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# Video: Representing Charities: Profit v. Non Profit

Adam Goldberg

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**Shepard Broad College of Law**

**Law Center Plus: Continuing Your Legal Education**

**Charities for Fun & Profit: Serving and Representing Them**

**Friday, June 16, 2017  
7:30 am – 9:30 am  
3305 College Avenue  
Ft. Lauderdale, FL 33314**

Law Center Plus  
Charities for Fun and Profit: Serving and Representing Them

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Tax Exempt Organizations for Fun and Profit; Serving and Representing  
By: Adam Scott Goldberg, J.D., LL.M.  
Krause, Goldberg, Revis & Hervas P.A.  
June 16, 2017

- I. Introduction
  - A. Tax Section of the Florida Bar
  - B. Real Property, Probate and Trust Law Section (reptile)
  - C. Public Interest Law Section
  
- II. The Fun Part; Serving as a Board Member
  - A. Example
  - B. What to request
    - a. Articles of Incorporation which should contain:
      - 1. Name
      - 2. Duration
      - 3. Purpose
      - 4. Principal Office
      - 5. Registered Agent including acceptance, address and signature
      - 6. Board of Directors
      - 7. Non-Stock Basis
      - 8. Events and Assets on Dissolution
      - 9. Prohibited Transactions
      - 10. Bylaws
      - 11. Incorporator's Name and Address and indemnification
      - 12. Amendment of Articles
    - b. Bylaws which should contain:
      - 1. Information on Directors, including responsibilities, election, terms, resignation and removal
      - 2. Information on Officers, including responsibilities, election, terms, resignation and removal
      - 3. List, makeup and purpose of committees
      - 4. Membership issues (if appropriate)
      - 5. Access to books and records
      - 6. How to amend bylaws
      - 7. Meeting and Notice Requirements

8. Quorum requirements
  9. Voting procedures
  10. Mission and Purpose statement
  11. Requirement of Roberts Rules of Order
  - c. Internal Revenue Service Form 990 for the last completed fiscal year
    1. 990
    2. 990-PF
    3. 990-EZ (receipts less than \$200K and assets less than \$500K)
    4. 990-N (the postcard, receipts less than \$50K)
    5. 990-T
  - d. Copy of the exemption letter from the Internal Revenue Service
  - e. Most recently filed corporate annual report from state of incorporation
  - f. List of Board Responsibilities
  - g. List of Existing Officers
  - h. List of Existing Board Members
  - i. Mission Statement
  - j. Copy of the most recent Audit/Budget Financial Report
  - k. Copy of the FDACS Solicitation of Contributions Registration Application
    1. Form DACS10100E
    2. Must be re-filed annually
    3. Can now be filed electronically (new in 2016)
  - l. Copy of Florida Sales Tax Exemption Certificate
    1. Generally for 501(c)(3) Organizations only
    2. Form DR-5
    3. Good for 5 years
- C. Board Orientation
- a. Is there one?
  - b. Did you meet the officers and the CEO?
  - c. What are your financial obligations?
  - d. What are your time obligations?
  - e. Are there any conflicts of interest?
  - f. Is it an advisory board or a governing board?

- D. Board Liability
  - a. Business Judgement Rule
    - 1. Good faith
    - 2. Due care
    - 3. Prudence
    - 4. No abuse of discretion
  - b. Potential Liability Risks
  - c. Indemnification, Florida Statute 617.0834
  - d. Florida Not for Profit Corporation Act
  - e. D&O or E&O Liability Policies
  - f. Private Inurement and Excess Benefits
  - g. Penalties for Violations
- E. How to read an IRS Form 990
- F. What to look for in Financial Statements
  - a. Days of cash
  - b. Accounts Payable
  - c. Accounts Receivable
  - d. Reserves and Restricted funds

### III. The Profitable Part; Representing Tax Exempt Organizations with their Legal Issues

- A. Example
- B. Legal Issues Faced by Charities
  - a. Tax
    - 1. Local taxes like property tax or business license
    - 2. State taxes like income and inheritance (not for Florida)
    - 3. Federal taxes like income and transfer tax
  - b. Governance
    - 1. Record retention policies
    - 2. Investment policies
  - c. Employment and Workers Compensation
    - 1. Full time vs. part time vs. independent contractor
    - 2. Exempt vs. non-exempt
    - 3. Executive compensation: Rebuttable presumption test of I.R.C. Section 4958; Should review comparable salaries every 3 years

- d. Contract
  - 1. Supplier Agreements
  - 2. Event Contracts
- e. Pension / retirement / benefit issues
  - 1. Defined benefit plan vs. defined contribution plan
  - 2. 403(b) plans and 457 plans
- f. Landlord Tenant
- g. Real Estate
- h. Probate and Planned Giving
  - 1. Wills and trusts
  - 2. Beneficiary designations
  - 3. Gift acceptance policies
  - 4. Naming and recognition policies
- I. Arts and Entertainment
- j. Creation, Merger and Dissolution
- k. Patent and Trademark
- l. Lobbying
  - 1. Lobbying imitations
  - 2. Candidate support is outlawed for almost all tax exempt organizations except veterans organizations
- m. Administrative and Governmental Affairs
- C. Creating Tax Exempt Organizations
  - a. What is the process to become tax exempt?
    - 1. Form 1023 EZ
      - i. Cost is \$275- updated to \$225 06-16-17
      - ii. Must be filed electronically
      - iii. IRS claims they will be giving extra scrutiny to Form 1023EZ
      - iv. Could take as little as 21 days to get approval
      - v. Is a public record
    - 2. Form 1023
      - i. Cost is \$400 or \$850
      - ii. IRS claims it takes 110 hours to complete
      - iii. IRS has 270 days to process

- iv. Is a public record
  - 3. Form 1024
    - i. Cost is \$400 or \$850
    - ii. IRS has 270 days to process
    - iii. Is a public record
  - 4. Examples of Organizations that would file Form 1024
    - 501(c)(1) - Federal Credit Union
    - 501(c)(4) - Rotary Club
    - 501(c)(6) - Chamber of Commerce
    - 501(c)(10) - Fraternities and Sororities
    - 501(c)(11) - Teacher Retirement Fund Associations
    - 501(c)(13) - Cemeteries
    - 501(c)(19) - Present or Past Armed Forces Organizations
    - 501(c)(20) - Prepaid Legal Plan Organizations
- D. What is the difference between a Calendar Year and a Fiscal Year?
  - a. Many charities use July 1<sup>st</sup> to June 30<sup>th</sup>
  - b. Tax years can be changed
  - c. Tax returns are due 4.5 months after the close of the tax year
  - d. Two three month extensions of time to file are available using Form 8868

#### IV. Conclusion



#### ***RULE 4-1.6 CONFIDENTIALITY OF INFORMATION***

**(a) Consent Required to Reveal Information.** A lawyer must not reveal information relating to representation of a client except as stated in subdivisions (b), (c), and (d), unless the client gives informed consent.

**(b) When Lawyer Must Reveal Information.** A lawyer must reveal such information to the extent the lawyer reasonably believes necessary:

- (1) to prevent a client from committing a crime; or
- (2) to prevent a death or substantial bodily harm to another.

**(c) When Lawyer May Reveal Information.** A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

- (1) to serve the client's interest unless it is information the client specifically requires not to be disclosed;
- (2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and client;
- (3) to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved;
- (4) to respond to allegations in any proceeding concerning the lawyer's representation of the client;  
or
- (5) to comply with the Rules Regulating The Florida Bar.

**(d) Exhaustion of Appellate Remedies.** When required by a tribunal to reveal such information, a lawyer may first exhaust all appellate remedies.

**(e) Limitation on Amount of Disclosure.** When disclosure is mandated or permitted, the lawyer must disclose no more information than is required to meet the requirements or accomplish the purposes of this rule.

#### **Comment**

The lawyer is part of a judicial system charged with upholding the law. One of the lawyer's functions is to advise clients so that they avoid any violation of the law in the proper exercise of their rights.

This rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See rule 4-1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, rule 4-1.9(c) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client, and rules 4-1.8(b) and 4-1.9(b) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See terminology for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs

this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

The principle of confidentiality is given effect in 2 related bodies of law, the attorney-client privilege (which includes the work product doctrine) in the law of evidence and the rule of confidentiality established in professional ethics. The attorney-client privilege applies in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules Regulating The Florida Bar or by law. However, none of the foregoing limits the requirement of disclosure in subdivision (b). This disclosure is required to prevent a lawyer from becoming an unwitting accomplice in the fraudulent acts of a client. See also Scope.

The requirement of maintaining confidentiality of information relating to representation applies to government lawyers who may disagree with the policy goals that their representation is designed to advance.

### **Authorized disclosure**

A lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation, except to the extent that the client's instructions or special circumstances limit that authority. In litigation, for example, a lawyer may disclose information by admitting a fact that cannot properly be disputed or in negotiation by making a disclosure that facilitates a satisfactory conclusion.

Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

### **Disclosure adverse to client**

The confidentiality rule is subject to limited exceptions. In becoming privy to information about a client, a lawyer may foresee that the client intends serious harm to another person. However, to the extent a lawyer is required or permitted to disclose a client's purposes, the client will be inhibited from revealing facts that would enable the lawyer to counsel against a wrongful course of action. While the public may be protected if full and open communication by the client is encouraged, several situations must be distinguished.

First, the lawyer may not counsel or assist a client in conduct that is criminal or fraudulent. See rule 4-1.2(d). Similarly, a lawyer has a duty under rule 4-3.3(a)(4) not to use false evidence. This duty is essentially a special instance of the duty prescribed in rule 4-1.2(d) to avoid assisting a client in criminal or fraudulent conduct.

Second, the lawyer may have been innocently involved in past conduct by the client that was criminal or fraudulent. In such a situation the lawyer has not violated rule 4-1.2(d), because to "counsel or assist" criminal or fraudulent conduct requires knowing that the conduct is of that character.

Third, the lawyer may learn that a client intends prospective conduct that is criminal. As stated in subdivision (b)(1), the lawyer must reveal information in order to prevent such consequences. It is admittedly difficult for a lawyer to "know" when the criminal intent will actually be carried out, for the client may have a change of mind.

Subdivision (b)(2) contemplates past acts on the part of a client that may result in present or future consequences that may be avoided by disclosure of otherwise confidential communications. Rule 4-1.6(b)(2) would now require the lawyer to disclose information reasonably necessary to prevent the future death or substantial bodily harm to another, even though the act of the client has been completed.

The lawyer's exercise of discretion requires consideration of such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction, and factors that may extenuate the conduct in question. Where practical the lawyer should seek to persuade the client to take suitable action. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to the purpose.

### **Withdrawal**

If the lawyer's services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw, as stated in rule 4-1.16(a)(1).

After withdrawal the lawyer is required to refrain from making disclosure of the client's confidences, except as otherwise provided in rule 4-1.6. Neither this rule nor rule 4-1.8(b) nor rule 4-1.16(d) prevents the lawyer from giving notice of the fact of withdrawal, and the lawyer may also withdraw or disaffirm any opinion, document, affirmation, or the like.

Where the client is an organization, the lawyer may be in doubt whether contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct in connection with the rule, the lawyer may make inquiry within the organization as indicated in rule 4-1.13(b).

### **Dispute concerning lawyer's conduct**

A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, subdivision (c)(5) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. The lawyer's right to respond arises when an assertion of such complicity has been made. Subdivision (c) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend, of course, applies where a proceeding has been commenced. Where practicable and not prejudicial to the lawyer's ability to establish the defense, the lawyer should advise the client of the third party's assertion and request that the client respond appropriately. In any event, disclosure should be no greater than the lawyer reasonably believes is necessary to vindicate innocence, the disclosure should

be made in a manner that limits access to the information to the tribunal or other persons having a need to know it, and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

If the lawyer is charged with wrongdoing in which the client's conduct is implicated, the rule of confidentiality should not prevent the lawyer from defending against the charge. Such a charge can arise in a civil, criminal, or professional disciplinary proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person; for example, a person claiming to have been defrauded by the lawyer and client acting together. A lawyer entitled to a fee is permitted by subdivision (c) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary. As stated above, the lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having the need to know it, and to obtain protective orders or make other arrangements minimizing the risk of disclosure.

#### **Disclosures otherwise required or authorized**

The attorney-client privilege is differently defined in various jurisdictions. If a lawyer is called as a witness to give testimony concerning a client, absent waiver by the client, rule 4-1.6(a) requires the lawyer to invoke the privilege when it is applicable. The lawyer must comply with the final orders of a court or other tribunal of competent jurisdiction requiring the lawyer to give information about the client.

The Rules of Professional Conduct in various circumstances permit or require a lawyer to disclose information relating to the representation. See rules 4-2.3, 4-3.3, and 4-4.1. In addition to these provisions, a lawyer may be obligated or permitted by other provisions of law to give information about a client. Whether another provision of law supersedes rule 4-1.6 is a matter of interpretation beyond the scope of these rules, but a presumption should exist against such a supersession.

#### **Former client**

The duty of confidentiality continues after the client-lawyer relationship has terminated. See rule 4-1.9 for the prohibition against using such information to the disadvantage of the former client.

*[Revised: 06/01/2014]*

#### ***RULE 4-1.7 CONFLICT OF INTEREST; CURRENT CLIENTS***

**(a) Representing Adverse Interests.** Except as provided in subdivision (b), a lawyer must not represent a client if:

(1) the representation of 1 client will be directly adverse to another client; or

(2) there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

**(b) Informed Consent.** Notwithstanding the existence of a conflict of interest under subdivision (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a position adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing or clearly stated on the record at a hearing.

**(c) Explanation to Clients.** When representation of multiple clients in a single matter is undertaken, the consultation must include an explanation of the implications of the common representation and the advantages and risks involved.

**(d) Lawyers Related by Blood, Adoption, or Marriage.** A lawyer related by blood, adoption, or marriage to another lawyer as parent, child, sibling, or spouse must not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except with the client's informed consent, confirmed in writing or clearly stated on the record at a hearing.

**(e) Representation of Insureds.** Upon undertaking the representation of an insured client at the expense of the insurer, a lawyer has a duty to ascertain whether the lawyer will be representing both the insurer and the insured as clients, or only the insured, and to inform both the insured and the insurer regarding the scope of the representation. All other Rules Regulating The Florida Bar related to conflicts of interest apply to the representation as they would in any other situation.

## Comment

### Loyalty to a client

Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person, or from the lawyer's own interests. For specific rules regarding certain conflicts of interest, see rule 4-1.8. For former client conflicts of interest, see rule 4-1.9. For conflicts of interest involving prospective clients, see rule 4-1.18. For definitions of "informed consent" and "confirmed in writing," see terminology.

An impermissible conflict of interest may exist before representation is undertaken, in which event the representation should be declined. If such a conflict arises after representation has been undertaken, the lawyer should withdraw from the representation. See rule 4-1.16. Where more than 1 client is

involved and the lawyer withdraws because a conflict arises after representation, whether the lawyer may continue to represent any of the clients is determined by rule 4-1.9. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see comment to rule 4-1.3 and scope.

