the extent of the "prior acts" coverage provided by the policy. Seek coverage for incidents dating back to the inception of the nonprofit (A great deal if you can get it!) If the policy contains a retroactive date, make sure that the date stays the same with each renewal or new policy.

10. Make certain that any prior incidents that might potentially give rise to a claim are reported on your application to a new carrier as well as to your existing carrier. Claims stemming from known incidents will be excluded under your new policy.

11. Request information on the carrier’s financial strength and status ("admitted" versus "surplus lines") and have your broker explain the ratings to you. Ask your broker about the carrier’s history on handling D&O claims against nonprofits. If you're considering an alternative market (i.e. a charitable risk pool or risk retention group), or a sponsored insurance program, make similar inquiries.

12. Consider the benefit of various loss control programs offered by your D&O carrier. With an estimated 60 companies now offering nonprofit D&O coverage, a growing number are providing useful loss prevention services, such as access to toll-free employment practices hot lines. Risk education services can greatly enhance a D&O insurance program. Ask about available services when you request a quote.

Waivers, Informed Consent, Permission Forms and Disclaimers

Waivers. A waiver is the intentional act of relinquishing a known right, claim, or privilege, such as the right to sue an organization for its alleged misconduct. Therefore, a waiver removes the potential liability from the party that could be held responsible for harm. Although an individual’s behavior (for example, engaging in an obviously hazardous activity such as skydiving) occasionally implies a waiver or release, the term usually refers to an express or written agreement.

Liability waivers are valid only if the person enters into the agreement knowingly and voluntarily and if the person waiving certain rights receives something in exchange. Few attempted waivers satisfy these standards. Courts often find that arrangements are not voluntary when they are between an individual and an organization because of unequal bargaining power. Courts often invalidate waivers on the grounds that a participant did not fully appreciate the rights being waived or that the waiver did not specifically indicate that it included the organization’s liability for negligence.

While programs serving young people often use waivers, it is important to remember that minors do not have the capacity to sign contracts. Most courts will strike a waiver signed by a minor.

Despite their legal vulnerability, if properly drafted and executed, waivers may help block liability. Moreover, an individual who has signed a waiver may be less likely to initiate a lawsuit than someone who has not. A waiver may also assist an organization in asserting the legal defense of “assumption of the risk.” This defense asserts that the individual proceeded with the
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Despite their legal vulnerability, if properly drafted and executed, waivers may help block liability. Moreover, an individual who has signed a waiver may be less likely to initiate a lawsuit than someone who has not. A waiver may also assist an organization in asserting the legal defense of "assumption of the risk." This defense asserts that the individual proceeded with the
activity despite being aware of the risks, and therefore should not be permitted to receive damages. An organization should consider using a participant waiver in any event where the nonprofit can identify the persons participating in the activity prior to the event. However, often such waivers do not absolve the nonprofit from liability for injuries directly caused by its negligence. Furthermore, waivers are not an appropriate substitute for the careful supervision of an organization’s activities.

The validity of a waiver may depend on when the person executed it. Those executed before any actual damages occur are more tenuous than those executed after an injury has occurred (commonly referred to as "releases"). Waivers written before any damages actually occur generally seek to establish that the individual recognizes the risks involved in a forthcoming activity and voluntarily consents to accept the consequences of those risks in exchange for the opportunity to participate. The circumstances of each case determine whether a court will enforce such a "before the fact" waiver. If the individual has no practical choice but to sign the waiver, it is unlikely that the court will uphold it.

Waivers executed after an injury are on much more solid legal ground because the value of the exchange is less speculative. Claimants often execute such a waiver in conjunction with a settlement arrangement. In either event, consult legal counsel when drafting such agreements. The law governing waivers varies widely from state to state and some states prohibit their use in certain situations.

Informed consent. An informed consent form does not attempt to excuse an organization from responsibility for its own negligence. Instead, the form seeks to relieve the nonprofit from liability for the inherent risks of an activity itself. An informed consent only relieves the organization for those risks that the organization reveals to the participant — there is no protection for risks not clearly identified in the consent form. Therefore, the form must apprise the participant or the parents/guardians in detail of the specific risks involved in the activity. The signer acknowledges that he or she has read and understood the risks involved and agrees not to bring suit for any harm resulting from the identified risks.

The keys to an effective informed consent are the identification and explanation of the risks inherent to the activity. An inherent risk is one that is essential to the nature of the activity. Skiing includes the inherent dangers of changing weather conditions, natural obstacles such as trees and rocks, and the possibility of severe injury resulting from a fall. An informed consent form would list these and any other recognized inherent risks of the activity. If the form does not identify a specific risk, the participant retains the right to seek redress from the organization for the harm caused by the unidentified risk.

Permission slips. Nonprofits should consider the use of permission slips for any activity involving a minor or other persons not legally competent to sign a waiver or informed consent. A permission slip does not absolve the organization of any liability but offers some protection. A well-drafted permission slip indicates the parents’ or guardian’s knowledge and consent for their child to participate in the activity. Also with a permission slip, the parent or guardian cannot claim convincingly that the organization infringed upon their authority, control, or custody over the child.
Permission slips, like informed consents, must explain clearly and fully the nature of the activity. A trip to the zoo could include a visit to the animal petting section, and this may be important information to a parent of a child with allergies. The more parents know, the less likely they are to claim that "had I known, I would not have let my child participate."

**Disclaimers.** A "disclaimer" is an express disavowal, repudiation, or limitation of liability by one party to a transaction. Disclaimers differ from waivers in that they are unilateral; the injured party does not explicitly agree to the liability limitation. As such, they are of limited legal value. Their principal functions are to refute assertions about extra duties that a program has taken upon itself and to apprise potential claimants of relevant program limitations.

The disclaimer may indicate, for example, that the sponsor will not provide security personnel for an event. Therefore, the sponsor is not assuming a special duty of care for the safety of event volunteers. Similarly, a clearly posted disclaimer of liability for harm from using athletic equipment that an organization provides for its sports program may counter any assertion that the organization assumes a special duty of care for the safety of the participants. In this sense, a disclaimer is roughly equivalent to an advisory or warning of risks that an individual may choose to accept or avoid. Regardless of legal effect, disclaimers, like waivers, may deter claims.

**Summary**

Liability shields can be an effective risk management tool. The shields offer a legal and psychological deterrent for the participant to pursue legal actions. Although these transfer techniques may not protect the nonprofit from a lawsuit, they enhance communication and understanding between the parties. Another byproduct could be the use of other precautionary measures to safeguard the participants and the organization.


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Duties of Directors and Officers of Bar Associations
By Jeannie Carmelelle Frey, Esq.

I. SOURCE OF DUTIES OF DIRECTORS AND OFFICERS

Most bar associations are formed as nonprofit corporations under state law. Many are also exempt from federal taxation under Section 501(c)(6) of the Internal Revenue Code (the “Code”). Thus, certain fundamental duties of officers and directors of bar associations flow not only from state nonprofit corporation law (both statutory and common law), but also from the Code and IRS regulations. In addition, specific laws and regulations that apply to a bar association’s activities may impose duties on officers and directors, which if not satisfied, could result in liability to the association and/or to directors or officers personally. This section focuses on the general duties applicable to directors and officers under state law; however, in many cases these duties encompass duties owed under the Code and IRS regulations, as well as more specific laws.

II. IMPLICATIONS OF STATUS AS FIDUCIARIES

Directors and officers of corporations are considered fiduciaries of the corporation they serve. That is, in discharging their leadership position, they are expected to act in furtherance of and in the best interests of the organization, and to favor the interests of the organization over their individual interests. In the corporate setting, the duty of fiduciaries has typically been defined, by state statute and/or the “common law” of judicial decisions, as being composed of two parts: the Duty of Care, and the Duty of Loyalty. The scope of such duties are discussed below. Adhering to such fiduciary duties can also assure satisfaction of other legal duties. For instance, compliance with Duty of Loyalty requirements will help avoid situations that would be deemed to constitute private inurement that could result in “excess benefit” penalties or even threaten a bar association’s tax-exempt status.

A. Satisfying the Duty of Care

1. Bar Association Directors. The Duty of Care requires the bar association leader to use the same degree of care in discharging his or her duties as an ordinarily prudent person would consider reasonable under similar circumstances. For bar association directors, satisfaction of the Duty Of Care may be evidenced by the following standards of conduct:

   (a) Stay Informed. Each association director should thoroughly review all materials provided to directors prior to board and applicable committee meetings.

   (b) Actively Participate. All directors should regularly attend and participate in association board meetings and meetings of committees in which the director is a member. Association directors should also participate in other organization-sponsored events in which directors are expected to participate.
(c) Understand and Evaluate Information Provided. The director should evidence understanding of written information and oral reports provided to the board, and ask questions to clarify issues and evaluate the accuracy and completeness of information provided. If necessary, the director should request additional information before making a decision, and/or make general suggestions for changes in the quantity, quality or timing of information provided to the board, consistent with the organization’s resources.

