Message from the Chair

As the new(ish) chair of the Nonprofit Organizations Committee, one of my primary goals is to make sure that the Committee and its activities, services and the opportunities it provides to you, the members meet your needs. In fact, I want to see if we can do more than meet just meet current needs. It would be great if the Committee provided you an opportunity to suggest ways in which the ABA and your fellow Committee members could assist you in your practices and lives.

The vast majority of members do not ever have a chance to come to the in-person meetings that the ABA runs several times a year. While the ABA intentionally moves those meetings around the country, providing an opportunity for each of you to travel a reasonable distance at least once every 3 years or so to such a meeting, we recognize that there are other constraints on your attendance. Besides, I can hear some of you saying, aren't we living in an electronically connected world?

Firstly, I encourage all of you to contact me if you have a question, comment or a suggestion. Please do that any way you wish: by telephone, email or at a meeting. Let me know if you have an interest in participating in any way.

Secondly, the Committee leadership wants to ask you to complete a survey so we can know you a little better. Our hope is that the survey will identify areas where we are doing well and providing useful service to you. Our hope is that you will also tell us what we're possibly wasting our time and effort doing. Finally, we want any suggestions you have.

The survey is relatively short and can likely be completed in a few minutes. Please click here to take the survey.

One change that we will be implementing because some of our members found the volume of the listserve emails on a particular topic about a month and a half ago overwhelming is to provide an easier way for you to unsubscribe from the listserve. However, before you do that, we will be making it easier for you manage those listserve emails by changing the manner you receive them only once a day in a digest/index format where all of the correspondence for the day are consolidated into one single email. I will be sending out to the listserve members an email with more details.

On the topic of the listserve, if you have not signed up for it, consider doing so. To get a sense of the types of questions and answers which are raised, you can go to the archive even if you are not signed up. That is found here.

You will need to create a password first, but doing so does not automatically sign you up for the listserve.

I look forward to hearing from you.

David Tang
Chair, Nonprofit Organizations Committee

http://apps.americanbar.org/buslaw/committees/CL580000pub/newsletter/201501/
Lawyer Awards

The Committee on Nonprofit Organizations is calling for nominations for the "2015 Outstanding Nonprofit Lawyer Awards." The Committee presents the Awards annually to outstanding lawyers in the categories of Academic, Attorney, Nonprofit In-House Counsel, and Young Attorney (under 35 years old or in practice for less than 10 years). The Committee will also bestow its Vanguard Award for lifetime commitment or achievement on a leading legal practitioner in the nonprofit field. **Nominations are due by March 16, 2015.**

For a nomination form, please go to the Nonprofit Lawyer Awards Subcommittee's webpage and scroll down to the bottom under "Nonprofit Lawyer Awards Documents." You will also find a list of prior award recipients. The Awards will be announced at the Business Law Section's Spring Meeting in April.

**Send nomination forms by March 16, 2015 to:**

William M. Klimon  
Caplin & Drysdale, Chartered  
One Thomas Circle, N.W.  
Suite 1100  
Washington, D.C. 20005-5894  
(202) 862-5022  
(202) 429-3301 (fax)  
wklimon@capdale.com

Nonprofit Issues for the "Non" Nonprofit Lawyer: Webinar Series

The webinar series "Nonprofit Issues for the 'Non' Nonprofit Lawyer" has returned in January 2015. This webinar series targets lawyers whose practice does not exclusively focus on the representation or formation of nonprofit organizations but who sit on the board of a nonprofit organization or periodically assist public charitable nonprofit entities. It can also be a great refresher course or update course. The webinars provide practical advice on essential nonprofit entity legal matters, and panelists are experts in the nonprofit area.

The first 90-minute webinar, **Nonprofit Formation Issues**, already took place on January 14 and focused on the basic rules relating to formation of nonprofit corporation and other nonprofit entities.

The second 90-minute program, **Nonprofit Tax Issues**, was held on January 21 and focused on types of tax-exempt entities and IRS requirements for 501(c)(3) organizations. (Downloads and on-demand online courses are available for ABA Value Pass subscribers and are available about a week after the program.)

The third program, **Nonprofit Governance**, to be held on January 28 at 1:00 PM (Eastern), will focus on nonprofit governance issues such as director fiduciary duties, protections from liability, and considerations for lawyers serving on a client's board.

