

LINN COUNTY BAR ASSOCIATION MONTHLY MINUTES

Cedar Rapids Museum of Art

Thursday, March 18, 2010

President-Elect Hinz called the meeting to order at approximately 12:20 p.m.

The following guests were introduced: Christine Conover from Simmons Perrine Moyer Bergman introduced Travis Schroeder.

The following attorneys were proposed and admitted for membership: Sasha Monthei proposed Travis Schroeder, a 2009 graduate of The University of Iowa College of Law practicing with Simmons Perrine Moyer Bergman, and Kristin Wilcox, a 2003 graduate of The University of Iowa College of Law who recently joined Guaranty Bank after working in private practice in Minnesota, for membership and they were both admitted.

Treasurer Todd Anderson distributed a Treasurer's Report showing total assets as of March 1, 2010 are \$76,112.33 (\$20,065.25 in the checking account and \$56,047.08 in the money market account).

Laura Ebinger, President of Linn Law Club, advised that 35 young attorneys attended the recent lunch with Judge McPartland. The next Linn Law Club event is on Thursday, March 25, 2010 at Gringo's. The April event will likely be a Breakfast with the Bench featuring Judge Thornhill.

President-Elect Hinz made the following announcements:

- The University of Iowa College of Law's legal clinic was recently renovated and Linn County attorneys are invited to their open house on April 23, 2010 from 4:00 to 6:00 pm.
- The annual LCBA Day at the Ballpark event will be Thursday May 20, 2010 at noon. The LCBA will pay for the cost of tickets, but members will be asked to RSVP in advance. This year our group is also being offered an all you can eat and drink (including alcohol) option for an additional \$15.00 – those tickets will be available the day of the game and gates open at 11:00 (the all you can eat/drink option expires at 2:00, which is usually the seventh inning). Information will be available on the LCBA's website at www.linncobar.org.
- The first Flood Buy Out program training has been held and the second, which will be presented by Lisa Gavin with Legal Aid, will be held on April 1, 2010 at Shuttleworth & Ingersoll. The City Attorney has agreed to waive conflicts with firms performing title opinion work so long as the attorneys who perform the title opinion work are not involved in the advice-giving to the flood victims.

Darin Luneckas spoke about the upcoming summer CLE and golf outing. The events will be held on Thursday, July 8, 2010. Bob Teig is organizing the CLE again, which will be held at the Dows Auditorium at Coe College. The golf event and dinner will be at Hunters Ridge. Stephanie Hinz will be organizing a bike ride. Registration cards for all the events will be mailed in mid-May.

Emily Ellingson of Lynch Dallas introduced Andy Hosmanek, who made a presentation on nonprofit law in the State of Iowa.

The next meeting of the LCBA will be on April 15, 2010 at the Cedar Rapids Museum of Art.

/s/ Laura C. Mueller
Secretary

**LINN COUNTY BAR ASSOCIATION
TREASURER'S REPORT**

MARCH 18, 2010

**LINN COUNTY BAR ASSOCIATION ACCOUNTS
AS OF MARCH 1, 2010**

Asset	Value
Checking Account	\$20,065.25
Money Market Account	\$56,047.08
Total:	\$76,112.33

**LINN COUNTY BAR ASSOCIATION ACCOUNTS
PREVIOUS MONTH**

Asset	Value
Checking Account	\$57,137.46
Money Market Account	\$18,892.86
Total:	\$76,030.32

Nonprofit Law in the State of Iowa





Andrew J. Hosmanek
 Meardon, Sueppel & Downer P.L.C.
 (319) 338-9222
andvh@meardonlaw.com

Adjunct Assistant Professor,
 University of Iowa

Outline

- What is a nonprofit?
- Why nonprofits are important to the State of Iowa
- Tips on advising nonprofit clients
- Resources for further assistance with nonprofits and nonprofit law

What is a nonprofit?

