

perspectives

January 2014

A publication from
Benesch Friedlander
Coplan & Aronoff LLP

MY BENESCH MY TEAM

Trends and topics in not-for-profit management

Not-for-Profit Spotlight



**St. Stephen's
Community House**

In every city, there is a place. A place so instrumental that the community could not imagine life without it. A place that provides a sanctuary for those in search of one and inspires hope where there seems to be none. That place is St. Stephen's Community House.

St. Stephen's Community House (St. Stephen's), a faith-based settlement house, has been brightening lives and strengthening families in Columbus since 1919 and is recognized nationally for providing quality community-based programs with measurable outcomes. As a hub for advancing self-sufficiency, St. Stephen's mission is to help its residents become independent through programs and services that strengthen individuals', and the surrounding communities', well-being. Agency programs help residents maximize their potential in the areas of social development, community organization, education and childcare.

St. Stephen's has always been driven by the needs of the community. In the early 1900s, St. Stephen's served as a settlement house, helping new immigrants learn the language, assimilate to the culture and acquire citizenship. As the needs of its community grew, so did St. Stephen's. While it continued to serve the needs of immigrants to the U.S. and Columbus as a settlement house, the organization eventually expanded to serve all of its community members, especially those most in need.

(continued on page 2)

Considerations in the Cloud: Managing the Risks



Sarah R. Stafford

Scenario: Your organization was served with a subpoena request for all board meeting agendas, minutes and financial reports for a certain time period. The subpoena also requested any communications among directors and officers relating to a certain time period of board activity. Responding to the request costs the organization more than expected to retrieve, review and produce the data, because your organization does not maintain its own email server, allows officers and staff to use "personal" email accounts (e.g., gmail or Yahoo mail) to conduct business, and emails board documents to board members using their respective personal or business (sometimes both) accounts. Now, your organization is evaluating options for centralized email and data management, including "cloud" options. What should you consider?

Cost-saving and flexibility are key reasons organizations are considering cloud computing for their IT infrastructure needs. From email hosting to data storage and security, using the "cloud"—or Internet-based services including software-as-a-service (SaaS), platform-as-a-service (PaaS) and infrastructure-as-a-service (IaaS) provided by third-party vendors—can offer practical solutions. But, those solutions come with legal implications. Care should be taken to understand cloud computing risk in your organization, including the risk of litigation costs and the risks associated with compliance with federal, state, local and foreign privacy and security laws, rules and regulations, and industry standards and other requirements. Your legal counsel can assist in evaluating and customizing your cloud contract so that these risks are shifted to the vendor if at all possible and to ensure that the vendor is itself compliant with applicable laws, standards and other requirements. As an initial step, consider the following areas when evaluating cloud service providers.

1. Record and data retention and destruction. An effective record and data retention and destruction policy that clearly spells out schedules for record preservation, deletion or destruction under applicable law should be in place for every organization, regardless of IT infrastructure or the use of cloud services. This type of policy is particularly important where cloud services are being used, because the third-party cloud services vendors should be required to comply with the policy when collecting, storing and transmitting organization data. An effective policy will always contain provisions pertaining to litigation hold procedures (i.e., important exceptions to scheduled record and data destruction that apply automatically in the scenario above). Having such a policy will help to mitigate the risk that records and data relevant to litigation are destroyed inappropriately and associated penalties and litigation costs.

Ask your prospective cloud service provider:

- What is its data retention/destruction schedule? (e.g., How far back can we retrieve emails if deleted by the user?) Is it consistent with the organization's policy? Is there a data volume storage limit?

(continued on page 2)



Not-for-Profit Spotlight

(continued from page 1)

Since 1965, St. Stephen's has focused its service in the Greater Linden area, weaving itself into the fabric of the community. In doing so, St. Stephen's strengthens its families with intentional social service programs.

