

PROBONO[®]

P A R T N E R S H I P

Volunteer Lawyers Strengthening Nonprofits & Our Communities

Ethics, Transparency and Accountability for Nonprofits

Webinar

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In conjunction with
the Hartford Foundation for Public Giving

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What is Pro Bono Partnership?

Pro Bono Partnership provides free business and transactional legal services to nonprofit organizations in New York, New Jersey and Connecticut.

To be eligible, an organization must be:

- Nonprofit, tax-exempt (or seeking 501(c)(3) status);
 - In our service area (Connecticut, New Jersey, and New York's lower Hudson Valley and Long Island);
 - Serving the poor or disadvantaged; providing health and human services; protecting the environment; or teaching and promoting the arts; and
 - Unable to pay for legal services without significant impairment of program resources.
- More information at **www.probonopartner.org**

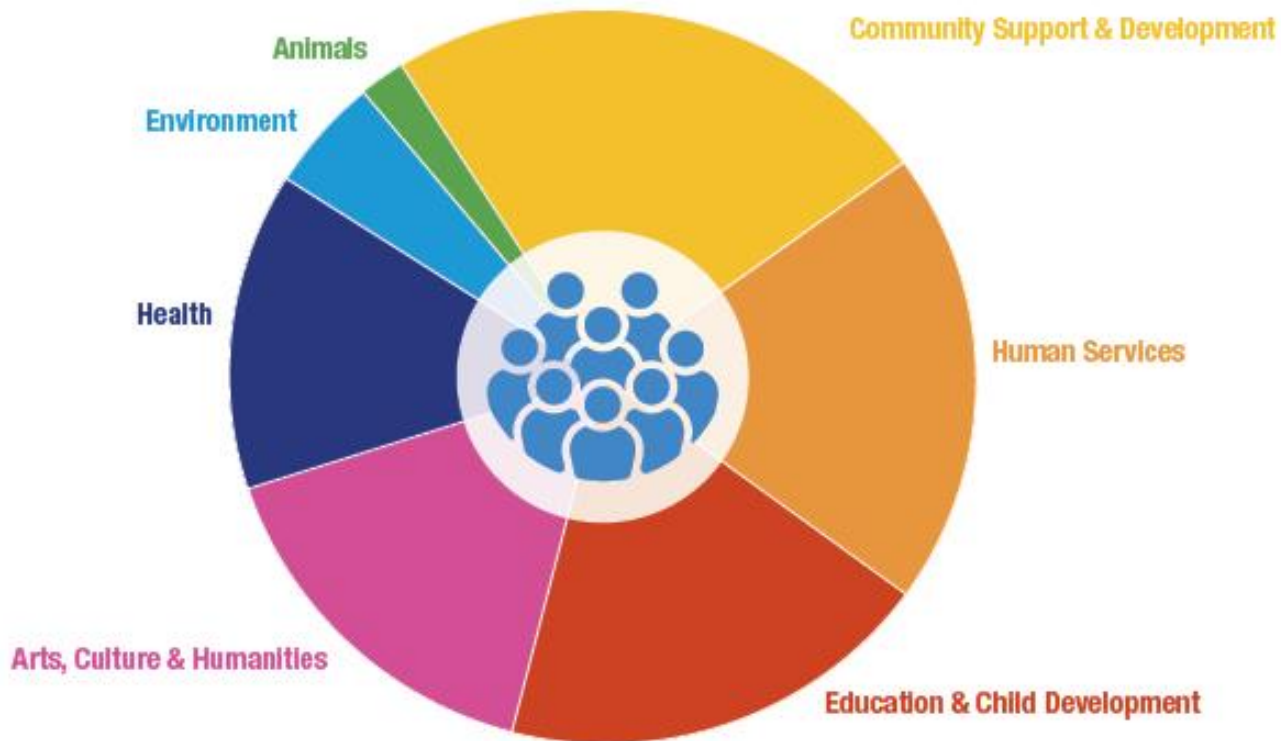


What Assistance is Available?

- Non-litigation, business law matters in areas such as:
 - Corporate structure and governance
 - Contracts
 - Employment law
 - Environmental law
 - Intellectual property law
 - Mergers, dissolutions, or bankruptcy
 - Real estate (including lease reviews)
 - Regulatory compliance (e.g., registration, annual reporting, charitable solicitation, lobbying)
 - Tax law and tax exempt status
- More information at **www.probonopartner.org**



98% of the Partnership's clients serve low-income individuals & provide important services in our communities



Ethics, Transparency and Accountability for Nonprofits

- POLL: Who is in the room?
 - Executive director, CEO, or other senior manager
 - Member of board of directors
 - Nonprofit consultant
 - other



Ethics, Transparency and Accountability for Nonprofits

- What are we really talking about?
- The 7 Major Ethical Hotspots
- Applicable Laws
- The Role of the Board
- Policies and Practices
- Oversight Agencies



What are we really talking about?

