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Important Dates

Business Law Section Spring Meeting
March 22-24, 2012
Las Vegas, NV

Nonprofit Organizations Committee Fast Facts

Number of Current Members: 653
Number of Young Lawyer Members: 81
Number of Active Past Chairs: 5
Subcommittee with the Most Members: Nonprofit Governance (271 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 plan to have a series of "Advising the Board" articles intended to assist our members when advising board of directors of nonprofit organizations on different issues. We are also seeking articles on other substantive subjects. If you are interested in submitting an article, please contact:

- Megan Christensen at Christensen@blankrome.com
- Cari Campbell at cari@campbell-legal.com

Submit Nominations for the 2012 Outstanding Nonprofit Lawyer Awards

The Committee on Nonprofit Organizations is calling for nominations for the 2012 Outstanding Nonprofit Lawyer Awards. These Awards are given annually to outstanding attorneys who provide legal services to nonprofit organizations and nonprofit organizations. Nominations should be submitted by February 1, 2013, to the Committee Chair, Michael E. Malamut, at michael.malamut@blakemorgan.com.

Leadership Message

As Committee Chair, I have the pleasure to work with a number of dedicated volunteers working hard to present top-notch programming through webinars and at Business Law Section meetings. The Committee presents terrific continuing education programs, both as webinars and at our regular face-to-face meetings at the Business Law Section's Spring Meeting and ABA's Annual Meeting. The upcoming training webinars for the "Non" Nonprofit Lawyer, detailed in the newsletter, should be great introductions for the occasional nonprofit practitioner, as well as useful refreshers for aficionados in the field.

At the Spring Meeting in Las Vegas, March 23-24, we will be presenting one stand-alone Committee Continuing Legal Education Seminar, Issues Faced by Trade and Member-Interest Organizations, as well as several co-sponsored programs: The Surge of For-Profit in Distressed Health Care-What Moves a Non-Profit to the For-Profit Option and How Do Non-Profit Boards Decide to Make the Move?, co-sponsored by the Subcommittee on Healthcare and Nonprofits in Bankruptcy: The Basics of Nonprofit Formation, co-sponsored by the Pro Bono Committee; and Innovative Community Economic Development Projects, co-sponsored by the Committee on Community Economic Development. The highlight of our Committee business meeting will be the announcement of the Nonprofit Lawyer Awards and discussion of upcoming publication project ideas.

Several of our Subcommittees will also be having face-to-face meetings, which will focus on recent developments, networking, and discussion of programming ideas. Subcommittees that will be meeting in Las Vegas include the Religious Organizations Subcommittee, the Athletic and Recreation Organizations Subcommittee, the Model Nonprofit Corporation Act Subcommittee, and the Nonprofit Governance Subcommittee. The full Committee meeting and all the Subcommittee meetings, aside from the Model Nonprofit Corporation Act Subcommittee, will be accessible by teleconferencing for those Committee members unable to attend in person.

In-person attendance at Las Vegas is encouraged in order to take full advantage of the continuing legal education and networking opportunities, but we understand that many Committee members are unable to attend and want to engage all Committee members to the extent possible. That way, Committee members can both contribute to and receive the optimal benefits from the Committee.

Michael E. Malamut
Chair, Nonprofit Organizations Committee
Two Part Webinar Series for the "Non" Nonprofit Lawyer: Essential Documents

The Committee on Nonprofit Organizations is sponsoring a two part series on nonprofit legal issues. The series is for lawyers whose practice does not focus on nonprofits but who either represent public charitable nonprofits or sit on nonprofit boards. It also is a great refresher for lawyers who regularly work in the nonprofit area. Each program will provide practical drafting advice on essential nonprofit documents.

This series follows a three-part series in 2011. This year's webinars will focus on documentation issues. The first seminar, which was held on January 18, focused on essential governing documents - articles of incorporation, bylaws and selected governance policies. The second program, which will be held on February 1, will focus on tax documents with a focus on application for tax-exempt status (Form 1023) and return (Form 990).