St. Stephen's is touted as providing "womb to tomb care" in five core service areas, all of which have earned national accreditation from the Council on Accreditation and the National Association for the Education of Young Children. The core service areas provided by the organization are:

- Family Services—supporting families to self-sufficiency
- Youth Services—shaping at-risk youth into responsible, educated, productive and healthy citizens
- Community & Emergency Services—stabilizing and improving the overall quality of life in the community
- Senior Services—supporting older adults for a healthy and enhanced quality of life
- Childcare Services—ensuring children are prepared with the skills to achieve and maintain academic success from cradle to career

St. Stephen's is a point of pride for the Greater Linden area of Columbus and a stabilizing force in a transitional neighborhood, serving more than 30,000 residents annually. To learn more, visit www.saintstephensch.org.

Considerations in the Cloud: Managing the Risks

(continued from page 1)

- Is metadata (i.e., author, creation date, modification date) preserved in the backup data?
- Where/How is the backup data stored? What data security standards are in place, and how does the vendor ensure that data stored by the vendor is protected against unauthorized access or destruction? Is any kind of encryption or security applied?
- Are the security and privacy features consistent with what your organization requires?

2. Data organization. Ask your staff and board members to maintain folders in their email systems clearly labeled with a particular subject matter agreed upon ahead of time (e.g., "Exec. Director job search" or "Capital Campaign study"), or adopt uniform document filename standards. This permits efficient identification and retrieval of relevant data should the need arise. It can also streamline the scope of data collection should litigation arise, thus reducing volume (and costs). Consider implementing one of the many software-based tools that are currently available in the marketplace to assist with eDiscovery.

Ask your prospective cloud service provider:

- Will the email platform support organization of email by folders? How sophisticated is the search capability of the platform (i.e., searchable by keyword *and* date range)?
- Is a standard email platform being used (e.g., Microsoft Outlook) or is it a proprietary system? If a proprietary system, can email be exported in a format eDiscovery vendors can work with?
- Is there additional cost for searching for relevant email data or documents, or is that part of your standard services?

3. Data retrieval and preservation. When litigation arises, or when responding to a subpoena is necessary, a document destruction policy should be suspended and litigation hold procedures put in place to preserve potentially relevant data. The parameters of these steps should be discussed with your legal counsel. However, you will be relying on your cloud service provider as well. Make sure you understand the capability of the provider to implement litigation holds and preservation and find out if additional costs will be assessed. Mandate in your contract with your cloud service vendor that they comply in full with any litigation hold notice issued by your organization.

Ask your prospective cloud service provider:

- Can we suspend the provider's data destruction schedule to preserve data should litigation arise? How much will this cost?
- Are there additional costs with retrieving backup data?
- If the relationship with the provider ends, does the contract spell out how the customer can retrieve and maintain (in an accessible format) the data once hosted by the provider?

Additional Information

For additional information, please contact **Sarah R. Stafford** at sstafford@beneschlaw.com or (614) 223-9331.

United States V. Sperry: A Revived Threat to Owners, Directors, Managers and Directors of Distressed Organizations



Caroline E. Richardson

Not-for-profit entities are not immune from the business cycles, risk of lawsuits and other threats to solvency. Managing the collapse of an organization has always required diligence, but recent IRS enforcement initiatives

and a recent District Court decision have made these situations even more troublesome. During the wind-down of a failed organization, there has generally been no personal liability for managers who have chosen to pay some vendors over others (except for certain limited statutory exceptions such as trust fund taxes). In the not-for-profit world, the policy encourages community leaders to volunteer to serve on boards. While the Internal Revenue Code's lien priority and personal liability limitations have created some comfort and certainty, there has long been a hidden weapon in the government's arsenal that has rarely left its holster. The Federal Insolvency Statute, 31 U.S.C. § 3713, is a rarely invoked but potentially devastating collection tool. The statute creates liability for responsible persons of insolvent companies who direct payment to unsecured creditors while obligations to the U.S. government are left unpaid.