(d) Make Decisions Independently and Based on Opinions and Recommendations that Appear Reliable. The director is not simply a “rubber stamp” to approve recommendations of management or the board leadership. Thus, each association director should be able to demonstrate, such as by notes of questions and votes at board meetings, that s/he had independently considered and evaluated matters presented to the board. Under both accepted corporate practice and the express provisions of many state laws, directors are permitted to rely on the opinions and other information provided by the following classes of persons, acting within the scope of their respective responsibility and/or expertise: (1) officers and employees of the corporation; (2) experts retained by the corporation; and (3) board committees – unless the director has information that makes such reliance unwarranted. However, as the Enron matter and other recent high-profile corporate bankruptcies illustrate, board members are well-advised to exercise a healthy skepticism, even when dealing with experts and executives.

With respect to board committees, directors should recognize that while they are entitled to rely on the findings and opinions of committees, such committees are nevertheless committees of the board, and subject to the board’s oversight. Although board members may be generally inclined to defer to decisions and recommendations of the Executive Committee or other committees of the board, the full board should nonetheless review and ask questions of such committees before routinely ratifying or approving committee actions or recommendations.

(e) Understand the Organization’s Mission and Purposes. Each association director should read and have available for reference the organization’s organizational documents – i.e., the Articles or Certificate of Incorporation (sometimes called the Charter), the Bylaws, the Mission Statement (if there is one) and material policy statements adopted by the board.

(f) Understand the Corporation’s Legal Environment. An association director should be generally aware of the range of state, federal and local laws and regulations to which the organization is subject. As a member of the board, the director should act to assure that sufficient procedures are in place to make sure the organization complies with applicable laws.

(g) Delegate Appropriately to Management. The director should demonstrate an appreciation for the distinction between appropriate oversight of officers and other managerial personnel, and micro-management. While a director should make sure that qualified personnel are operating the organization and implementing the board’s directives, the director generally should not use his or her role to become involved in daily operations.
2. Bar Association Officers and Key Management Personnel. For bar association officers and other management leaders,¹ satisfaction of the Duty Of Care may be evidenced by the following conduct:

(a) Expend the Amount of Time Necessary and Appropriate for the Position. The organization’s bylaws and historical practices often provide a good overall sense of the scope of an officer’s or other key manager’s position and the amount of time expected to fulfill the duties of such position. In addition, certain activities are generally associated with certain positions – for instance, the Treasurer is usually expected to oversee all financial activities of the corporation, including preparation of periodic financial reports and communications with auditors. In comparison, the individual holding the position of Secretary is usually expected to maintain, or cause someone else to maintain, the corporation’s minute book containing the corporation’s organizational documents, all amendments thereto, and minutes of board and committee meetings.

(b) Oversee Employees and Employee Matters. In light of the fact that employee-related claims have become an increasingly significant amount of all claims against nonprofit organizations, the officers and key management staff of the corporation should act to ensure that the organization follows appropriate procedures with respect to the hiring, firing and general oversight of employees. Since volunteers of nonprofit organizations can also trigger organizational liability (because of actions done by or to the volunteers), the organization’s management should ensure that procedures are in place to minimize volunteer-related liability.

(c) Provide the Board with Timely and Material Information. As noted above, the directors of a bar association cannot do their job without receiving timely and complete summaries regarding material aspects of current and proposed association operations. It is therefore the duty of the association officers and other management leaders to ensure that directors are provided with accurate and complete information on a timely basis. Such information will consist both of written information and oral reports at board and committee meetings.

(d) Implement Board Decisions and Recognize the Directors as the Ultimate Decision-Making Body with Respect to Material Policies and Actions. Bar association officers and other management leaders are responsible for implementing board policies and decisions, even decisions with which such officers or managers may disagree. Although association management can and should provide board members with their recommendations on significant issues, officers and other managerial staff ultimately must defer to the board’s determinations. Key officers, such as the President, should not use their power to intimidate non-management board members into approving management’s recommendations without independent evaluation.

B. Satisfying the Duty of Loyalty

¹ Most bar associations have Executive Directors, and sometimes other high-level management staff, who are not officers but function in positions equivalent to that of persons who would be considered senior officers in a for-profit corporation, such as chief executive officer, chief operating officer and/or chief financial officer. For purposes of this discussion, we assume that some non-officer management staff are among the “management leaders” who owe fiduciary and other duties to the association.
1. **Bar Association Directors.** To fulfill the Duty of Loyalty, the bar association leader must act in good faith and in the best interests of the organization, rather than in the leader's own interest. Bar association directors are responsible both for individually acting in compliance with the Duty of Loyalty and for collectively ensuring that appropriate procedures are in place to avoid or deal with potential breaches of the Duty of Loyalty by other association directors or officers.

(a) **Proper Procedures for Disclosing and Dealing with Conflicts:** Good corporate practice recommends that each bar association adopt a conflict of interest policy. In light of the numerous high-profile conflict of interest issues raised recently in both the for-profit and nonprofit arenas, from Enron to the United Way, bar associations may wish to be particularly scrupulous in the conflicts area. The IRS has developed a model conflict of interest policy for tax-exempt healthcare organizations that contains many provisions considered "state of the art" in this area and which thus may be worth consideration by bar associations. However, like many conflict policies, the IRS model policy defines "conflicts" only in terms of "self-dealing" transactions, in which a director or officer is on the other side (directly or indirectly through a relative or affiliate) of a transaction with the organization – such as when the organization is considering a material contract with a company of which a board member is affiliated. Best practice recommends (and some state laws require) that an interested director or officer not participate in the board meeting considering any self-dealing matter. Directors should also ensure that the provisions of the association's conflict of interest policy relating to self-dealing transactions are consistent with state law requirements under which contracts involving self-dealing may be treated as void or voidable, unless certain conditions are met.

Directors may also experience conflicts between their personal interests and those of the organization in contexts other than self-dealing, such as when the director will be personally affected by proposed board actions. For instance, a proposal to bolster declining association revenues by increasing membership fees for judges would cause association directors who are also judges to have an "interest" in the matter that may conflict with the interests of the association. Similarly, a policy statement to mandate the acceptance of electronic filings by certain courts and agencies may negatively effect the family income of an association director whose spouse was a co-owner of a filing service. A comprehensive conflict of interest policy for the association should require disclosure of all such conflicts. Depending on the circumstances, it may be useful for the board to allow an interested director to participate in the board discussion of the proposal, particularly when the director is part of a class of association members who will be adversely (or positively) affected. However, when the interest is of a more individual nature, it may be advisable to preclude the interested director from participating in the board discussion and/or being present during the vote. If the director's presence might be likely to inhibit candid discussion by other directors, the interested director should not be present during the general discussion, other than to provide relevant information. If such interested director appears incapable of voting in a way that he or she reasonably believes to be in the best interests of the organization, apart from the director's own interest in a matter, such director should not vote on the applicable matter.

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2 See Lawrence M. Brauer and Charles F. Kaiser, tax-exempt Health Care Organizations, Community Board and Conflict of Interest Policies; to find on the Web, go to: www.irs.gov/pub; then click on irs-utl, then on topic-c.pdf.
(b) **Dualities of Interest.** Many bar association directors will have affiliations with other bar associations or similar organizations. Such other organizations may be “specialty” bars that are based on geographic area, practice area, age, gender, ethnic background or other criteria. In some cases, the director’s service on the board of one bar association may be a result of appointment by another association to a board seat designated for representatives of such other association. Such directors thus have what is often referred to as a “duality” of interest, in that they serve simultaneously in fiduciary roles with respect to similar organizations. Generally, such dualities do not pose conflicts, although potential conflicts may arise. For example, an individual may be a director of “Association A,” which sponsors a certain event or program that is particularly lucrative or successful from a public relations perspective for Association A. This same individual may serve as a director for Association B, which proposes to establish an event or program similar to that of Association A. The dual director may be concerned that Association B’s activities will result in less support for the existing program or event, or diminish the goodwill value of Association A’s activity. Although such conflicts may be resolvable, especially with input from the “dual interest” director, it is important that any affected director disclose such a dual interest, and make sure the other board members are aware of any potential conflict.

(c) **Non-Competition.** As a fiduciary, the director of a bar association should not engage in any activity which directly competes with the activities of the association. However, because of the nature of a bar association as a nonprofit enterprise that supports the legal profession and the professional and community activities of lawyers in general, attorney involvement in certain activities that are directly competitive with the association’s activities, and which might raise serious conflict issues in a for-profit context, generally do not raise concern in the context of a nonprofit bar association. For instance, a director or officer of a bar association that has an extensive publishing division may write books on legal topics that are published by a university press or publisher other than that of the association; such writings would not generally raise a competition concern from the association’s perspective. Similarly, directors of bar associations are generally not deemed to be precluded from belonging to or being active in other bar associations that address the same geographic, practice or other segment of the legal profession. Simultaneously holding leadership roles in both organizations would fall under the “duality of interest” category discussed above, and could result in conflicts from time to time. In some limited cases, holding comparable dual roles of particularly visible and/or time-consuming nature (such as simultaneously serving as President of two directly comparable organizations) may appear improper, and raise questions as to where an individual’s “true loyalties” lie. As in other conflict situations, disclosure and discussion of any potentially “competing” interest is the key step that allows the other board members to determine if there is any conflict issue and if so how to best address such issue.