- Ethics: Moral principles that govern a person's or group's behavior; rules regarding what is right and what is wrong
- Good governance establishes an ethical culture
- Essential components of ethical governance:
 - Transparency: The degree to which information is observable by or available to outsiders. Addressed through reporting and disclosure, both mandatory and optional
 - Accountability: being responsible for one's actions; being willing to explain or justify decisions to stakeholders; being in compliance



What are we really talking about?

- “It takes 20 years to build a reputation and five minutes to ruin it. If you think about that, you’ll do things differently.”
(Warren Buffet)

What are we really talking about?

- Many factors affect ethical conduct, such as
 - Individual morality
 - peer pressure
 - Other
- Key: the culture or climate at the work place. The Board sets the tone at the top.



What are we really talking about?

- The Ethics Resource Center categorizes an organization as having a strong ethical culture when:
 - top management – including board – leads with integrity,
 - supervisors reinforce ethical conduct,
 - peers display a commitment to ethics, and
 - the organization integrates its values in day-to-day decision making.
- This is our goal.



The 7 Major Ethical Hotspots

- Compensation and Human Resources
- Conflicts of Interest
- Publications and Solicitations
- Financial Integrity
- Investment
- Accountability and Strategic Management
- Confidentiality/Data Protection



The 7 Major Ethical Hotspots

- Compensation and Human Resources
 - Importance of public perception and reality of the organization's values
 - Salaries
 - New York Public Library
 - Perks
 - United Way of America
 - Hiring and oversight
 - Travel reimbursement



The 7 Major Ethical Hotspots

- Conflicts of Interest
 - In this context, generally means doing business with an insider, benefiting improperly from one's relationship with a nonprofit, or otherwise putting ones own interest in front of the nonprofit's
 - Central Asia Institute



The 7 Major Ethical Hotspots

- Publications and Solicitations
 - Importance of honesty and accuracy
 - Red Cross after 9/11



The 7 Major Ethical Hotspots

- Financial Integrity
 - Oversight of Board
 - Financial engagement; fiscal policies
 - Appropriate use of funds (no waste, fraud, etc)
 - Use of gifts as intended by donors
 - No loans to directors, officers, staff
 - Board can be liable! Example: Lemington Home for the Aged
 - Development
 - Stamford Institute for Research on Women and Gender declined gift from the Playboy Foundation, but ACLU Women's Rights Project accepted (has since changed position)
 - Corporations seeking to use "affiliations" with nonprofits to improve ("green") their image



The 7 Major Ethical Hotspots

- Investment
 - Degree to which investment portfolio reflects organization's values
 - Rockefeller Foundation's divestment of all fossil fuel holdings



The 7 Major Ethical Hotspots

- Accountability and Strategic Management
 - Ethical imperative to further organization's mission and critically evaluate success
 - Purpose-driven leadership
 - Use resources in a principled way (“money held in public trust should be well spent, not just well-intentioned”)
 - Accountability to members/stakeholders
 - American Psychological Assn. – action re torture



The 7 Major Ethical Hotspots

- Confidentiality/Data Protection
 - Questions to ask:
 - Do we have the right to collect, use, transfer (if applicable), and store the information? And have we informed the individual of our processes and intent?
 - How long should we continue to keep this information, and are we using it for anything we didn't originally communicate or intend to?
 - Do we let people access the data we hold on them, change it if it is inaccurate, and have it deleted if they wish? (“the right to be forgotten”)?
 - Are we keeping this sensitive personal information securely and limiting who has access to it?



The 7 Major Ethical Hotspots

- Your Toolkit:
 - Code of Ethics (and related policies)
 - Legal compliance and public disclosure
 - Strong financial oversight
 - Responsible fundraising
 - Culture and training
 - “make it live”



Applicable Laws

- Federal
 - Sarbanes Oxley; limited applicability to nonprofits:
 - No retaliation against whistleblowers
 - No destruction of documents that could be used in an official investigation
 - Internal Revenue Code
 - Private benefit and private inurement
 - Excess benefit transactions
 - Form 990 – annual informational return (addressed in more detail on next slide)
 - Disclosure of 990s and 1023 upon request
 - Not required to share names of donors