The statute has not been materially changed since it was enacted in 1797. The statute does not differentiate between legitimate business expenses, expenses necessary to preserve going concern value, the expenses necessary to preserve the liquidation value of organization and fraudulent transfers. The plain meaning of the statute is very harsh. If any creditor is paid while the government remains unpaid, the individuals directing the payment may be held liable to the government to the extent of the payments. For instance, an executive director or board member who approves payroll and expense payments of \$1 million in order to keep an organization operating while he finds a

buyer or works on a bankruptcy solution could be liable for the \$1 million in payments made for ordinary and necessary operating expenses. Responsible officers are generally only pursued for the trust fund portion of employment taxes. The corporate side of employment taxes, income taxes and other government claims have not been assessed against the business owners or its managers. Statute 26 U.S.C. § 6672 creates personal liability for owners, employees and agents who: (1) are deemed to be *responsible* for the collection and payment of withholding taxes, and (2) *willfully* fail to remit the withheld money to the government. The theory behind the liability is that the money was collected from employees on behalf of the government, and the failure to pay the withheld funds is akin to conversion. An employee who becomes a target of a responsible person assessment bears the burden of disproving liability by a preponderance of the evidence. The targets of responsible owner liability claims include owners, directors, managers, accountants and even payroll agents. This statute often encourages managers of distressed organizations to keep trust fund payments current while corporate liabilities are not paid. It also gives them some comfort that their efforts to preserve going concern value or provide for an orderly liquidation when a large tax liability cannot be paid will not lead to personal liability, so long as the trust fund taxes are kept current during their supervision.

The limited liability for business tax liabilities is now in doubt after a recent Indianapolis District Court decision. In *United States v. Sperry*¹, the Court held that under 31 U.S.C. § 3713, the government could recover non-trust fund employment taxes to the extent that the company remitted payments to the company's unsecured creditors. The facts in *Sperry* are common to many failed businesses and not-for-profit organizations. Sperry owned Monroe County Title Company (MCTC). In June 2008, the company suffered substantial revenue losses from which it could not recover. It closed

in February 2010. In the 31 months that the business floundered, Sperry paid operating expenses of the company, salaries, personal expenses, his salary and some debts which he personally guaranteed. He failed to pay employment taxes and was personally assessed for the trust portion of this liability. He paid the trust fund liability and was then sued by the government to recover the non-trust fund taxes under the Federal Insolvency Statute.

The District Court held that where a representative of an insolvent business enterprise exercises his authority to pay *anyone* before the government, that representative can be held personally responsible for the amounts paid (up to the amount due the government). If more courts follow the *Sperry* analysis and application of 31 U.S.C. § 3713, the structured wind-down of organizations outside of bankruptcy may pose unreasonable risk for managers, directors and liquidation agents. The current best practice of liquidation agents has historically included deferring payment of old tax debt to ensure that current taxes, wages and other essential operating expenses are paid to preserve the value of the entity for the benefit of all creditors, including the government. Under the holding in *Sperry*, the liquidation agent cannot spend the first dollar toward asset preservation unless there is sufficient cash on hand to pay the tax debt in full. The statute, as applied in *Sperry*, leaves no room for payment of insurance, security and utilities necessary to prevent complete loss of the corporation's assets or even the accounting services necessary to allow the government to assess an accurate claim.

¹ 2013 WL 1768664 (S.D. Ind. Apr. 24, 2013).

Additional Information

For additional information, please contact **Caroline E. Richardson** at crichardson@beneschlaw.com or (317) 685-6121.



HPIO Releases “The Online Guide to Evidence-Based Prevention”

An exciting new resource and policy tool is available from the Health Policy Institute of Ohio (HPIO), [“The Online Guide to Evidence-Based Prevention.”](#)

This guide provides policymakers, funders and prevention planners with a common understanding of “evidence-based practice” and assembles additional tools to identify effective strategies to prevent Ohio’s high-priority health problems. It also compiles a convenient list of Ohio preventative health organizations and statewide plans for population health.

HPIO is a not-for-profit organization dedicated to providing nonpartisan health policy analysis and information to policymakers. For more information about HPIO and health policy in Ohio, visit the [HPIO Homepage](#).

Board Membership & Ethics—Fulfilling Fiduciary Obligation to the Letter and Within the Spirit of the Law



James L. Ervin, Jr.

