

PROBONO[®]

P A R T N E R S H I P

Volunteer Lawyers Strengthening Nonprofits & Our Communities

Top 10 Legal Issues for Nonprofits

Dyson Foundation

And

Pro Bono Partnership

Maurice Segall, Program Director Fairfield County/New York

Judy Siegel, Esq., Senior Staff Attorney

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- Not Legal Advice

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What Is Pro Bono Partnership?

- A 501(c)(3) legal services organization that provides free business legal services for nonprofit organizations, through the services of our staff and corporate and private attorney volunteers
- Serving CT, NJ and NY, excluding NYC
- We make it easy for attorneys to volunteer their expertise and to connect with nonprofits in their communities
- To apply, visit www.probonopartner.org and click on “Request Legal Assistance”

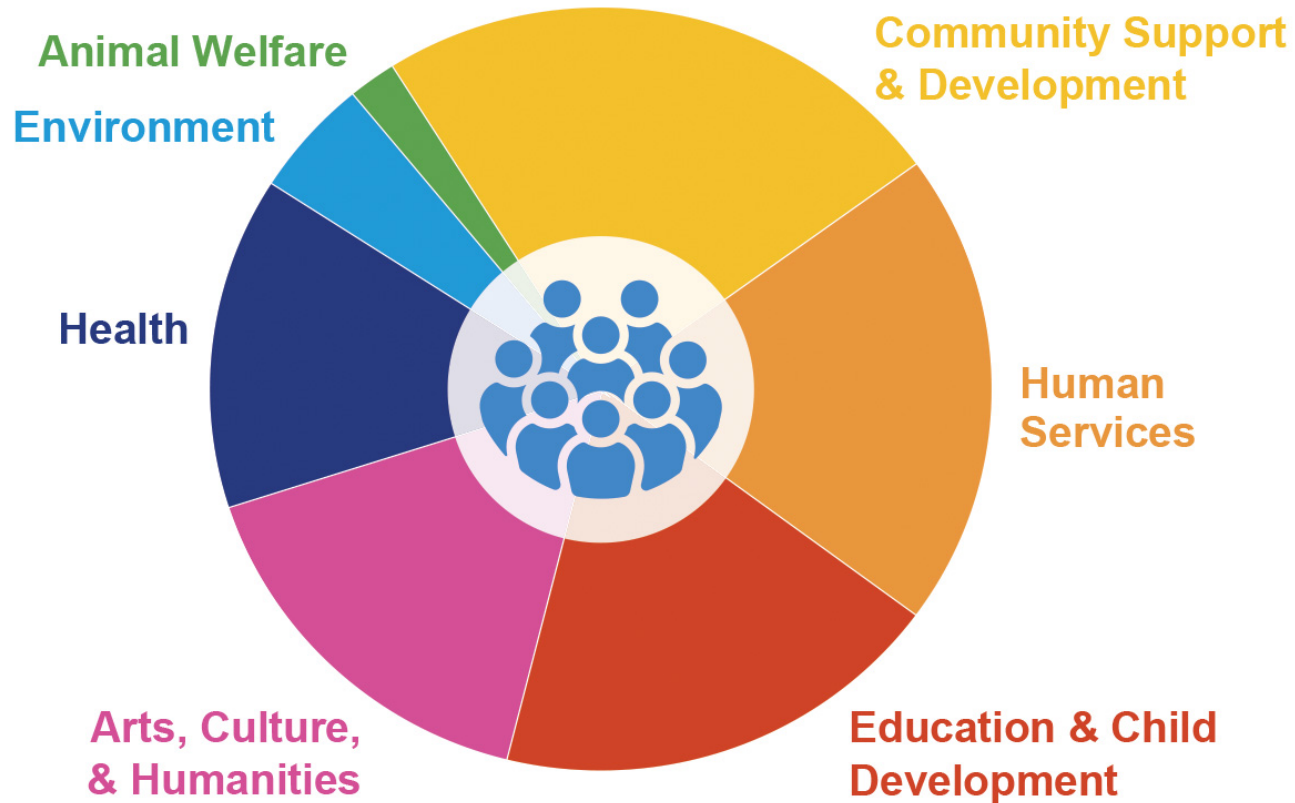


Who Do We Serve?

- Nonprofit 501(c)(3) organizations (or seeking 501(c)(3) status), serving the disadvantaged or enhancing the quality of life through important social, civic, arts, educational, or environmental programs or services
- Seeking transactional (i.e. non-litigation) legal assistance
- Unable to pay for legal services without significantly impacting resources for programs



Types of Pro Bono Partnership Clients



Types of Assistance We Provide

- Compliance
- Contracts
- Corporate structure/governance
- Dissolution and bankruptcy
- Employment/volunteer issues
- Fundraising/charitable solicitation laws
- Incorporation/tax exemption
- Intellectual property
- Lending/finance
- Merger/collaboration
- Real estate
- Tax
- Trusts and estates
- To apply for services:
<https://probonopartner.org/nonprofits-clients/request-legal-assistance/>



What Law Applies?

