Leadership Message

Greetings from the Nonprofit Organizations Committee Chair.

As we look forward to the summer, and that well-deserved special time of the year when the pace slows up just a bit, now is a good time to reflect on the changes to the Business Law Section's annual meeting calendar that take affect this year. No longer will Nonprofit Organizations Committee members' summer vacation plans have to be tailored around the annual meeting of the full ABA in August. Instead, this year the ABA Business Law Section premiers its new Section Annual Meeting in September, scheduled to take place in the early fall when businesses again start gearing up to work at full strength and schools start the next year of classes.

Going forward, Business Law Section members (including Nonprofit Organizations Committee members) will no longer have Section-specific content available at the ABA-wide annual meeting in August. Business Law Section leadership will still have governance-related meetings at the ABA-wide meeting, and there will still be plenty of CLE for those who are able to attend. For example, on Saturday, August 8, the Solo, Small Firm, and General Practice Division will put on a program called Nonprofit Boards of Directors 101: What You Must Know! with the assistance of the Nonprofit Organizations Committee.

While I will miss the opportunity to host fellow Committee members in Boston at the ABA-wide meeting in August, I look forward to seeing you in Chicago, September 11-13, for the inaugural Business Law Section Annual Meeting. Business Law Section leadership and staff have been working diligently to provide a new level of flexibility and responsiveness to member concerns at this new meeting. We will have substantive sessions of the Nonprofit Governance and Religious Organizations Subcommittees, as well as a new joint substantive session of the Athletic & Recreational Associations and Trade & Professional Associations Subcommittees on the subject of the continuing viability of tax-exempt status for professional sports leagues such as the National Football League. This will be the meeting when we will present our Outstanding Nonprofit Lawyer Awards and host a brown-bag roundtable lunch on current issues in nonprofit practice. In response to requests from the Section, the Committee Dinner will be on Thursday evening, Sept. 11. Programming for our Committee will not start until late Thursday afternoon at the earliest.

At this first Section Annual Meeting, we will be sponsoring a feature CLE on the topic, Are Charities Under Attack? The Program will be organized around issues that a number of scholars are grappling with involving the meaning of "charitable" and the appropriate targeting of the charitable deduction. Some of this work, resonating with some ideas in Congress and in local government, suggests tying the legal meaning of charitable more closely to relief of poverty, and targeting the deduction and potentially other tax benefits, to charities that explicitly work to address poverty. Other aims pursued by charities might not be tax-benefitted or not benefitted as much as currently. Some of the topics that the Program will focus on include: Are some tax exemptions under siege? What are
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
- David Levitt at levitt@adlercolvin.com or
- Cari Campbell at cari@cambell­legal.com or
- Matthew Wright at matthew@mgwrightlaw.com.

Please consider attending the first Business Law Section Annual Meeting. It will be a very special event. Register now to get the best pricing on flights, hotels, and program registration. I hope to see you there.

Michael E. Malamut
Chair, Nonprofit Organizations Committee

Nonprofit Lawyer Profile: Kristen Gurdin

Kristen Gurdin has served as in-house counsel to the Robert Wood Johnson Foundation since 2010. For more than 40 years, the Robert Wood Johnson Foundation has worked to improve the health and health care of all Americans. The Foundation's vision is to build a Culture of Health, enabling all members in our diverse society to lead healthy lives, now and for generations to come.

Prior to joining the Foundation, Kristen advised tax-exempt organizations at the firms of Caplin & Drysdale, Chartered, Davis Wright Tremaine LLP and Reed Smith LLP, representing colleges, universities, private foundations, hospitals and other tax-exempt organizations. She also served as director of foundation and legal affairs for a small liberal arts college located in Pennsylvania.

Kristen received her JD from Temple University, holds an MLitt in Theatre-in-Education from Trinity College Dublin and an AB in Theater, Speech and Dance from Brown University, and was a Fulbright Scholar to the Republic of Ireland.

Did you have any previous experiences that were particularly helpful in developing your nonprofit law practice?

Theater was my first "nonprofit career." I worked for an organization that used theater produced by award-winning playwrights as a tool to reach disadvantaged youth. The organization's staff was talented and mission-driven, but routinely addressed management issues and legal and funder requirements as an afterthought. That type of neglect ultimately contributed to the organization's demise. It was tragic. Unfortunately, as anyone who represents nonprofits knows, this is not an unusual story. That experience taught me that I need to work hard to unpack the stuff that clients see as intimidating and boring (like federal tax law) and help them understand exactly how that "stuff" relates to achieving their mission and sustaining their organizations.

What do you see as the top one or two legal issues that are currently of concern for the nonprofit sector?