Service is a cornerstone to leadership and part of the foundation for a well-lived life. As the cultural anthropologist and educator Margaret Mead said, “[N]ever doubt that a small group of thoughtful, committed citizens can change the world; indeed, it’s the only thing that ever has.” Whether demonstrated by serving meals at a homeless shelter, tutoring young people, donating blood or helping the little old lady or man across the street, the service of and for others transcends race, religion, gender, sexuality, color, creed, national origin, political persuasion, age or education. Service exemplifies our humanity and, as Mead implied, a commitment to change the world for the better. This may be why many of us seek out opportunities

to support causes near and dear to our hearts or step forward and participate when the need arises. Yet, even the best of intentions cannot be manifest without some guideline for ensuring ethical conduct, care, loyalty and fulfillment of one’s duty. This is especially true for those of us who fulfill our desire to serve through involvement on a board of a not-for-profit organization.

This article is focused on the uniqueness of not-for-profit board service, which is generally focused on the fulfillment and sustainability of meeting the altruistic ideas and mission of an organization. This typically involves serving the public or a public purpose. In many instances, the direction, strategic planning and continued existence of a not-for-profit organization is dependent on the strength of its board of directors (the board) – the small group of thoughtful, committed citizens. As a result, an organization’s success can be linked to the strength of its board, and how each board member acknowledges, understands and meets his or her fiduciary duty to the organization.

It can be difficult to understand one’s role as a board member of a not-for-profit organization. Misconceptions regarding corporate governance, duties, authority and obligations abound. Further, it is difficult to know whether a board member is a cheerleader, fundraiser, strategic planner or all three, or none. The key to answering these questions, and the key to an effective not-for-profit organization and its corporate governance, begins with its board members and their knowledge of their roles. The board’s role can be categorized threefold: first, oversight of the administration of the organization and the advancement of its mission statement; second, partnering with, enabling and supporting the chief executive senior management/leadership; and third, active participation in the organization’s goal and objectives.

Oversight of the administration of the organization and the advancement of its mission

The business affairs and mission of the organization are managed under the oversight of the board. The basic responsibility of the board is to exercise its good faith and reasonable judgment with the care that an ordinarily prudent person in a like position would use under similar circumstances to further the best interest of the organization. [See R.C. § 1702.30(A) and (B).] The board can satisfy its responsibility through exercising good faith, a duty of care, a duty of loyalty, knowledge and understanding of the organization’s programs and services, and maintaining its fiduciary duty. The primary manner in which the board demonstrates its good faith, demonstrates its knowledge and understanding, and fulfills its fiduciary duties is through advancing and sustaining the organization’s mission.

The advancement and sustainability of an organization’s mission begins with the board understanding the mission. This requires board members to read, learn and understand the mission of the organization both in its provision of services and/or programming, and in regard to its altruistic, philosophical and/or morale objectives. In addition to ensuring that the board knows and understands the organization’s mission, it is important for the board to periodically review the mission and ensure that it is meeting the needs of the clients that are served and the changing times of the community in which the organization functions. The mission, as manifest in the mission statement, should clearly express the organization’s goals, means and primary constituents served. An adequate statement of mission should serve as a guide to organizational

planning, board and staff decision making, volunteer initiatives and setting priorities among competing demands for scarce resources. It sets the stage for developing fundraising strategies and strategic planning as well as the board's many other responsibilities.

In addition to its mission, the board should read, understand, ask questions about and ensure viability and legality of the organization's by-laws. The by-laws serve as the organization's governing documents—its adopted regulations, ordinances, rules or law. The by-laws define the rights and obligations of the board, senior leadership (i.e., officers) and day-to-day operations, including, but not limited to, receipt, use and maintenance of funds, meetings, voting, incurring liabilities and termination. While Ohio not-for-profit corporations can be governed by R.C. § 1702 *et seq.*, R.C. § 1702 provides a general exception to an organization's regulations—when and where by-laws have been adopted and enacted. Therefore, it is vitally important for board members to adhere to the organization's by-laws for guidance as to authority, conduct and corporate governance.