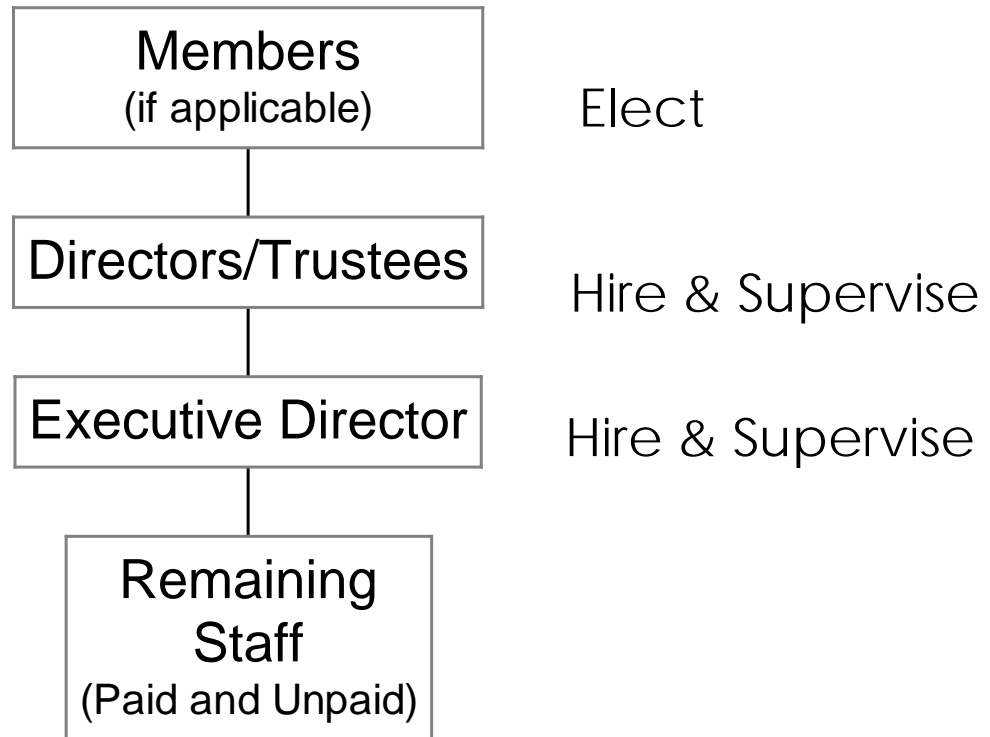
- Nonprofit corporations are organized and operated in accordance with ***state statutes***.
- Internal Revenue Code (IRC), most notably Section 501(c)
 - ***Section 501(c)(3)***
- Other state and federal statutes may apply
- Common law
 - Fiduciary responsibilities of Board members



Nomenclature

- **Charitable organizations have two “classifications”**
 - **Nonprofit** - function of state law
 - Formed for a non-pecuniary purpose (for the benefit of their members, for a public good, etc.)
 - Most often are incorporated
 - New York not-for-profit corporations are governed by the New York State Not-for-Profit Corporation Law
 - **Tax exempt**- under Section 501(c)(3) of the Internal Revenue Code - function of federal law
 - Organized and operated exclusively for purposes that are charitable, literary, educational, religious, scientific, etc.
 - Governed by Internal Revenue Code

Organization Chart for Nonprofit Corporations



The Board and Members

- Members are a legally defined separate body from the Board and may have power to govern the organization.
- Members may or may not have delineated voting rights – usually to elect the Board.
- You don't have to have members, but if you do, this needs to be clearly set forth in your governance documents and the organization needs to abide by all of the laws governing members.

Application for Tax-Exempt Status Under Internal Revenue Code §501(c)(3)

- 501(c)(3) status requires formal recognition from IRS (with limited exceptions) and issuance of a determination letter
- Primary benefits:
 - Can accept contributions that are tax-deductible to donors
 - Also eligible for exemption from state income or sales taxes and may be exempt from property taxes
- Primary tradeoffs:
 - No permissible private benefit or inurement
 - Restrictions on lobbying activities
 - Prohibition on political campaign activities

Issue 1: Corporate Governance

- Are board members fulfilling their **fiduciary duties**?
 - Duty of care
 - Duty of loyalty
 - Duty of obedience
- Managing **conflicts of interest**
 - Having and following a conflict of interest policy- **required** for NY NFPs
- Ensuring **bylaws** are legally compliant; followed; and reflect the organization's actual practices
- Implementing **other corporate governance policies**- e.g. conflict of interest policy; anti-harassment policy, whistleblower policy; record retention policy; gift acceptance policy
 - Policies set out in IRS Form 990

