



# NONPROFIT ORGANIZATIONS COMMITTEE NEWSLETTER

First Quarter, 2017

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### [Business Law Section Spring Meeting](#)

April 6-8, 2017  
New Orleans, LA

## Editorial Board

**David Levitt**, San Francisco, CA  
**Emily Chan**, San Francisco, CA  
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Washington, DC  
**Matthew G. Wright**, Waco, TX

## Message from the Chair

"Laissez les bon temps roulez!" or "Let the good times roll!" is the traditional rallying cry for those headed to New Orleans. That is where the Spring 2017 Business Law Section meeting is being held this April 6-8, 2017. For many of us, the meeting and our time in New Orleans will be good times indeed, although less about jazz, gumbo, alligators and Mardi Gras than for most tourists. I am looking forward to a good time working with, getting to know better our fellow non-profit lawyers, serving, learning and sharpening our skills.

At the New Orleans Spring meeting, our Committee members have been working at putting on two Continuing Legal Education Programs. The first, *Nonprofit Law Basics*, is designed for the business lawyer who is not regularly engaged in practising non-profit organizations law and represents our Committee's commitment to serving the rest of our profession and through them, the many non-profit organizations that business lawyers are part of. It is only with the participation of the Section's many business lawyers that thousands of non-profit organizations can have meaningful exposure to the legal issues which they may be blissfully unaware of, until they create expensive and possibly disastrous consequences. Our program, held on Saturday, April 8, will provide lawyers without day to day expertise in the area with the overview of non-profit law, an understanding of the primary issues, and the ability to participate more meaningfully and effectively in the non-profit organizations in which they are volunteers. A Nonprofit Law Basics CLE Program is run by our Committee every several years and is always extremely popular with the rest of the Business Law section's lawyers. You may want to encourage your colleagues to attend this program. The presenters are a virtual Who's Who of past leaders of the Non-Profit Organizations Committee.

The second CLE Program, *Nonprofit Associations: Being Unincorporated in the Twenty-First Century*, will cater largely to our Committee's core membership of nonprofit law practitioners. It will explore developments to structures which seem antiquated, the unincorporated non-profit organization, but which actually lives on and thrives in the 21<sup>st</sup> century. Instead of another survey of the many options open to non-profit practitioners to incorporate and organize their clients, this program will explore why the unincorporated entity remains an important part of the non-profit spectrum of options. The emphasis will be on changes and how these unincorporated associations not only continue to exist, but how they can thrive and some of the challenges.

The rest of the Committee's meetings and activities are listed below. As usual, the primary period our Committee will be meeting is Friday and Saturday. However, for those members who are part of the significant redrafting team for the Model Nonprofit Corporations Act, an all-day (9 to 5) drafting session is scheduled for Thursday, April 6. Please make your travel and hotel arrangements accordingly.

Athletic, Recreation, & Affinity Organizations Subcommittee Meeting: Friday  
4 /7 /2017 3:00PM - 4:00PM

Current Developments in Nonprofit Corporation Law Subcommittee  
Meeting: Saturday 4 /8 /2017 11:30AM - 1:00PM

Governance of Nonprofit Organizations Jt. Meeting: Friday 4 /7 /2017  
4:00PM - 5:00PM

Model Nonprofit Corporations Act Drafting Meeting (invitation only):  
Thursday 4 /6 /2017 9:00AM - 5:00PM

Nonprofit Organizations Committee Meeting: Friday 4 /7 /2017 9:00AM - 10:30AM

Program: Nonprofit Associations: Being Unincorporated in the Twenty-First Century: Saturday 4 /8 /2017 1:00PM - 2:30PM

Program: Nonprofit Law Basics: Saturday 4 /8 /2017 8:00AM - 9:30AM

Religious Organizations Subcommittee Meeting: Friday 4 /7 /2017 10:30AM - 12:00PM

Social Entrepreneurship and Social Benefit Entities Subcommittee Meeting: Saturday 4 /8 /2017 9:30AM - 10:30AM

### **Registration Information**

Registration details can be found here:

[http://www.americanbar.org/groups/business\\_law/events\\_cle/spring\\_2017/registration.html](http://www.americanbar.org/groups/business_law/events_cle/spring_2017/registration.html).

The Spring meeting will be held at the Hyatt Regency New Orleans and a group room blocker is available at \$249 per night plus taxes and fees. That rate is only guaranteed until March 15, 2017 or until those rooms are sold out. The Hyatt can be reached at 1-888-421-1442 and details could be found here:

<https://aws.passkey.com/event/14854116/owner/2787/home>.

### **Committee Dinner(s)**

Please note that our Committee's meeting dinner will be held on Friday, April 7 at Mr. B's Bistro in the French Quarter so that we will all have a chance to experience the French Quarter while in New Orleans. Details on the restaurant are here:

<http://www.mrbsbistro.com/>. Please let Phil Hackney (philip.hackney@law.lsu.edu) know whether you are coming to that dinner (and how many - families are welcome) so that he can make reservations for us all. Phil share that this is a "fun favourite of mine" and that the prices are very reasonable for the Quarter. Please note that the ticketed Business Section Dinner is held at the same time so you will have to choose between that dinner and the Committee dinner when you register.

For those of you staying in New Orleans Saturday night, we will be meeting together for dinner on Saturday night too, since our program stretches into Saturday afternoon.