- A mission-based organization
 - Organization: a nonprofit corporation, trust, or association
 - Mission: set up to further exempt goals set out in the tax code
- Not for profit, but must have a profit
 - "No money, no mission" – Prof. Boyd

Professor Boyd's "Power Points"

- "Do Good Well" and "Do Well Good"
- Charitable nonprofit organizations must be accountable to the publics they serve because of their tax exempt status granted by the federal government: "accountability" takes the form of "good management practices, legal mandates and ethical conduct"
 - Section XIII – Accountability and Compliance
Iowa Principles and Practices for Charitable Nonprofit Excellence



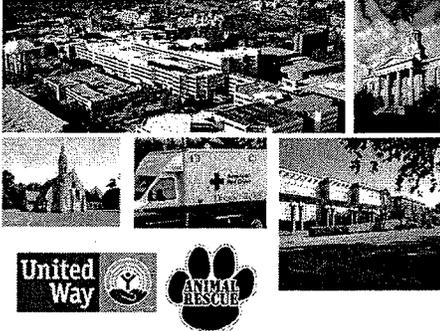
Scope of the Nonprofit Sector

- In 2006, there were over 1.9 million nonprofit organizations in the United States.
- The Internal Revenue Code defines over 27 categories of organizations exempt from federal income taxes.
- The majority of these organizations – about 1.5 million of them – make up the "independent sector." The independent sector includes 501(c)(3)s (public charities, private foundations, and religious congregations) and 501(c)(4)s (social welfare/advocacy organizations).

The 501(c)(3) organizations in this network fall into eight major categories:

- Arts, culture, and humanities, such as museums, symphonies and orchestras, and community theatres;
- Education and research, such as private colleges and universities, independent elementary and secondary schools, and noncommercial research institutions;
- Environmental and animals, such as zoos, bird sanctuaries, wildlife organizations, and land protection groups;
- Health services, such as hospitals, public clinics, and nursing facilities;
- Human services, such as housing and shelter, organizers of sport and recreation programs, and youth programs;
- International and foreign affairs, such as overseas relief and development assistance;
- Public and societal benefit, such as private and community foundations, civil rights organizations, civic, social, and fraternal organizations;
- Religion, such as houses of worship and their related auxiliary

Familiar nonprofits



Less familiar nonprofits

- Fraternities and Sororities
- Social clubs (garden clubs, athletic associations, etc)
- Country clubs
- Fraternal insurance organizations
- Literary organizations



Nonprofit Impact in the USA

- In 2005, nonprofits employed 12.9 million individuals, or approximately 9.7 percent of the U.S. economy. This was greater than the number of people employed by the financial activities sector that year.
- Employees of nonprofit organizations account for 8.1 percent of wages paid in the U.S. in 2006. The average annual wage for an employee of a nonprofit organization was \$34,339 in 2005.

Impact of Iowa Nonprofits

- In 2005, charitable employment ~ 8.9% of total employment for State of Iowa
- In 2005, charitable nonprofit employees earned \$3.7 B in wages (nearly 8% of state's total wages)
- The number of Iowa public charities with more than \$25,000 in gross receipts increased by 21.9% between 2001 and 2005
- Source: http://www.iowalifechanging.com/downloads/char_givin_g_report_FINAL-02-01-2007.pdf

Nonprofit Funding

- Government is the primary source of revenue for human services (52%)
- Dues, fees and charges are the primary source of revenue for education (56%) and health (47%)
- Charitable contributions are the primary source of revenue for the arts (44%)
- Charitable contributions are also the primary source of revenue for religious organizations (95%)

Volunteer Trends

- Even with the economic crisis, the national volunteer rate remained relatively constant, from 26.2% in 2007 to 26.4% in 2008. In 2008, 61.8 million volunteers donated approximately 8 billion hours of service in communities across the country.
- 38% of adults volunteered in Iowa in 2008, contributing 90.6 million hours of service.
- In addition to the 886,000 adults in Iowa volunteering in 2008, an extra 54,382 individuals worked with their neighbors to fix a problem or improve a condition in their community but did not serve through an organization.