Oversight of the organization also requires that board members fulfill the mission through conduct performed in good faith, while maintaining their duty of care and loyalty. Good faith is not a *per se* independent duty; rather, it is a condition of the fundamental duty of loyalty. It is important for board members to remember that when they commit to serve, first and foremost they must do so with a commitment to the best interest of the organization. Each board member must exercise his/her independent judgment, vote and actions. [See R.C. § 1702.30(C).] This means avoiding controversies, conflicts and issues whether personal, economic or political. [See R.C. §§ 1702.30(D) and 1702.55 (under Ohio law, when a director breaches his or her duty of good faith, he or she can be subject to liability in damages).] “[I]n determining what a director reasonably believes to be in or not opposed to the best interest of the [not-for-profit] corporation, a director ... *may consider* any of the following:

- (1) [t]he interest of the employees, suppliers, creditors and customers of the corporation;
- (2) [t]he economy of this state and of the nation;
- (3) [c]ommunity and societal considerations;
- (4) ... long-term and short-term best interests of the [not-for-profit] corporation, including, but not limited to, the possibility that those interests may be best served by the continued independence of the [not-for-profit] corporation.

[R.C. § 1702.30(E) (Emphasis added).] A good rule of thumb is that if a board member must question his or her conduct, even for a second, then it is better to not engage in the conduct. The organization and its mission come first.

The duty of care involves a director's responsibility to exercise appropriate diligence when making a decision and overseeing and guiding senior leadership. As part of a director satisfying his or her duty of care, the director can and should utilize, and when necessary rely upon, all the information, data, financial reports, expert testimony or opinion, statements and materials that permit the director to make informed decisions. This also requires a director to: attend meetings regularly; know the programs and services the organization provides as well as the full organization team and how funding and finances of the organization operate; read board materials; and invest time outside of board meetings to understand the organization's marketplace, social, economic, political and cultural environment. The director must question and seek out answers to advance the organization's cause and purpose. By exercising his or her duty of care, the board member can ensure that his or her actions and conduct are being performed in good faith.

Additional Information

For additional information, please contact **James L. Ervin Jr.** at jervin@beneschlaw.com or (614) 223-9325.

Automatic Revocation— How to Have Your Tax-Exempt Status Retroactively Reinstated

Organizations whose tax-exempt status was automatically revoked because they did not file the required 990 series returns or notices for three consecutive years can apply for reinstatement of their tax-exempt status.

In a new Revenue Procedure 2014-11, the IRS provides a great overview explaining the four procedures a charity or not-for-profit organization may use to apply for reinstatement. The piece covers the following situations and can be found in its entirety [here](#).

- *Streamlined Retroactive Reinstatement*
- *Retroactive Reinstatement Process (Within 15 Months)*
- *Retroactive Reinstatement (After 15 Months)*
- *Post-Mark Date Reinstatement*
- *What's a Reasonable Cause Statement?*
- *Pending Reinstatement Applications and Previously Granted Applications*
- *Avoid Being Automatically Revoked Again – File Annual Returns*

Managing Legal Liability Associated with Volunteers



Heather E. Baird

Many not-for-profit organizations use and encourage the participation of unpaid volunteers to further their worthy missions. Indeed, volunteer participation is essential to the efficient operation and success of many

such organizations. According to the Urban Institute, in 2012 nearly 26.5% of American adults donated their time by volunteering. In doing so, they contributed 12.7 billion hours and an estimated \$259.6 billion in added value. While most volunteer time (26.1%) was spent on administrative and support activities, many volunteers (20%) provided social services like food preparation, collection and delivery of donations, as well as direct care, education, counseling and mentoring. Not-for-profit organizations also often have volunteer boards of directors. Needless to say, not-for-profits may be responsible for overseeing volunteers performing a wide variety of activities on their behalf.

While essential to the organizations they serve, volunteers are a source of potential liability. A not-for-profit organization that critically assesses its own risk related to its volunteer activities can better manage and minimize potential liabilities. State law controls many aspects of volunteer liability—the details about how and when liability may exist varies across the country. Broadly, however, there are three areas of concern for a not-for-profit organization using a volunteer workforce: (1) liability of a volunteer to a third party for acts done while volunteering; (2) liability of an organization to third parties for harmful acts by volunteers; and (3) liability of an organization to a volunteer for an injury sustained by the volunteer while providing services. An overview of each of these is presented below along with some tips to manage the risk.