As a general proposition, loyalty to a client prohibits undertaking representation directly adverse to that client's or another client's interests without the affected client's consent. Subdivision (a)(1) expresses that general rule. Thus, a lawyer ordinarily may not act as advocate against a person the lawyer represents in some other matter, even if it is wholly unrelated. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only generally adverse, such as competing economic enterprises, does not require consent of the respective clients. Subdivision (a)(1) applies only when the representation of 1 client would be directly adverse to the other and where the lawyer's responsibilities of loyalty and confidentiality of the other client might be compromised.

Loyalty to a client is also impaired when a lawyer cannot consider, recommend, or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. Subdivision (a)(2) addresses such situations. A possible conflict does not itself preclude the representation. The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. Consideration should be given to whether the client wishes to accommodate the other interest involved.

### **Consultation and consent**

A client may consent to representation notwithstanding a conflict. However, as indicated in subdivision (a)(1) with respect to representation directly adverse to a client and subdivision (a)(2) with respect to material limitations on representation of a client, when a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When more than 1 client is involved, the question of conflict must be resolved as to each client. Moreover, there may be circumstances where it is impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and 1 of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent.

### **Lawyer's interests**

The lawyer's own interests should not be permitted to have adverse effect on representation of a client. For example, a lawyer's need for income should not lead the lawyer to undertake matters that cannot be handled competently and at a reasonable fee. See rules 4-1.1 and 4-1.5. If the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. A lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed interest.

## **Conflicts in litigation**

Subdivision (a)(1) prohibits representation of opposing parties in litigation. Simultaneous representation of parties whose interests in litigation may conflict, such as co-plaintiffs or co-defendants, is governed by subdivisions (a), (b), and (c). An impermissible conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party, or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than 1 co-defendant. On the other hand, common representation of persons having similar interests is proper if the risk of adverse effect is minimal and the requirements of subdivisions (b) and (c) are met.

Ordinarily, a lawyer may not act as advocate against a client the lawyer represents in some other matter, even if the other matter is wholly unrelated. However, there are circumstances in which a lawyer may act as advocate against a client. For example, a lawyer representing an enterprise with diverse operations may accept employment as an advocate against the enterprise in an unrelated matter if doing so will not adversely affect the lawyer's relationship with the enterprise or conduct of the suit and if both clients consent upon consultation. By the same token, government lawyers in some circumstances may represent government employees in proceedings in which a government agency is the opposing party. The propriety of concurrent representation can depend on the nature of the litigation. For example, a suit charging fraud entails conflict to a degree not involved in a suit for a declaratory judgment concerning statutory interpretation.

A lawyer may represent parties having antagonistic positions on a legal question that has arisen in different cases, unless representation of either client would be adversely affected. Thus, it is ordinarily not improper to assert such positions in cases pending in different trial courts, but it may be improper to do so in cases pending at the same time in an appellate court.

## **Interest of person paying for a lawyer's service**

A lawyer may be paid from a source other than the client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty to the client. See rule 4-1.8(f). For example, when an insurer and its insured have conflicting interests in a matter arising from a liability insurance agreement and the insurer is required to provide special counsel for the insured, the arrangement should assure the special counsel's professional independence. So also, when a corporation and its directors or employees are involved in a controversy in which they have conflicting interests, the corporation may provide funds for separate legal representation of the directors or employees, if the clients consent after consultation and the arrangement ensures the lawyer's professional independence.

## **Other conflict situations**

Conflicts of interest in contexts other than litigation sometimes may be difficult to assess. Relevant factors in determining whether there is potential for adverse effect include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that actual conflict will arise, and the likely prejudice to the client from the conflict if it does arise. The question is often one of proximity and degree.

For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference of interest among them.

Conflict questions may also arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may arise. In estate administration the identity of the client may be unclear under the law of some jurisdictions. In Florida, the personal representative is the client rather than the estate or the beneficiaries. The lawyer should make clear the relationship to the parties involved.

A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the 2 roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board, and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director.

## **Conflict charged by an opposing party**

Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation. In litigation, a court may raise the question when there is reason to infer that the lawyer has neglected the responsibility. In a criminal case, inquiry by the court is generally required when a lawyer represents multiple defendants. Where the conflict is such as clearly to call in question the fair or efficient administration of justice, opposing counsel may properly raise the question. Such an objection should be viewed with caution, however, for it can be misused as a technique of harassment. See scope.

## **Family relationships between lawyers**

Rule 4-1.7(d) applies to related lawyers who are in different firms. Related lawyers in the same firm are also governed by rules 4-1.9 and 4-1.10. The disqualification stated in rule 4-1.7(d) is personal and is not imputed to members of firms with whom the lawyers are associated.



The purpose of Rule 4-1.7(d) is to prohibit representation of adverse interests, unless informed consent is given by the client, by a lawyer related to another lawyer by blood, adoption, or marriage as a parent, child, sibling, or spouse so as to include those with biological or adopted children and within relations by marriage those who would be considered in-laws and stepchildren and stepparents.

### **Representation of insureds**

The unique tripartite relationship of insured, insurer, and lawyer can lead to ambiguity as to whom a lawyer represents. In a particular case, the lawyer may represent only the insured, with the insurer having the status of a non-client third party payor of the lawyer's fees. Alternatively, the lawyer may represent both as dual clients, in the absence of a disqualifying conflict of interest, upon compliance with applicable rules. Establishing clarity as to the role of the lawyer at the inception of the representation avoids misunderstanding that may ethically compromise the lawyer. This is a general duty of every lawyer undertaking representation of a client, which is made specific in this context due to the desire to minimize confusion and inconsistent expectations that may arise.

### **Consent confirmed in writing or stated on the record at a hearing**

Subdivision (b) requires the lawyer to obtain the informed consent of the client, confirmed in writing or clearly stated on the record at a hearing. With regard to being confirmed in writing, such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. See terminology. If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time afterwards. See terminology. The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

*[Revised: 06/01/2014]*

### ***RULE 4-1.8 CONFLICT OF INTEREST; PROHIBITED AND OTHER TRANSACTIONS***

**(a) Business Transactions With or Acquiring Interest Adverse to Client.** A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, except a lien granted by law to secure a lawyer's fee or expenses, unless:

- (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be reasonably understood by the client;
- (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity

to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

**(b) Using Information to Disadvantage of Client.** A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these rules.

**(c) Gifts to Lawyer or Lawyer's Family.** A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this subdivision, related persons include a spouse, child, grandchild, parent, grandparent, or other relative with whom the lawyer or the client maintains a close, familial relationship.

**(d) Acquiring Literary or Media Rights.** Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

**(e) Financial Assistance to Client.** A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

**(f) Compensation by Third Party.** A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by rule 4-1.6.

**(g) Settlement of Claims for Multiple Clients.** A lawyer who represents 2 or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

**(h) Limiting Liability for Malpractice.** A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement. A lawyer shall not settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent

representation is appropriate in connection therewith.

**(i) Acquiring Proprietary Interest in Cause of Action.** A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien granted by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee.

**(j) Representation of Insureds.** When a lawyer undertakes the defense of an insured other than a governmental entity, at the expense of an insurance company, in regard to an action or claim for personal injury or for property damages, or for death or loss of services resulting from personal injuries based upon tortious conduct, including product liability claims, the Statement of Insured Client's Rights shall be provided to the insured at the commencement of the representation. The lawyer shall sign the statement certifying the date on which the statement was provided to the insured. The lawyer shall keep a copy of the signed statement in the client's file and shall retain a copy of the signed statement for 6 years after the representation is completed. The statement shall be available for inspection at reasonable times by the insured, or by the appropriate disciplinary agency. Nothing in the Statement of Insured Client's Rights shall be deemed to augment or detract from any substantive or ethical duty of a lawyer or affect the extradisciplinary consequences of violating an existing substantive legal or ethical duty; nor shall any matter set forth in the Statement of Insured Client's Rights give rise to an independent cause of action or create any presumption that an existing legal or ethical duty has been breached.

#### **STATEMENT OF INSURED CLIENT'S RIGHTS**

An insurance company has selected a lawyer to defend a lawsuit or claim against you. This Statement of Insured Client's Rights is being given to you to assure that you are aware of your rights regarding your legal representation. This disclosure statement highlights many, but not all, of your rights when your legal representation is being provided by the insurance company.

1. *Your Lawyer.* If you have questions concerning the selection of the lawyer by the insurance company, you should discuss the matter with the insurance company and the lawyer. As a client, you have the right to know about the lawyer's education, training, and experience. If you ask, the lawyer should tell you specifically about the lawyer's actual experience dealing with cases similar to yours and give you this information in writing, if you request it. Your lawyer is responsible for keeping you reasonably informed regarding the case and promptly complying with your reasonable requests for information. You are entitled to be informed of the final disposition of your case within a reasonable time.

2. *Fees and Costs.* Usually the insurance company pays all of the fees and costs of defending the claim. If you are responsible for directly paying the lawyer for any fees or costs, your lawyer must promptly inform you of that.

3. *Directing the Lawyer.* If your policy, like most insurance policies, provides for the insurance company to control the defense of the lawsuit, the lawyer will be taking instructions from the insurance company. Under such policies, the lawyer cannot act solely on your instructions, and at the same time, cannot act contrary to your interests. Your preferences should be communicated to the lawyer.

4. *Litigation Guidelines.* Many insurance companies establish guidelines governing how lawyers are to proceed in defending a claim. Sometimes those guidelines affect the range of actions the lawyer can

take and may require authorization of the insurance company before certain actions are undertaken. You are entitled to know the guidelines affecting the extent and level of legal services being provided to you. Upon request, the lawyer or the insurance company should either explain the guidelines to you or provide you with a copy. If the lawyer is denied authorization to provide a service or undertake an action the lawyer believes necessary to your defense, you are entitled to be informed that the insurance company has declined authorization for the service or action.

5. *Confidentiality.* Lawyers have a general duty to keep secret the confidential information a client provides, subject to limited exceptions. However, the lawyer chosen to represent you also may have a duty to share with the insurance company information relating to the defense or settlement of the claim. If the lawyer learns of information indicating that the insurance company is not obligated under the policy to cover the claim or provide a defense, the lawyer's duty is to maintain that information in confidence. If the lawyer cannot do so, the lawyer may be required to withdraw from the representation without disclosing to the insurance company the nature of the conflict of interest which has arisen. Whenever a waiver of the lawyer-client confidentiality privilege is needed, your lawyer has a duty to consult with you and obtain your informed consent. Some insurance companies retain auditing companies to review the billings and files of the lawyers they hire to represent policyholders. If the lawyer believes a bill review or other action releases information in a manner that is contrary to your interests, the lawyer should advise you regarding the matter.

6. *Conflicts of Interest.* Most insurance policies state that the insurance company will provide a lawyer to represent your interests as well as those of the insurance company. The lawyer is responsible for identifying conflicts of interest and advising you of them. If at any time you believe the lawyer provided by the insurance company cannot fairly represent you because of conflicts of interest between you and the company (such as whether there is insurance coverage for the claim against you), you should discuss this with the lawyer and explain why you believe there is a conflict. If an actual conflict of interest arises that cannot be resolved, the insurance company may be required to provide you with another lawyer.

7. *Settlement.* Many policies state that the insurance company alone may make a final decision regarding settlement of a claim, but under some policies your agreement is required. If you want to object to or encourage a settlement within policy limits, you should discuss your concerns with your lawyer to learn your rights and possible consequences. No settlement of the case requiring you to pay money in excess of your policy limits can be reached without your agreement, following full disclosure.

8. *Your Risk.* If you lose the case, there might be a judgment entered against you for more than the amount of your insurance, and you might have to pay it. Your lawyer has a duty to advise you about this risk and other reasonably foreseeable adverse results.

9. *Hiring Your Own Lawyer.* The lawyer provided by the insurance company is representing you only to defend the lawsuit. If you desire to pursue a claim against the other side, or desire legal services not directly related to the defense of the lawsuit against you, you will need to make your own arrangements with this or another lawyer. You also may hire another lawyer, at your own expense, to monitor the defense being provided by the insurance company. If there is a reasonable risk that the claim made against you exceeds the amount of coverage under your policy, you should consider consulting another lawyer.

10. *Reporting Violations.* If at any time you believe that your lawyer has acted in violation of your rights, you have the right to report the matter to The Florida Bar, the agency that oversees the practice and behavior of all lawyers in Florida. For information on how to reach The Florida Bar call (850) 561-5839 or you may access the Bar at [www.FlaBar.org](http://www.FlaBar.org).

**IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS,  
PLEASE ASK FOR AN EXPLANATION.**

CERTIFICATE

The undersigned hereby certifies that this Statement of Insured Client's Rights has been provided to.....  
(name of insured/client(s)).....  
by ..... (mail/hand delivery)..... at .....(address of insured/client(s) to which mailed or delivered, on .....  
(date).....

[Signature of Attorney]

\_\_\_\_\_

[Print/Type Name]

\_\_\_\_\_

Florida Bar No.: \_\_\_\_\_

**(k) Imputation of Conflicts.** While lawyers are associated in a firm, a prohibition in the foregoing subdivisions (a) through (i) that applies to any one of them shall apply to all of them.

**Comment**

**Business transactions between client and lawyer**

A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property, or financial transaction with a client. The requirements of subdivision (a) must be met even when the transaction is not closely related to the subject matter of the representation. The rule applies to lawyers engaged in the sale of goods or services related to the practice of law. See rule 4-5.7. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by rule 4-1.5, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment for all or part of a fee. In addition, the rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities services. In such transactions the lawyer has no advantage in dealing with the client, and the restrictions in subdivision (a) are unnecessary and impracticable. Likewise, subdivision (a) does not prohibit a lawyer from acquiring or asserting a lien granted by law to secure the lawyer's fee or expenses.

Subdivision (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Subdivision (a)(2) requires that the client also be advised, in writing, of the desirability of seeking the advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain such advice. Subdivision (a)(3) requires that the lawyer obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. See terminology (definition of informed consent).

The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with the requirements of subdivision (a), but also with the requirements of rule 4-1.7. Under that rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that rule 4-1.7 will preclude the lawyer from seeking the client's consent to the transaction.

If the client is independently represented in the transaction, subdivision (a)(2) of this rule is inapplicable, and the subdivision (a)(1) requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent counsel. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as subdivision (a)(1) further requires.

### **Gifts to lawyers**

A lawyer may accept a gift from a client, if the transaction meets general standards of fairness and if the lawyer does not prepare the instrument bestowing the gift. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, subdivision (c) does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a substantial gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in subdivision (c). If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance, however, the client should have the detached advice that another lawyer can provide and the lawyer should advise the client to seek advice of independent counsel. Subdivision (c) recognizes an exception where the client is related by blood or marriage to the donee or the gift is not substantial.

This rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as personal representative of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in rule 4-1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of a personal representative or other fiduciary. In obtaining the client's informed consent to the conflict, the lawyer should advise the client concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position.

### **Literary rights**

An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Subdivision (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property if the arrangement conforms to rule 4-1.5 and subdivision (a) and (i).