Third Edition of New York Nonprofit Law and Practice Published

The third edition of New York Nonprofit Law and Practice with Tax Analysis, authored by Victoria B. Bjorklund, James J. Fishman, and Daniel L. Kurtz has been published by LexisNexis. The new edition covers the changes to New York's Not-for-Profit Corporation Law wrought by the Non-Profit Revitalization Act of 2013. It is available in hard copy and online and is the first new edition since 2007.
Upcoming Impact Investing Conference and Webinars

This past year, a working group of lawyers was formed to build a legal community of practice for impact investing (the "Impact Investing Legal Working Group"). While there are multiple definitions of impact investments, at their core, impact investments are investments made in enterprises that are seeking to generate both financial and social returns and are measuring their progress toward those "multiple" bottom-line returns. Impact investing is a quickly growing market with over $46 billion in assets currently under management, including investments by nonprofit organizations.

For the first half of 2015, this Impact Investing Legal Working Group has planned a series of webinars and a day-long conference to be held in Washington, D.C. on discrete aspects of this practice. The first three webinars will be focused on these legal issues: pay for success financings/social impact bonds (3rd week of February); governance of impact investments (2nd week of March), and equity exits in impact investment (2nd week of April). Details on the webinars and upcoming conference, including CLE credits, will be available by emailing Deborah Burand at dburand@umich.edu.

Nonprofit Lawyer Profile: David Schleicher

David Schleicher is a solo practitioner in Central Texas. He serves the greater Waco community. The Waco area has over 1,100 non-profits in addition to churches. Some of those non-profits serve a geographic area as large as New England.

What attracted you to working with non-profits?
Helping others do good work.

What do you wish law schools would teach regarding non-profits?
They should be covered as part of instruction about corporate law and/or tax law.

What do you wish non-Non-Profit lawyers would understand regarding the charity world?
Providing up to, say, the first three hours a month of work free for two of your group of non-profit clients is a good way to meaningfully deal with some of an attorney's pro bono obligations.

What has been the most rewarding case regarding non-profits and what was the key issue?
Ironically, helping a non-profit go out of a business—in a way that got the creditors and government agencies paid and left a judgment on file against the Executive Director that caused it to fail.

Regarding the law, what legal issue do you wish non-profits would understand better?
I have been blessed with non-profit clients that know when to ask for help, so nothing to add here.

What legal challenges will non-profits face in the next decade?
Cybercrime/cybervandalism with the damaging potential for confidential information about donors and clients served being released or sold to others. Donors won't give to organizations they don't trust.

What book, web-site, listserve, or other resource would you recommend to lawyers and non-lawyers regarding non-profits?
www.charitynavigator.com
National Updates

Megan A. Christensen & Sydney V. Jones, Blank Rome LLP, Washington, DC

IRS and Treasury Finalize Regulations for Tax-Exempt Hospitals

On December 29, 2014, the IRS and the Treasury Department issued final regulations under Internal Revenue Code 501(r) concerning exemption requirements for charitable hospitals. The regulations provide guidance for meeting the four conditions for 501(c)(3) hospitals: (1) establish financial assistance and emergency medical care policies; (2) limit the amounts charged for emergencies or other medically necessary care to patients eligible for financial assistance; (3) develop measures to protect against aggressive debt collection; and (4) conduct and publish a community health needs assessment once every three years. The final regulations, inter alia, also provide that a hospital facility that fails to meet the community health needs assessment requirement will be subject to excise tax. Charitable hospitals will have until December 29, 2015 to implement these new procedures, but they must make a good faith effort to comply in the meantime. Failure to fully satisfy the new terms could result in revocation of their tax-exempt status.

GAO Publishes Report on Exempt Organization Compliance

The Government Accountability Office (“GAO”) recently released a report suggesting methods for exempt organizations (“EO”) to improve oversight efforts. The report recognizes the challenges EOs face with respect to measuring compliance for the charitable sector as a whole, for particular segments of the sector, and for specific aspects of noncompliance, including political activity or personal inurement. In addition, the report cites statutory protections for taxpayer data as a further imposition to the IRS more readily identifying areas of noncompliance. The GAO hopes that acknowledging these issues will lead to greater accountability and fundamental changes in oversight of charitable organizations.

IRS Provides Tax Guidance in Response to Guinea, Liberia, and Sierra Leone Ebola Outbreak

The IRS issued guidance for providing assistance in response to the Ebola outbreak in Guinea, Liberia, and Sierra Leone. The leave-based donation guidance provides that employees may donate their vacation, sick, or personal time in exchange for employer cash payments to qualified tax-exempt
organizations offering relief for victims. In addition, the qualified-disaster guidance enables recipients of qualified relief payments related to the Ebola outbreak to exclude such payments from income on their tax returns. Qualified payments generally include those used for necessary personal, family, living, or certain other expenses not covered by insurance.