Issue 2: Registrations/Filings/Disclosure Requirements

- Most nonprofits are required to register with the New York State Attorney General's Charities Bureau – Form Char 410 and then Char 500
- IRS Form 990
- Registered to do business in other states?
- Disclosure Requirements- 1023 and 990s

Issue 3: Fundraising

- Properly documenting/acknowledging contributions?
- Any Commercial co-ventures?
 - Terms and registration requirements
- Multi-state solicitation requirements
 - do you fundraise in other states? If so, are you registered in those states?
- Rules regarding charitable gaming - raffles, bingo, etc.
- Required language for solicitation materials

Issue 4: Employment Law Concerns

- Employment laws change frequently; many nonprofits struggle to keep up
- **Employment law matters are a NFP's biggest potential source of liability**
- Common Employment Law Issues
 - Are your employees “Employees at will” – and what does it mean?
 - Do you have personnel policies? Have they been reviewed/updated by an attorney? **Are they followed?**
 - Do you have both employees and/or independent contractors? Are your workers properly classified?
 - Are your employees properly classified as exempt or non-exempt?

Issue 4: Employment Law Concerns (cont'd)

- Hiring
 - Good hiring practices?
 - Offer letters?
- Accommodations
 - Understanding obligations to make reasonable accommodations for employees for reasons of disability or religious belief
- Leaves of absence
 - Understanding state and federal family and medical leave laws
- Performance management and terminations
 - Conducting performance reviews; addressing and documenting poor performance or non-performance; severance agreements

Issue 5: Volunteers

- Are volunteers properly classified?
- Screening
- Volunteer Procedures and Manuals
- Releases
- Insurance

Issue 6: Intellectual Property

- Protecting names/logos
 - Understanding their common law rights
 - Registering trademarks or service marks at the state level, or at the federal level through a filing with the USPTO
- Protecting materials/curriculum/original works through copyright
 - Again, understanding their common law rights and how to protect their original works
 - Licensing agreements – many nonprofits earn revenue by licensing original program content to others
- Understanding fair use and avoiding inadvertent infringement of others' intellectual property

Issue 7: E-Commerce/Internet

- Have you had a legal review of your organization's website?
- Does your website have a terms of use policy? A privacy policy?
- Do you have permission to use materials on your website/social media?
- Understanding obligations when you collect and store certain types of information (personal information, credit cards, etc.)

Issue 8: Privacy

- Creating and implementing policies to protect confidential information
 - Clients
 - Donors
 - Employees
 - Others?
- Application of HIPAA to those who collect personal health information
- Social media usage by employees

Issue 9: Real Estate

- Do you lease property? Has the lease been reviewed by legal counsel?
 - Do you understand your options if/when a landlord fails to deliver services?
- Negotiating with contractors / landlords for renovations
- Need to renegotiate terms of a lease?
- Occasionally, purchases and sales of property

Issue 10: Corporate Changes

- Has your mission changed? Your service area? Does your certificate of incorporation need to be reviewed/revised?
- Are you considering a collaboration or merger with another organization? What form would that take?
- Is your organization winding down/stopping activities? Do you need to consider dissolution?

Issue 11: Contracts

- Ensuring their agreements are in writing and accurately reflect parties' understandings
- Understanding their obligations and rights - what's beyond the business terms?
- Understanding their options when business relationship doesn't work out

Upcoming Workshops and Webinars

- Nonprofit 101: How to Build Your Best Board and Run Your Best Board Meeting, May 22, 2024 (at noon and in the evening)
- How Effective Boards Balance DEI and Fiduciary Duties, June 5th, 2024
- Upsides, Downsides, and Alternatives to Starting a Nonprofit, June 11, 2024
- Artificial Intelligence (AI) Use by Nonprofits: Legal and Ethical Considerations, June 12, 2024

And More to Be Announced



For More Information/Resources

General:

To Apply to Become a Client:

<https://probonopartner.org/nonprofits-clients/request-legal-assistance/>

Learning Center:

<https://www.probonopartner.org/learning-center/>

Emails and Legal Alerts:

<https://www.probonopartner.org/signup-form/>

Resource Line:

<https://www.probonopartner.org/nonprofits-clients/legal-resource-helpline/>



Contact Us

Pro Bono Partnership
www.probonopartner.org

Maurice Segall
Program Director NY/Fairfield County, CT
(914) 328-0674 x323
msegall@probonopartner.org

Judy Siegel
Senior Staff Attorney
(914) 328-0674 x337
jsiegel@probonopartner.org