## **Financial assistance**

Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer advancing a client court costs and litigation expenses, including the expenses of diagnostic medical examination used for litigation purposes and the reasonable costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

## **Person paying for lawyer's services**

Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company), or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client. See also rule 4-5.4(d) (prohibiting interference with a lawyer's professional judgment by one who recommends, employs or pays the lawyer to render legal services for another).

Sometimes, it will be sufficient for the lawyer to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with rule 4-1.7. The lawyer must also conform to the requirements of rule 4-1.6 concerning confidentiality. Under rule 4-1.7(a), a conflict of interest exists if there is significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in the fee arrangement or by the lawyer's responsibilities to the third-party payer (for example, when the third-party payer is a co-client). Under rule 4-1.7(b), the lawyer may accept or continue the representation with the informed consent of each affected client, unless the conflict is nonconsentable under that subdivision. Under rule 4-1.7(b), the informed consent must be confirmed in writing or clearly stated on the record at a hearing.

## **Aggregate settlements**

Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. Under rule 4-1.7, this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, rule 4-1.2(a) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or nolo

contendere plea in a criminal case. The rule stated in this subdivision is a corollary of both these rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted. See also terminology (definition of informed consent). Lawyers representing a class of plaintiffs or defendants, or those proceeding derivatively, must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

### **Acquisition of interest in litigation**

Subdivision (i) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. This general rule, which has its basis in common law champerty and maintenance, is subject to specific exceptions developed in decisional law and continued in these rules, such as the exception for reasonable contingent fees set forth in rule 4-1.5 and the exception for certain advances of the costs of litigation set forth in subdivision (e).

This rule is not intended to apply to customary qualification and limitations in legal opinions and memoranda.

### **Representation of insureds**

As with any representation of a client when another person or client is paying for the representation, the representation of an insured client at the request of the insurer creates a special need for the lawyer to be cognizant of the potential for ethical risks. The nature of the relationship between a lawyer and a client can lead to the insured or the insurer having expectations inconsistent with the duty of the lawyer to maintain confidences, avoid conflicts of interest, and otherwise comply with professional standards. When a lawyer undertakes the representation of an insured client at the expense of the insurer, the lawyer should ascertain whether the lawyer will be representing both the insured and the insurer, or only the insured. Communication with both the insured and the insurer promotes their mutual understanding of the role of the lawyer in the particular representation. The Statement of Insured Client's Rights has been developed to facilitate the lawyer's performance of ethical responsibilities. The highly variable nature of insurance and the responsiveness of the insurance industry in developing new types of coverages for risks arising in the dynamic American economy render it impractical to establish a statement of rights applicable to all forms of insurance. The Statement of Insured Client's Rights is intended to apply to personal injury and property damage tort cases. It is not intended to apply to workers' compensation cases. Even in that relatively narrow area of insurance coverage, there is variability among policies. For that reason, the statement is necessarily broad. It is the responsibility of the lawyer to explain the statement to the insured. In particular cases, the lawyer may need to provide additional information to the insured.

Because the purpose of the statement is to assist laypersons in understanding their basic rights as clients, it is necessarily abbreviated. Although brevity promotes the purpose for which the statement



was developed, it also necessitates incompleteness. For these reasons, it is specifically provided that the statement shall not serve to establish any legal rights or duties, nor create any presumption that an existing legal or ethical duty has been breached. As a result, the statement and its contents should not be invoked by opposing parties as grounds for disqualification of a lawyer or for procedural purposes. The purpose of the statement would be subverted if it could be used in such a manner.

The statement is to be signed by the lawyer to establish that it was timely provided to the insured, but the insured client is not required to sign it. It is in the best interests of the lawyer to have the insured client sign the statement to avoid future questions, but it is considered impractical to require the lawyer to obtain the insured client's signature in all instances.

Establishment of the statement and the duty to provide it to an insured in tort cases involving personal injury or property damage should not be construed as lessening the duty of the lawyer to inform clients of their rights in other circumstances. When other types of insurance are involved, when there are other third-party payors of fees, or when multiple clients are represented, similar needs for fully informing clients exist, as recognized in rules 4-1.7(c) and 4-1.8(f).

#### **Imputation of prohibitions**

Under subdivision (k), a prohibition on conduct by an individual lawyer in subdivisions (a) through (i) also applies to all lawyers associated in a firm with the personally prohibited lawyer. For example, 1 lawyer in a firm may not enter into a business transaction with a client of another member of the firm without complying with subdivision (a), even if the first lawyer is not personally involved in the representation of the client.

*[Revised: 02/01/2010]*

#### ***RULE 4-1.9 CONFLICT OF INTEREST; FORMER CLIENT***

A lawyer who has formerly represented a client in a matter must not afterwards:

- (a)** represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent;
- (b)** use information relating to the representation to the disadvantage of the former client except as these rules would permit or require with respect to a client or when the information has become generally known; or
- (c)** reveal information relating to the representation except as these rules would permit or require with respect to a client.

#### **Comment**

After termination of a client-lawyer relationship, a lawyer may not represent another client except in conformity with this rule. The principles in rule 4-1.7 determine whether the interests of the present and former client are adverse. Thus, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction.

The scope of a "matter" for purposes of rule 4-1.9(a) may depend on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a wholly distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of military lawyers between defense and prosecution functions within the same military jurisdiction. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

Matters are "substantially related" for purposes of this rule if they involve the same transaction or legal dispute, or if the current matter would involve the lawyer attacking work that the lawyer performed for the former client. For example, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations; however, the lawyer would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent.

Lawyers owe confidentiality obligations to former clients, and thus information acquired by the lawyer in the course of representing a client may not subsequently be used by the lawyer to the disadvantage of the client without the former client's consent. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client. Information that has been widely disseminated by the media to the public, or that typically would be obtained by any reasonably prudent lawyer who had never represented the former client, should be considered generally known and ordinarily will not be disqualifying. The

essential question is whether, but for having represented the former client, the lawyer would know or discover the information.

Information acquired in a prior representation may have been rendered obsolete by the passage of time. In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation. A former client is not required to reveal the confidential information learned by the lawyer in order to establish a substantial risk that the lawyer has confidential information to use in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services.

The provisions of this rule are for the protection of clients and can be waived if the former client gives informed consent. See terminology.

With regard to an opposing party's raising a question of conflict of interest, see comment to rule 4-1.7. With regard to disqualification of a firm with which a lawyer is associated, see rule 4-1.10.

*[Revised: 06/01/2014]*

#### ***RULE 4-1.10 IMPUTATION OF CONFLICTS OF INTEREST; GENERAL RULE***

**(a) Imputed Disqualification of All Lawyers in Firm.** While lawyers are associated in a firm, none of them may knowingly represent a client when any 1 of them practicing alone would be prohibited from doing so by rule 4-1.7 or 4-1.9 except as provided elsewhere in this rule, or unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

**(b) Former Clients of Newly Associated Lawyer.** When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by rules 4-1.6 and 4-1.9(b) and (c) that is material to the matter.

**(c) Representing Interests Adverse to Clients of Formerly Associated Lawyer.** When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer unless:

- (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
- (2) any lawyer remaining in the firm has information protected by rules 4-1.6 and 4-1.9(b) and (c) that is material to the matter.

**(d) Waiver of Conflict.** A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in rule 4-1.7.

**(e) Government Lawyers.** The disqualification of lawyers associated in a firm with former or current government lawyers is governed by rule 4-1.11.

### **Comment**

#### **Definition of "firm"**

With respect to the law department of an organization, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. However, there can be uncertainty as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

Similar questions can also arise with respect to lawyers in legal aid. Lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyers should be treated as associated with each other can depend on the particular rule that is involved and on the specific facts of the situation.

Where a lawyer has joined a private firm after having represented the government, the situation is governed by rule 4-1.11(a) and (b); where a lawyer represents the government after having served private clients, the situation is governed by rule 4-1.11(c)(1). The individual lawyer involved is bound by the rules generally, including rules 4-1.6, 4-1.7, and 4-1.9.

Different provisions are thus made for movement of a lawyer from 1 private firm to another and for movement of a lawyer between a private firm and the government. The government is entitled to protection of its client confidences and, therefore, to the protections provided in rules 4-1.6, 4-1.9, and 4-1.11. However, if the more extensive disqualification in rule 4-1.10 were applied to former government lawyers, the potential effect on the government would be unduly burdensome. The government deals with all private citizens and organizations and thus has a much wider circle of adverse legal interests than does any private law firm. In these circumstances, the government's recruitment of lawyers would be seriously impaired if rule 4-1.10 were applied to the government. On balance, therefore, the government is better served in the long run by the protections stated in rule 4-1.11.

#### **Principles of imputed disqualification**

The rule of imputed disqualification stated in subdivision (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially 1 lawyer for purposes of the rules governing loyalty to the client or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Subdivision (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from 1 firm to another the situation is governed by subdivisions (b) and (c).

The rule in subdivision (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where 1 lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were

owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

The rule in subdivision (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect. See terminology and rule 4-5.3.

### **Lawyers moving between firms**

When lawyers have been associated in a firm but then end their association, however, the problem is more complicated. The fiction that the law firm is the same as a single lawyer is no longer wholly realistic. There are several competing considerations. First, the client previously represented must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule of disqualification should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule of disqualification should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many to some degree limit their practice to 1 field or another, and that many move from 1 association to another several times in their careers. If the concept of imputed disqualification were defined with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from 1 practice setting to another and of the opportunity of clients to change counsel.

Reconciliation of these competing principles in the past has been attempted under 2 rubrics. One approach has been to seek per se rules of disqualification. For example, it has been held that a partner in a law firm is conclusively presumed to have access to all confidences concerning all clients of the firm. Under this analysis, if a lawyer has been a partner in one law firm and then becomes a partner in another law firm, there is a presumption that all confidences known by a partner in the first firm are known to all partners in the second firm. This presumption might properly be applied in some circumstances, especially where the client has been extensively represented, but may be unrealistic where the client was represented only for limited purposes. Furthermore, such a rigid rule exaggerates the difference between a partner and an associate in modern law firms.

The other rubric formerly used for dealing with vicarious disqualification is the appearance of impropriety and was proscribed in former Canon 9 of the Code of Professional Responsibility. This rubric has a two-fold problem. First, the appearance of impropriety can be taken to include any new client-lawyer relationship that might make a former client feel anxious. If that meaning were adopted, disqualification would become little more than a question of subjective judgment by the former client. Second, since "impropriety" is undefined, the term "appearance of impropriety" is question-begging. It therefore has to be recognized that the problem of imputed disqualification cannot be properly resolved either by simple analogy to a lawyer practicing alone or by the very general concept of appearance of impropriety.

A rule based on a functional analysis is more appropriate for determining the question of vicarious disqualification. Two functions are involved: preserving confidentiality and avoiding positions adverse to a client.

## **Confidentiality**

Preserving confidentiality is a question of access to information. Access to information, in turn, is essentially a question of fact in particular circumstances, aided by inferences, deductions, or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussion of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not information about other clients.

Application of subdivisions (b) and (c) depends on a situation's particular facts. In any such inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

Subdivisions (b) and (c) operate to disqualify the firm only when the lawyer involved has actual knowledge of relevant information protected by rules 4-1.6 and 4-1.9(b) and (c). Thus, if a lawyer while with 1 firm acquired no knowledge or information relating to a particular client of the firm and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the 2 clients conflict.

Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See rules 4-1.6 and 4-1.9.

## **Adverse positions**

The second aspect of loyalty to client is the lawyer's obligation to decline subsequent representations involving positions adverse to a former client arising in substantially related matters. This obligation requires abstention from adverse representation by the individual lawyer involved, but does not properly entail abstention of other lawyers through imputed disqualification. Hence, this aspect of the problem is governed by rule 4-1.9(a). Thus, if a lawyer left 1 firm for another, the new affiliation would not preclude the firms involved from continuing to represent clients with adverse interests in the same or related matters so long as the conditions of rule 4-1.10(b) and (c) concerning confidentiality have been met.

Rule 4-1.10(d) removes imputation with the informed consent of the affected client or former client under the conditions stated in rule 4-1.7. The conditions stated in rule 4-1.7 require the lawyer to determine that the representation is not prohibited by rule 4-1.7(b) and that each affected client or former client has given informed consent to the representation, confirmed in writing or clearly stated on the record. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a definition of informed consent, see terminology.

Where a lawyer is prohibited from engaging in certain transactions under rule 4-1.8, subdivision (k) of that rule, and not this rule, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.

[Revised: 06/01/2014]

#### **RULE 4-1.13 ORGANIZATION AS CLIENT**

**(a) Representation of Organization.** A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

**(b) Violations by Officers or Employees of Organization.** If a lawyer for an organization knows that an officer, employee, or other person associated with the organization is engaged in action, intends to act, or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization or a violation of law that reasonably might be imputed to the organization and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization. Such measures may include among others:

- (1) asking reconsideration of the matter;
- (2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and
- (3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.

**(c) Resignation as Counsel for Organization.** If, despite the lawyer's efforts in accordance with subdivision (b), the highest authority that can act on behalf of the organization insists upon action, or a refusal to act, that is clearly a violation of law and is likely to result in substantial injury to the organization, the lawyer may resign in accordance with rule 4-1.16.

**(d) Identification of Client.** In dealing with an organization's directors, officers, employees, members, shareholders, or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

**(e) Representing Directors, Officers, Employees, Members, Shareholders, or Other Constituents of Organization.** A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders, or other constituents, subject to the provisions of rule 4-1.7. If the organization's consent to the dual representation is required by rule 4-1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

#### **Comment**

##### **The entity as the client**

An organizational client is a legal entity, but it cannot act except through its officers, directors,

employees, shareholders, and other constituents. Officers, directors, employees, and shareholders are the constituents of the corporate organizational client. The duties defined in this comment apply equally to unincorporated associations. "Other constituents" as used in this comment means the positions equivalent to officers, directors, employees, and shareholders held by persons acting for organizational clients that are not corporations.

When 1 of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by rule 4-1.6. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by rule 4-1.6. This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by rule 4-1.6.

When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province. However, different considerations arise when the lawyer knows that the organization may be substantially injured by action of a constituent that is in violation of law. In such a circumstance, it may be reasonably necessary for the lawyer to ask the constituent to reconsider the matter. If that fails, or if the matter is of sufficient seriousness and importance to the organization, it may be reasonably necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. Clear justification should exist for seeking review over the head of the constituent normally responsible for it. The stated policy of the organization may define circumstances and prescribe channels for such review, and a lawyer should encourage the formulation of such a policy. Even in the absence of organization policy, however, the lawyer may have an obligation to refer a matter to higher authority, depending on the seriousness of the matter and whether the constituent in question has apparent motives to act at variance with the organization's interest. Review by the chief executive officer or by the board of directors may be required when the matter is of importance commensurate with their authority. At some point it may be useful or essential to obtain an independent legal opinion.

The organization's highest authority to whom a matter may be referred ordinarily will be the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions highest authority reposes elsewhere; for example, in the independent directors of a corporation.