(d) **Usurpation of Association Opportunities.** In the course of serving as a director of a bar association, the director may learn of business or organizational opportunities that may be of great interest or use to the director’s own firm, company, or other affiliated organization – for instance, a lead on a favorable office lease in a desirable location. It is a breach of the Duty of Loyalty for the director to take action that would cause such opportunity to be lost to the bar association because it is “taken” by the director or an affiliate acting on information provided by the director.
(e) **Use or Appropriation of Organization Assets.** Both to satisfy tax-exemption prohibitions against private inurement and general Duty of Loyalty principles, directors should not use or take any organization asset — whether confidential or other proprietary information, empty office space, or company resources (personnel or other) for the director’s personal use or for any purposes other than those of the association. Depending on the circumstances, however, such use or taking may sometimes be done consistently with tax-exemption and general Duty of Loyalty principles, such as when a use is pre-approved by a majority of disinterested directors and the director pays reasonable compensation for the asset or its use.

2. **Bar Association Officers and Key Management Personnel.** For bar association officers, the Executive Director and any other key managers, Duty of Loyalty issues may arise in both similar and different contexts than for directors. Following the guidelines below can assist bar association officers and other management leaders in avoiding any Duty of Loyalty problems:

(a) **Disclose Actual and Potential Conflicts.** Bar association officers and other key management staff should fill out any annual or other periodic disclosure statements required under the organization’s conflict of interest policies. If no such disclosure statement is required, or for conflicts that arise between disclosure statement dates, the officer or manager should advise the board Chair or other board representative of any actual or potential conflict of interest. It is the board’s duty to determine whether a conflict actually exists, and then to determine what actions are appropriate to avoid the organization being harmed or detrimentally affected by such conflict.

(b) **Dualities of Interest and Non-Competition Requirements.** Dualities of interest may be less common for a full-time, paid Executive Director or other management leader of a bar association than for a director or unpaid officer who is a practicing attorney. However, any dualities of interest that do or may exist for any officer or management leader should be disclosed to the association board. To the extent an association officer’s or management leader’s duality of interest - or any other interest - appears to directly conflict or compete with the interests and activities of the association, the officer or other leader should either resign or ask the board to determine how best to deal with the issue.

(c) **Usurpation of Association Opportunities.** Like directors, bar association officers or other management leaders may learn, in the course of their service to the association, of opportunities that the organization would likely be interested in pursuing, but which would also be advantageous to such individual or an affiliated organization. Unless the association has been fully informed of the opportunity and declined to pursue it, any action by an association officer or other leader to take advantage of the opportunity personally or through an affiliated entity may breach the Duty of Loyalty.

(d) **Use or Appropriation of Organization Assets.** The standard described above for directors applies equally to association officers and other management leaders. Moreover, the association board should consider whether effective controls are in place to discover any inappropriate personal use or appropriation of association assets.
III. LIABILITY ISSUES

As any bar association leader will appreciate, no discussion of legal duties would be complete without at least a brief reference to potential liability arising from the breach of such duties. Claims against officers or directors of bar associations under the Duty of Care may include claims of negligent hiring or supervision of employees or volunteers under circumstances that resulted in harm to the organization or a third party. In the Duty of Loyalty context, bar leaders (like the leaders of other organizations) can be held personally liable for breaches of such duty that result in loss or harm to the organization. In addition, responsible directors and officers can also be held personally liable if the organization fails to comply with certain legal requirements, such as those relating to payment of certain taxes, anti-discrimination requirements and antitrust matters.

Claims of breaches of the Duty of Care that are made by or on behalf of the association may be potentially shielded by the business judgment rule (a defense in litigation by members or in other “derivative” actions brought on behalf of the association, under which a court will refrain from second-guessing board actions, unless bad faith, fraud, willful misconduct or other “bad facts” are alleged). Directors may also be protected from liability by state “shield” statutes or by the federal Volunteer Protection Act. Shield statutes vary from state to state, but generally offer protections from liability for directors (and sometimes officers) of tax-exempt organizations, unless a certain high level of misconduct is present; however, such statutes typically only cover only Duty of Care claims, and not claims of a breach of the Duty of Loyalty. Many shield statutes, like the federal Volunteer Protection Act, only protect organization leaders who receive no compensation for their service. The indemnification provisions of the association’s bylaws, as well as D&O insurance, may also provide protection against losses due to suits filed against an association leader. However, indemnification or insurance coverage may not be available for matters involving Duty of Loyalty claims. Beyond liability concerns, of course, bar association leaders will recognize that satisfying their fiduciary and related duties with respect to the organization will help assure that they are doing their best to promote the association’s success and fulfillment of its mission.
Chapter 4

Budgeting and Financial Reporting

Budgeting and financial reporting are all about putting all your financial reporting skills together. To successfully establish a budget that allows your bar to grow and be flexible, bar leaders and executives must have a firm grasp on organizational structure and the culture in which it operates. The traditional model of budgeting a year in advance is being challenged by new ideas of budgeting including continuous, zero-sum and business plan budgeting.

Max Moses, a C.P.A. who worked at a specialty bar for more than 20 years, gives an overview of the different types of budgeting models and describes the components of a successful budget.

Financial reporting is key to providing a transparent view of your organization. Financial reporting acts as the ultimate internal control – its creation and review by association staff, elected leaders, government agencies and members allows the association’s financial health to be examined. Doug Boedeker, senior audit manager at Tate & Tryon, CPAs, gives an overview of financial reporting essentials. Mr. Boedeker is a C.P.A and C.M.A. as well.
Budgets: A Key Tool for Bar Associations

By Max G. Moses, President, Member Media

The Budgeting Process

Until fairly recently, the creation of an association’s budget was the responsibility of the finance department. Budgets involved numbers and numbers were generated, reported, and understood by the accounting types in the organization. It was not uncommon for the CEO of the association or the volunteer leaders (including those on the finance committee) to have little understanding of the story that the numbers were telling.

As questions began to be raised about the “why” of the numbers, a more inclusive process of developing the budget came into play. Department heads, who were responsible for developing and selling the association’s products and services, were asked to provide data and recommendations. The availability and easy use of powerful spreadsheet software made the numbers easier to crunch and made “what if” scenarios easier to create and take into account.

Typically, budgets are prepared annually. The budget “season” usually starts three to four months prior to the start of the new fiscal year. The budget is presented to the association’s finance committee or governing board for approval shortly before the start of the new fiscal year.

Often, the association’s culture, policy statements, and in some cases its bylaws, required that a balanced budget be presented.

The budget formalizes the association’s goals and objectives, allocates the resources needed to attain the strategic initiatives of the group, and provides guides to management and policy makers to gauge how well the association is meeting these goals.

However, the world is changing at a faster pace than before. The success of associations requires the ability to respond more frequently to changes than annually. The demands of increased competition from sources that were unknown just a couple of short years ago is making the budgeting process much more global and strategic in nature than has been the case in the past.

As a result, the budgeting process needs to change to meet these new demands. For example, continuous or perpetual budgets are gaining favor. Rather than being updated annually to coincide with an organization’s fiscal year or when a crisis occurs, these budgets are updated quarterly or even monthly.

In this way, management is consistently involved in the budget process so that changing external or internal conditions can be addressed, while policy makers are better positioned to evaluate the data upon which policy decisions are based.
Types of Budgets

Although often we tend to think of the budget as simply the profit and loss statement with some hoped for and presumably attainable numbers, there are several types of budgets that can and should be prepared in order to provide the organization, its management and policy makers with the type of information needed to best manage the association’s future.

Capital Budget

Even though most bar associations tend not to use resources heavily for attaining large amounts of property or equipment, they nonetheless do make periodic capital investments.

For example, investment in technology has become a significant source of capital expenditure and one that must be planned and budgeted for on an ongoing basis. This is even more important now that the utilization of the Internet has become even more crucial in offering services to members. Without planning, the growth of the association’s hardware, software, internet presence and support networks will be the result of reaction to internal and external pressures on an ad hoc basis. There will be no well thought out goal and direction.

Another benefit of creating a capital budget is that it will allow the association to see what significant investments will be required well beyond the end of any given fiscal year. In this manner, the association can plan for how the funds will be generated to pay for those improvements.

Some of the considerations to take into account when creating a capital budget for technology include:

- Analysis of how the association’s strategic initiatives will impact its use of and need for technology.
- Determination of the time frame for a technology plan (usually two to three years).
- Analysis of the current state of technology within the association.
- A statement about what is to be achieved through new technology.
- Return on Investment analysis and how that ROI is to be evaluated and measured.
- Analysis of what technology is available currently, anticipated over the life of the plan and a cost analysis:
  - New technology acquisitions
  - Interfaces needed with current technology
  - Phasing out obsolete technologies
  - Staff training
  - Developing evaluation mechanisms
  - Ongoing assessment of continued applicability and adequacy of technology
  - Continual updating of the plan
  - Determine how often the infrastructure and operating system should be upgraded. This would include deciding how long after the release of a major operating system upgrade would the bar association plan to conduct its own upgrade. How often
should the server be replaced? Examine the accounting package as well. How often should business applications that aren’t specific to the association be upgraded (e.g. Word, Excel, etc.)