When is a Nonprofit Appropriate?

- Obvious choices include public charities such as scholarship organizations, relief agencies, animal rescues, PTO, etc.
- When a profitable business will exist and the main goal is not dividends to shareholders and the business will not be sold for value
 - "There is money in nonprofits" – officers/employees can be compensated very fairly for their efforts
 - Good example would be an organization that works alongside a large nonprofit such as a University, hospital, etc. and can be folded into the larger organization one day
- Where there is little or no profit potential and it exists mainly for the benefit of the members (donations may not be tax-exempt, but pays no entity-level income tax)

Nonprofit Formation



- A 2-step process:
 - Entity formation (State level)
 - To establish name and basic information
 - To allow you to receive an EIN and start banking
 - To allow corporate governance
 - Application for tax-exemption (Federal level) if indicated
 - To allow donations to be tax-deductible to donors (501c3 only), and/or
 - To prevent entity-level taxation (501c3 and 501c"others")

Nonprofit Entity Choices

- Nonprofit Corporation (Iowa Code 504)
 - Recommended if planning to apply for tax-exempt status
 - Low drafting cost, low filing fee
 - Familiar structure
- Trust
 - Higher drafting cost, no filing fee
 - Greater privacy and possibly flexibility
- Unincorporated Association
 - No drafting cost or filing fee
 - More difficult to achieve tax-exempt status
- Limited Liability Company
 - Possibly for joint venture between nonprofits

Nonprofit Corporations (Iowa Code 504)

- Articles of Incorporation are similar to for-profit articles
- Required provisions:
 - A name (may include Inc., Ltd., or the like, but not required)
 - Address of registered office and registered agent at that office
 - Name and address of each incorporator
 - Whether there will be members
 - Dissolution provision
 - Signature of an incorporator

Nonprofit Corporations (Iowa Code 504)

- Optional provisions:
 - A purpose clause (recommended if you plan to apply for tax-exempt status)
 - Names and addresses of initial directors
 - Governance provisions
 - Powers of members or any class thereof
 - Indemnity provisions
- Filing fee: \$20.00
- Biennial reporting with no fee

Your Information Checklist

- Client (entity) name
- Registered agent (you or an officer?)
- Contact person/incorporator (director or treasurer)
- Contact info (mailing address, phone etc.)
- Nonprofit's fiscal year
- Nonprofit's website
- Nonprofit's accountant (if any), and get release form to exchange information



Next Steps

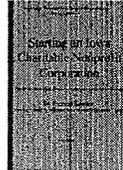
- State-level incorporation is only the first step in becoming a tax-exempt nonprofit
- Once Articles are filed, get an EIN:
<http://www.irs.gov/businesses/small/article/0, id=102767, 00.html>
- Hold a board meeting and adopt bylaws
- File Form 1023 or 1024 for tax-exemption with the IRS



Bylaws

- Similar to for-profit bylaws, but it may be useful to have a good sample for a starting point.
- "Starting an Iowa Charitable Nonprofit Corporation" by INRC's Prof. Koontz has sample by-laws and explanations of each

• <http://nonprofit.law.uiowa.edu/AboutUs/inrcpubs.asp>



Form 1023



- The IRS form used to apply for charitable tax-exemption
- Form: www.irs.gov/pub/irs-pdf/f1023.pdf
- Instructions: www.irs.gov/pub/irs-pdf/i1023.pdf
- 30 pages including schedules and checklists



Client Considerations

- Filling out the 1023 can take as little time as 3 hours, or as long as 3 years (I've had both)
- It is generally a mistake for the attorney to take this task on herself/himself alone
- If the nonprofit is small, sit down with the founder and work on the form together for an afternoon
- If the nonprofit is established, this might be the work of a committee – but get accountability and one point of contact