### **Relation to other rules**

The authority and responsibility provided in this rule are concurrent with the authority and responsibility provided in other rules. In particular, this rule does not limit or expand the lawyer's responsibility under rule 4-1.6, 4-1.8, 4-1.16, 4-3.3, or 4-4.1. If the lawyer's services are being used by an organization to further a crime or fraud by the organization, rule 4-1.2(d) can be applicable.

### **Government agency**

The duty defined in this rule applies to governmental organizations. However, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful official act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined



by statutes and regulation. Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these rules. Although in some circumstances the client may be a specific agency, it may also be a branch of the government, such as the executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government may be the client for purposes of this rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. This rule does not limit that authority.

### **Clarifying the lawyer's role**

There are times when the organization's interest may be or becomes adverse to those of 1 or more of its constituents. In such circumstances the lawyer should advise any constituent whose interest the lawyer finds adverse to that of the organization of the conflict or potential conflict of interest that the lawyer cannot represent such constituent and that such person may wish to obtain independent representation. Care must be taken to assure that the constituent understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent and that discussions between the lawyer for the organization and the constituent may not be privileged.

Whether such a warning should be given by the lawyer for the organization to any constituent may turn on the facts of each case.

### **Dual representation**

Subdivision (e) recognizes that a lawyer for an organization may also represent a principal officer or major shareholder.

### **Derivative actions**

Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated associations have essentially the same right. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over management of the organization.

The question can arise whether counsel for the organization may defend such an action. The proposition that the organization is the lawyer's client does not alone resolve the issue. Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board. In those circumstances, rule 4-1.7 governs who should represent the directors and the organization.

### **Representing related organizations**

Consistent with the principle expressed in subdivision (a) of this rule, a lawyer or law firm who represents or has represented a corporation (or other organization) ordinarily is not presumed to also represent, solely by virtue of representing or having represented the client, an organization (such as a corporate parent or subsidiary) that is affiliated with the client. There are exceptions to this general

proposition, such as, for example, when an affiliate actually is the alter ego of the organizational client or when the client has revealed confidential information to an attorney with the reasonable expectation that the information would not be used adversely to the client's affiliate(s). Absent such an exception, an attorney or law firm is not ethically precluded from undertaking representations adverse to affiliates of an existing or former client.

*[Revised: 05/22/2006]*

#### **RULE 4-6.3 MEMBERSHIP IN LEGAL SERVICES ORGANIZATION**

A lawyer may serve as a director, officer, or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to the client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

**(a)** if participating in the decision would be incompatible with the lawyer's obligations to a client under rule 4-1.7; or

**(b)** where the decision could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

#### **Comment**

Lawyers should be encouraged to support and participate in legal service organizations. A lawyer who is an officer or a member of such an organization does not thereby have a client-lawyer relationship with persons served by the organization. However, there is potential conflict between the interests of such persons and the interests of the lawyer's clients. If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.

*[Revised: 01/01/1993]*

# Return of Organization Exempt From Income Tax

## 2014

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

▶ Do not enter social security numbers on this form as it may be made public.

▶ Information about Form 990 and its instructions is at [www.irs.gov/form990](http://www.irs.gov/form990).

**Open to Public Inspection**

Department of the Treasury  
Internal Revenue Service

**A** For the 2014 calendar year, or tax year beginning \_\_\_\_\_, 2014, and ending \_\_\_\_\_, 20

**B** Check if applicable:  
 Address change  
 Name change  
 Initial return  
 Final return/terminated  
 Amended return  
 Application pending

**C** Name of organization: \_\_\_\_\_  
 Doing business as: \_\_\_\_\_  
 Number and street (or P.O. box if mail is not delivered to street address) \_\_\_\_\_ Room/suite \_\_\_\_\_  
 City or town, state or province, country, and ZIP or foreign postal code \_\_\_\_\_

**D** Employer identification number \_\_\_\_\_  
**E** Telephone number \_\_\_\_\_  
**G** Gross receipts \$ \_\_\_\_\_

**F** Name and address of principal officer: \_\_\_\_\_  
 H(a) Is this a group return for subordinates?  Yes  No  
 H(b) Are all subordinates included?  Yes  No  
 If "No," attach a list. (see instructions): \_\_\_\_\_  
 H(c) Group exemption number ▶ \_\_\_\_\_

**I** Tax-exempt status:  501(c)(3)  501(c) ( ) (insert no.)  4947(a)(1) or  527

**J** Website: ▶ \_\_\_\_\_

**K** Form of organization:  Corporation  Trust  Association  Other ▶ \_\_\_\_\_  
**L** Year of formation: \_\_\_\_\_  
**M** State of legal domicile: \_\_\_\_\_

### Part I Summary

Activities & Governance	1	Briefly describe the organization's mission or most significant activities: _____		
	2	Check this box <input type="checkbox"/> if the organization discontinued its operations or disposed of more than 25% of its net assets.		
	3	Number of voting members of the governing body (Part VI, line 1a)	3	
	4	Number of independent voting members of the governing body (Part VI, line 1b)	4	
	5	Total number of individuals employed in calendar year 2014 (Part V, line 2a)	5	
	6	Total number of volunteers (estimate if necessary)	6	
	7a	Total unrelated business revenue from Part VIII, column (C), line 12	7a	
	b	Net unrelated business taxable income from Form 990-T, line 34	7b	
Revenue	8	Contributions and grants (Part VIII, line 1h)	Prior Year	Current Year
	9	Program service revenue (Part VIII, line 2g)		
	10	Investment income (Part VIII, column (A), lines 3, 4, and 7d)		
	11	Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)		
	12	Total revenue—add lines 8 through 11 (must equal Part VIII, column (A), line 12)		
Expenses	13	Grants and similar amounts paid (Part IX, column (A), lines 1–3)		
	14	Benefits paid to or for members (Part IX, column (A), line 4)		
	15	Salaries, other compensation, employee benefits (Part IX, column (A), lines 5–10)		
	16a	Professional fundraising fees (Part IX, column (A), line 11e)		
	b	Total fundraising expenses (Part IX, column (D), line 25) ▶		
	17	Other expenses (Part IX, column (A), lines 11a–11d, 11f–24e)		
	18	Total expenses. Add lines 13–17 (must equal Part IX, column (A), line 25)		
Net Assets or Fund Balances	19	Revenue less expenses. Subtract line 18 from line 12		
	20	Total assets (Part X, line 16)	Beginning of Current Year	End of Year
	21	Total liabilities (Part X, line 26)		
	22	Net assets or fund balances. Subtract line 21 from line 20		

### Part II Signature Block

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

**Sign Here**

Signature of officer \_\_\_\_\_ Date \_\_\_\_\_  
 Type or print name and title \_\_\_\_\_

**Paid Preparer Use Only**

Print/Type preparer's name \_\_\_\_\_ Preparer's signature \_\_\_\_\_ Date \_\_\_\_\_ Check  if self-employed PTIN \_\_\_\_\_  
 Firm's name ▶ \_\_\_\_\_ Firm's EIN ▶ \_\_\_\_\_  
 Firm's address ▶ \_\_\_\_\_ Phone no. \_\_\_\_\_

May the IRS discuss this return with the preparer shown above? (see instructions)  Yes  No

For Paperwork Reduction Act Notice, see the separate instructions.

**Part III** Statement of Program Service Accomplishments

Check if Schedule O contains a response or note to any line in this Part III

1 Briefly describe the organization's mission:  
.....  
.....  
.....

2 Did the organization undertake any significant program services during the year which were not listed on the prior Form 990 or 990-EZ?  Yes  No  
If "Yes," describe these new services on Schedule O.

3 Did the organization cease conducting, or make significant changes in how it conducts, any program services?  Yes  No  
If "Yes," describe these changes on Schedule O.

4 Describe the organization's program service accomplishments for each of its three largest program services, as measured by expenses. Section 501(c)(3) and 501(c)(4) organizations are required to report the amount of grants and allocations to others, the total expenses, and revenue, if any, for each program service reported.

4a (Code: \_\_\_\_\_) (Expenses \$ \_\_\_\_\_ including grants of \$ \_\_\_\_\_) (Revenue \$ \_\_\_\_\_)  
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4b (Code: \_\_\_\_\_) (Expenses \$ \_\_\_\_\_ including grants of \$ \_\_\_\_\_) (Revenue \$ \_\_\_\_\_)  
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4c (Code: \_\_\_\_\_) (Expenses \$ \_\_\_\_\_ including grants of \$ \_\_\_\_\_) (Revenue \$ \_\_\_\_\_)  
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4d Other program services (Describe in Schedule O.)  
(Expenses \$ \_\_\_\_\_ including grants of \$ \_\_\_\_\_) (Revenue \$ \_\_\_\_\_)

4e Total program service expenses ▶

**Part IV Checklist of Required Schedules**

	Yes	No
1 Is the organization described in section 501(c)(3) or 4947(a)(1) (other than a private foundation)? If "Yes," complete Schedule A . . . . .	1	
2 Is the organization required to complete Schedule B, Schedule of Contributors (see instructions)? . . . . .	2	
3 Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office? If "Yes," complete Schedule C, Part I . . . . .	3	
4 <b>Section 501(c)(3) organizations.</b> Did the organization engage in lobbying activities, or have a section 501(h) election in effect during the tax year? If "Yes," complete Schedule C, Part II . . . . .	4	
5 Is the organization a section 501(c)(4), 501(c)(5), or 501(c)(6) organization that receives membership dues, assessments, or similar amounts as defined in Revenue Procedure 98-19? If "Yes," complete Schedule C, Part III . . . . .	5	
6 Did the organization maintain any donor advised funds or any similar funds or accounts for which donors have the right to provide advice on the distribution or investment of amounts in such funds or accounts? If "Yes," complete Schedule D, Part I . . . . .	6	
7 Did the organization receive or hold a conservation easement, including easements to preserve open space, the environment, historic land areas, or historic structures? If "Yes," complete Schedule D, Part II . . . . .	7	
8 Did the organization maintain collections of works of art, historical treasures, or other similar assets? If "Yes," complete Schedule D, Part III . . . . .	8	
9 Did the organization report an amount in Part X, line 21, for escrow or custodial account liability; serve as a custodian for amounts not listed in Part X; or provide credit counseling, debt management, credit repair, or debt negotiation services? If "Yes," complete Schedule D, Part IV . . . . .	9	
10 Did the organization, directly or through a related organization, hold assets in temporarily restricted endowments, permanent endowments, or quasi-endowments? If "Yes," complete Schedule D, Part V . . . . .	10	
11 If the organization's answer to any of the following questions is "Yes," then complete Schedule D, Parts VI, VII, VIII, IX, or X as applicable.		
a Did the organization report an amount for land, buildings, and equipment in Part X, line 10? If "Yes," complete Schedule D, Part VI . . . . .	11a	
b Did the organization report an amount for investments—other securities in Part X, line 12 that is 5% or more of its total assets reported in Part X, line 16? If "Yes," complete Schedule D, Part VII . . . . .	11b	
c Did the organization report an amount for investments—program related in Part X, line 13 that is 5% or more of its total assets reported in Part X, line 16? If "Yes," complete Schedule D, Part VIII . . . . .	11c	
d Did the organization report an amount for other assets in Part X, line 15 that is 5% or more of its total assets reported in Part X, line 16? If "Yes," complete Schedule D, Part IX . . . . .	11d	
e Did the organization report an amount for other liabilities in Part X, line 25? If "Yes," complete Schedule D, Part X . . . . .	11e	
f Did the organization's separate or consolidated financial statements for the tax year include a footnote that addresses the organization's liability for uncertain tax positions under FIN 48 (ASC 740)? If "Yes," complete Schedule D, Part X . . . . .	11f	
12 a Did the organization obtain separate, independent audited financial statements for the tax year? If "Yes," complete Schedule D, Parts XI and XII . . . . .	12a	
b Was the organization included in consolidated, independent audited financial statements for the tax year? If "Yes," and if the organization answered "No" to line 12a, then completing Schedule D, Parts XI and XII is optional . . . . .	12b	
13 Is the organization a school described in section 170(b)(1)(A)(ii)? If "Yes," complete Schedule E . . . . .	13	
14 a Did the organization maintain an office, employees, or agents outside of the United States? . . . . .	14a	
b Did the organization have aggregate revenues or expenses of more than \$10,000 from grantmaking, fundraising, business, investment, and program service activities outside the United States, or aggregate foreign investments valued at \$100,000 or more? If "Yes," complete Schedule F, Parts I and IV . . . . .	14b	
15 Did the organization report on Part IX, column (A), line 3, more than \$5,000 of grants or other assistance to or for any foreign organization? If "Yes," complete Schedule F, Parts II and IV . . . . .	15	
16 Did the organization report on Part IX, column (A), line 3, more than \$5,000 of aggregate grants or other assistance to or for foreign individuals? If "Yes," complete Schedule F, Parts III and IV . . . . .	16	
17 Did the organization report a total of more than \$15,000 of expenses for professional fundraising services on Part IX, column (A), lines 6 and 11e? If "Yes," complete Schedule G, Part I (see instructions) . . . . .	17	
18 Did the organization report more than \$15,000 total of fundraising event gross income and contributions on Part VIII, lines 1c and 8a? If "Yes," complete Schedule G, Part II . . . . .	18	
19 Did the organization report more than \$15,000 of gross income from gaming activities on Part VIII, line 9a? If "Yes," complete Schedule G, Part III . . . . .	19	
20 a Did the organization operate one or more hospital facilities? If "Yes," complete Schedule H . . . . .	20a	
b If "Yes" to line 20a, did the organization attach a copy of its audited financial statements to this return? . . . . .	20b	