Applicable Laws

- Federal, cont'd
 - Form 990, 990 EZ, 990 N (the e-postcard)
 - Form 990 and 990 EZ:
 - Questions re governance, examples:
 - Independent board
 - Loans to/from related parties
 - Minutes of board meetings
 - Form 990 reviewed by board prior to submission
 - Conflict of interest, whistleblower and document retention/destruction policy
 - Etc.
 - Use Schedule O
 - Public disclosure; part of public relations



Applicable Laws

- Connecticut
 - Nonprofit governance/operation – CT Revised Nonstock Corporation Act (Secretary of the State)
 - Board standard of conduct
 - Requirements/prohibitions in relation to governance (very few)
 - Conflicting interest transactions
 - Charitable Solicitation Rules (Dept. of Consumer Protection)
 - Registration/exemption
 - Req'd disclosures
 - Rules re charitable promotions
 - Other
 - Tax filings if any (Dept. of Revenue Services)
 - Lobbying (Office of State Ethics)



The Role of the Board/Governance

- Standard of Conduct for Individual Directors:
 - A director shall discharge his duties as a director, including his duties as a member of a committee: (1) In good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner he reasonably believes to be in the best interests of the corporation (C.G.S. §33-1104
 - Also sometimes framed as duties: the duties of care, loyalty and obedience



The Role of the Board/Governance

- Responsibilities of the Board
 - General administration
 - **Finance – Ensure adequate financial resources and strong and responsible financial management**
 - **Personnel**
 - Program/Strategic Planning
 - **Fundraising**
 - **Public Relations**
 - Board Self-Evaluation
 - **Setting the Tone at the Top**



Policies and Practices

- Generally:
 - Rules clarify expectations
 - Project responsible image
 - Reinforce core values
 - Deter misconduct
 - Reduce risk of legal liability
- How are the polices perceived and integrated? Are they enforced?



Policies and Practices

- Essential Written Policies
 - Conflict of Interest plus Annual Disclosure Statement
 - Whistleblower Policy
 - For larger organizations: Executive Compensation Policy
- Other Important Policies/Practices
 - Code of Ethics
 - Financial Control Policies
 - Reimbursement Policy (including travel)
 - Gift Acceptance Policy
 - Document Retention (and Destruction, optional) Policy
 - Confidentiality Policy
 - Investment Policy
 - Employment Policies
- Other Practices to Foster Environment of Integrity



Policies and Practices

- Essential Written Policies
 - Conflict of Interest Policy plus Annual Disclosure Statement
 - Addresses federal and state rules; Form 990
 - Goal: Prevent those with influence over organization's actions from benefiting personally from their position
 - IRS and state (and most templates) focus on financial conflicts only; feel free to address others
 - Elements:
 - Person with potential conflict must disclose the conflict when a transaction is being considered (called the "interested person")
 - Person with conflict does not participate in discussion (unless invited) or in vote
 - Board engages in research to learn about other deals available to organization
 - Board makes a determination re best interests of the organization
 - All the above steps are recorded in minutes
 - Policy reviewed and affirmed annually
 - Make sure everyone is aware
 - Identify new potential conflicts



Policies and Practices

- Essential Written Policies
 - Whistleblower Policy
 - Addresses federal and state rules; Form 990
 - Usually in the employment context (i.e., no adverse employment consequences for reporting wrong-doing)
 - Consider also addressing reporting of concerns in other contexts
 - Volunteers
 - Donors
 - Organizations that encourage reporting/complaints are (seen as) more transparent and accountable
 - Culture of ethics; key to success of all codes and standards of conduct



Policies and Practices

- Essential Written Policies
 - Executive Compensation Policy
 - IRS (excess benefit transaction rules) and Form 990
 - Assure that compensation (including benefits and perks) is reasonable
 - Available resources for comparables
 - Having a written policy makes clear that donations are being put to good use
 - Generally more important in larger organizations
 - Focus of IRS examination program
 - Generally not a good idea to tie salary to amount of money raised
 - Reality: compensation in nonprofit sector viewed differently than in for-profit



Policies and Practices

- Other Important Policies/Practices
 - Code of Ethics/Code of Conduct
 - Summarizes the policies and priorities that are important to the organization
 - The Code references other organization policies; can have a form that board members/employees sign to affirm they will adhere
 - Could include:
 - Personal and professional integrity
 - Mission
 - Governance
 - Conflicts of interest
 - Legal compliance
 - Responsible stewardship of resources and financial oversight
 - Openness and disclosure
 - Program evaluation
 - Inclusiveness and diversity
 - Integrity in fundraising and/or grantmaking (depending on the type of organization.)
 - Other areas of particular importance to your organization and field of interest
 - Can/should be part of employee/volunteer orientation & periodic reviews



