Nonprofit Organizations Committee Newsletter

Fourth Quarter, 2012

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Important Dates

- "Non" Nonprofit Lawyer Webinar Series
  - Nonprofit Formation Issues (January 16)
  - Tax Issues for Nonprofits (January 23)
  - Nonprofit Governance Issues (January 30)
- Spring Meeting
  April 4-6, 2013
  Washington, DC

Nonprofit Organizations Committee Fast Facts

- Number of Current Members: 819
- Number of Young Lawyer Members: 81
- Number of Active Past Chairs: 5

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. If you are interested in submitting an article, please contact:

- Megan Christensen at Christensen@blankrome.com or
- Cari Campbell at cari@campbelllegal.com or
- Matthew Wright at matthew@mgwrightlaw.com

Leadership Message

Diversity on the Nonprofit Organizations Committee

The Nonprofit Organizations Committee has been growing over the past year, through active new members and through existing members who are becoming more involved.

Much of this growth has been attributable to a recent campaign, organized with the assistance of our dedicated Business Law Section staff and outgoing Membership Committee Director/Liaison Patrick Sternal. Patrick was a stalwart member of the Nonprofit Organizations Committee for many years, taking on a number of leadership roles. Unfortunately for our committee, Patrick recently received a wonderful career opportunity to work with the Internal Revenue Service. We wish Patrick well, but understand that he cannot continue in his Committee leadership role given his new job.

Patrick is to be commended on the strides made during his role increasing committee size and diversity during his time as Membership Committee Director/Liaison. The Committee as a whole saw membership increase from 715 to 799, an 11.75% increase. But Committee diversity was increasing even faster than overall membership during that time. Hispanic membership increased almost 17%, Asian membership increased 23%, and African American membership increased 48%. Membership of women increased almost 21%. These developments are something that the entire Committee can be proud of, as we continue to build on the openness and inclusiveness that keeps our committee strong, representing the vast diversity of the nonprofit sector. We look forward to working with our new Membership Committee Director/Liaison, Kelli Byers Hooper of Hooper & Honore of Atlanta, GA, to continue to increase Committee membership.

We welcome all members of the committee to participate actively by getting involved in face-to-face meetings, call-in committee and subcommittee meetings, CLE and non-CLE webinars, the Committee listserve, and publication opportunities through the Committee newsletter, Business Law Today, and our acclaimed Committee publications, like the recently published third edition of the Guidebook for Directors of Nonprofit Corporations. Or, like many Committee members, you can use the Committee as a resource to keep up to date with nonprofit law. If you would like to get involved and aren't sure of the right vehicle for you, please contact the Committee Chair and I will be happy to help you find an appropriate role and level of involvement.

Michael E. Malamut
Chair, Nonprofit Organizations Committee

Submit Nominations for the 2013 Outstanding Nonprofit Lawyer Awards

The Committee on Nonprofit Organizations is calling for nominations for the 2013 Outstanding Nonprofit Lawyer Awards. These Awards are given annually in the following categories: Academic, Attorney, Nonprofit In-House Counsel, Young Attorney (under 35 or in practice for less than 10 years) and the Vanguard Award (for lifetime commitment/achievement).
For a nomination form, go to the Nonprofit Lawyer Awards Subcommittee's webpage and look under "Nonprofit Lawyer Awards Documents." You can also find there a list of prior award recipients. Nominations are due by March 1, 2013.

The Awards will be announced at the Business Law Section's Spring Meeting in Washington, DC April 4-6.

Send nomination forms by March 1, 2013 to:

William Klimon  
Caplin & Drysdale  
Suite 1100  
One Thomas Circle, NW  
Washington, DC 20005  
(202) 862-5022  
(202) 429-3301 (fax)  
wklimon@capdale.com

The Nonprofit Committee Needs You!

The Committee is in search of persons to fill the following positions. For more information or to volunteer to hold one of these positions, please contact Michael Malumut (michael@michaelmalamut.com):

1. Committee Secretary;  
2. Technology Committee Director/Liaison; and  
3. Chair of the Trade and Professional Associations Subcommittee.

THREE PART WEBINAR SERIES FOR THE "NON" NONPROFIT LAWYER

The Committee on Nonprofit Organizations is sponsoring a three-part webinar 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 advice for addressing important nonprofit legal issues.

The topics are as follows: Nonprofit Formation Issues (January 16), Tax Issues for Nonprofits (January 23), and Nonprofit Governance Issues (January 30).

Faculty members will include leading practitioners in the nonprofit area including a representative from the IRS.