**Part IV Checklist of Required Schedules (continued)**

		Yes	No
21	Did the organization report more than \$5,000 of grants or other assistance to any domestic organization or domestic government on Part IX, column (A), line 1? If "Yes," complete Schedule I, Parts I and II . . . . .		
22	Did the organization report more than \$5,000 of grants or other assistance to or for domestic individuals on Part IX, column (A), line 2? If "Yes," complete Schedule I, Parts I and III . . . . .		
23	Did the organization answer "Yes" to Part VII, Section A, line 3, 4, or 5 about compensation of the organization's current and former officers, directors, trustees, key employees, and highest compensated employees? If "Yes," complete Schedule J . . . . .		
24a	Did the organization have a tax-exempt bond issue with an outstanding principal amount of more than \$100,000 as of the last day of the year, that was issued after December 31, 2002? If "Yes," answer lines 24b through 24d and complete Schedule K. If "No," go to line 25a . . . . .		
b	Did the organization invest any proceeds of tax-exempt bonds beyond a temporary period exception? . . . . .		
c	Did the organization maintain an escrow account other than a refunding escrow at any time during the year to defease any tax-exempt bonds? . . . . .		
d	Did the organization act as an "on behalf of" issuer for bonds outstanding at any time during the year? . . . . .		
25a	<b>Section 501(c)(3), 501(c)(4), and 501(c)(29) organizations.</b> Did the organization engage in an excess benefit transaction with a disqualified person during the year? If "Yes," complete Schedule L, Part I . . . . .		
b	Is the organization aware that it engaged in an excess benefit transaction with a disqualified person in a prior year, and that the transaction has not been reported on any of the organization's prior Forms 990 or 990-EZ? If "Yes," complete Schedule L, Part I . . . . .		
26	Did the organization report any amount on Part X, line 5, 6, or 22 for receivables from or payables to any current or former officers, directors, trustees, key employees, highest compensated employees, or disqualified persons? If "Yes," complete Schedule L, Part II . . . . .		
27	Did the organization provide a grant or other assistance to an officer, director, trustee, key employee, substantial contributor or employee thereof, a grant selection committee member, or to a 35% controlled entity or family member of any of these persons? If "Yes," complete Schedule L, Part III . . . . .		
28	Was the organization a party to a business transaction with one of the following parties (see Schedule L, Part IV instructions for applicable filing thresholds, conditions, and exceptions):		
a	A current or former officer, director, trustee, or key employee? If "Yes," complete Schedule L, Part IV . . . . .		
b	A family member of a current or former officer, director, trustee, or key employee? If "Yes," complete Schedule L, Part IV . . . . .		
c	An entity of which a current or former officer, director, trustee, or key employee (or a family member thereof) was an officer, director, trustee, or direct or indirect owner? If "Yes," complete Schedule L, Part IV . . . . .		
29	Did the organization receive more than \$25,000 in non-cash contributions? If "Yes," complete Schedule M . . . . .		
30	Did the organization receive contributions of art, historical treasures, or other similar assets, or qualified conservation contributions? If "Yes," complete Schedule M . . . . .		
31	Did the organization liquidate, terminate, or dissolve and cease operations? If "Yes," complete Schedule N, Part I . . . . .		
32	Did the organization sell, exchange, dispose of, or transfer more than 25% of its net assets? If "Yes," complete Schedule N, Part II . . . . .		
33	Did the organization own 100% of an entity disregarded as separate from the organization under Regulations sections 301.7701-2 and 301.7701-3? If "Yes," complete Schedule R, Part I . . . . .		
34	Was the organization related to any tax-exempt or taxable entity? If "Yes," complete Schedule R, Part II, III, or IV, and Part V, line 1 . . . . .		
35a	Did the organization have a controlled entity within the meaning of section 512(b)(13)? . . . . .		
b	If "Yes" to line 35a, did the organization receive any payment from or engage in any transaction with a controlled entity within the meaning of section 512(b)(13)? If "Yes," complete Schedule R, Part V, line 2 . . . . .		
36	<b>Section 501(c)(3) organizations.</b> Did the organization make any transfers to an exempt non-charitable related organization? If "Yes," complete Schedule R, Part V, line 2 . . . . .		
37	Did the organization conduct more than 5% of its activities through an entity that is not a related organization and that is treated as a partnership for federal income tax purposes? If "Yes," complete Schedule R, Part VI . . . . .		
38	Did the organization complete Schedule O and provide explanations in Schedule O for Part VI, lines 11b and 19? <b>Note.</b> All Form 990 filers are required to complete Schedule O . . . . .		



Part V Statements Regarding Other IRS Filings and Tax Compliance

Check if Schedule O contains a response or note to any line in this Part V

Table with columns for line numbers (1a-14b), descriptions of questions, and Yes/No columns. Includes sections for Form 1096, Form W-2G, Form W-3, Form 990-T, Form 8886-T, Form 8282, Form 8899, Form 1098-C, Form 990, Form 501(c)(7), Form 501(c)(12), Form 4947(a)(1), and Form 501(c)(29).

**Part VI Governance, Management, and Disclosure** For each "Yes" response to lines 2 through 7b below, and for a "No" response to line 8a, 8b, or 10b below, describe the circumstances, processes, or changes in Schedule O. See instructions.  
 Check if Schedule O contains a response or note to any line in this Part VI

**Section A. Governing Body and Management**

		Yes	No
1a	Enter the number of voting members of the governing body at the end of the tax year . . . . . If there are material differences in voting rights among members of the governing body, or if the governing body delegated broad authority to an executive committee or similar committee, explain in Schedule O.		
1b	Enter the number of voting members included in line 1a, above, who are independent . . . . .		
2	Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee? . . . . .		
3	Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors, or trustees, or key employees to a management company or other person? . . . . .		
4	Did the organization make any significant changes to its governing documents since the prior Form 990 was filed? . . . . .		
5	Did the organization become aware during the year of a significant diversion of the organization's assets? . . . . .		
6	Did the organization have members or stockholders? . . . . .		
7a	Did the organization have members, stockholders, or other persons who had the power to elect or appoint one or more members of the governing body? . . . . .		
7b	Are any governance decisions of the organization reserved to (or subject to approval by) members, stockholders, or persons other than the governing body? . . . . .		
8	Did the organization contemporaneously document the meetings held or written actions undertaken during the year by the following:		
8a	a The governing body? . . . . .		
8b	b Each committee with authority to act on behalf of the governing body? . . . . .		
9	Is there any officer, director, trustee, or key employee listed in Part VII, Section A, who cannot be reached at the organization's mailing address? If "Yes," provide the names and addresses in Schedule O . . . . .		

**Section B. Policies** (This Section B requests information about policies not required by the Internal Revenue Code.)

		Yes	No
10a	Did the organization have local chapters, branches, or affiliates? . . . . .		
10b	b If "Yes," did the organization have written policies and procedures governing the activities of such chapters, affiliates, and branches to ensure their operations are consistent with the organization's exempt purposes? . . . . .		
11a	Has the organization provided a complete copy of this Form 990 to all members of its governing body before filing the form? . . . . .		
11b	b Describe in Schedule O the process, if any, used by the organization to review this Form 990. . . . .		
12a	Did the organization have a written conflict of interest policy? If "No," go to line 13 . . . . .		
12b	b Were officers, directors, or trustees, and key employees required to disclose annually interests that could give rise to conflicts? . . . . .		
12c	c Did the organization regularly and consistently monitor and enforce compliance with the policy? If "Yes," describe in Schedule O how this was done . . . . .		
13	Did the organization have a written whistleblower policy? . . . . .		
14	Did the organization have a written document retention and destruction policy? . . . . .		
15	Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision?		
15a	a The organization's CEO, Executive Director, or top management official . . . . .		
15b	b Other officers or key employees of the organization . . . . . If "Yes" to line 15a or 15b, describe the process in Schedule O (see instructions).		
16a	Did the organization invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable entity during the year? . . . . .		
16b	b If "Yes," did the organization follow a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable federal tax law, and take steps to safeguard the organization's exempt status with respect to such arrangements? . . . . .		

**Section C. Disclosure**

- 17 List the states with which a copy of this Form 990 is required to be filed ►
- 18 Section 6104 requires an organization to make its Forms 1023 (or 1024 if applicable), 990, and 990-T (Section 501(c)(3)s only) available for public inspection. Indicate how you made these available. Check all that apply.  
 Own website    Another's website    Upon request    Other (explain in Schedule O)
- 19 Describe in Schedule O whether (and if so, how) the organization made its governing documents, conflict of interest policy, and financial statements available to the public during the tax year.
- 20 State the name, address, and telephone number of the person who possesses the organization's books and records: ►



**Part VII Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors**

Check if Schedule O contains a response or note to any line in this Part VII

**Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees**

**1a** Complete this table for all persons required to be listed. Report compensation for the calendar year ending with or within the organization's tax year.

- List all of the organization's **current** officers, directors, trustees (whether individuals or organizations), regardless of amount of compensation. Enter -0- in columns (D), (E), and (F) if no compensation was paid.
- List all of the organization's **current** key employees, if any. See instructions for definition of "key employee."
- List the organization's five **current** highest compensated employees (other than an officer, director, trustee, or key employee) who received reportable compensation (Box 5 of Form W-2 and/or Box 7 of Form 1099-MISC) of more than \$100,000 from the organization and any related organizations.
- List all of the organization's **former** officers, key employees, and highest compensated employees who received more than \$100,000 of reportable compensation from the organization and any related organizations.
- List all of the organization's **former directors or trustees** that received, in the capacity as a former director or trustee of the organization, more than \$10,000 of reportable compensation from the organization and any related organizations.

List persons in the following order: individual trustees or directors; institutional trustees; officers; key employees; highest compensated employees; and former such persons.

Check this box if neither the organization nor any related organization compensated any current officer, director, or trustee.

(A) Name and Title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)						(D) Reportable compensation from the organization (W-2/1099-MISC)	(E) Reportable compensation from related organizations (W-2/1099-MISC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee	Former			
(1) .....										
(2) .....										
(3) .....										
(4) .....										
(5) .....										
(6) .....										
(7) .....										
(8) .....										
(9) .....										
(10) .....										
(11) .....										
(12) .....										
(13) .....										
(14) .....										

**Part VII Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees** (continued)

(A) Name and title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)						(D) Reportable compensation from the organization (W-2/1099-MISC)	(E) Reportable compensation from related organizations (W-2/1099-MISC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee	Former			
(15)										
(16)										
(17)										
(18)										
(19)										
(20)										
(21)										
(22)										
(23)										
(24)										
(25)										
<b>1b</b> Sub-total										
<b>c</b> Total from continuation sheets to Part VII, Section A										
<b>d</b> Total (add lines 1b and 1c)										

**2** Total number of individuals (including but not limited to those listed above) who received more than \$100,000 of reportable compensation from the organization

	Yes	No
<b>3</b> Did the organization list any <b>former</b> officer, director, or trustee, key employee, or highest compensated employee on line 1a? If "Yes," complete Schedule J for such individual	3	
<b>4</b> For any individual listed on line 1a, is the sum of reportable compensation and other compensation from the organization and related organizations greater than \$150,000? If "Yes," complete Schedule J for such individual	4	
<b>5</b> Did any person listed on line 1a receive or accrue compensation from any unrelated organization or individual for services rendered to the organization? If "Yes," complete Schedule J for such person	5	

**Section B. Independent Contractors**

**1** Complete this table for your five highest compensated independent contractors that received more than \$100,000 of compensation from the organization. Report compensation for the calendar year ending with or within the organization's tax year.

(A) Name and business address	(B) Description of services	(C) Compensation

**2** Total number of independent contractors (including but not limited to those listed above) who received more than \$100,000 of compensation from the organization

**Part VIII** Statement of Revenue

Check if Schedule O contains a response or note to any line in this Part VIII

			(A) Total revenue	(B) Related or exempt function revenue	(C) Unrelated business revenue	(D) Revenue excluded from tax under sections 512-514
Contributions, Gifts, Grants and Other Similar Amounts	1a	Federated campaigns . . . . .	1a			
	b	Membership dues . . . . .	1b			
	c	Fundraising events . . . . .	1c			
	d	Related organizations . . . . .	1d			
	e	Government grants (contributions)	1e			
	f	All other contributions, gifts, grants, and similar amounts not included above	1f			
	g	Noncash contributions included in lines 1a-1f: \$				
	h	<b>Total.</b> Add lines 1a-1f . . . . .				
Program Service Revenue			Business Code			
	2a	_____				
	b	_____				
	c	_____				
	d	_____				
	e	_____				
	f	All other program service revenue . . . . .				
g	<b>Total.</b> Add lines 2a-2f . . . . .					
Other Revenue	3	Investment income (including dividends, interest, and other similar amounts) . . . . .				
	4	Income from investment of tax-exempt bond proceeds				
	5	Royalties . . . . .				
	6a	Gross rents . . . . .	(i) Real			
			(ii) Personal			
	b	Less: rental expenses . . . . .				
	c	Rental income or (loss) . . . . .				
	d	Net rental income or (loss) . . . . .				
	7a	Gross amount from sales of assets other than inventory . . . . .	(i) Securities			
			(ii) Other			
	b	Less: cost or other basis and sales expenses . . . . .				
	c	Gain or (loss) . . . . .				
	d	Net gain or (loss) . . . . .				
	8a	Gross income from fundraising events (not including \$ of contributions reported on line 1c). See Part IV, line 18 . . . . .	a			
	b	Less: direct expenses . . . . .	b			
c	Net income or (loss) from fundraising events . . . . .					
9a	Gross income from gaming activities. See Part IV, line 19 . . . . .	a				
b	Less: direct expenses . . . . .	b				
c	Net income or (loss) from gaming activities . . . . .					
10a	Gross sales of inventory, less returns and allowances . . . . .	a				
b	Less: cost of goods sold . . . . .	b				
c	Net income or (loss) from sales of inventory . . . . .					
		Miscellaneous Revenue	Business Code			
11a	_____					
b	_____					
c	_____					
d	All other revenue . . . . .					
e	<b>Total.</b> Add lines 11a-11d . . . . .					
12	<b>Total revenue.</b> See instructions. . . . .					

**Part IX Statement of Functional Expenses**

Section 501(c)(3) and 501(c)(4) organizations must complete all columns. All other organizations must complete column (A).

Check if Schedule O contains a response or note to any line in this Part IX

Do not include amounts reported on lines 6b, 7b, 8b, 9b, and 10b of Part VIII.

	(A) Total expenses	(B) Program service expenses	(C) Management and general expenses	(D) Fundraising expenses
1 Grants and other assistance to domestic organizations and domestic governments. See Part IV, line 21 . . . . .				
2 Grants and other assistance to domestic individuals. See Part IV, line 22 . . . . .				
3 Grants and other assistance to foreign organizations, foreign governments, and foreign individuals. See Part IV, lines 15 and 16 . . . . .				
4 Benefits paid to or for members . . . . .				
5 Compensation of current officers, directors, trustees, and key employees . . . . .				
6 Compensation not included above, to disqualified persons (as defined under section 4958(f)(1)) and persons described in section 4958(c)(3)(B) . . . . .				
7 Other salaries and wages . . . . .				
8 Pension plan accruals and contributions (include section 401(k) and 403(b) employer contributions)				
9 Other employee benefits . . . . .				
10 Payroll taxes . . . . .				
11 Fees for services (non-employees):				
a Management . . . . .				
b Legal . . . . .				
c Accounting . . . . .				
d Lobbying . . . . .				
e Professional fundraising services. See Part IV, line 17				
f Investment management fees . . . . .				
g Other. (If line 11g amount exceeds 10% of line 25, column (A) amount, list line 11g expenses on Schedule O.) . . . . .				
12 Advertising and promotion . . . . .				
13 Office expenses . . . . .				
14 Information technology . . . . .				
15 Royalties . . . . .				
16 Occupancy . . . . .				
17 Travel . . . . .				
18 Payments of travel or entertainment expenses for any federal, state, or local public officials				
19 Conferences, conventions, and meetings . . . . .				
20 Interest . . . . .				
21 Payments to affiliates . . . . .				
22 Depreciation, depletion, and amortization . . . . .				
23 Insurance . . . . .				
24 Other expenses. Itemize expenses not covered above (List miscellaneous expenses in line 24e. If line 24e amount exceeds 10% of line 25, column (A) amount, list line 24e expenses on Schedule O.)				
a . . . . .				
b . . . . .				
c . . . . .				
d . . . . .				
e All other expenses . . . . .				
25 Total functional expenses. Add lines 1 through 24e				
26 Joint costs. Complete this line only if the organization reported in column (B) joint costs from a combined educational campaign and fundraising solicitation. Check here <input type="checkbox"/> if following SOP 98-2 (ASC 958-720) . . . . .				