My primary concern is not about any single legal issue, but rather about the capacity of small and midsize nonprofits to handle legal issues in general. Operation of even a small nonprofit can involve a lot of legal complexity these days. Unfortunately, in many areas of the country it is very difficult for nonprofits to find affordable legal counsel with the expertise they need. At the same time, there is pressure not to squander precious donations on administrative costs, including lawyer fees. As a result, otherwise strong organizations are often vulnerable to unforeseen legal risks. This is not a new phenomenon, of course. As the list of potential legal issues grows, the problem grows more acute. I believe that the issue of access to legal resources is something funders need to consider.

What has been the most rewarding experience as a nonprofit lawyer?

I get to work with people who inspire me to be a better lawyer and a better human. I've been lucky to have a number of world-class lawyer mentors, who offered their time, their expertise, and their networks. Moreover, I have had the great privilege of representing organizations that strive to make the world a better place. Those organizations are filled with smart, dedicated people, from the emerging concepts of what a charity must be? What is behind the concepts and policies and what changes should charities consider now?
whom I have learned so much. It doesn't get any better than that!

What advice would you give a law student or fellow attorney about becoming a nonprofit lawyer?

You will need more than an interest in social change to be successful. Success requires both technical skills and empathy for those you counsel. Learn to master analysis of complex statutory language and precise contract drafting. Make sure you understand your client’s mission, organizational perspective, risk tolerance, and the internal politics of their decision-making process. There is a wonderful, supportive network of lawyers who do this work across the country, become part of it and learn all you can. If you are prepared to do that, you’ve found a rewarding and dynamic path.

Nonprofit Organizations Committee Announces 2014 Outstanding Nonprofit Lawyer Award Recipients

On June 5, 2014, the legal nonprofit community named the recipients of the 2014 annual "Outstanding Nonprofit Lawyer Awards." The Nonprofit Organizations Committee of the American Bar Association, Business Law Section, recognizes accomplished and civic-minded nonprofit lawyers in the categories of Academic, Attorney, In-House Counsel, and Young Attorney. Additionally, the Committee bestows the Vanguard Award on a leading legal practitioner for his or her lifetime commitment to the nonprofit field. Read more...

National Updates

Megan A. Christensen, Blank Rome LLP, Washington, DC

1. IRS Releases Draft Form 1023-EZ.
   In the March 31 Federal Register, the IRS released Draft Form 1023-EZ Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code. The draft is a 2-page form available to applicants expecting to have no more than $200,000 in annual gross receipts and no more than $500,000 in total assets. Additionally, the form would not be available to churches, hospitals, supporting organizations, foreign organizations, credit counseling organization, previously revoked organizations (other than automatic revocation for failure to file Form 990) and certain other types of organizations. In order to determine eligibility, the draft instructions include an eligibility worksheet, which asks twenty-two yes or no questions and if the answer to any question is yes, the organization is not eligible to apply for exemption using Form 1023-EZ. The supporting statement filed with OMB states that Form 1023-EZ applicants will be able to file electronically beginning in 2015.

2. IRS: Tax-Exempt Organizations Should Consider Healthcare Tax Credit.
   The IRS has encouraged small businesses and tax-exempt organizations to consider the health care tax credit that was included in the Affordable Care Act. Small employers that pay at least half of the premiums for employee health insurance coverage under a qualifying arrangement may be able to claim the credit for 2010 through 2013 and for two additional years beginning in 2014. Importantly for small tax-exempt organizations, the credit is refundable and, thus, even without taxable income, a tax-exempt employer may be eligible to receive the credit as a refund, provided it does not exceed income tax withholding and Medicare tax liability. IRS News Release IR-2014-27, issued on March 10 also includes health care tips that provide useful
3. **Proposed Rules Could Greatly Impact 501(c)(4) Political Activity.**
   On April 22, 2014, the Congressional Research Service (CRS) published a report that analyzed campaign finance policy, focusing on tax-exempt entity issues, campaign contributions, and disclosure requirements. In the report, CRS noted that the recently proposed Treasury Department rules that would curb the political activity of 501(c)(4) groups could be critical in both campaign finance law and tax law debates. CRS suggested that lawmakers consider the November 2013 IRS notice of proposed rulemaking that could narrow how 501(c)(4) groups participate in campaign activity when Congress examines campaign finance issues. The IRS has received over 150,000 comments on the proposed rule. Commissioner John Koskinen stated that the agency may revise the draft rules based on that input.