### **Business Law Mini Theme - Call for Articles**

The Business Law Section's June issue of *Business Law Today* will feature a Mini-Theme on nonprofit organizations. Please consider whether you would like to contribute an article. We are hoping to publish five articles in that issue. The articles will be due by May 1, 2017. If you have any questions and/or would like to contribute an article, please contact Megan Christensen at [mchristensen@manatt.com](mailto:mchristensen@manatt.com).

### **Join Meeting by Telephone**

Finally, those of you who are unable to join us in New Orleans can still participate over the telephone. All of the meetings (but not the two CLE Programs) allow for telephone conference participation. The telephone number information will be sent out over the list-serve at a later date. I hope many of you will consider rolling down to New Orleans.

David Tang

Chair, Nonprofit Organizations Committee



## Maximizing 501(c)(3) Impact through Policy Advocacy & Lobbying

*By: Natalie Ossenfort*

With politics and government action taking center stage in public discourse, many 501(c)(3) organizations are now even more motivated to speak out against laws and other proposals that they believe are harmful and in favor of reforms that advance the interests of their constituents. Unfortunately, too many organizations—and the lawyers who represent them—remain fearful that advocacy (including lobbying) is inappropriate or illegal. But, in reality, it is a lawful and effective way for public charities to advance their missions. Whether urging Senators to pass a bill that increases funding for mental health programs or opposing an executive order that alters United States immigration policy, public charities may take a stand and vocalize their support or opposition to these actions.

While lobbying is one type of advocacy, not all advocacy is lobbying. The Internal Revenue Code (the Code) defines lobbying fairly narrowly to include attempts to influence legislation, and it explicitly permits public charities to lobby as long as they do so within permissible limits. The Code states that public charities may lobby so long as lobbying constitutes an "insubstantial part" of an organization's overall activities. While this is a vague, ill-defined standard, eligible organizations can obtain additional clarity and maximize their lobbying limits even further by electing to use section 501(h) of the Code, which permits some groups to spend up to 20% of their annual exempt purpose expenditures on lobbying.

Organizations eligible to make the 501(h) election include most types of 501(c)(3) organizations (e.g. educational institutions, hospitals, organizations publically supported by charitable contributions, agricultural research organizations, and others). Organizations disqualified from making the 501(h) election include 501(c)(3) organizations formed under Section 170(b)(1)(A)(i) (organizations relating to churches), integrated auxiliaries of a church or of a convention / association of churches, and members of affiliated groups of organizations with one or more members who fall into the 170(b)(1)(A)(i) or auxiliary categories. Private foundations are also ineligible to make the 501(h) election and are subject to taxation if they spend money on lobbying, either directly or by earmarking grant funds for lobbying purposes. However, this does not mean that private foundations are prohibited from funding grantees who [lobby](#).

By filing [form 5768](#), eligible public charities may opt-in to receiving a clear, dollar-based limit for how much they can spend on lobbying. These 501(h) electors may also take advantage of precise lobbying definitions, which make clear which types of actions and communications qualify as lobbying.

[Section 4911](#) of the Code defines two types of lobbying for 501(h) electors: [direct lobbying and grassroots lobbying](#). Direct lobbying consists of communications with legislators that express a view on specific legislation, and grassroots lobbying encompasses communications with the general-public that express a view on specific legislation and contain a call to action. Specific legislation incorporates pending legislation and legislative proposals. It includes, for instance, nominations requiring senate confirmation and the budget. Importantly, both types of lobbying are lawful activities for public charities so long as they are counted against an organization's lobbying limits and reported on Schedule C

of the organization's 990.

Any communications that attempt to impact public policy but do not meet the lobbying definitions above do not count against an electing organization's lobbying limit. Critically, this means that advocacy related to executive orders, regulations, and enforcement of existing law does not qualify as lobbying, because executive and administrative actions do not qualify as legislation. It also means that communications with certain non-legislative bodies (e.g. school boards, sewer and water districts, housing authorities, and other special purpose bodies) are not deemed to be lobbying under federal tax law. By taking advantage of the narrow lobbying definitions for 501(h) electors, organizations can amplify their impact and reach in their communities.

*Natalie Ossenfort is the Texas director at Alliance for Justice, where she works with the organization's Bolder Advocacy program to demystify advocacy rules for nonprofit organizations. Visit [www.bolderadvocacy.org](http://www.bolderadvocacy.org) for more information about the 501(h) election and lobbying.*

## Other Links of Interest

To link the non-profit law community and provide opportunities for robust discussions, please see our list of online resources regarding charities, fundraising, and organizations. Listing of these resources does not constitute an endorsement or verification of the information:

**Nonprofit Law Blog:** <http://www.nonprofitlawblog.com/> (Featured in the January Issue of ABA Journal)

**Law Professor Blogs:** <http://lawprofessors.typepad.com/nonprofit/> (Featured on the ABA Web-site)

**Philanthropy News Digest (PND):** <http://pndblog.typepad.com/pndblog/>

**Association of Fundraising Professionals:** <http://www.afpnet.org/>

## 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 [levitt@adlercolvin.com](mailto:levitt@adlercolvin.com) or
- Matthew Wright at [matthew@diazwright.com](mailto:matthew@diazwright.com)

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