State Updates

Emily Chan, Adler & Colvin, San Francisco, CA

California

On November 10, 2014, the written comment period closed regarding proposed regulations that would significantly expand the California Attorney General's enforcement powers. Among other changes, the proposed regulations will allow the Department of Justice to impose a penalty up to $1,000 per act or omission, for each act or omission that constitutes a violation of the Supervision of Trustees and Fundraisers for Charitable Purposes Act or Title 11, Division 1, Chapter 15, of the California Code of Regulations. Under the proposed regulations, a penalty will accrue at $100 per day starting on the fifth day after notice of the violation is provided to the person or entity that committed the violation. In addition, a registrant which has been suspended or revoked would not be permitted to distribute or expend any charitable assets subject to a charitable trust without the written approval of the Attorney General, and board members or any person directly involved in distributing or expending charitable assets could be held personally liable in a civil action brought by the Attorney General for any charitable assets or assets subject to a charitable trust that are distributed or expended in violation of this regulation. The Attorney General also would have the authority to direct a registrant whose registration has been suspended or revoked to distribute some or all of its charitable assets or assets subject to a charitable trust to another charitable organization or into a blocked bank account. The proposed regulations have not yet been adopted as of early January this year, and another opportunity for public comment may be provided.

Last October, the California Franchise Tax Board released Public Service Bulletin 14-28 regarding a new Form FTB 3589, Nonprofit Organization Report of Funds Received and Used for Campaign Activity, which requires certain nonprofit organizations to disclose use of public resources received from local agencies for the purpose of conducting campaign activity. These nonprofit organizations must file Form FTB 3589 if they engaged in campaign activity (either directly or through the control of another entity) and received public resources from one or more local agencies (as that term is defined) that account for more than 20 percent of the organization's annual gross revenue in the current fiscal year or either of the previous two fiscal years. This filing requirement does not apply to an organization exempt under Internal Revenue Code Section 501(c)(3) or California Revenue and Taxation Code Section 23701d, or a political action committee.

On December 9, 2014, Americans for Prosperity Foundation, a Virginia-based public charity, filed a complaint against California Attorney General Kamala Harris in the U.S. District Court for the Central District of California challenging the Attorney General's request for disclosures about the organization's donors. This lawsuit follows on the heels of a similar complaint filed by the Center for Competitive Politics against Attorney General Harris in March 2014.

Kansas

During the November 2014 election, Kansas voters approved SCR 1618, a state constitutional amendment authorizing charitable raffles. The amendment defines "raffle" as a game of chance in which each participant buys a ticket or tickets from a nonprofit organization, with each ticket providing an equal chance to win a prize and the winner being determined by a random drawing. Authorized raffles are subject to certain limitations, such as the organization may not use an electronic gaming or vending machine to sell tickets or conduct raffles. Raffles of all types remain illegal until the statutes are drafted during the 2015 Legislation
Session, with such laws expected to take effect in July 2015.

**Massachusetts**

On November 19, 2014, Harvard Climate Justice Coalition and seven Harvard students filed a complaint in Suffolk County Superior Court against the President and Fellows of Harvard College (the "Harvard Corporation"), Harvard Management Company, Inc., and Massachusetts Attorney General Martha Coakley, alleging mismanagement of charitable funds and a tort claim of intentional investments in abnormally dangerous activities. Among the allegations are the plaintiff's claims that investment in the fossil fuel companies is a breach of the Harvard Corporation's fiduciary and charitable duties as a public charity and nonprofit corporation to uphold its purposes, which include the advancement and education of youth. The plaintiffs are seeking divestment of Harvard Corporation's direct and indirect holdings in fossil fuel companies, among other prayers for relief. The defendants filed a motion to dismiss in December last year, to which the plaintiffs filed a memorandum in opposition to the motion to dismiss in early January of this year.

**South Carolina**

During the November 2014 election, South Carolina voters approved a constitutional amendment authorizing charitable raffles, which must next be approved by South Carolina's General Assembly before it can become law. The amendment would allow raffles to be conducted by a nonprofit organization for charitable, religious, fraternal, educational, or other eleemosynary purposes, and also require the general law to define the type of organization authorized to operate and conduct the raffles, provide standards for the operation and conduct of the raffles, provide for the use of proceeds for charitable, religious, fraternal, educational, or other eleemosynary purposes, provide penalties for violations, and provide for other laws necessary to ensure the proper functioning, honesty, and integrity of the raffles. The state Senate approved the ratification bill, S.9, on January 15, 2015. The state House of Representatives referred the ratification bill, H.3701, to Committee on Judiciary as of January 13, 2015.

**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:

- David Levitt at levitti@adlercolvin.com
- Cari Campbell at cari@campbell-legal.com
- Matthew Wright at matthew@mgwrightlaw.com

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