> Decide how often workstations should be replaced.
> Look at the association management software and plan for replacements in the future. Consider whether integrating the Web site with the association management software is important.
> Review hosting of the Web site and the underlying technology. Also look at the style and navigation to determine how often changes should be planned.

**Cash Budget**

What drives any business - including a bar association - is cash. Typically, much of a bar association’s revenue comes from dues of its members. Unless the bar association bills dues on an anniversary date basis, the flow of cash is not even throughout the organization’s fiscal year. Generally, large amounts of cash are received within a couple of months after the initial dues billing. While some members pay only after a second, third or final notice, most of the cash from dues is received typically within the first quarter of a fiscal year.

The challenge faced by bar association staff is to manage cash flow so that the organization doesn’t run out of cash before the end of the year. Knowing when cash will be needed will impact how the funds are invested. You certainly don’t want to be forced to sell long term investments, potentially at a loss simply to address a short term cash need. An inadvertent delay of a week or two in getting the dues bills in the mail could create a major cash flow problem. For more information regarding short term cash flow management, please see Chapter 2 – “Short Term Cash Management.”

Often, the timing of expenditures doesn’t correspond neatly with the receipt of revenue. For example, you may be required to make a deposit with a hotel for a convention that won’t be held for one or more years. Registration revenue won’t start flowing in until three or four months in advance of the event. By that time, you will not only have made substantial deposits upon the hotel and meeting spaces, but also significant investments in speakers, promotional material and other conference-related expenditures.

In addition to allowing you to identify peaks and valleys of cash flow, a cash budget can help identify severe cash problems. It is possible, through an analysis of the cash flow trends over a period of years that management may discover that it has been effectively borrowing its cash from anticipated dues revenue for the following year to make ends meet at the end of the current fiscal year.

**Personnel Budget**

Creating regular personnel budgets can help the association identify how well its human resources assets are being allocated. Personnel budgets help project additional needs as new projects are contemplated by staff, management and the board.
Personnel budgets can be particularly useful in identifying the hidden costs of transitioning and training required when staff turnover occurs. Associations tend to devote a high percentage of their operating expenses to personnel costs. Unanticipated costs relating to turnovers can wreck any budget.

**Operating Budget**

Most association staff and governing boards are familiar with the operating budget. This is what is typically provided to the finance committee and the board for approval on an annual basis. It identifies revenue sources and cost centers. Normally it is the budget over which staff has the most control and must take the most responsibility.

**Allocation of overhead and personnel**

It is important to allocate overhead and personnel costs within the budget. Difficult as it may be, the association must determine a method for identifying, tracking and allocating these costs. Consideration must also be given to the cost of accumulating the data. However, it will allow management and policy makers to determine the true cost of an activity or a program.

This is not to say that any program that isn’t contributing enough to overhead and indirect personnel costs should be dropped. Rather, it allows policy makers enough information to make an informed decision about whether a program is strategically important enough to receive support from the organization even if it doesn’t contribute towards overhead and indirect personnel costs.

**Types of Budgeting Approaches**

In addition to different types of budgets there are various ways to approach the budgeting process itself. Following are some examples of new trends in the budgeting process:

**Continuous Budgets**

Most organizations’ budgeting process is as follows:

Typically, the board is presented with a recommended budget that has been reviewed by the finance committee and adopts it a couple of weeks before the start of the fiscal year. Everyone gives a great sigh of relief and avoids thinking about changing the budget until about four months before the end of the year.

A new trend in budgeting is to create perpetual or continuous budgets. Rather than updating a budget annually or when a crisis hits the association, many groups are now updating budgets quarterly or even monthly. Among the advantages is that management is continually invested in the budget process. In this way, the changing internal and external conditions can be addressed on a more timely basis. A crisis isn’t necessary for the budget to be considered.
As a result, at any given time the budget is a living document that continues perpetually for the organization.

**Zero-based budgets**

The easiest way to budget is to look at this year’s budget, this year’s actual results along with last year’s actual results, and then project some percentage of change for the coming year. Unfortunately, such an approach (over-simplified as it is) doesn’t force staff, management or the Board to focus on the programs of the organization and justify the continued allocation of resources to those programs.

Many times, programs continue for the wrong reasons. Many programs should continue to be supported even if it is a financial drain. For example, government affairs activities of a bar association are not profit generators and typically take significant financial and human resources. However, they may further one of the strategic initiatives of the organization and so the investment is justified.

This is a decision that the Board should make about all programming of the organization and using zero-based budgets to accomplish this is a tool that forces all involved to consider how programs further the strategic initiatives of the association.

**Strategic planning budget**

Much like zero-based budgets, using the association’s strategic plan to allocate resources is another excellent tool to force management and the Board to determine the best way for the association to further its goals.

Usually the strategic plan contains four to six major goals for the association. Each goal typically contains several strategic initiatives for accomplishing the goal. Because it is difficult if not impossible to accomplish everything in a given time period, the Board should have gone through strategic initiatives and prioritized them. Those that should be accomplished over the next six months or the following fiscal year should be agreed upon by the Board. In this way, management and staff have clear directions and the Board has a way to evaluate progress towards meeting the goals.

The budget should therefore be organized and presented in much the same way. Rather than being structured around cost centers or activities, it should paint a clear picture for management and the Board of how many resources are allocated to accomplishing each goal and strategic objective and where more or less should be allocated.

**Financial statement budgets (pro forma statements) and use of ratio analysis**

When budgets are presented to the finance committee and Board, they are usually presented in the form of a pro-forma profit and loss statement. A more telling picture of the future of the
organization and an additional useful planning tool for management and policy makers is the pro-forma balance sheet.

This will show the impact of capital budgets, changes in policies as they may relate to collections and billing, and allow for a better use of ratios in predicting the impact of budget and programming decisions on the association. Looking at various ratios gives the readers of financial documents a way of interpreting the numbers and attaining a better understanding of their potential impact on the operations of the association. It allows you to benchmark your association against others that have similar constituencies and missions. It also allows you to have a better understanding of where you stand today compared with the past and possibly help project where you might go in the future.

Some ratios to consider calculating and analyzing can be gleaned solely from a profit and loss statement. Others that are useful will use a balance sheet as well.

The following items are some ratios to consider for a bar association:

- Dues revenue - tells you what percentage dues is used to cover your operating expenses; calculated by dividing gross dues income by total expenses.
- Non-dues revenue – tells you what percentage non-dues revenue programs (e.g. conventions, education, publications, etc.) is used to cover operating expenses; calculated by dividing each category of non-dues revenue by total expenses.
- Personnel expenses – tells you how labor intensive your association is; calculated by dividing total personnel costs (salary, benefits, etc.) by total expenses.
- Net profitability – gives you the bottom line profitability as a percentage of total income; calculated by net profit divided by total income
- Current ratio – tells you the association’s ability to pay its current bills; calculated by dividing current assets by current liabilities so that a proportionate ratio is calculated.
- Reserves – gives you an idea of how much of your reserves are available should the worst case scenario occur; calculated by dividing unrestricted reserves by total expenses.

**Business plan approach to budgeting**

Budgets must result from the accumulation of data about the costs of programs including those currently offered and those that may be offered in the future. However, to truly evaluate the cost and income of a program or activity, one must have a number of things about the program. For example, the association must have a good idea of what the product or service to be offered is. The association team must analyze and research the marketplace to determine the need for the program, unique selling points and its potential sales of the product or service. It must have in mind the marketing and sales approach which includes information about the cost of producing the product or service, what type of personnel will be needed, availability from existing human resources, and how will the product or service be delivered, etc.

In other words, each initiative, program or service, requires that a mini business plan be developed in order to truly know the financial impact it will have. In order to put a credible number into a budget, this business plan must have been prepared.
In addition to providing more credible numbers, developing this business plan as a part of the planning and budgeting process provides staff and management with a blueprint for implementation and the Board with a method of evaluation.

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Financial Reporting Considerations for Bar Associations  
By Douglas A. Boedeker, Senior Audit Manager, Tate & Tryon

At its very heart, the accounting function of any association is charged with two primary tasks. The first and most basic task is the duty of safeguarding the association's assets from theft or loss - commonly referred to as "the stewardship function." The second, and more advanced, task is that of providing interested parties with accurate and timely information regarding the financial position and performance of the organization - commonly referred to as "the financial reporting function."

The stewardship and financial reporting functions work hand-in-hand. That is to say, without an effective control system over organizational assets, it becomes extremely difficult to generate accurate financial reports. Likewise, if management does not receive accurate information regarding the organization's financial position and performance, there is a greater likelihood that theft, misappropriation, or loss will occur. Thus, in order for management to fulfill its fiduciary obligations, it is critical to arrive at an understanding of the stewardship and financial reporting functions.

In this chapter, we will discuss the concepts underlying financial reporting for state and local bar associations.