The price for Business Law Section members is $125 per webinar.


This offer is valid through February 28, 2013. The discount does not apply to eBooks.
Megan A. Christensen, Blank Rome LLP, Washington, DC

1. IRS Issues Final Regulations Regarding Type III Supporting Organizations.
   Effective December 28, 2012, the IRS issued final, temporary, and proposed regulations regarding Type III supporting organization qualification requirements (i.e., organizations described in I.R.C. Section 509(a)(3) operated in connection with one or more supported organizations). The final and temporary regulations revise provisions contained in the proposed regulations issued in 2009, including (a) the definition of "supported organization", (b) the prohibition on the receipt of gifts or contributions from those controlling the supported organization, (c) the notification requirement, (d) the responsiveness test, (e) the requirements to be "functionally integrated", (f) the requirements to qualify as a "non-functionally integrated" Type III supporting organization (i.e., the distribution requirement), and (g) the transition rules.

2. IRS Acts to Provide Relief to Victims of Hurricane Sandy.
   In the aftermath of Hurricane Sandy, the IRS has released a number of news releases providing information to aid victims. Some of the relief includes: expediting charity applications; extending deadlines for tax returns and payments, including extensions to February 1, 2013 for certain tax-exempt organizations with original or extended deadlines falling in late October and on or before February 1, 2013; and additional time until February 1, 2013 for small, automatically revoked tax-exempt organizations affected by the hurricane.

State Updates

Emily Chan, NEO Law Group, San Francisco, CA

1. California
   a. In November, the California Supreme Court ordered a Phoenix-based nonprofit, Americans for Responsible Leadership ("ARL"), to disclose its donors pursuant to California's disclosure regulations that require certain organizations to disclose an individual donation if the donor requests or knows that the payment will be used to make a contribution or an independent expenditure to support or oppose a candidate or ballot measure in California. California's Fair Political Practices Commission alleged that ARL's $11 million contribution to a California political action committee opposing Proposition 30 was funneled to ARL from two other nonprofit organizations, Americans for Job Security and the Center to Protect Patient Rights.

   b. On September 28, Governor Brown signed into law SB 804 which amends the requirement for districts in showing that a transfer of 50 percent or more of the district's assets to a nonprofit in the absence of adequate consideration is for the benefit of the communities served by the district. SB 804 also requires districts to obtain an independently verified fair market value appraisal of the district transfers less than six months before the district approves the transfer.

2. Idaho
   On October 31, Education Voters of Idaho, a 501(c)(4) tax-exempt Idaho nonprofit ("EVI"), complied with a court order requiring EVI to disclose its donors pursuant to Idaho's Sunshine Law. A district judge issued the court order after Secretary of State Ysursa filed suit against EVI for disclosure. Among the donors revealed included New York City Mayor Michael Bloomberg.

3. Maine
   On December 12, the Maine Supreme Court heard arguments on the issue of whether a nonprofit boarding school, Hebron Academy, is exempt from property taxes on the income-generating uses of its facilities, namely renting facilities to outside groups. The court is expected to rule on Hebron Academy v. Town of Hebron in 2013.
4. **Michigan**
   As of December 14, SB 1337 is awaiting the signature of Governor Synder. SB 1337 would amend the General Sales Tax Act to make clear and explicit that personal property purchased by certain nonprofit and charitable organizations used to carry out the purposes of the organization or to raise funds or obtain resources necessary to carry out the purposes of the organization are not subject to sales tax.

5. **New York**
   a. On October 18, the New York Attorney General's Office issued “Five Best Practices for Transparent Cause Marketing.” The guidelines were the result of a yearlong review of “pink ribbon” and similar campaigns of roughly 150 companies.
   b. On November 27, the New York Attorney General's Office announced it has sent letters to 75 nonprofits requesting information on Hurricane Sandy-related fundraising and relief activities. The Attorney General reported it was an effort to promote transparency and donor confidence and ensure proper use of funds raised for Hurricane Sandy relief.
   c. On December 10, the New York Attorney General's Office announced it had entered into a $5.5 million settlement with a New York City-based nonprofit, Educational Housing Services ("EHS"). The Attorney General found that the board breached its fiduciary duties between 2003 and 2009 by entering into contracts that provided "no meaningful benefit" to EHS with a corporation controlled and founded by the same individual who founded EHS. Pursuant to the settlement, the five board members must personally pay $1 million, resign from the EHS Board of Directors, and are banned from serving on the board of directors of any New York charity.