The price for Business Law Section members is $85 per webinar.

Special Offer for Webinar Participants: Save 20% on Nonprofit Governance Library (pc 5070392P) or on each book individually. Visit www.ababooks.org and enter source code PAB9ENPG at checkout to save on nonprofit books published by the ABA Business Law Section.
departments and related organizations present unique challenges to attorneys who may not be conversant with the environment of the sports entities. To help meet these challenges, our Subcommittee plans to build upon past programs and develop new programs at both Annual and Spring Section meetings. With a membership of 50+ and growing, the Nonprofit Athletic & Recreation Organizations Subcommittee will reconvene in Las Vegas at the BLS Spring Meeting. Speaking and publishing opportunities abound. You can join our sports law "team" today. Contact Al Goldberger, Chair at 973-376-0909 or alan@RefLaw.com.

Publication Feature

*Nonprofit Resources, Second Edition: A Companion to Nonprofit Governance,* is a reference tool for the nonprofit professional. It covers nearly one hundred topics and includes over one thousand entries to give the reader a variety of references. The entries, arranged by topic, include listings of books, handbooks, professional journals, government publications, foundation reports, case and statutory cites, and Internet sites. The resources listed are compiled by industry experts and is a useful starting point for researching any nonprofit topic. Topics include accountability, affinity cards, audit committee, bylaws, codes of conduct, compensation, directors, disaster relief, educational institutions, indemnification and insurance, mission statements, religious organizations, social investing, and volunteers.

National and State Updates

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

1. **IRS Announces Filing Changes for Certain Tax-Exempt Organizations.**  
From January 1 through February 29, 2012, the IRS will *suspend* its Modernized e-File (MeF) System for tax-exempt organizations that file Form 990, Form 990-EZ, Form 990-PF, or Form 1120-POL. IRS Notice 2012-4 states that the IRS will extend those affected organizations' filing due dates automatically to March 30, 2012. Affected organizations are those tax-exempt organizations who file the above-mentioned forms with filing due dates within the suspension period. Organizations that file Form 990-N, however, may continue to file electronically during the suspension period. In the Notice, the IRS also reminds tax-exempt hospital organizations to complete Part V.B on their Form 990's Schedule H, which is a mandatory requirement for tax year 2011 and all future tax years.

2. **AICPA Offers Guidance on Fair Value Measures of Nonprofits’ Assets.**  
The American Institute of Certified Public Accountants (AICPA) *published guidance* for valuing certain transactions of not-for-profit entities. The guidance measures fair value for unconditional promises to give cash or other financial assets, beneficial interests in trusts, and split interest agreements. The AICPA initiated its study because readily available markets do not exist for these assets and liabilities and generally accepted accounting principles proved difficult to apply to these nonprofit transactions. Additional topics in the guidance include determination of an appropriate discount rate when using present-value valuation techniques, proper reporting of the valuation of these assets and liabilities, and disclosure considerations.

3. **IRS Releases Fact Sheet for Exempt Organizations Participating in Medicare Shared Savings Program through Accountable Care Organizations.**  
On October 20, 2011, the IRS released Fact Sheet FS-2011-14 to...
On October 24, 2011, the IRS released Fact Sheet 2011-11 to summarize existing IRS guidance with respect to exempt organizations participating in the Medicare Shared Savings Program (MSSP) through ACOs, as described in the Patient Protection and Affordable Care Act. In the fact sheet, the IRS clarifies the five factors to avoid inurement or impermissible private benefit in IRS Notice 2011-20, and determines which activities qualify as "shared savings program activities" for an exempt organization to receive payments from MSSP. The fact sheet also references the final regulations released by the Centers for Medicare and Medicaid Services, which provide guidance to exempt organizations participating in MSSP.