Basic Financial Statements of Not-For-Profit Organizations

Before exploring the nature of the financial reporting function, it is important to define what is meant by the term basic financial statements. Quite simply, the basic financial statements mandated by the U.S. Generally Accepted Accounting Principles (GAAP) for not-for-profit organizations are as follows:

1. The Statement of Financial Position (aka The Balance Sheet) - This statement presents the total assets, liabilities, and reserves of an association as calculated at one specific moment in time.

2. The Statement of Activities (aka The Profit & Loss Statement) - This statement shows the total revenues earned and expenses incurred by an association during a certain length of time (such as one year, one quarter, or one month).

3. The Statement of Cash Flows - This statement shows an association's sources and uses of cash during a certain length of time.
Throughout the course of this chapter, the following terms will be used interchangeably:

Statement of Financial Position and Balance Sheet

Statement of Activities and Profit & Loss Statement

Internal and External customers

As with any business function, the accounting function must meet the needs of an organization's internal and external customers. Internal customers would include management and the board of directors. A bar association's external customers would include the membership, the federal government, and state and local governments. It is through the financial reporting function that the accounting department seeks to satisfy the interests of these different customer bases. Because each type of customer has its own particular set of interests, different financial reporting vehicles are utilized depending on the nature of the customer in question.

The following table presents the financial reporting vehicles typically issued to internal and external customers:

<table>
<thead>
<tr>
<th>External Customers</th>
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<tbody>
<tr>
<td>Annual audited financial statements</td>
</tr>
<tr>
<td>Federal Form 990 – Return of Organization</td>
</tr>
<tr>
<td>Exempt From Income Tax</td>
</tr>
<tr>
<td>Federal Form 990-T – Exempt Organization Business Income Tax Return</td>
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<tr>
<td>(if applicable)</td>
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<tr>
<td>State income tax and information returns</td>
</tr>
<tr>
<td>Federal and state payroll tax returns</td>
</tr>
<tr>
<td>State sales &amp; use tax returns</td>
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<table>
<thead>
<tr>
<th>Internal Customers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual audited financial statements</td>
</tr>
<tr>
<td>Monthly departmental profit &amp; loss statements</td>
</tr>
<tr>
<td>Monthly total-association financial statements</td>
</tr>
</tbody>
</table>

As the table above shows, the financial reports issued by an association can be separated into two broad categories - (1) financial performance reports and (2) governmental information and tax reports.

Financial Performance Reports

Monthly Departmental Profit & Loss Statements (P&Ls)

The monthly departmental P&Ls are the most detailed type of financial report generated by an association. These reports are not generally intended for distribution outside of the association's management team and board of directors. A separate P&L should be prepared for each distinct
operating department or program maintained by the association. The purpose of these P&L reports is to present to management the revenues and expenses attributable to each functional unit within the association. Using this information, management can then assess whether the association is utilizing its resources in an effective manner.

Each manager should receive the P&L for his or her department no later than the tenth working day after the end of each month. Managers should be encouraged to review their P&Ls and to question revenue and expense items that they do not understand. Quite often, routine accounting errors can be quickly identified and corrected as a result of managerial review.

In addition to current-month and year-to-date information, it is important that a departmental P&L present current-year budget data and prior-year actual data. Since the comparison of budget to actual results is the primary yardstick by which the financial performance of association managers is judged, it is essential that they have monthly access to information regarding their budget versus actual performance.

The presentation of the prior year’s actual data is important as well. Prior-year actual data provides management with the ability to quickly assess where the association has been and where it is going.

Appendix E1 provides a sample reporting format that can be used for a monthly departmental P&L.

**Monthly Total-Association Financial Statements**

This set of financial statements is designed to present the financial position and performance of the entire association. Because of its broad perspective, it is generally distributed only to the association’s senior management team. As with the departmental P&Ls, the total-association financial statements should be received by the tenth working day following the end of the month. Appendix E provides a sample reporting format that can be used for a total-association P&L.

The monthly total-association financial statements present the combined totals of the departmental P&Ls. In addition, a statement of financial position for the association as of the last day of the month should also be presented. It should be realized that most associations do not prepare departmental statements of financial position. This is due to the fact that it is often difficult to attribute assets and liabilities to specific departments. Therefore, associations usually make it a practice to issue a statement of financial position that encompasses the entire organization. Departmental managers typically receive only a P&L for their department.

While senior management will naturally gravitate towards a review and analysis of the association’s revenue, expense, and net income, the necessity of reviewing the statement of financial position should not be overlooked. It is only through a review of the statement of financial position that senior management can gain an understanding of the assets controlled and liabilities owed by the association. Furthermore, the statement of financial position allows management to track the levels of the association’s reserves (also referred to as “net assets.”)
When reviewing the statement of financial position, management must assess the *quality* of the assets being presented. This assessment is done by asking questions such as:

- How old are the customer balances within the accounts receivable total - are these balances still collectible?

- Is the inventory balance comprised of goods that are readily saleable - does it contain old or outdated items that very few people will want?

- Are we presenting our investments at current market value as required by GAAP? What methods are we using to determine the market value of these investments?

- Do we maintain a roster that details the individual pieces of furniture and equipment contained within our fixed assets balance? Do we still own all of these items? Are we depreciating the fixed assets in a rational manner?

Management must also be sure to understand the nature of the liabilities presented on the statement of financial position. Things to consider when reviewing the liabilities of an association are:

- Are we current with our payments to our vendors?

- Do any of the liabilities shown represent amounts owed to related parties?

- How do we record and track deferred membership dues and meeting registrations?

- What assumptions were used to calculate the liabilities for defined benefit pension plans and postretirement benefit plans? Do they make sense?

- Have we recorded the liability for executive deferred compensation plans?

- What contingent liabilities, such as potential or actual litigation, does the association face? Should an estimated liability be recorded in order to account for the losses that would stem from a negative outcome?

As with the monthly P&L, managerial review of the statement of financial position can serve to enhance the accuracy of the accounting information generated by the association.

**Annual Audited Financial Statements**

Although annual audited financial statements are widely considered to be a tool used in the management of an association, that is not the primary purpose of those statements. Because of the amount of time needed to complete a proper audit, most audited financial statements are not issued as quickly as the monthly financial statements prepared by the association's accounting
department. Thus, management will most likely have received the unaudited, internally
generated, year-end financial statements by the time the audited financial statements are ready.
Therefore, the primary purpose of the audited financial statements is to give management and the
board of directors assurance that the accounting information generated by the association is
reasonably accurate. That is to say, if the audited financial statements present values and results
that are significantly different from those shown on the association's internally-generated
statements, it should alert management to the possibility that the monthly financial statements
they have been receiving may not be correct. It is imperative that management discuss such a
situation with the outside auditors to determine what corrective actions are necessary to ensure
the accuracy of internally-generated financial statements.

When reviewing the audited financial statements, management and the audit committee of the
board should always be sure to inquire of the independent auditors as to the nature of any audit
adjustments that were proposed as a result of the audit procedures. This inquiry will provide
valuable insight into areas that the association's accounting department needs to focus on for
future improvement.

Many associations also publish their audited financial statements in an annual report that is
distributed to the general membership. The audited financial statements give the membership an
annual "big-picture" view of the association's financial situation and allow the members to see
how their dues dollars are being spent. The audited financial statements also give assurance to
the members that an independent accountant has examined the financial statements and agrees
with their presentation.

**Governmental Information and Tax Reports**

Even though they are classified as tax-exempt organizations, associations are still required to file
numerous federal and state tax and information returns. A complete discussion of the filing
requirements for these reports is beyond the scope of this publication. Rather, presented below
are brief outlines of the more common types of reports filed by associations:

**Federal Form 990**

**Return of Organization Exempt From Income Tax**

This form is classified as an "information return" because no taxes are paid with it. Rather, the
990 is used by the federal government to collect a wide variety of financial and operating
information related to not-for-profit organizations. One of the main functions of the 990 is to
show the federal government how the not-for-profit has fulfilled the primary purpose that
qualified it for exemption from income tax. The deadline for filing the form with the IRS is the
15th day of the fifth month after the end of the association's fiscal year. For example, if the
association's fiscal year ends on June 30th, its 990 is due on November 15th. The filing deadline
can be extended by up to six additional months if the association files the necessary extension
requests with the IRS in a timely fashion.
The IRS assesses penalties for the late filing of a Form 990 based on the number of days that the return is overdue. Late filing penalties can be substantial and accumulate quickly, so it is imperative to file the return by its original due date or follow the proper procedures to obtain a valid deadline extension.

One of the most important aspects of the 990 is the fact that the bulk of it is open to public inspection. By law, any member of the general public can request from an association a copy of its three most-recent 990s. The association may charge reasonable fees to cover report reproduction and postage costs, but in general, the request for the 990 copies must be fulfilled in a prompt manner. If an association posts an exact replica of its 990 on a freely-accessible internet page, it may simply direct interested parties to the internet site. In this instance, copies do not have to be provided. Please note that under no circumstance does an association have to provide copies of Form 990's Schedule B, "Schedule of Contributors," to the general public.