Policies and Practices

- Other Important Policies/Practices
 - Financial Policies and Practices
 - Internal Financial Controls
 - Who is responsible for making journal entries & how often
 - Review and reconciliation of bank statements
 - Who has authority to approve expenses
 - Segregation of duties – having check signing, accounting, and opening and logging checks assigned to different people reduces the opportunities for fraud or error
 - Require key financial people to take annual vacation 2 weeks or longer
 - Etc.
 - Board's regular review of financial statements and Form 990
 - Approval of the budget, both at first and after revisions, is a responsibility of the Board
 - Periodic preparation and review of regular financial reports (rec. Budget-to-Actual)
 - Review Form 990 for completeness and accuracy
 - Financial audits
 - Connecticut requires organizations that receive more than \$1 million in gross revenues to conduct annual audits (increased from \$500K just last year)
 - If between \$500K - \$1M, can do a financial review instead



Policies and Practices

- Other Important Policies/Practices
 - Reimbursement Policy (including travel)
 - Federal tax law allows organizations to reimburse ordinary and necessary expenses incurred while carrying out the organization's activities
 - Could include travel, lodging, and meals
 - Should be a written policy so the reimbursement process is clear
 - Also needs to follow an "accountable plan" in order to not be taxed as compensation or income
 - Accountable plan – employee must adequately account for all business expenses and return any excess reimbursements
 - Gift Acceptance Policy
 - States what gifts/donations the organization cannot or will not accept
 - Creates uniformity in gift acceptance
 - Informs staff why certain gifts can't be accepted (potential liability, upkeep costs, lack of usefulness, etc.)
 - Donors whose gifts are rejected will be less offended if there is a written policy that they can see



Policies and Practices

- Other Important Policies/Practices
 - Document Retention (and Destruction) Policy
 - State and federal law; Form 990
 - Has always been the case that cannot destroy documents when legal action is on-going or threatened
 - Protects organization when it does destroy documents; can point to policy
 - Periodic review of documents provides a reminder of what the organization has done, teaches newer arrivals about the organization history, and could identify any documents that need to be updated or renewed
 - Having a set time to get rid of documents frees up storage space
 - Consider a retention policy/schedule without mandatory destruction of documents
 - Confidentiality Policy
 - Subject to accepted practices, do not share or trade donor names without the permission of the donor
 - Protect names and images of clients
 - Other clinical or industry-specific requirements (e.g., HIPAA)
 - Investment Policy
 - Who makes investment decisions
 - To what extent will investments be consistent with organization's mission and activities



Policies and Practices

- Other Practices to Foster Environment of Integrity
 - Statement of Core Values (featured on website)
 - Displaying a clear statement of the organization's values attracts employees and volunteers, encourages donations and community support, and provides a reference point to ensure that all transactions align with the values of the organization
 - Posting this on a website demonstrates a commitment to accountability
 - Can either be written to be completely unique to the organization or reference the statement of values of a larger organization
 - Voluntary disclosure on website – Form 990s on website; prompt release of 1023 if requested
 - Nonprofit organizations must disclose Form 990s and 1023s on request
 - Putting 990s on website makes it easier to respond to requests and increases transparency
 - Other information available on nonprofit's website
 - List of Board Members and Staff
 - Privacy Policy, etc.



Policies and Practices

- Other Practices to Foster Environment of Integrity
 - Honesty in solicitation materials and communication with donors about how gifts are used
 - Fundraising communication should be clear, accurate, and honest information about the organization
 - Honesty about the intended use of funds; do not make unrealistic promises
 - Manage and supervise fundraising activity conducted by contracted fundraising professionals
 - Strong communication with employees and volunteers
 - Solicit input from staff and volunteers when designing projects
 - Holding periodic public meetings
 - provide opportunity for constituents to interact with nonprofit
 - nonprofit can gather info about effectiveness of its message and mission
 - also, should monitor the satisfaction of program participants and constituents



Policies and Practices

- Other Practices to Foster Environment of Integrity
 - Make sure organization is following the corporate mission
 - Review mission statement and purposes
 - Amend certificate of incorporation and bylaws as needed
 - Consider conducting an Ethics Audit – idea from National Council of Nonprofits
 - Look at overall organization and specific policies
 - Review what laws apply to the organization and make sure board members & staff are aware of the laws
 - Evaluate whether there are shared values within the organization and whether they match any existing code of ethics/conduct
 - Communicating with other nonprofits (about lessons learned and best practices)
 - Stay informed about latest changes to regulations and new publications about nonprofit best practices



Oversight and Watch-dog Agencies

- IRS
- State Attorney General (could be multi-state)
- Dept. of Consumer Protection (same)
- BBB Wise Giving Alliance
- Charity Navigator
- Charity Watch
- GuideStar



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For More Information

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