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Important Dates

ABA Annual Meeting
August 5-8, 2011
(Business Law Dates)
Toronto, ON

Nonprofit Organizations Committee Fast Facts

| Number of Current Members: | 714 |
| Number of Young Lawyer Members: | 90 |
| Number of Active Past Chairs: | 4 |
| Subcommittee with the Most Members: | Current Developments in Nonprofit Corporation Law (298 Members) |

Article Writers Wanted

The Newsletter Editorial Board is seeking articles on nonprofit law subject matter to include in future newsletters. There is no length requirement. We have started a series of "Advising the Board" articles intended to assist our members when advising board of

Leadership Message

As part of the ABA Annual Meeting in Toronto, the Committee will have both Committee and Subcommittee meetings as well as sponsoring a program called Multi-Level (International, National, Regional & Local) Non-Profit Organizations: How to Structure Them Plus Unexpected Issues.

The Committee meeting will be held on Saturday, August 6, at 8 a.m. (ET).

At the meeting, there will be discussion of substantive nonprofit legal issues, including a continuation of the discussion on low profit limited liability companies (L3C's). The Committee also will be discussing Committee activities and appointments to Subcommittees. If you are unable to attend the meeting, you can participate in the Committee meeting by telephone. See below for more information.

As always, the Annual Meeting will provide an opportunity both for substantive programming and meetings and opportunities to network with colleagues who share your professional interests. To that end, if you are able to join us at the meeting, we will be having our traditional no-host dinner on Friday, August 5, at 6:30 p.m. at Ciao Wine Bar. More information is provided below.

We look forward to seeing you at the meeting.

Bill Boyd
Chair, Nonprofit Organizations Committee

Committee Dinner at Annual Meeting

Friday, August 5 - Please Join Us!

The Nonprofit Organizations Committee will have its traditional no-host dinner on Friday, August 5 at 6:30 p.m. at Ciao Wine Bar (133 Yorkville Ave. located between Avenue Rd. and Bay St., Toronto 416.925.2143). All members of the Committee and friends are invited to attend the dinner. Please email David Tang if you plan to attend at David.Tang@gowlings.com.

Unable to Make it to the Meeting in Toronto?

Participate in the Nonprofit Organizations Committee Meeting

By Telephone
If you are unable to attend the Annual Meeting in Toronto, you may participate by telephone in the Nonprofit Organizations Committee meeting to be held Saturday, August 6, at 8 a.m. (ET). An agenda for the meeting with the call-in information is on the Committee’s webpage.

Announcement of 2011 Nonprofit Lawyer Award Recipients

The Nonprofit Organizations Committee 2011 Nonprofit Lawyer Awards were announced at the Spring Meeting in Boston. There were five awardees.

**Betsy Buchalter Adler**, a partner at Adler & Colvin in San Francisco, received the Vanguard Award for Lifetime Achievement and Commitment to Nonprofit Law for distinguished lifetime achievement in the nonprofit sector. Adler, a national expert on tax-exempt entities, has written extensively in the area of nonprofit law, including *A Guide to the Law of Charities in the United States*, second edition.

**Professor Marilyn E. Phelan** received the Outstanding Academic Award for distinguished academic achievement in the nonprofit sector. Professor Phelan, a well-known expert in nonprofit law, is semi-retired with the title Emeritus and teaches at the Texas Tech University School of Law in Lubbock, Texas. She also has written extensively on nonprofit law, including *Nonprofit Organization Law and Policy, Nonprofit Organizations: Law and Taxation, Representing Nonprofit Organizations, and Museums and the Law*.

**Cynthia R. Rowland**, a partner at Coblenz, Patch, Duffy & Bass, LLP, in San Francisco, received the Outstanding Attorney Award for distinguished service by an attorney in the nonprofit sector. Rowland, a former chair of the Committee, serves as general corporate and tax counsel to national and international tax-exempt organizations. She was on the NCCUSL drafting committee that resulted in the Uniform Prudent Management of Institutional Funds Act and is on the current drafting committee developing the Model Protection of Charitable Assets Act.

The Outstanding In-House Counsel Award was given to **Diana Sen**, who is the Senior Counsel for LatinoJustice PRLDEF in New York City. The award is given for distinguished service by a nonprofit counsel. Among her many accomplishments, Sen, as lead trial counsel, secured a federal court decree to require Volusia County, Florida to provide its Spanish-language voters with an opportunity to vote using a bilingual ballot. As an in-house attorney for PRLDEF, Sen has demonstrated the highest commitment to her nonprofit organization and advancing its charitable purposes.

**Matthew G. Wright**, Vice President of Development at Scott and White Healthcare in Temple, Texas, received the Outstanding Young Lawyer Award for distinguished service by a young attorney in the nonprofit sector. He has published and presented on numerous nonprofit issues, including *Developing a Compliant Corporate Giving Program* at the 2010 Association of Healthcare Philanthropy Annual Conference.

The Nonprofit Lawyer Awards have been given annually since 1999. The news release for this year's awardees as well as a list of past recipients are on the Committee's website.
Subcommittee Spotlight

The Current Developments in Nonprofit Law Subcommittee of the ABA Business Law Section's Nonprofit Organizations Committee is the largest subcommittee of the Nonprofit Organizations Committee. The Subcommittee is involved in analyzing and disseminating information relating to new developments in nonprofit law at both the federal and state level. One of the main activities of the Subcommittee is the Committee's Newsletter. The Subcommittee is continually seeking authors for articles on nonprofit subjects for inclusion in the Newsletter. Any member of the Business Law Section may join the Subcommittee by signing up on the Committee's website. Megan Christensen is the incoming chair of the Subcommittee. Megan can be contacted at Christensen@blankrome.com.