**Federal Form 990-T**

**Exempt Organization Business Income Tax Return**

The Form 990-T is used by nonprofit organizations to calculate the amount of income tax owed to the federal government as a result of revenues generated by activities that do not relate to the organization's exempt purpose. Such revenue is subjected to "unrelated business income tax" (UBIT). Because the laws and regulations governing what types of revenue are subjected to UBIT are extremely complex, an association should always seek the advice of a qualified tax advisor to ensure that revenues from new activities are being properly included or excluded from the Form 990-T. Unlike the Form 990, the Form 990-T is treated like any other corporate income tax return. Thus, the 990-T is not open to public inspection and may be treated by an association as a confidential document. Members of the general public may not request copies of an association's 990-T.

**State Income Tax and Information Returns**

Most states do not require nonprofit organizations to prepare an annual information return similar to the federal Form 990. However, certain states do have their own nonprofit organization annual information returns that must be completed and submitted. In addition, certain states require nonprofits to submit a copy of the federal Form 990. Charitable and educational organizations affiliated with associations are often required to file certain reports regarding charitable solicitation within a given state.

In general, if a state has a corporate income tax, it will require an association that files a federal Form 990-T to prepare a state income tax return. Most states do not require the preparation of a state income tax return if the association does not file federal Form 990-T.

The filing requirements and deadlines for the state income tax and information returns vary greatly. Associations should always consult with a qualified tax advisor regarding their specific state requirements.
Federal and State Payroll Tax Returns
The task of preparing, filing, and paying the variety of federal and state payroll taxes can be quite onerous. Therefore, most associations utilize the services of an outside payroll company to handle these matters. The use of an outside payroll company is a common business practice. In fact, the cost of the payroll company is often quite minimal when compared to the potential late filing and late payment penalties many organizations are subjected to when they prepare and file their own payroll tax returns.

State Sales & Use Tax Returns
One area of taxation that is commonly overlooked by associations is that of sales & use taxes. Most association managers are familiar with the concept of collecting and remitting sales tax for sales made by the association. However, many managers are not familiar with the concept of use tax. Simply put, use tax must be paid by an organization if it is not charged the applicable state sales tax by the vendor when a purchase is made. For example, assume that an association based in Maryland orders a new computer over the internet from a vendor based in Texas. The Texas-based vendor might not charge the association Maryland sales tax. Even though the Texas vendor did not charge the applicable Maryland sales tax, the association has received tangible property and is using it in Maryland. Therefore, the association is subject to Maryland use tax - which in effect functions as a surrogate sales tax. The association must file a sales & use tax return with the state of Maryland, listing the purchase price of the new computer and the sales tax amount that should have been charged by the vendor. The association must then remit this calculated use tax amount to Maryland.

A common misconception is that as a result of the federal Internet tax moratorium, purchases made over the internet are exempt from state and local taxes. This is not correct. The federal Internet tax moratorium primarily applies only to the provision of Internet access services; thus, purchases of equipment and the like over the internet are still subject to use tax. In other words, for purposes of sales & use tax, an association should treat purchases made over the Internet just as they would treat purchases made through a mail order catalog.

It is relatively cheap and easy for states to conduct periodic sales & use tax audits of businesses registered within their jurisdictions. If an association has not been diligent in monitoring its purchases for exposure to use tax, it runs the risk of being assessed with a large, unexpected use tax bill as the result of a state audit. Hence, in order to avoid nasty surprises, an association's management team should be certain to understand the sales and use tax regulations of the state in which it operates.

Concluding Thoughts
As can be seen by this preliminary overview, the concept of financial reporting covers a wide range of issues. However, the common theme underlying all financial reporting topics is that of accuracy. Whenever financial reports are prepared - whether they are for internal or external use - the question of basic accuracy must always be addressed. That is to say, one must always consider whether the values presented within the report make sense based on the current business
environment faced by the association. As long as the reports reflect a fair portrayal of an association's economic position and performance, the purpose of the financial reporting function - that of providing useful data to internal and external customers - can be met.

Editor’s Note: Douglas A. Boedeker is a senior audit manager at Tate and Tryon in Washington, D.C. He can be reached at (202) 293-2200 x 310 or Dboedeker@Tatetryon.com. The Web site for Tate and Tryon is www.tatetryon.com/index.shtml.
ALLEGHENY COUNTY BAR ASSOCIATION

GENERAL FUND OPERATING ACCOUNTS

Investment Objective - The General Fund Operating Accounts of Allegheny County Bar Association represent those cash flows, which enable the Association to function on a daily basis. While the ACBA operates under a balanced annual budget, receipts and disbursements for each particular month of the operating year may not be in equilibrium. The timing of operating receipts and disbursement of these funds will fluctuate seasonally during the course of the year. Since it is the objective of the ACBA to render its disbursement obligations on a timely basis, liquid availability of General Fund Account assets will be of primary importance. Therefore, safety of principal and liquid availability of the funds shall be the primary investment objective. Within these parameters, however, the ACBA wishes to maximize the return available on these funds before their disbursement without exposing them to unnecessary risk. This will necessitate the control of disbursements timing as well as coordination of investment maturity in conjunction with available rates of return.

1) Approved Investments

CASH

FIXED INCOME
U.S.Treasury Securities
U.S.Agency Securities
Bankers Acceptances
Certificates of Deposit
Repurchase Agreements (approved commercial bank)
Commercial Paper (A1-P1)
Bank Deposit Accounts - (approved banks)
Money Market Mutual Funds (those investing in the above)

EQUITIES
None

OTHER
None

2) Maturity
No more than 12 months maximum maturity
No more than 6 months average maturity
ACBA INVESTMENT POLICIES - AUGUST 2001

3) Credit Quality
   All assets shall be of Investment Grade

4) Allocation of Assets
   Assets shall be invested 100% in cash and approved fixed income securities, taking strict account of
   scheduled cash disbursement projections. Special attention shall be paid to avoid risk of excessive
   concentration in specific maturities

   overall policy ranges
   
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<thead>
<tr>
<th></th>
<th>min.</th>
<th>max.</th>
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<tbody>
<tr>
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<tr>
<td>Fixed Income</td>
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</tr>
<tr>
<td>Equities</td>
<td>0%</td>
<td>0%</td>
</tr>
</tbody>
</table>

   2001/02 policy targets
   
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</thead>
<tbody>
<tr>
<td>Cash</td>
<td>25%</td>
</tr>
<tr>
<td>Fixed Income</td>
<td>75%</td>
</tr>
<tr>
<td>Equities</td>
<td>0%</td>
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</table>

5) Investment Authorities -
   Under the supervision of the Executive Director, the Director of Finance shall have the authority to
direct management of the General Fund Accounts within the parameters approved by the Board's
policies. Reporting shall be to the Executive Director monthly and to the Finance Committee on a
regular basis at least quarterly.

6) Investment Procedures -
   Investment activity shall be directed at weekly meetings of the Finance Department. At those times,
the Director of Finance shall review reports covering the current status of the General Fund Accounts.
These reports shall include:

   a) current investment asset reports for the operating funds
   b) current cash needs projections for the General Fund Accounts
   c) current maturity schedules of those funds
   d) current investment yield curve data and summary of financial market trends
   e) current reports of deposits by financial institution
   f) current financial institution fee reports (as appropriate)
   g) current data on actual and comparative current yield of the assets

7) Procedures for Receipt of Funds
   (see attached ACBA Funds Disbursements Policy)

8) Procedures for Disbursement of Funds
   (see attached ACBA Funds Receipts Policy)

9) Procedures for Approval of Financial Institution Service Provider
   (Approved List as maintained by Finance Department.)
ALLEGHENY COUNTY BAR ASSOCIATION

LOSS PREVENTION ACCOUNTS

Investment Objective - The Board of Governors of the Allegheny County Bar Association have designated the Loss Prevention Funds to be used to promote and provide the ACBA’s malpractice protection. Since regular anticipated flows of funds are available for most projected operating needs in providing malpractice protection, the funds in the Loss Prevention accounts are meant to generate longer term excess protection. As such preservation of principal and long term growth of assets shall be of primary importance.

The ACBA wishes to create from these funds a pool of assets capable of providing a consistent source of income to assist in loss prevention. As such it is the investment objective of the ACBA for these funds to maximize long term total returns on these assets without exposing them to unacceptable risk. Protection against loss of principal, consistent long term growth as well as ability to generate future income are all primary investment objectives for these assets. Liquidity and current income shall rank second to these primary objectives. To monitor and measure the investment performance of these assets to be sure that objectives are being adequately met, growth and total return will be compared with general stock and bond performance indexes (i.e.-DJIA; NYSE; SLGBF).