1023 Questions



- Administrative (contact info, officers, pay)
- Legal (purpose clause, dissolution clause)
- Practical (conflicts of interest, related parties, related organizations)
- Financial (3-year budget and balance sheet)
- Program (what will be done, how it fits into the exempt purpose)
- Fundraising (where, methods)

1023 – Legal and Practical Issues

- Have the articles, bylaws, and a conflict of interest policy already adopted
 - Sample COI Policy:
<http://www.irs.gov/instructions/i1023/ar03.html>
- If there are related parties or entities, or if the entity has a predecessor, gather this information and be prepared to disclose it
- Concisely state what you do and how it fits a charitable purpose under 501(c)(3) – this is your purpose clause (in Articles)

1023 – Financial Issues



- Gathering the client's financial information is often the most difficult part
- Often few records are kept, or funds have been out of the founder's pocket
- There may be a treasurer or finance committee, but often they do not have the expertise or time to supply the information
- Remember: you can estimate 3 years out for new entities (another good reason to do this process early)
- Highly recommend that you advise the nonprofit to hook up with a good accountant early

1023 - Program and Fundraising

- These sections require narrative answers in addition to the form itself, on separate pages
- These require the most information from the client – and they have to understand what they are going to do, and how they will raise money
- You can (and should) submit newsletters, news articles, website printouts etc. that reflect favorably on the nonprofit
- Lobbying activities are generally prohibited – if your client wishes to do this, dig deeper

1023 Considerations

- Filing fee is \$400 or \$850 based on receipts (+/- \$10,000 annually)
- Filing fee will be \$200 for online applications when(?) this rolls out (2010?)
- File within 27 months or donations may not be retroactively deductible
- File within your first tax year or your nonprofit corporation will have to pay corporate tax (Form 1120)
- Always check that you have the most up-to-date Form 1023 and any errata sheets – the IRS changes this frequently

1024 and "501c3-Others"

- Certain organizations may be eligible to avoid entity-level income tax, but are not "charitable" – thus donations are not tax-deductible to the donors
 - 501(c)(2) — Title Holding Corporation for Exempt Organization (House Corp.)
 - 501(c)(5) – Labor unions
 - 501(c)(6) – Chambers of Commerce
 - 501(c)(7) – Alumni Associations, Social and Recreation Clubs, Fraternities/Sororities
 - 501(c)(8) – Fraternal Benefit Society
- Uses IRS Form 1024, which is shorter and less complicated than Form 1023

Nonprofit Taxation

- All nonprofits must make a filing
- Under \$25,000 = Form 990-N ("e-Postcard" informational filing)
- Others file Form 990-EZ or Form 990
- www.guidestar.org (free login required) to view Form 990 filings of your favorite nonprofits



Iowa Nonprofit Resource Center

- Located near the College of Law
 - 130 Grand Avenue Court
 - Iowa City, IA 52242
- <http://nonprofit.law.uiowa.edu/default.asp>
- Publications, training, newsletters and programs
- 319-335-9765



Principles & Practices

- Free download:
<http://nonprofit.law.uiowa.edu/updates/P&P%20w%20color2008.pdf>
- Clarifies management practices, ethical conduct, and public accountability.
- Governor Chet Culver has said the guidelines "include more Iowa-specific information, and will better allow Iowa nonprofit organizations to improve their ability to provide their services."
- Secretary of State Michael Mauro adds, "Increasingly, the factors that boost community vitality come from Iowa's charitable nonprofit organizations. I hope this booklet serves as a useful resource for local nonprofits."



Iowa Register of Accountability

- <http://nonprofit.law.uiowa.edu/community/registrysearch.asp>
- A listing of Iowa nonprofits who have dedicated themselves to the P&P by adoption of resolution, P&P training, or certain types of licensure or certification



Questions or Comments?

Andrew J. Hosmanek
Meardon, Sueppel & Downer P.L.C.
(319) 338-9222
andyh@meardonlaw.com

Adjunct Assistant Professor,
University of Iowa