Liability of individual volunteers to third parties

The most robust legal protections apply to the individual liability of volunteers. The Federal Volunteer Protection Act (42 U.S.C. § 14503), passed in 1997, generally absolves not-for-profit organization volunteers from liability for harm caused when (1) the volunteer was acting

within the scope of his or her responsibilities; (2) the volunteer was properly licensed, certified, or otherwise authorized to act when appropriate or required; (3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct or a conscious, flagrant indifference to the rights or safety of the third party harmed; and (4) the harm was not caused by a vehicle for which insurance or a license is required to operate. The Volunteer Protection Act provides a minimum level of liability relief for not-for-profit volunteers across the country. Most states have legislation providing greater or additional protections for volunteers.

Risk Tips

- *Consider liability insurance.* Potential volunteers may find this an attractive incentive when considering whether to work with an organization. Some policies may cover, or provide the option to cover, volunteers acting on behalf of the insured organization. Officer and director volunteer insurance is often distinct from insurance for other types of volunteers. Always review insurance policies closely so you know exactly what is covered.
- *Provide support materials to volunteers.* Orientation, training, a handbook and a chain of command where questions or issues may be reported can better ensure a volunteer is prepared for his or her responsibilities and decrease the chance of injury to a third party.

Organization liability for injuries caused by volunteers

Not-for-profit organizations were once insulated from a great deal of liability by charitable immunity laws. Most states have now completely, or partially, repealed these immunity laws because barring victims injured by the negligent acts of not-for-profit organizations from seeking compensation was determined to be bad policy. Today, in most jurisdictions, an organization may be liable for injury caused to third parties as a result of a volunteer's action when the organization was aware, or should have been aware, of a potential for harm.

Risk Tips

- *Prepare detailed volunteer job descriptions.* A job description clarifies what activities the volunteer is authorized to perform on behalf of the organization, thus decreasing

the chance an organization will be held responsible for any unanticipated actions by volunteers.

- *Consider an indemnification agreement.* A volunteer executing an indemnification agreement agrees to hold the organization harmless for his or her acts. This type of contract term is usually enforceable for unintentional injury, but may dissuade individuals from volunteering for fear of personal liability.
- *Consider purchasing liability insurance.* Insurance policies vary substantially in terms of who and what activities are covered. Multiple policies may be necessary. For example, an organization may carry both commercial general liability and directors and officers liability insurance. Again, always review insurance policies closely so you know exactly what is covered.
- *Develop policies and procedures.* Policies and procedures governing the work of volunteers ensure that there are uniform standards regarding volunteer roles, expectations and training.
- *Assess your risk.* Create a risk management team that will identify and manage areas where liability is a significant concern to the organization.

Organization liability for injury to volunteers

When a volunteer is injured while providing services, the organization for which he or she was working may be liable. Injuries include physical harm such as medical bills incurred after a car accident that happened while an individual was volunteering. Volunteers may be able to sue in instances other than physical injury. For example, many federal and state laws that protect employees also apply to unpaid volunteers. Not-for-profit organizations need to evaluate all types of potential harm to volunteers, including possible damages from employment-type claims.

Risk Tips

- *Consider a liability waiver.* A volunteer executing a liability waiver agrees to forgo any claims against the organization in the event the volunteer is physically injured while providing services. As additional protection, program participants (those

individuals receiving services provided by the organization and its volunteers) may also be asked to waive the right to sue if they are injured. Be aware that volunteers and participants may not be willing to agree to such a waiver and that all waivers may not be enforceable. A waiver is more likely to be enforced by a court if it is specific and reasonable given the volunteer's activities.

- *Provide support materials to volunteers.* Orientation, training, a handbook and a chain of command where questions or issues may be reported all decrease risk by minimizing the chance of an incident in the first place. In the event of an accident, these support materials decrease the likelihood that a volunteer will seek recovery from the organization.
- *Avoid providing anything of value to volunteers as compensation for their work or time.* A not-for-profit organization should avoid accidentally creating an employer-employee relationship with a volunteer because of the myriad of associated obligations like wage and hour requirements, overtime pay and other benefits to which employees are entitled. Volunteers are permitted to be reimbursed for expenses actually incurred while undertaking volunteer activities without forming an employer-employee relationship with the organization.
- *Review employee-volunteer practices.* Nonexempt employees should generally not perform volunteer duties for their employer-organization that are the same as, similar or related to their regular job responsibilities.
- *Manage volunteers in a fair and non-discriminatory manner.* Certain employment laws, including nondiscrimination statutes, have been found to apply to volunteers that are not otherwise considered employees.
- *Consider purchasing liability insurance.* Employment practices liability insurance is available to not-for-profit organizations.