1) Approved Investments
   CASH

   FIXED INCOME
   U.S.Treasury Securities
   U.S.Agency Securities
   Bankers Acceptances
   Certificates of Deposit
   Repurchase Agreements (approved commercial bank)
   Commercial Paper (A1-P1)
   Bank Deposit Accounts - (approved banks)
   Money Market Mutual Funds (those investing in the above)
   Fixed Income Mutual Funds (those investing in the above)

   EQUITIES
   NYSE and NASDQ Listed Equity Securities
   Equity Mutual funds (those investing in approved equity securities)

   OTHER
   None

2) Maturity
   No more than 30 years maximum maturity
   No more than 60 months average maturity

3) Credit Quality
   All assets shall be of Investment Grade

4) Allocation of Assets
   overall policy ranges
<table>
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<td>Fixed Income</td>
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<tr>
<td>Equities</td>
<td>0%</td>
</tr>
</tbody>
</table>

   2001/02 policy targets
ACBA INVESTMENT POLICIES - AUGUST 2001

Cash 5%
Fixed Income 35%
Equities 60%

The following additional limits shall also apply:

Equities:
* no more than 10% of total equity investments may be with any one issuer
* no more than 20% of total equity investments may be with any one industry group

Fixed Income:
* no more than 20% of total fixed income securities shall be invested to mature in any one month (except for short term maturities invested for liquidity purposes)
* no more than 10% of debt securities may be with any one issuer (except the U.S. Government and its Agencies which may be without limit)

5) Investment Authorities -
The Board shall designate an investment manager(s) for the Loss Prevention Fund assets. It shall delegate to the Director of Finance under the supervision of the Executive Director the authority to monitor management of the Fund within its approved parameters described above. Reporting shall be to the Executive Director and the Finance Committee on a regular basis with full reporting to the Board quarterly.

6) Investment Procedures -
Investment activity shall be monitored at meetings of the Finance Department. At those times, the Director of Finance shall review reports covering the current status of the Loss Prevention Accounts. These reports shall include:

a) current investment asset reports for the Funds
b) current cash needs projections for the Funds
c) current maturity schedules of those Funds
d) current investment yield curve data and summary of financial market trends
e) current reports of deposits by financial institution
f) current financial institution fee reports (as appropriate)
g) current data on actual and comparative current yield of the assets

7) Procedures for Receipt of Funds
(see attached ACBA Funds Disbursements Policy)

8) Procedures for Disbursement of Funds
(see attached ACBA Funds Receipts Policy)

9) Procedures for Approval of Financial Institution Service Provider
(Approved List maintained by Finance Department.)

ALLEGHENY COUNTY BAR ASSOCIATION
ACBA INVESTMENT POLICIES - AUGUST 2001

DEVELOPMENT and RESERVE ACCOUNT
Investment Objective - The Board of Governors of the Allegheny County Bar Association have designated the Development and Reserve Account to serve as a major source of funding for future capital needs. It therefore is meant to provide not only adequate liquidity for such currently budgeted or anticipated capital needs, but also the potential for long term growth to meet those future needs. As such preservation of principal and long term growth of assets shall be of primary importance.

The ACBA wishes to create from these funds a pool of assets capable of providing a consistent source of income to assist in loss prevention. As such it is the investment objective of the ACBA for these funds to maximize long term total returns on these assets without exposing them to unacceptable risk while at the same time providing a liquidity pool adequate to meet short-term anticipated needs. To monitor and measure the investment performance of these assets to be sure that objectives are being adequately met, growth and total return will be compared with general stock and bond performance indexes (i.e.-DJIA; NYSE; SLGBF).

1) Approved Investments

CASH

FIXED INCOME
U.S.Treasury Securities
U.S.Agency Securities
Bankers Acceptances
Certificates of Deposit
Repurchase Agreements (approved commercial bank)
Commercial Paper (A1-P1)
Bank Deposit Accounts - (approved banks)
Money Market Mutual Funds (those investing in the above)
Fixed Income Mutual Funds (those investing in the above)

EQUITIES
NYSE and NASDAQ Listed Equity Securities
Equity Mutual funds (those investing in approved equity securities)

OTHER
None

2) Maturity
No more than 10 years maximum maturity
No more than 36 months average maturity

3) Credit Quality
All assets shall be of Investment Grade

4) Allocation of Assets

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<th>Asset</th>
<th>overall policy ranges</th>
<th>2001/02 policy targets</th>
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<td>90%</td>
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<tr>
<td>Equities</td>
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<td>75%</td>
</tr>
</tbody>
</table>

A5
Equities 65%

The following additional limits shall also apply:

Equities:
* no more than 10% of total equity investments may be with any one issuer
* no more than 20% of total equity investments may be with any one industry group

Fixed Income:
* no more than 20% of total fixed income securities shall be invested to mature in any one month (except for short term maturities invested for liquidity purposes)
* no more than 10% of debt securities may be with any one issuer (except the U.S. Government and its Agencies which may be without limit)

5) Investment Authorities -
The Board shall delegate to the Director of Finance the authority to monitor management of the Fund within its approved parameters described above. Reporting shall be to the Finance Committee on a regular basis with full reporting to the Board quarterly.

6) Investment Procedures -
Investment activity shall be monitored at meetings of the Finance Department. At those times, the Director of Finance shall review reports covering the current status of the Fund. These reports shall include:

a) current investment asset reports for the Fund
b) current cash needs projections for the Fund
c) current maturity schedules of those Fund
d) current investment yield curve data and summary of financial market trends
e) current reports of deposits by financial institution
f) current financial institution fee reports (as appropriate)
g) current data on actual and comparative current yield of the assets

7) Procedures for Receipt of Funds
(see attached ACBA Funds Disbursements Policy)

8) Procedures for Disbursement of Funds
(see attached ACBA Funds Receipts Policy)

9) Procedures for Approval of Financial Institution Service Provider
(Approved List maintained by Finance Department.)
# Travel and Entertainment Expense Report

## Your Organization Name

**Employee:**

**Destination/Purpose of Trip:**

**Period Ending:**

<table>
<thead>
<tr>
<th>Item</th>
<th>Sun</th>
<th>Mon</th>
<th>Tue</th>
<th>Wed</th>
<th>Thu</th>
<th>Fri</th>
<th>Sat</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Miles Driven</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reimbursement @ $.0__/mile</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parking/Tolls</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Auto Rental</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gas</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Taxi/Limo/Other</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Airfare</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Transportation Total</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Breakfast</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lunch</td>
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<tr>
<td>Dinner</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Entertainment (detail below)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Meals &amp; Entertainment Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Lodging</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Phone/Fax</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Postage</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Supplies</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (explain below)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Daily Total</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

## Detailed Entertainment Record

<table>
<thead>
<tr>
<th>Date</th>
<th>Item</th>
<th>Persons / Business Relationship</th>
<th>Place Name and Location</th>
<th>Business Purpose</th>
<th>Amount</th>
</tr>
</thead>
</table>

## Explanation of Other Expenses

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
</table>

## Summary

<table>
<thead>
<tr>
<th>Total Expenses</th>
<th>Less Cash Advance</th>
<th>Less Corporate Paid</th>
<th>Amount Due Employee</th>
<th>Amount Due Company</th>
</tr>
</thead>
</table>

**Employee Signature/Date**

**Approval/Date**
APPENDIX C

Credit Card Usage Policy

TO: {staff name}

FR:

DA: August 14, 2001

RE: Policy on Association Credit Card Use

This memo is to clarify our policy on the use of association credit cards. Any credit card obtained by association for business use by an employee is for association business use only. Cardholders may not, under any circumstance, use the credit card for personal purchases nor for guaranteeing any type of personal reservations (hotel, rental cars, etc.) nor for any other non-association business use.

Any personal use of an association business credit card will be grounds for disciplinary action, up to and including termination.

Association credit cards are generally to be used for business travel. Because of the lack of documentation, it is always preferable to request a check in advance for your purchases as it provides a better audit trail.

For any business purchases you make using the association credit card you must obtain a receipt for the purchase and attach it to your credit card statement when submitting it to the bookkeeper for payment. If you use your credit card to pay for a meal, you must indicate on the receipt, persons in attendance and the purpose of the meal. If you permit other staff members to use your credit card for approved purchases, it is your responsibility to obtain from them a receipt for the charge. All monthly statements for credit card accounts must go directly to the accounts payable manager and not to the individual cardholder. H/She will then give you the statement to reconcile and approve. Failure to approve statements promptly may result in late payment charges, which, in turn, may be passed on to you. Repeated failure to approve statements in a timely manner may result in forfeiture of your card.

I understand the above policies regarding association business card use and agree to abide by these policies.