The IRS released a Conservation Easement Audit Techniques Guide to provide guidance for examinations of charitable contributions of conservation easements. The guide addresses the statutory requirements to deduct charitable contributions of parks, wetlands, farmland, forest land, and historic land or structures, and which organizations qualify to accept such contributions. The guide further explains its requirements of substantiation of a charitable contribution, and appraisal and valuation of noncash contributions, as well as penalties that will result from underpayment of the required tax. The IRS concedes that this guide is not comprehensive, and examiners should also consider related tax issues, such as sale of state tax credits or recapture of rehabilitation tax credits.

5. IRS Planning to Issue Guidance for Tax-Exempt and Nonprofit Health Care Providers.
The IRS plans to issue proposed regulations concerning tax-exempt hospitals' additional requirements of developing financial assistance and collection policies for patients as required by the Patient Protection and Affordable Care Act (PPACA). As mentioned in IRS Notice 2011-52, the IRS expects the proposed regulations to clarify all tax-exempt hospital organizations' additional requirements under the PPACA, including the mandatory community health needs assessment (CHNA). The IRS also plans to issue proposed regulations regarding qualified nonprofit health insurance issuers (QNHIs). The proposed regulations will discuss the process by which QNHIs may apply for tax-exempt status. The IRS has stated that developing this guidance is a high priority, but did not give a time frame for its issuance.

State Updates
Patrick Starnal, Runquist & Associates, Northridge, CA

1. Oregon
The Oregon Department of Justice resolved its actions against an Oregon-based veterans charity and its for-profit telemarketer. The settlement stems from a 2010 lawsuit against Veterans of Oregon & Members of the Community and its telemarketer, Associated Community Services, Inc. In an October 27, 2011 announcement, Oregon Attorney General John Kroger's office said that the charity had agreed to follow procedures to make sure donations are spent for charitable purposes: Before contracting with a telemarketer, the board must obtain proposals from at least three different firms. In addition, the charity agreed to restrict any telemarketer from using the organization's donor information for commercial purposes. The charity also agreed that the full board will review all scripts and written materials provided to donors and will not approve solicitations that fail to describe the primary purposes for which donations will be used or that are otherwise not accurate.

2. New York
New York Attorney General Eric Schneiderman issued his office's annual report on commercial fundraising on December 14, 2011, entitled "Pennies for Charity, Where Your Money Goes: Telemarketing by Professional Fundraisers." The report concludes that charity telemarketers gave, on average, 37.6% of their gross to the charities for which they raise money in 2010. California Attorney General Kamala Harris issued a similar annual report on November 29, 2011, which noted that organizations received less than 45% of the gross receipts by commercial fundraisers in 2010, which represents an increase from 43% in 2009.

3. California
California legislation creating legal frameworks for two new "hybrid" nonprofit forms: "benefit corporations" (AB 201) and "Flexible purpose
corporate forms: "benefit corporations" (AB 361) and "flexible purpose corporations" (SB 201) became effective January 1, 2012. New York State has also passed benefit corporation enabling legislation (A4692-a and S79-a) and is now the seventh state that officially recognizes benefit corporations. These new hybrid entities both combine the ability to return profits to investors with some kind of an overriding public benefitting purpose.

4. Montana

In a December 30, 2011 decision in *Western Tradition Partnership, Inc v Attorney General of Montana*, the Montana Supreme Court upheld the state’s ban on direct spending by corporations on political candidates or committees. The court held that the 2010 *Citizens United v. FEC* decision of the U.S. Supreme Court, which dealt with federal laws and elections, does not compel ruling Montana's law prohibiting independent expenditures by a corporation unconstitutional. In the court's view, "political" corporations like Western Tradition Partnership, a 501(c)(4) exempt corporation, which had challenged the state ban, "act as conduits for anonymous spending by others and represent a threat to the 'political marketplace'" and that Montana has a compelling interest to impose its rationally-tailored restrictions. WTP intends to appeal the decision to the U.S. Supreme Court.

You are receiving this Committee Newsletter because you are a member of the ABA Business Law Section Nonprofit Organizations Committee.

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