Publication Feature

The Model Nonprofit Corporation Act, Third Edition, contains the text of the Model Nonprofit Corporation Act and Official Comments. The original MNCA was prepared by the Committee on Corporate Laws in 1952 and has evolved. The Model Nonprofit Corporation Act, Third Edition follows the Model Business Corporation Act provisions to the extent possible, distinguishing nonprofit corporations from profit corporations, eliminates the classification scheme included in the Revised MNCA, and makes the provisions pertaining to the role of the attorney general with a suggestion to adopting states that provisions regarding the supervision of nonprofit organizations would be located in a different place in the state's statutory scheme. Other significant changes involve fundamental transactions, the use of alternative governance arrangements, and the elimination of cumulative voting. The Model Nonprofit Corporation Act, Third Edition, is a great resource for the nonprofit law practitioner.

For more information and to order, click here.

National and State Updates

National Updates
Megan A. Christensen, Blank Rome LLP, Washington, D.C.

1. Automatic Revocation of Tax-Exempt Status by the IRS
On June 8, 2011, the IRS released an Auto-Revocation list for organizations that have failed to satisfy their filing requirements for three consecutive years. Section 501(c)(3) organizations affected are no longer eligible to receive tax-deductible contributions. As of June 10, 2011, Publication 78 and the IRS Business Master File were updated to remove affected organizations. Consequently, IRS determination letters written prior to
1. **Full Board of Directors Adoption of Governance Policies No Longer Required for Form 990 Filing**

At the end of June, the IRS issued a new list of tips regarding Part VI (Governance) of the revised Form 990. The tips specifically provide that tax-exempt organizations may respond affirmatively that it has a particular policy if a committee of the Board of Directors, with Board delegated authority adopted the policy by the end of the organization's tax year. Consequently, organizations are not required to obtain full board of directors' approval for the adoption of whistleblower, conflict of interest, or other governance polices.

However, as state law may still require full board approval of certain policies, organizations should check to ensure that their actions conform.

2. **Changes to the Domain Name System for Nonprofits**

In a memorandum published on July 7, 2011, the IRS closed all current examinations on the application of the gift tax to contributions made to organizations exempt from tax under Section 501(c)(4) of the Internal Revenue Code. The IRS acknowledges that application of the gift tax would result in significant legal implications, due to the historical lack of enforcement. However, the IRS will coordinate with its Office of General Counsel to determine if further guidance is necessary.

3. **State Updates**

*Patrick Sternal, Runquist & Associates, Northridge, CA*

1. **Massachusetts**

The Massachusetts Attorney General's Office issued a report on April 14, 2011 regarding director compensation at nonprofit healthcare organizations. In particular, the report was critical of those organizations that compensate their directors. Based on the findings of this report, the Attorney General determined to undertake certain regulatory and legislative actions in order to limit director compensation at public charities. Beginning in 2012, the Attorney General's Office will require annual statements from all Massachusetts based public charities that compensate their directors, setting forth the basis and rationale for their compensation practices. The Attorney General has also advocated new legislation which would prohibit public charities from providing compensation to any officer, director or trustee, unless the charity has applied for and received the approval of the Attorney General's Office for such compensation. Although the proposal was passed in the Massachusetts State Senate, it has not been enacted.
since been rejected as part of the budget bill. The sponsors, however, have promised to continue to promote similar legislation in a separate bill.

2. Oregon
In Oregon, lawmakers have rejected Senate Bill 40, which would have enabled the Attorney General to issue orders disallowing charitable deductions for purpose of Oregon income tax and corporate excise tax for contributions to charitable organizations that the Attorney General finds have failed to expend at least 30 percent of total annual functional expenses on program services, averaged over three most recent fiscal years. Although the measure passed the Senate, it has been held up in the House Revenue Committee. The bill was initiated by the Oregon Attorney General, who indicates he will work to reintroduce the bill.

3. Hawaii
Recent Hawaiian legislation (Senate Bill 570), approved by the legislature in May and signed by the governor in June, caps the itemized deductions, including charitable donations, that taxpayers can claim on their state taxes. The law specifies that no more than $25,000 may be deducted for individuals with adjusted gross income of $100,000 or more; $37,000 for individuals filing as head of household with AGI of $150,000 or more, and $50,000 for couples with AGI of $200,000 or more. The law became effective July 1, 2011.

Featured Article

The Strategic Importance of the 990 Return
By Michael Sol, Sol & Wolfe Law Firm, PLLP, Missoula, MT

The halcyon days when a non-profit organization could muddle along with minimal financial accounting and little attention to financial reporting are gone. Although the Internal Revenue Service continues not to require the filing of the long-form 990 tax return for non-profit organizations receiving recognition under IRS Code 501(c)(3)1 for those organizations earning less the $25,000 in gross revenues,2 there are myriad, and increasing, reasons why every nonprofit organization should consider preparing and filing an appropriate complete version of the 990 return. That is, the fact that an organization may be "exempt" from filing the full-fledged 990 tax return doesn't mean that it shouldn't file the full-fledged form anyway. And, with the threshold for filing a 990 EZ or full 990 form increasing to $50,000 for tax years ending after December 31, 2010, many more organizations will be exempt from filing anything other than the electronic postcard 990N.

However, there are five good reasons why all non-profit organizations, regardless of size, should consider always filing and publishing a complete 990 return.

Complete Article...