Signature

Date

Employee Signature

CreditCardPolicy.doc

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### Software Use By State Bar Associations - 2002

<table>
<thead>
<tr>
<th>Software</th>
<th>State Bars Using</th>
<th>Web site</th>
</tr>
</thead>
<tbody>
<tr>
<td>Great Plains</td>
<td>11</td>
<td><a href="http://www.greatplains.com">www.greatplains.com</a></td>
</tr>
<tr>
<td>QuickBooks Pro</td>
<td>5</td>
<td><a href="http://www.quickbooks.com">www.quickbooks.com</a></td>
</tr>
<tr>
<td>Peachtree</td>
<td>4</td>
<td><a href="http://www.peachtree.com">www.peachtree.com</a></td>
</tr>
<tr>
<td>Go.Members</td>
<td>3</td>
<td><a href="http://www.gomembers.com">www.gomembers.com</a></td>
</tr>
<tr>
<td>MIP (Sage)</td>
<td>2</td>
<td><a href="http://www.milp.com">www.milp.com</a></td>
</tr>
<tr>
<td>JD Edwards</td>
<td>1</td>
<td><a href="http://www.jdedwards.com">www.jdedwards.com</a></td>
</tr>
<tr>
<td>Business Works</td>
<td>1</td>
<td><a href="http://www.business-works.com">www.business-works.com</a></td>
</tr>
<tr>
<td>SBT</td>
<td>1</td>
<td><a href="http://www.sbtcorp.com">www.sbtcorp.com</a></td>
</tr>
<tr>
<td>Member Pro</td>
<td>1</td>
<td><a href="http://www.bestsoftware.com">www.bestsoftware.com</a></td>
</tr>
<tr>
<td>Traverse</td>
<td>1</td>
<td><a href="http://www.osas.com">www.osas.com</a></td>
</tr>
<tr>
<td>MYOB</td>
<td>1</td>
<td><a href="http://www.myob.com">www.myob.com</a></td>
</tr>
<tr>
<td>Add-On</td>
<td>1</td>
<td>None</td>
</tr>
<tr>
<td>Remember</td>
<td>1</td>
<td>None</td>
</tr>
<tr>
<td>AS400</td>
<td>1</td>
<td>None</td>
</tr>
<tr>
<td>Learesse</td>
<td>1</td>
<td>None</td>
</tr>
</tbody>
</table>

Data based on Responses to 2002 Bar Activities Inventory
### SAMPLE STATE BAR ASSOCIATION

*For the Six Months Ended June 30,*

<table>
<thead>
<tr>
<th></th>
<th>2002</th>
<th>2001</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Current Month</td>
<td>Year to Date</td>
<td>Favorable (Unfavorable)</td>
</tr>
<tr>
<td></td>
<td>Actual</td>
<td>Actual</td>
<td>Variance</td>
</tr>
<tr>
<td><strong>Revenue</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Membership dues</td>
<td>$10,000</td>
<td>$250,000</td>
<td>$240,000</td>
</tr>
<tr>
<td>Grant Revenue</td>
<td>10,000</td>
<td>60,000</td>
<td>60,000</td>
</tr>
<tr>
<td>Investment Income</td>
<td>3,000</td>
<td>8,000</td>
<td>12,000</td>
</tr>
<tr>
<td>Other</td>
<td>1,500</td>
<td>2,500</td>
<td>3,000</td>
</tr>
<tr>
<td><strong>Total revenue</strong></td>
<td>$24,500</td>
<td>$320,500</td>
<td>$315,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Expenses</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salaries and Benefits</td>
<td>8,000</td>
<td>48,000</td>
<td>50,000</td>
</tr>
<tr>
<td>Contracted Services</td>
<td>3,000</td>
<td>9,000</td>
<td>6,000</td>
</tr>
<tr>
<td>Printing</td>
<td>4,500</td>
<td>25,000</td>
<td>23,500</td>
</tr>
<tr>
<td>Communications</td>
<td>8,000</td>
<td>16,000</td>
<td>14,000</td>
</tr>
<tr>
<td>Travel</td>
<td>500</td>
<td>2,000</td>
<td>-</td>
</tr>
<tr>
<td>Supplies/Materials</td>
<td>1,000</td>
<td>3,000</td>
<td>3,500</td>
</tr>
<tr>
<td>Office Rent</td>
<td>2,500</td>
<td>15,000</td>
<td>15,000</td>
</tr>
<tr>
<td>Equipment &amp; Furniture Rental</td>
<td>1,000</td>
<td>6,000</td>
<td>6,000</td>
</tr>
<tr>
<td>Other</td>
<td>3,500</td>
<td>5,500</td>
<td>3,000</td>
</tr>
<tr>
<td><strong>Total expenses</strong></td>
<td>$32,000</td>
<td>$129,500</td>
<td>$121,000</td>
</tr>
<tr>
<td><strong>Change in Net Assets</strong></td>
<td>$(7,500)</td>
<td>$191,000</td>
<td>$194,000</td>
</tr>
</tbody>
</table>

**Note:** 2001 figures adjusted for hindsight.
### SAMPLE STATE BAR ASSOCIATION
#### TOTAL-ASSOCIATION P&L

For the Six Months Ended June 30, 2002 with comparative totals for 2001

<table>
<thead>
<tr>
<th>Revenue</th>
<th>Publications Department</th>
<th>Affinity Programs</th>
<th>Professional Development</th>
<th>Governmental Affairs</th>
<th>Membership Relations</th>
<th>Total 2002</th>
<th>Total Budget</th>
<th>Favorable (Unfavorable) Variance</th>
<th>Total 2001</th>
</tr>
</thead>
<tbody>
<tr>
<td>Membership dues</td>
<td>$50,000</td>
<td>$ -</td>
<td>$ -</td>
<td>$100,000</td>
<td>$250,000</td>
<td>$400,000</td>
<td>$395,000</td>
<td>$5,000</td>
<td>$390,000</td>
</tr>
<tr>
<td>Grant Revenue</td>
<td>-</td>
<td>-</td>
<td>15,000</td>
<td>-</td>
<td>60,000</td>
<td>75,000</td>
<td>75,000</td>
<td>-</td>
<td>35,000</td>
</tr>
<tr>
<td>Investment Income</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>8,000</td>
<td>8,000</td>
<td>12,000</td>
<td>(4,000)</td>
<td>15,000</td>
</tr>
<tr>
<td>Other</td>
<td>25,000</td>
<td>50,000</td>
<td>80,000</td>
<td>500</td>
<td>2,500</td>
<td>158,000</td>
<td>160,000</td>
<td>(2,000)</td>
<td>135,000</td>
</tr>
<tr>
<td><strong>Total revenue</strong></td>
<td>$75,000</td>
<td>$50,000</td>
<td>$95,000</td>
<td>$100,500</td>
<td>$320,500</td>
<td>$641,000</td>
<td>$642,000</td>
<td>$(1,000)</td>
<td>$575,000</td>
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</table>

<table>
<thead>
<tr>
<th>Expenses</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries and Benefits</td>
<td>45,000</td>
<td>-</td>
<td>40,000</td>
<td>60,000</td>
<td>48,000</td>
<td>193,000</td>
<td>225,000</td>
<td>32,000</td>
<td>175,000</td>
</tr>
<tr>
<td>Contracted Services</td>
<td>45,000</td>
<td>1,000</td>
<td>4,000</td>
<td>-</td>
<td>9,000</td>
<td>59,000</td>
<td>55,000</td>
<td>(4,000)</td>
<td>60,000</td>
</tr>
<tr>
<td>Printing</td>
<td>35,000</td>
<td>2,000</td>
<td>4,000</td>
<td>-</td>
<td>25,000</td>
<td>66,000</td>
<td>65,000</td>
<td>(1,000)</td>
<td>60,000</td>
</tr>
<tr>
<td>Communications</td>
<td>25,000</td>
<td>1,000</td>
<td>3,000</td>
<td>500</td>
<td>16,000</td>
<td>45,500</td>
<td>40,000</td>
<td>(5,500)</td>
<td>42,000</td>
</tr>
<tr>
<td>Travel</td>
<td>-</td>
<td>-</td>
<td>6,000</td>
<td>3,000</td>
<td>2,000</td>
<td>11,000</td>
<td>13,500</td>
<td>2,500</td>
<td>10,250</td>
</tr>
<tr>
<td>Supplies/Materials</td>
<td>5,000</td>
<td>-</td>
<td>2,000</td>
<td>1,000</td>
<td>3,000</td>
<td>11,000</td>
<td>10,000</td>
<td>(1,000)</td>
<td>9,500</td>
</tr>
<tr>
<td>Office Rent</td>
<td>15,000</td>
<td>-</td>
<td>15,000</td>
<td>15,000</td>
<td>15,000</td>
<td>60,000</td>
<td>60,000</td>
<td>-</td>
<td>58,000</td>
</tr>
<tr>
<td>Equipment &amp; Furniture Rental</td>
<td>12,000</td>
<td>-</td>
<td>20,000</td>
<td>6,000</td>
<td>6,000</td>
<td>44,000</td>
<td>35,000</td>
<td>(9,000)</td>
<td>38,500</td>
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<tr>
<td>Other</td>
<td>4,000</td>
<td>750</td>
<td>3,500</td>
<td>2,000</td>
<td>5,500</td>
<td>15,750</td>
<td>10,000</td>
<td>(5,750)</td>
<td>18,000</td>
</tr>
<tr>
<td><strong>Total expenses</strong></td>
<td>$186,000</td>
<td>$4,750</td>
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<td>$87,500</td>
<td>$129,500</td>
<td>$505,250</td>
<td>$513,500</td>
<td>$8,250</td>
<td>$471,250</td>
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</tbody>
</table>

| Change in Net Assets         | $(111,000)              | $45,250           | $(2,500)                 | $(3,000)             | $191,000            | $135,750   | $128,500   | $7,250                          | $103,750   |