**Part X Balance Sheet**

Check if Schedule O contains a response or note to any line in this Part X

		(A) Beginning of year	(B) End of year
<b>Assets</b>	<b>1</b> Cash—non-interest-bearing . . . . .		<b>1</b>
	<b>2</b> Savings and temporary cash investments . . . . .		<b>2</b>
	<b>3</b> Pledges and grants receivable, net . . . . .		<b>3</b>
	<b>4</b> Accounts receivable, net . . . . .		<b>4</b>
	<b>5</b> Loans and other receivables from current and former officers, directors, trustees, key employees, and highest compensated employees. Complete Part II of Schedule L . . . . .		<b>5</b>
	<b>6</b> Loans and other receivables from other disqualified persons (as defined under section 4958(f)(1)), persons described in section 4958(c)(3)(B), and contributing employers and sponsoring organizations of section 501(c)(9) voluntary employees' beneficiary organizations (see instructions). Complete Part II of Schedule L . . . . .		<b>6</b>
	<b>7</b> Notes and loans receivable, net . . . . .		<b>7</b>
	<b>8</b> Inventories for sale or use . . . . .		<b>8</b>
	<b>9</b> Prepaid expenses and deferred charges . . . . .		<b>9</b>
	<b>10a</b> Land, buildings, and equipment: cost or other basis. Complete Part VI of Schedule D . . . . .	<b>10a</b>	
	<b>b</b> Less: accumulated depreciation . . . . .	<b>10b</b>	<b>10c</b>
	<b>11</b> Investments—publicly traded securities . . . . .		<b>11</b>
	<b>12</b> Investments—other securities. See Part IV, line 11 . . . . .		<b>12</b>
	<b>13</b> Investments—program-related. See Part IV, line 11 . . . . .		<b>13</b>
	<b>14</b> Intangible assets . . . . .		<b>14</b>
	<b>15</b> Other assets. See Part IV, line 11 . . . . .		<b>15</b>
<b>16 Total assets.</b> Add lines 1 through 15 (must equal line 34) . . . . .		<b>16</b>	
<b>Liabilities</b>	<b>17</b> Accounts payable and accrued expenses . . . . .		<b>17</b>
	<b>18</b> Grants payable . . . . .		<b>18</b>
	<b>19</b> Deferred revenue . . . . .		<b>19</b>
	<b>20</b> Tax-exempt bond liabilities . . . . .		<b>20</b>
	<b>21</b> Escrow or custodial account liability. Complete Part IV of Schedule D . . . . .		<b>21</b>
	<b>22</b> Loans and other payables to current and former officers, directors, trustees, key employees, highest compensated employees, and disqualified persons. Complete Part II of Schedule L . . . . .		<b>22</b>
	<b>23</b> Secured mortgages and notes payable to unrelated third parties . . . . .		<b>23</b>
	<b>24</b> Unsecured notes and loans payable to unrelated third parties . . . . .		<b>24</b>
	<b>25</b> Other liabilities (including federal income tax, payables to related third parties, and other liabilities not included on lines 17-24). Complete Part X of Schedule D . . . . .		<b>25</b>
	<b>26 Total liabilities.</b> Add lines 17 through 25 . . . . .		<b>26</b>
<b>Net Assets or Fund Balances</b>	<b>Organizations that follow SFAS 117 (ASC 958), check here</b> <input type="checkbox"/> <b>and complete lines 27 through 29, and lines 33 and 34.</b>		
	<b>27</b> Unrestricted net assets . . . . .		<b>27</b>
	<b>28</b> Temporarily restricted net assets . . . . .		<b>28</b>
	<b>29</b> Permanently restricted net assets . . . . .		<b>29</b>
	<b>Organizations that do not follow SFAS 117 (ASC 958), check here</b> <input type="checkbox"/> <b>and complete lines 30 through 34.</b>		
	<b>30</b> Capital stock or trust principal, or current funds . . . . .		<b>30</b>
	<b>31</b> Paid-in or capital surplus, or land, building, or equipment fund . . . . .		<b>31</b>
	<b>32</b> Retained earnings, endowment, accumulated income, or other funds . . . . .		<b>32</b>
	<b>33 Total net assets or fund balances</b> . . . . .		<b>33</b>
<b>34 Total liabilities and net assets/fund balances</b> . . . . .		<b>34</b>	

**Part XI Reconciliation of Net Assets**

Check if Schedule O contains a response or note to any line in this Part XI

1	Total revenue (must equal Part VIII, column (A), line 12)	1
2	Total expenses (must equal Part IX, column (A), line 25)	2
3	Revenue less expenses. Subtract line 2 from line 1	3
4	Net assets or fund balances at beginning of year (must equal Part X, line 33, column (A))	4
5	Net unrealized gains (losses) on investments	5
6	Donated services and use of facilities	6
7	Investment expenses	7
8	Prior period adjustments	8
9	Other changes in net assets or fund balances (explain in Schedule O)	9
10	Net assets or fund balances at end of year. Combine lines 3 through 9 (must equal Part X, line 33, column (B))	10

**Part XII Financial Statements and Reporting**

Check if Schedule O contains a response or note to any line in this Part XII

	Yes	No
1 Accounting method used to prepare the Form 990: <input type="checkbox"/> Cash <input type="checkbox"/> Accrual <input type="checkbox"/> Other If the organization changed its method of accounting from a prior year or checked "Other," explain in Schedule O.		
2a Were the organization's financial statements compiled or reviewed by an independent accountant? If "Yes," check a box below to indicate whether the financial statements for the year were compiled or reviewed on a separate basis, consolidated basis, or both: <input type="checkbox"/> Separate basis <input type="checkbox"/> Consolidated basis <input type="checkbox"/> Both consolidated and separate basis		
b Were the organization's financial statements audited by an independent accountant? If "Yes," check a box below to indicate whether the financial statements for the year were audited on a separate basis, consolidated basis, or both: <input type="checkbox"/> Separate basis <input type="checkbox"/> Consolidated basis <input type="checkbox"/> Both consolidated and separate basis		
c If "Yes" to line 2a or 2b, does the organization have a committee that assumes responsibility for oversight of the audit, review, or compilation of its financial statements and selection of an independent accountant? If the organization changed either its oversight process or selection process during the tax year, explain in Schedule O.		
3a As a result of a federal award, was the organization required to undergo an audit or audits as set forth in the Single Audit Act and OMB Circular A-133?		
b If "Yes," did the organization undergo the required audit or audits? If the organization did not undergo the required audit or audits, explain why in Schedule O and describe any steps taken to undergo such audits.		

INTERNAL REVENUE SERVICE  
P. O. BOX 2508  
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date:

C/O ADAM GOLDBERG  
1792 BELL TOWER LN  
WESTON, FL 33326

Employer Identification Number:

DLN:

Contact Person:

Contact Telephone Number:

Accounting Period Ending:  
December 31

Public Charity Status:  
170(b)(1)(A)(iii)

Form 990 Required:  
Yes

Effective Date of Exemption:

Contribution Deductibility:  
Yes

Addendum Applies:  
No

Dear Applicant:

We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are deductible under section 170 of the Code. You are also qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

Organizations exempt under section 501(c)(3) of the Code are further classified as either public charities or private foundations. We determined that you are a public charity under the Code section(s) listed in the heading of this letter.

For important information about your responsibilities as a tax-exempt organization, go to [www.irs.gov/charities](http://www.irs.gov/charities). Enter "4221-PC" in the search bar to view Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities, which describes your recordkeeping, reporting, and disclosure requirements.

We have sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,



Director, Exempt Organizations



**617.0834 Officers and directors of certain corporations and associations not for profit; immunity from civil liability.—**

(1) An officer or director of a nonprofit organization recognized under s. 501(c)(3) or s. 501(c)(4) or s. 501(c)(6) of the Internal Revenue Code of 1986, as amended, or of an agricultural or a horticultural organization recognized under s. 501(c)(5), of the Internal Revenue Code of 1986, as amended, is not personally liable for monetary damages to any person for any statement, vote, decision, or failure to take an action, regarding organizational management or policy by an officer or director, unless:

(a) The officer or director breached or failed to perform his or her duties as an officer or director; and

(b) The officer's or director's breach of, or failure to perform, his or her duties constitutes:

1. A violation of the criminal law, unless the officer or director had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful. A judgment or other final adjudication against an officer or director in any criminal proceeding for violation of the criminal law estops that officer or director from contesting the fact that his or her breach, or failure to perform, constitutes a violation of the criminal law, but does not estop the officer or director from establishing that he or she had reasonable cause to believe that his or her conduct was lawful or had no reasonable cause to believe that his or her conduct was unlawful;

2. A transaction from which the officer or director derived an improper personal benefit, directly or indirectly; or

3. Recklessness or an act or omission that was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(2) For the purposes of this section, the term:

(a) "Recklessness" means the acting, or omission to act, in conscious disregard of a risk:

1. Known, or so obvious that it should have been known, to the officer or director; and

2. Known to the officer or director, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or omission.

(b) "Director" means a person who serves as a director, trustee, or member of the governing board of an organization.

(c) "Officer" means a person who serves as an officer without compensation except reimbursement for actual expenses incurred or to be incurred.

History.—s. 54, ch. 90-179; s. 92, ch. 97-102; s. 33, ch. 2009-205.



## SUMMARY OF PARLIAMENTARY PROCEDURE

**Justice and courtesy to all**  
**One thing at a time**  
**The rule of the majority**  
**The right of the minority**

In order for an organization to conduct business in a professional and effective manner, rules and procedures are needed. The following are basic parliamentary procedures to achieve that end. A complete Roberts Rules is available at the library or local bookstore.

### **Securing the Floor**

When a member wishes to bring a matter before the house, he/she must first “secure the floor” (be recognized and get permission to speak). To do this:

1. Member raises hand or rises to get Chair’s attention.
2. Member addresses the Chair by title(not be his/her name) and says “Mr. (Madam) President” or Mr. (Madam) Chairman”, and then waits for recognition.
3. The Chair recognizes a member by either calling the member by name or nodding in the member’s direction.
4. Once recognized, the member “has the floor” and permission to introduce business.

### **Introducing Business**

As in securing the floor, there are several steps:

1. A motion is made by stating, “I move that...” or “I move to...” or “I move the adoption of the following...”. “I move” is the equivalent of, “I propose”.
2. Another member seconds the motion by saying “I second the motion”. The reason that a motion needs to be seconded is to indicate that more than one person is in favor of discussing the matter. It is not necessary to secure the floor in order to second a motion.
3. The Chair restates the motion. “It is moved and seconded that...” “Is there any discussion?”

### **Discussing the Motion**

Discussion of the motion allows opposing views on the motion to be debated. The Chair guides the debate by encouraging opposing views. For example, after a member has offered support for the motion, the Chair asks “Is there anyone opposed to the motion?” If a member expresses opposition, the Chair then asks “Does anyone want to speak in favor of the motion?” If the motion is a hot topic, this process may continue for several rounds before the motion is ready to be voted on. Motions that

are less volatile may have little or no debate. Based on the topic, the Chair may decide to extend or shorten the discussion before proceeding to a vote.

### **Voting on the Motion by Voice**

There are several ways of taking the vote. The most common is by voice. This is the form generally used when taking the vote on an ordinary main motion. The form is “All who are in favor of the motion say aye (or yes)”. In response, the members who are in favor of the motion should say “aye”, loud enough to be heard. The chair then says: “All who are opposed will say No”. All those opposed then say “No”. The chair announces the result by saying either, “The ayes have it, the motion is carried,” or “The nos have it, the motion fails”, followed by lightly rapping the gavel on the table. This completes the vote of a particular motion.

### **Voting on the Motion by Hand**

If the motion is particularly sensitive, a hand vote and tally is advisable. The Chair says, “All those in favor, raise their hand.” A tally is then taken and recorded in the meeting minutes. The Chair then says, “All those opposed raise their hand.” That number is recorded as well. The Chair may ask for those that abstain (do not vote at all) if there are those present, however, members should abstain only if there is a conflict of interest or lack of understanding or background on the motion being voted on.

### **Voting on the Motion by Acclamation**

If a motion being made is universally accepted by the members, the Chair may call for a voice vote by acclamation (no dissenters). If there is no objection, the vote is taken and recorded as such.

### **Voting by Secret Ballot**

For motions that are highly sensitive, such as election of officers, a paper ballot vote may be appropriate. In this case, each member indicates preference on a ballot, folds the ballot and passes it to the secretary or someone appointed to count the votes. In the case of elections where secret ballots are normal, the process isn't necessary if there is only one candidate. In this case, the Chair may request a Vote by Acclamation.

## **TYPES OF MOTIONS:**

### **Main Motion**

When a motion has been made, seconded and stated by the chair, all other business should be deferred until the motion has been disposed of. If the motion is long and involved, the secretary should write it down before proceeding to debate or vote.

### **Motion to Amend**

This motion changes, adds or omits words in the original main motion. It is debatable and subject to a majority vote.

### **Motion to Amend the Amendment**

This motion changes, adds or omits words in the first amendment; it is debatable and subject to a

majority vote.

### **Voting Procedure**

When the main motion has been amended and subsequently re-amended. The first vote deals with the re-amendment. The second vote deals with the amendment. The final vote deals with the main motion (as amended if appropriate).

### **Motion to Commit**

When it becomes apparent that a particular motion requires further investigation or study, it may be moved to commit the motion to a committee for further review. This motion is debatable and amendable.

### **Motion to Table**

This motion postpones the subject under discussion to some time in the future. These motions are not debatable or amendable and require a majority vote.

### **Motion to Take from The Table**

The removal from the table a motion that has been previously tabled. It may be at the same or a later meeting. This returns the motion for further consideration; not debatable or amendable, and can have no subsidiary motion applied. It takes precedence over any main motion.

### **Motion to Postpone Definitely**

A motion that automatically comes up under Unfinished Business at the next meeting. It is a debatable motion.

### **Motion to Adjourn**

This motion is in order except when a speaker has the floor, a vote is being taken or when the assembly is in the midst of urgent business. When a motion is made to adjourn to a definite place and time, it is debatable.

### **Motion to Reconsider**

The motion to reconsider a motion that was carried or failed is in order if made on the same day, but must be made by one who voted with the prevailing side. Motion in question can be twice reconsidered. Debatable: majority rule.

### **Question**

This motion is made to close debate on the pending motion. It is not debatable. The form is "Mr. (Madam) Chairman, I move the previous question." The Chairman then asks, "Shall debate be closed and the question now put?" If this is adopted by a two-thirds vote, the question before the assembly is immediately voted upon.

**Point of Order**

This motion is always in order, but can be used only to present an objection to the ruling of the Chair or some method of parliamentary procedure. The form is "Mr. (Madam) Chairman, I rise to a point of order." The Chairman: "Please state your point of order." After the member has stated the objection, the Chair answers either "Your point of order is sustained" or "Your point of order is denied." The Chair's decision may be appealed. If appealed, the Chair addresses the assembly and says, "Shall the decision of the Chair be sustained?" This is debatable and voted on like any other motion. A majority or tie vote sustains the decision or reverses the decision of the Chair.