4. **IRS Cautions Tax-Exempt Organizations to Not Include Personal Data of Form 990.**
   In May, the IRS reminded tax-exempt organizations to not include social security numbers or other unneeded personal information on their Form 990. Both the IRS and most tax-exempt organizations are required by law to publicly disclose parts of Form 990 filings, including schedules and attachments. Forms that must be made public by the IRS are clearly marked “Open to Public Inspection.” The public release of sensitive personal information about donors, clients or benefactors could give rise to identity theft. IRS News Release IR-2014-57, issued on April 29, 2014, also encouraged tax-exempt organizations to file forms electronically in order to reduce the risk of inadvertently including social security numbers or other unnecessary personal information.

5. **IRS Advisory Panel Recommends Rule on Commerciality for 501(c)(3) Organizations.**
   In light of the IRS's recent focus on unrelated business taxable income, an IRS Advisory Committee on Tax Exempt and Government Entities has issued several recommendations for specific changes. Included among the recommendations contained in the committee's June 11, 2014 report, is a regulation project to formalize the commensurate test set forth in Rev. Rul. 64-182 so that profits from a substantial commercial activity will not preclude exemption under Section 501(c)(3) as long as an organization's income and financial resources are used commensurate in scope with its charitable program. The committee also recommends that the regulation project reject application of the "commerciality test" recently used by courts and the IRS to determine what constitutes an unrelated business generating taxable income and when certain business activity conducted by charitable organizations precludes tax exemption. The committee concluded that neither tax law nor the implementing regulations support the commerciality test.

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**State Updates**

*Emily Chan, Adler & Colvin, San Francisco, CA*

1. **California**
   On March 7, 2014, the Center for Competitive Politics (CCP) filed a complaint in the U.S. District Court for the Eastern District of California against state Attorney General Kamala Harris for declaratory and injunctive relief. The complaint is in response to the Attorney General's request for an unredacted IRS Form 990, Schedule B. The case concerns whether the state may require nonprofit organizations to provide the names and addresses of their principal donors before being permitted to solicit charitable donations. CCP asserts this requirement violates both the Supremacy Clause (because it is preempted by the Internal Revenue Code) and its First Amendment right to freedom of association. CCP's motion for a preliminary injunction was denied on
May 13, 2014.

On May 14, 2014, Governor Jerry Brown signed into law SB 27 which contains a number of reforms related to the Political Reform Act of 1974 and affects the regulation of multipurpose organizations, such as Internal Revenue Code section 501(c)(4) organizations, involved in candidate and ballot measure elections in California. SB 27 is intended to address transparency in "dark money" and strengthen the laws requiring disclosure of contributions and expenditures in California elections by multipurpose organizations. SB 27 is effective July 1, 2014.

2. **Maryland**
Governor Paul LePage signed into law LD 1799, "An Act To Amend the Laws Governing Charitable Solicitations," on April 10, 2014. LD 1799 amends the state Charitable Solicitations Act to exclude from professional solicitation regulation persons who solicit donations on behalf of a charitable organization without remuneration. It also revises the definition of "charitable organization" to remove the carve-out for solicitors for organizations serving bona fide religious purposes from regulation under the Act.

3. **Massachusetts**
On April 23, 2014, the Massachusetts Attorney General's Office announced it had filed a lawsuit in Suffolk Superior Court against Dr. Robert Gee, former president of National Graduate School of Quality Management, Inc. (NGS), for breach of his fiduciary duty to NGS by collecting excessive compensation and other unjustified benefits, such as a vacation property, a private residence, and several personal luxury vehicles. The Attorney General's Office has also entered into a related settlement agreement with NGS and its Board of Directors, which will result in dissolution of the charity if NGS and its Board of Directors fail to abide by the settlement terms.

4. **Virginia**
On April 4, 2014, Governor Terry McAuliffe signed into law SB 175 which clarifies that state property tax exemption for real property owned by churches and religious bodies includes: (i) property used primarily for outdoor worship activities; (ii) property used for ancillary and accessory purposes as allowed under the local zoning ordinance, the dominant purpose of which is to support or augment the principal religious worship use; and (iii) property used as required by federal, state, or local law. This act is effective July 1, 2014.