Additional Information

For additional information, please contact **Heather E. Baird** at hbaird@beneschlaw.com or (614) 223-9368.

Optional Expedited Process for Section 501(c)(4) Applications (120 Days Old as of May 28, 2013)

An [optional expedited process](#) is available for certain Section 501(c)(4) applicants. If your organization's application has been pending for more than 120 days as of May 28, 2013, and your organization's activities involve possible political campaign intervention or issue advocacy, you may receive a Letter 5228, Application Notification of Expedited 501(c)(4) Option.

As of December 23, 2013, this optional, expedited processing is being offered to all Section 501(c)(4) applicants whose applications indicate that the organization may be involved in political campaign intervention or in providing private benefit to a political party and that otherwise do not present any issue with regard to exempt status.

This [webpage](#) is for organizations who were eligible for the original optional expedited process. If you are eligible for the expanded optional expedited process offered on December 23, 2013, see [additional information](#).

If you receive Letter 5228

You will be able to self-certify your organization if you represent to the following:

- Your organization devotes 60% or more of both spending and time to activities that promote social welfare as defined by Section 501(c)(4).
- Your organization devotes less than 40% of both spending and time to political campaign intervention.
- Your organization ensures the above thresholds apply for past, current and future activities.

Self-certify your organization

Please review Letter 5228 and follow the instructions. Sign and return pages 4 and 5 within 45 days from the date of your letter. The IRS will send you a favorable determination letter within two weeks after it receives your signed representations.

If you think you should have received a letter

If you did not receive Letter 5228 but believe your organization is eligible for the expedited 501(c)(4) option because your case was older than 120 days old as of May 28, 2013, and involved the issues discussed above, you should make sure you meet the eligibility criteria listed in Letter 5228, then call (877) 829-5500.

Events

Benesch & Howard Wershbale Present Not-for-Profit Workshops in Cleveland and Columbus

Benesch teamed up with Howard Wershbale & Associates to host workshops for not-for-profit organization employees and board members on January 21 in Columbus and January 23 in Cleveland. More than 200 people attended the two workshops. Benesch's [Martha J. Sweterlitsch](#) and [Jessica N. Angney](#) presented.

Association of Fundraising Professionals, Indiana Chapter Brown Bag Lunch

Date: February 5, 2014

Time: 12:00–1:15 P.M.

Topic: “Social Media, Storytelling and Snowmen—How to Distinguish Your Organization Online.” Attendees will learn how to better utilize social media, technology and storytelling to make their organization stand out online.

Presenter: Jeff Stanger, Cause Geek/The Fund Raising School

Location: Keep Indianapolis Beautiful, 1029 Fletcher Ave., Indianapolis

Registration: Please RSVP to Sara Nash at afpic@nashams.com with Subject: Feb Brown Bag.

Association of Fundraising Professionals, Central Ohio Chapter Luncheon

Date: February 11, 2014

Time: 11:00–1:30 P.M.

Topic: “What the CEO Needs from Development and What Development Needs from the CEO—I’ve Looked at Life from Both Sides Now”

Presenter: Bob Ramin, CEO, Washington Animal Rescue League

Location: Jewish Community Center 1125 College Ave., Columbus, OH 43209

Registration: info@centralohioafp.org or (614) 231-2731

Lorman Education Services—Live Not-for-Profit Webinar

Date: June 24, 2014

Time: 1:00–2:30 P.M.

Topic: “Tax Treatment of Charitable Fundraising”

Presenter: Martha J. Sweterlitsch, Chair of Benesch’s Not-for-Profit Team

Registration: For additional information please contact Megan Pajakowski at (216) 363-4639 or mpajakowski@beneschlaw.com



Friend us on Facebook:
www.facebook.com/Benesch.Law



Follow us on Twitter:
twitter.com/BeneschLaw



Subscribe to our YouTube Channel:
www.youtube.com/user/BeneschVideos