**Point of Information**

Request that is made when a member desires clarification of details. The member may interrupt a speaker and need not obtain the floor.

**Repeal**

Motion to revoke a former action by the group. It may completely remove the motion that originated the action. It may or may not include that the former motion be "struck from the records."

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**PARLIAMENTARY PROCEDURE IN BRIEF****1. Securing the floor**

Member raises hand or rises.  
Member addresses the chair.  
Chair recognizes member.

**2. Introducing the business**

Member makes a motion.  
Another member seconds the motion.  
Chair states the motion.

**3. Voting on the question**

Chair takes the affirmative vote.  
Chair takes the negative vote.  
Chair announces the result.

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# Gift Givers' Guide

KNOW HOW YOUR MONEY IS BEING SPENT

The Gift Givers' Guide is a resource that provides the financial information reported to us from charitable organizations. The information in the Gift Givers' Guide is provided as a public service. The charities listed are currently registered with the Department; Inactive or expired registrations will not display. To search an organization, type in the organization's complete or partial name in the text box below and click the "Search" button.

Business Name: American Cancer Society

**SEARCH**

License/Registration Number:

[Advanced Search](#)

### Search Results

+ **Expand All (show solicitors, branches, fundraisers and statement of purpose) or select them individually**

Sort By: Name: A to Z

Display per page: 5

1
<p>+ <b>American Bladder Cancer Society, Inc., Dalton, MA</b>            Registration Number :CH38887      Expiration Date : 6/19/2016            Revenue Source : IRS 990EZ (12/31/2014)            Total Revenue : \$36,919.00            Total Expenses : \$41,114.00            Surplus/Deficit : -\$4,195.00      IRS Reported Expenses : \$41,114.00    100%</p>
<p>+ <b>American Cancer Society Cancer Action Network, Inc., Washington, DC</b>            Registration Number :CH13501      Expiration Date : 4/10/2015            Revenue Source : 08 - IRS 990 w/ Sch.A (12/31/2013)            Total Revenue : \$35,598,637.00      Program Services Expenses : \$32,063,935.00    91%            Total Expenses : \$35,348,711.00      Administrative Expenses : \$1,527,046.00    4%            Surplus/Deficit : \$249,926.00      Fundraising Expenses : \$1,757,730.00    5%</p>
<p>+ <b>American Cancer Society, Inc., Atlanta, GA</b>            Registration Number :CH7486      Expiration Date : 6/4/2015            Revenue Source : 08 - IRS 990 w/ Sch.A and Audit (12/31/2013)            Total Revenue : \$919,529,774.00      Program Services Expenses : \$112,980,095.00    61%            Total Expenses : \$185,639,572.00      Administrative Expenses : \$7,552,378.00    4%            Surplus/Deficit : \$733,890,202.00      Fundraising Expenses : \$65,107,099.00    35%</p>
<p>+ <b>American Children'S Society, Inc., Marlboro, NJ</b>  <i>Also Soliciting as</i>            The American Children'S Cancer Society, Inc            Registration Number :CH11978      Expiration Date : 4/19/2015            Revenue Source : 08 - IRS 990 w/ Sch.A and Audit (12/31/2013)            Total Revenue : \$1,534,255.00      Program Services Expenses : \$849,365.00    54%            Total Expenses : \$1,564,146.00      Administrative Expenses : \$8,901.00    1%            Surplus/Deficit : -\$29,891.00      Fundraising Expenses : \$705,880.00    45%</p>
<p>+ <b>Conquer Cancer Foundation Of The American Society Of Clinical Oncology, Alexandria, VA</b>            Registration Number :CH14186      Expiration Date : 6/26/2015            Revenue Source : 08 - IRS 990 w/ Sch.A and Audit (12/31/2013)            Total Revenue : \$24,575,140.00      Program Services Expenses : \$16,005,185.00    87%            Total Expenses : \$18,443,237.00      Administrative Expenses : \$551,196.00    3%            Surplus/Deficit : \$6,131,903.00      Fundraising Expenses : \$1,886,856.00    10%</p>
1

**CHARITY FOUNDATION X (Florida)**  
Board of Directors  
Whistleblower Policy

*What is the purpose of a Whistleblower Policy?*

The Code of Ethics of the XXXXXX Foundation (the “Foundation”) requires the Board of Directors to observe high standards of business and personal ethics in the conduct of their duties and responsibilities. It is acknowledged that the Foundation staff are employees of XXXXXX, and as such, fall under the XXXXXX Whistleblower Policy.

This Whistleblower Policy is intended to facilitate the reporting of violations or suspected violations of applicable laws or regulations or of any of the Foundation’s policies. It is the responsibility of all Directors to report any such violations or suspected violations in accordance with this Whistleblower Policy.

*What types of violations or suspected violations are covered by this Whistleblower Policy?*

We strongly encourage the prompt reporting of any of the following violations or suspected violations (each, a “Violation”):

- Questionable accounting, internal accounting controls, or auditing matters;
- Violations of local, state, or federal laws or regulations;
- Violations of the Foundation’s Code of Ethics.

Directors are strongly encouraged to raise their concerns about Violations or suspected Violations by submitting them in the form of a complaint to the Executive Committee of the Foundation’s Board of Directors (currently comprised of the President of XXXXXX, the Executive Director of the Foundation, the officers of the Foundation and the Chairs of the XXXXXX Committee, the Governance Committee and XXXXXX Committee). An individual may submit such complaint on a confidential, anonymous basis, but should be aware that the anonymous nature of the complaint may hinder the ability of the Foundation to investigate the matter in a timely and effective manner.

All complaints should be in writing and should include a full statement of the acts or omissions, along with relevant dates, forming the basis of the complaint. In addition, the complaint should state that it is being made pursuant to this Whistleblower Policy.

To facilitate the investigation of the complaint, the complaint should include contact information for the person making the complaint. The XXXXXX Committee will use its best efforts to maintain the confidentiality of the person making the complaint, but cannot guarantee it. The Board member submitting a complaint on a confidential, anonymous basis is not required to include contact information, but should be aware that the nature of the concerns may lead to the identification of that person as the source of the complaint.

To submit a complaint to the Executive Director or the Chair of the Foundation, send it to the following address:

Executive Director or Chair of the XXXXXX Foundation  
XXX Main Boulevard, Suite XXX  
XXXX, FL 333XX

To submit a complaint on a confidential, anonymous basis, send it in a sealed envelope marked clearly as “CONFIDENTIAL.”

*How will complaints be investigated?*

The Executive Committee will assess every complaint submitted under this Whistleblower Policy and determine the appropriate next steps, including investigation and resulting corrective and/or disciplinary actions, if appropriate. The Executive Committee may enlist staff of the Foundation and/or outside legal, accounting, private investigators, or any other resource, as appropriate, to conduct any investigation of complaints submitted pursuant to this Whistleblower Policy. Upon the conclusion of the investigation, the Executive Committee shall promptly report its findings to the Board of Directors.

*What will happen to me if I report a Violation under this Whistleblower Policy?*

This Whistleblower Policy is intended to encourage Directors to raise serious concerns within the Foundation for investigation and appropriate action. With this goal in mind, the Foundation DOES NOT permit retaliation or discrimination of any kind against any individual who submits, in good faith, a complaint under this Whistleblower Policy. Moreover, an individual who retaliates against someone who has reported a concern in good faith is subject to discipline up to and including termination.

*Who is responsible for this Whistleblower Policy?*

The Foundation’s Executive Committee of the Board of Directors administers this policy and will review this policy periodically and make modifications if required or appropriate.

**Acknowledgment:**

My signature below acknowledges my receipt of the Foundation’s Whistleblower Policy and my understanding of my obligations and responsibilities as detailed herein.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

# **CONFLICT OF INTEREST STATEMENT**

## **XXXXXX CHARITABLE FOUNDATION, INC. (Florida)**

The purpose of this Statement is to protect XXXXXX CHARITABLE FOUNDATION, INC.'s interest when it is contemplating entering into a transaction that might benefit the private interest of an officer, director, member or relative of an officer, director, member or might result in a possible excess benefit transaction.

I. Applicable Law: This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations. This Agreement, its validity, construction and effect will be by the laws of the State of Florida, with venue proper in XXXXXX County, Florida.

II. Definitions:

1. Interested Person: Any director, officer, committee member or relative of any director, officer, or committee member, who has a direct or indirect financial interest.

2. Financial Interest: A person has a financial interest if the person directly or indirectly, through business, investment or family has an ownership or investment interest in any entity with which XXXXXX CHARITABLE FOUNDATION, INC. has a transaction or arrangement or a compensation arrangement with XXXXXX CHARITABLE FOUNDATION, INC. or with any entity or individual with which XXXXXX CHARITABLE FOUNDATION, INC. has a transaction or arrangement or a potential ownership or investment interest in or compensation agreement with any entity or individual with which XXXXXX CHARITABLE FOUNDATION, INC. is negotiating a transaction or arrangement.

III. Procedures:

1. Duty to Disclose: In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the Board of Directors or Committee considering the proposed transaction or arrangement.
2. Decision Making Authority: A financial interest is not necessarily a conflict of interest. A person who has a financial interest may have a conflict of interest only



## **CONFLICT OF INTEREST STATEMENT**

### **XXXXXX CHARITABLE FOUNDATION, INC. (Florida)**

if the Board of Directors decides that a conflict of interest exists. After the disclosure of material facts, and after any discussion with the interested person, he/she shall leave the Board of Directors or Committee Meeting while the determination of a conflict of interest is discussed and voted upon.

3. Procedures for Addressing the Conflict of Interest:
  - A. An interested person may make a presentation at the Board of Directors or Committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and vote on, the transaction or arrangement involving the possible conflict of interest.
  - B. The chairperson of the Board of Directors or Committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to be proposed transaction or arrangement.
  - C. After exercising due diligence, the Board of Directors or the Committee shall determine whether XXXXXX CHARITABLE FOUNDATION, INC. can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
  - D. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board of Directors or Committee shall determine by a majority vote of the disinterested directors or Committee members whether the transaction or arrangement is in XXXXXX CHARITABLE FOUNDATION, INC.'s best interest, for its own benefit, and whether or not it is fair and reasonable.
4. Violations of the Conflict of Interest Policy:
  - A. If the Board of Directors or Committee has reasonable cause to believe a party has failed to disclose an actual or possible conflict of interest, it shall inform the party of the basis for such belief and afford the party an opportunity to explain the alleged failure to disclose.
  - B. If, after hearing the party's response and after making further investigation as warranted by the circumstances, the Board of Directors or Committee determines the party has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

## **CONFLICT OF INTEREST STATEMENT**

### **XXXXXX CHARITABLE FOUNDATION, INC. (Florida)**

- IV. Recording of Proceedings: The minutes of the Board of Directors and all Committee meetings shall contain the names of the persons who disclosed or were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest exists, and the decision as to whether or not a conflict of interest existed. The minutes shall also include the names of the persons who were present for the discussion and the votes relating to the proceedings. Alternatives to the proposed transaction shall also be recorded in the minutes.
- V. Compensation:
1. A voting member of the Board of Directors or a Committee who receives compensation, directly or indirectly from XXXXXX CHARITABLE FOUNDATION, INC. for services is precluded from voting on matters pertaining to that member's compensation.
  2. Any voting member of the Board of Directors or any Committee whose responsibilities include compensation matters and who receives compensation, directly or indirectly, from XXXXXX CHARITABLE FOUNDATION, INC. either individually or collectively, is prohibited from providing any information to any Committee regarding compensation.
- VI. Annual Statements: Each director, principal officer and/or member of a Committee with decision making authority should annually sign a statement which affirms that such person has received a copy of the Conflict of Interest Policy, has read and understands such policy, has agreed to comply with such policy and understands that XXXXXX CHARITABLE FOUNDATION, INC. is charitable, and in order to maintain its federal tax exemption, it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.
- VII. Periodic Reviews: To ensure XXXXXX CHARITABLE FOUNDATION, INC. operates in a manner consistent with the charitable purposes and does not engage in activities that could jeopardize its tax exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include whether compensation arrangements and benefits are reasonable based on competent survey information and arm's length bargaining and whether relationships with management organizations conform to XXXXXX CHARITABLE

**CONFLICT OF INTEREST STATEMENT**  
**XXXXXX CHARITABLE FOUNDATION, INC. (Florida)**

FOUNDATION, INC.'s written policies, are properly recorded, reflect reasonable investment and payments for goods and services, further the exempt purpose of XXXXXX CHARITABLE FOUNDATION, INC. and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

VIII. Use of Outside Experts: When conducting periodic reviews or as needed for investigative purposes, XXXXXX CHARITABLE FOUNDATION, INC., may, but need not, use outside advisors and/or experts. If the outside experts are used, their use shall not relieve the Board of Directors of Committee of its responsibility for ensuring that periodic reviews are conducted.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CHARITY X - FLORIDA**  
Records Retention Policy  
Number of Years or Permanently (P)

<u>Item</u>	<u>Retention Period</u>
Annual Audits	P
Canceled Checks & Documentation	8
Charity X Historical Records	P
Check Requests	8
Conflict of Interest Forms	8
Corporate Book and Seal	P
Deeds, Mortgages, Bills of Sale and Loan Documents	P
Division of Corporation filings	P
Employment Applications	3
Florida Department of Agriculture and Consumer Services	8
Florida Department of Revenue	8
Local Licenses (including Local Business Tax)	8
IRS Form 1023 and Approval Letter	P
IRS Form 990's	8
Payroll Records	8
Personnel Records - Terminated	5
Property Appraisals	P or 8 years after sale
Property Records, Blueprints, etc...	P or 8 years after sale
Sales Tax Exemption Certificate	6
Trade Mark Registrations	P

## **The Dirty Dozen: Twelve Documents Every Attorney Should Review Before Serving on the Board of a Tax-exempt Organization**

**by Adam Scott Goldberg**

Page 45

You sit on the board of directors for a tax-exempt organization that provides a community theater to the neighborhood. The theater has been around for three decades, and you have been a board member for the last five years. The board meets three times a year. The most recent board meeting was pretty typical: After approval of the prior meeting's minutes, the chief executive officer presented his report, and the treasurer presented the financial report. Listening to the presentation of the financial report is rarely the high point of a board meeting. It is not uncommon to see people checking their iPhones or reviewing other handouts while secretly hoping that the financial report will end soon. Imagine your surprise a month later when you are served with a complaint for financial mismanagement of the theater seeking to hold you personally liable for allowing the treasurer to take off with \$1,000,000 in assets. The immediate response is normally, "the audited financial statements did not reflect a problem."