5. **Wyoming**
On March 10, 2014, Governor Matt Mead signed into law HB 21 which amends the state property tax exemption law to include property owned and used by: (i) any fraternal organization officially recognized by the University of Wyoming or a community college to the extent it is not used for private profit nor primarily for commercial purposes by the organization or community college, (ii) a senior citizens center to the extent it is not used for private profit nor primarily for commercial purposes by the center, and (iii) a charitable organization or association that directly uses the property for the operation of charity and which is directly beneficial to the people of Wyoming. This act is effective January 1, 2015.
Nonprofit Organizations Committee Announces 2014 Outstanding Nonprofit Lawyer Award Recipients

On June 5, 2014, the legal nonprofit community named the recipients of the 2014 annual “Outstanding Nonprofit Lawyer Awards.” The Nonprofit Organizations Committee of the American Bar Association, Business Law Section, recognizes accomplished and civic-minded nonprofit lawyers in the categories of Academic, Attorney, In-House Counsel, and Young Attorney. Additionally, the Committee bestows the Vanguard Award on a leading legal practitioner for his or her lifetime commitment to the nonprofit field. The 2014 recipients are:

**Vanguard Award** – for distinguished lifetime achievement in the nonprofit sector:

*Deirdre Dessingue*, Associate General Counsel, United States Conference of Catholic Bishops (retired)

**Outstanding Academic Award** – for distinguished academic achievement in the nonprofit sector:

*Lloyd Hitoshi Mayer*, Associate Dean for Academic Affairs and Professor of Law, Notre Dame Law School

**Outstanding Attorney Award** – for distinguished service as outside counsel to nonprofit organizations:

*Michael I. Sanders*, Partner, Tax Group, Blank Rome LLP

**Outstanding In-House Counsel Award** – for distinguished service by a nonprofit in-house counsel:

*Lynne Chafetz*, Senior Vice President and General Counsel, Virginia Mason Health System
Outstanding Young Attorney Award – for distinguished service by an attorney in the nonprofit sector who is under the age of 35 or has been in practice less than 10 years:

Matthew T. Journy, Associate, Nonprofit Organizations Practice, Venable LLP

VANGUARD AWARD

Deirdre Dessingue recently retired as Associate General Counsel of the United States Conference of Catholic Bishops, after serving there for over 32 years. In that position, she was the U.S. principal tax advisor, representative, and spokesperson for the Roman Catholic Church—the largest denomination in the country. As Associate General Counsel, Ms. Dessingue regularly counseled bishops and other ecclesiastical leaders and diocesan attorneys on a variety of issues involving tax and corporate matters. Prior to her service at the USCCB, Ms. Dessingue was employed for five years by the Exempt Organizations Division of the Internal Revenue Service.

Ms. Dessingue has been a frequent speaker at academic and CLE conferences on a host of tax and nonprofit topics and a regular lecturer at Georgetown Law CLE programs. She is a member of the Advisory Board of the Exempt Organizations Tax Review and served for ten years as co-chair of the Religious Organizations Subcommittee of the ABA’s Exempt Organizations Committee, Section of Taxation. Ms. Dessingue is a prolific author on tax and nonprofit topics, including Politics and the Pulpit: A Guide to the Internal Revenue Code Restrictions on the Political Activities of Religious Organizations (Pew Forum on Religion and Public Life, 2004). From 2001-2005, she served as a member of the IRS Advisory Committee on Tax Exempt and Government Entities. More recently, she served as a member of both the religious-sector and legal-expert panels advising the ECFA Commission on Accountability and Policy for Religious Organizations.

Ms. Dessingue is widely recognized as the national authority on tax issues involving churches. She is also an expert on nonprofit corporations, the law of corporations sole, and the law concerning political-campaign intervention. Ms. Dessingue received both her undergraduate and law degrees from The Catholic University of America.

Ms. Dessingue has been a mentor to a generation of attorneys desiring to represent nonprofit organizations. Her wisdom and judgment are prized both within and outside the Roman Catholic Church.

OUTSTANDING ACADEMIC AWARD RECIPIENT

Lloyd Hitoshi Mayer is Associate Dean for Academic Affairs and Professor of Law at Notre Dame Law School. He joined the faculty as an associate professor of law in 2005 and became a full professor and Associate Dean in 2011. Prof. Mayer earned his A.B., with distinction and honors, from Stanford University in 1989 and his J.D. from Yale Law School in 1994. While at Yale, he was a John M. Olin Fellow in Law and Economics and served as business editor of the Yale Law and Policy Review and as an editor of the Yale Journal on Regulation.

Following graduation, Prof. Mayer clerked for the Honorable Lowell A. Reed, Jr., U.S. District Court for the Eastern District of Pennsylvania. He then joined the Exempt Organizations practice group at Caplin & Drysdale in Washington, D.C., first as an associate and later as a Member, where he concentrated on tax issues, particularly for nonprofit organizations.

Prof. Mayer teaches courses at Notre Dame Law School on not-for-profit organizations, federal income taxation, business-enterprise taxation, and election law. He also lectures at the Notre Dame Mendoza College of Business on legal issues facing nonprofit organizations.
Prof. Mayer’s areas of expertise, research interest, and publication include advocacy by nonprofit organizations, the growing intersection of election law and tax law with respect to lobbying and other political activity, and the role of nonprofits both domestically and internationally. He writes and speaks frequently on issues relating to nonprofit organizations. His law review articles have appeared in numerous law journals, including the *Boston University Law Review*, the *Election Law Journal*, the *Stanford Law Review*, and the *Vanderbilt Law Review*, and he has made invited presentations at many academic and professional venues, including Columbia Law School, Harvard Law School, NYU School of Law, and the University of Virginia School of Law.

**OUTSTANDING ATTORNEY AWARD RECIPIENT**

Michael I. Sanders is Lead Partner of the Tax Group in the D.C. office of Blank Rome LLP. He has been engaged in the practice of law for 50 years, practicing in the area of nonprofits for most, if not all, of that time. As a trial attorney at the U.S. Department of Justice, Mr. Sanders worked cases involving tax-exempt organizations, including the famous *Founding Church of Scientology* case. He served in the U.S. Department of Treasury as an attorney advisor to the Assistant Secretary for Tax Policy, in the Office of Tax Legislative Counsel, and worked on the 1969 amendments to the rules governing private foundations.

Mr. Sanders has consistently represented nonprofits since going into private practice in 1971, representing small and large nonprofits, including Enterprise Community Partners, the Ford Foundation, and the Robin Hood Foundation. He has pioneered the use of the New Markets Tax Credit as a financing mechanism for a number of nonprofits.

An adjunct professor of taxation at Georgetown University Law Center for over 30 years, Mr. Sanders teaches tax treatment of charities and other nonprofit organizations and joint ventures between nonprofits and for-profits, as well as partnership taxation. Mr. Sanders is the author of the treatise *Joint Ventures Involving Tax-Exempt Organizations*, currently in its 4th Edition, and he co-authored *Private Foundations – Taxable Expenditures, Tax Management Portfolio*, 393-3rd, in addition to writing and co-writing many other publications.

**OUTSTANDING IN-HOUSE COUNSEL AWARD RECIPIENT**

Lynne Chafetz is Senior Vice President and General Counsel to the Virginia Mason Health System. In that role, Ms. Chafetz oversees legal affairs, governance, and enterprise risk management for the Virginia Mason Health System, which is a nonprofit health system that includes Virginia Mason Hospital and Seattle Medical Center; a 336-bed acute care teaching hospital; a multispecialty group practice of more than 440 physicians and a regional network of medical centers; Bailey-Boushay House, a nursing residence and day health center for people living with HIV/AIDS and other complex diseases; Benaroya Research Institute, an internationally recognized research institute; Virginia Mason Foundation; and Virginia Mason Institute, an educational institute dedicated to educating others about the Virginia Mason Production System (VMPS).

Ms. Chafetz has been an innovator in applying the lean principles of VMPS to streamlining the processes of Virginia Mason’s legal and governance departments. She recruited a highly talented and efficient team and has worked with them to examine and improve the processes by which Virginia Mason handles compliance with new rules and regulations such as the Affordable Care Act, contract management, preventing and managing potential claims against Virginia Mason, assessment and negotiation of the complex partnering arrangements now essential in an era of health care consolidation, and the day-to-day legal issues facing many organizations the size and complexity of Virginia Mason.

**OUTSTANDING YOUNG ATTORNEY AWARD RECIPIENT**

Matthew T. Journy is an Associate in the Nonprofit Organizations Practice at Venable LLP. Mr. Journy’s entire nine-year legal career has been devoted to serving the nonprofit community in his capacity as a tax advisor. He has worked in the TEGE Division of the IRS Office of Chief Counsel, in the national nonprofit practice at the accounting firm of Ernst & Young, and, for the last six years, in Venable’s nonprofit
practice. In that time, Mr. Journy has made many significant contributions as a legal advocate and advisor to a wide array of nonprofit organizations.

Though he advises nonprofits on a variety of issues, Mr. Journy’s focus and most significant contributions have come in his capacity as tax advisor, especially in nonprofit tax controversies with the IRS. He developed, and successfully implemented, new theories and legal arguments used to successfully resolve IRS audits and tax litigation involving nonprofit, tax-exempt organizations. In 2010, the IRS published the results of its examinations of credit counseling organizations. According to the report, the IRS had examined 395 organizations issuing only 23 “no-change” letters, meaning that less than 6% of all credit-counseling examinations had resulted in no changes at that time. As of the publication of that information, Mr. Journy had represented 16 credit counseling organizations in IRS examinations, each of which had received a no-change letter. In addition, he has pioneered the use of section 7428 of the Internal Revenue Code in resolving exempt-status controversies.