As a board member, you are responsible for monitoring the reports to avoid a situation like this from occurring. A proper reading of the organization's bylaws would have made you aware that a finance committee and a separate audit committee must exist, and that each of those committees must meet quarterly. Unfortunately for you, neither the finance committee nor the audit committee was staffed, and neither had met for the last 10 years. How unlikely is this scenario? Fortunately, such lawsuits are rare,<sup>1</sup> and very few cases have occurred in Florida. Almost all of the published case law from Florida deals with homeowner or condominium associations,<sup>2</sup> which are a type of tax-exempt organization.<sup>3</sup>

Most tax-exempt organizations are governed by a board of directors that is empowered to carry out the exempt purpose of the organization. The board is the policymaker for the entity and is ultimately responsible for the operations and activities of the organization. Any CEO of a tax-exempt organization will tell you that he or she is always looking for attorneys to serve on the board of his or her organization. Attorneys often agree to serve on these boards without considering the responsibilities and consequences of such service.

The federal government, through the Internal Revenue Service, and the state of Florida, through the Florida Department of Agriculture and Consumer Services (FDAC), along with the Florida attorney general, provide much regulatory supervision of tax-exempt organizations.

F.S. §617.0830 states that a director of a Florida not-for-profit corporation is not liable if he or she acted, or failed to act, provided his or her duties were performed in good faith and in the best interest of the entity, using the level of care an ordinary person in a similar position would exercise in similar circumstances. This statute shields board members against liability, except for those cases involving self-dealing or bad faith.

F.S. §617.0834 grants immunity from civil liability to board members and officers who serve without compensation on a Florida not-for-profit organization that is organized under I.R.C. §§501(c)(3) through 501(c)(6).

Pursuant to F.S. §607.0850, most tax-exempt organizations, other than condominium associations, cooperative associations, homeowners' associations, and timeshare management groups, are permitted to indemnify any person who is serving as a director. Under F.S. §607.0850, an organization has the power to indemnify any person who was a director against liability incurred in connection with any proceeding,<sup>4</sup> provided the person acted in good faith and

in a manner he or she reasonably believed to be in the best interests of the organization, and provided the person had no reasonable cause to believe his or her conduct was unlawful or criminal.<sup>5</sup> If this protection is afforded through insurance, the type of insurance is often called a directors & officers (D&O) insurance policy.<sup>6</sup> If an organization has D&O insurance, be sure to inquire as to the policy limits and coverage to ensure that you, as a board member, are covered.

Some of the larger private foundations, hospitals, and other charities may indemnify directors without the benefit of a D&O insurance policy. This assumes that the entity has sufficient assets to self-insure. An individual with deep pockets should be wary of serving on the board of an organization that chooses to self-insure. D&O insurance policies offer varying degrees of protection, depending upon how much coverage the organization can afford. Most policies will pay either directly to the directors or to the organization itself. Many D&O policies do not include reimbursement of legal fees, and almost all such policies exclude from coverage any liability for acts of self-dealing, unauthorized payments, defamation, pension law violations, and fraud.

Before agreeing to serve on a board of directors, an attorney should request and review the following documents:

1) *Articles of Incorporation* — These are the documents that created the organization. Be sure to check if an articles of amendment is filed, which indicates a change was made after incorporation. Common changes would be a name change or a change in distribution of assets upon termination. Alternatively, look for a trust agreement or, if the entity was formed as a limited liability company, an articles of organization. In many jurisdictions, a limited liability company (but only those treated as a corporation for federal tax purposes), a trust, or a trust created by will can create a tax-exempt organization.<sup>7</sup> The organizing document can be filed in any state. These documents will let you know the corporate name, which could be very different from the name the general public sees. As an example in Florida, the American Lung Association in Florida is incorporated under the name American Lung Association of the Southeast, Inc. The articles of incorporation must contain certain information as described by Florida law.<sup>8</sup> The articles will establish the initial board of directors and may contain the procedure for electing or appointing new board members and states, perhaps very generically, the purpose of the organization. For a tax-exempt organization, the articles must also contain the procedure to follow for disposing of corporate assets upon the dissolution of the organization. Articles created under Florida law tend to be short and sweet because they are not easy to amend, and there is a cost associated to filing amendments. The Florida Division of Corporations charges a fee for the filing of articles of amendment (currently \$35).<sup>9</sup>

2) *Bylaws* — These are the rules adopted to regulate and manage the affairs of the tax-exempt organization.<sup>10</sup> The bylaws are normally adopted by the board and should be reviewed at least once every three years. The bylaws may contain any provision that does not conflict with the articles and may not contain anything that would violate local, state, or federal law. If it is not contained in the articles, the bylaws may also establish how directors are qualified, elected, and removed and the length of term. Terms for members of the board may be staggered. The purpose of staggered directors is to provide for continuity of the board.<sup>11</sup> Within the bylaws, you should take note of the quorum requirements, the meeting notice requirements, and whether meetings can be conducted by telephone or online. You should also check to see whether the organization focuses attention on lobbying. Most tax-exempt organizations are prohibited or severely restricted from conducting lobbying activities.<sup>12</sup>

3) *IRS Form 990 for the Last Completed Fiscal Year* — Form 990 is an informational income tax return that must be filed with the IRS on annual basis by most tax-exempt organizations. Versions of this form include 990-EZ, 990-PF, 990-T, and 990-N (also commonly known as “the e-postcard,” which can only be filed electronically). The form is due by the 15th day of the fifth month after the close of the organization’s tax year (also commonly known as the fiscal year).<sup>13</sup> The amount of income and type of exempt organization determines which form is appropriate. This form must be filed annually. Many tax-exempt organizations use a tax year for their accounting period as opposed to a calendar year. This means that the organization uses a 12-month tax period that does not start on January 1 and end on December 31. In Florida, tax-exempt organizations commonly use July 1 to June 30 as the organization’s tax year; however, it can be any 12-month period the organization desires. Form 990, including schedules and attachments, must be made available for public inspection during the organization’s regular business hours at the organization’s principal office.<sup>14</sup> When reviewing the Form 990, you should pay special attention to total assets and total liabilities, which can be found at the end of part one. This will give you a good idea of the financial health of

the organization.

4) *Copy of the Exemption Letter from the IRS (the IRS Determination Letter)* — This is a letter from the IRS that states the organization is exempt from federal taxes. Once an organization receives a favorable determination letter, the letter is valid as long as there are no substantial changes in the purpose or operation of the organization.<sup>15</sup> In order to revoke the tax-exempt status, the IRS must publish a notice that the organization has lost its exempt status.<sup>16</sup> This letter is not required for most religious organizations.

5) *Most Recently Filed Corporate Annual Report from State of Incorporation* — A Florida-based, tax-exempt organization must file an annual report with the Florida Department of State, Division of Corporations, just like a for-profit organization.<sup>17</sup> The report is due by May 1 of each year beyond the year of incorporation.<sup>18</sup> The purpose of the annual report is to keep the state of Florida apprised of the organization's basic information. No financial information is contained in an annual report. Failure to timely file the annual report will result in the organization becoming inactive and legally unable to transact business within Florida. Filing fees for an annual report for a tax-exempt organization are less than for-profit entities at \$61.25; however, the late payment penalty does not apply to tax-exempt organizations.<sup>19</sup> If the organization is incorporated under the laws of another state, check that state's law to review filing requirements.

6) *List of Board Responsibilities, Including any Required Financial Commitment and Copy of the Conflict of Interest Form* — It is important to know what is expected of you before you agree to serve as a board member. Be sure to inquire as to the number of meetings per year, at what time of day and for how long meetings are usually held, and where meetings are usually held. People often agree to serve and are then surprised to find out that a large annual donation is expected from each board member. Many organizations have a "give or get" policy, which requires the board member to make the minimum donation themselves or assist in procuring the minimum donation amount from others. In addition, ask to see the conflict of interest form that the organization asks you to sign. All IRS informational tax returns for nonprofit organizations ask whether the organization uses a conflict of interest form. The IRS application for tax-exempt status goes so far as to request that a copy of the conflict of interest policy be sent in with the application.<sup>20</sup>

7) *List of Existing Officers* — The officer positions in a tax-exempt organization must be specified in the articles or the bylaws. The articles or bylaws also provide for the time and manner of election of officers.<sup>21</sup> If both the articles and bylaws are silent as to term of office, the term of office is one year.<sup>22</sup> The same person may hold multiple offices.<sup>23</sup> An officer may resign at any time.<sup>24</sup> The duties of a particular office should be described in the bylaws.

8) *List of Existing Board Members* — Board members must be natural persons who are 18 years of age or older.<sup>25</sup> Other requirements for membership on the board may be provided in the articles or bylaws. Reviewing a roster of the board members can reveal much about a given board. Generally, a large board means that it meets infrequently and that they serve more in an honorary role than in a managerial or oversight capacity. A small board sometimes provides an opportunity to become more proactive quickly within the organization. There is no right or wrong answer as to how many board members should be required, but there must be at least three board members under Florida law.<sup>26</sup> In addition, the composition of the board can suggest potential problems. For example, a board comprised of all attorneys or all financial planners is usually not a good idea. A board roster will also be helpful in providing you with a list of people to talk with in order to answer questions about the organization itself. Reviewing the board roster will help anticipate conflicts of interest should you have knowledge of, or previous history with, some of the other directors. For more information on conflicts of interest for directors of a Florida not-for-profit corporation, see F.S. §617.0832.

9) *Mission Statement* — A mission statement or program of work is an important item that every tax-exempt organization should have. A good mission statement is succinct and explains what the organization actually does, aspires to do, and/or what it hopes to achieve. A mission statement may be broad, such as "for literary purposes," or be more specific, such as "to improve the reading skills of third grade students in Tampa, Florida." The IRS recognizes eight tax-exempt purposes: religious, scientific, charitable, literary, educational, testing for public safety, fostering national or international amateur sports, and prevention of cruelty to children or animals.<sup>27</sup> Florida merely

requires that the organization act “for any one or more lawful purposes not for pecuniary profit.”<sup>28</sup> Before agreeing to serve on a board, be sure you agree with the mission statement and feel comfortable taking action or raising funds in furtherance of the mission statement. Many tax-exempt organizations have problems when they stray too far from the core mission. As an example, a religious institution should not open a restaurant on the premises unless it is willing to prove how the restaurant furthers its mission and/or exempt purpose.

10) *Copy of Most Recent Audit/Budget/Financial Report* — Board members must understand the financial condition of an organization in order to serve and protect it. If a board member is not satisfied with his or her ability to understand the audit, budget, or financial report, the member should ask questions until he or she understands. When looking at year-end audited financial statements, look for the auditor to offer an “unqualified” or “clean” opinion. This is the highest level of assurance an auditor can provide.<sup>29</sup> If the organization does not have a budget, it is exceedingly difficult to determine whether the organization is meeting its exempt purpose. A proper budget should also show projections versus last year’s results in order to help one assess the success or failure of the organization.

11) *Copy of the FDACS Solicitation of Contributions Registration Application or Proof of the Annual Renewal* — On January 1, 1992, the Florida Solicitation of Contributions Act went into effect. This law regulates the solicitation of public contributions and requires full public disclosure of certain information from persons or organizations soliciting Florida residents for contributions. The act does not apply to religious or educational institutions, government agencies, certain veterans’ organizations, or political groups who need not file this application.<sup>30</sup> The initial application form with FDACS is form DACS-10100E, and there is a filing fee based upon the finances of the organization. FDACS sends an annual renewal form to the organization and there is a late fee for missing the renewal deadline. Information obtained from the application or the renewal thereof is made available to the public at the website for FDACS, [www.freshfromflorida.com](http://www.freshfromflorida.com). The publication is only available online and is known as the Florida Charities Gift Givers’ Guide.

12) *Copy of Florida Sales Tax Exemption Certificate* — These certificates are issued by the Florida Department of Revenue to allow an organization to avoid paying sales tax on most purchases and leases. The certificate is good for five consecutive years from date of issuance and may be renewed.<sup>31</sup> F.S. §§212.08(6), 212.08(7), and 213.12(2) govern which types of organizations may qualify for a sales tax exemption.

If an organization cannot provide you with most of the “dirty dozen” listed above, you should seriously reconsider joining the board. If you are already a board member of an organization that cannot provide most of the items listed above, encourage staff, officers, volunteers, and other board members to get current with their required paperwork and filings.

<sup>1</sup> See *Stern v. Lucy Webb Hayes National Training School*, 381 F. Supp. 1003 (D.C. 1954).

<sup>2</sup> See *Taylor v. Wellington Station Community Association, Inc.*, 633 So. 2d 43 (Fla. 5th D.C.A. 1994), and *Munder v. Circle One Condominium, Inc.*, 596 So. 2d 144 (Fla. 4th D.C.A. 1992).

<sup>3</sup> See I.R.C. §§501(c)(4) and 501(c)(7). All references made to the Internal Revenue Code shall mean the Internal Revenue Code of 1986 as amended.

<sup>4</sup> See Fla. Stat. §607.0850(11)(d), which defines “proceeding” to include any formal or informal, threatened, pending or completed action, suit or other matter, whether civil, criminal, administrative, or investigative. All references are to the 2010 Fla. Stat. unless otherwise provided.

<sup>5</sup> See Fla. Stat. §607.0850(1).



<sup>6</sup> See Fla. Stat. §607.0850(12).

<sup>7</sup> See I.R.S. Rev. Rul. 2004-51 (June 1, 2004).

<sup>8</sup> See Fla. Stat. Ch. 617.

<sup>9</sup> Florida Dept. of State, Division of Corporations, Corporation Fees, <http://www.sunbiz.org/feecorp.html>.

<sup>10</sup> See Fla. Stat. §617.01401(3).

<sup>11</sup> See generally ALI-ABA Revised Model Nonprofit Corporation Act (1987).

<sup>12</sup> See I.R.C. §501(h).

<sup>13</sup> See I.R.C. §6072(e).

<sup>14</sup> See I.R.C. §6104(a)-(b).

<sup>15</sup> See Treas. Reg. §1.501(a)-1(a)(2).

<sup>16</sup> See Treas. Reg. §601.201(n)(3)(iii)(a).

<sup>17</sup> See Fla. Stat. §617.1622.

<sup>18</sup> See Fla. Stat. §617.1222(2).

<sup>19</sup> See Fla. Stat. §617.1622(7). This report is available to the public at <http://www.sunbiz.org>.

<sup>20</sup> See IRS Form 1023 (rev. June 2006) at 4, Part 5, Question 5(a), (b) and (c).

<sup>21</sup> See Fla. Stat. §617.0840(1).

<sup>22</sup> See *id.*

<sup>23</sup> See Fla. Stat. §617.0840(4).

<sup>24</sup> See Fla. Stat. §617.0842(1).

<sup>25</sup> See Fla. Stat. §617.0802.

<sup>26</sup> See Fla. Stat. §617.0806.

<sup>27</sup> See I.R.C. §501(c)(3).

<sup>28</sup> See Fla. Stat. §617.2001(1).

<sup>29</sup> See Andrew S. Lang, Financial Responsibilities of Nonprofit Boards, 20 (Boardsource 2003).

<sup>30</sup> See Fla. Stat. §§496.095 and 496.096.

<sup>31</sup> See Fla. Stat. §212.084.

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*This column is submitted on behalf of the Tax Section, Domenick R. Lioce, chair, and Michael D. Miller and Benjamin Jablow, editors.*

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