

of the following conditions: conducted herself in good faith; reasonably believed that her conduct was in the best interests of the organization; and, in the case of a criminal proceeding, had no reasonable cause to believe her conduct was unlawful.²³ Unless limited by its articles of incorporation, a corporation must pay the reasonable legal expenses incurred by a director who wins a lawsuit that arose because of her board service.²⁴ A nonprofit may purchase insurance to cover these costs.²⁵

Whether to indemnify and how much insurance to buy are business decisions that are the responsibility of the organization's board of directors. Indemnification without insurance is only helpful to the extent of the organization's assets available to cover the costs.

Directors' and Officers' Liability Insurance

Directors' and officers' ("D&O") insurance coverage addresses actual or alleged wrongful acts by directors, officers, and other persons insured under the policy. Most often the person bringing a lawsuit covered by a D&O policy alleges that a board member has engaged in "wrongful acts" in governing and managing the organization. The plaintiff in such a suit may be an insider, such as an employee or volunteer, or an outsider, such as a client, donor, or governmental official. Most organizations do not have sufficient assets set aside to fulfill their promises to indemnify board members

for the legal expenses they incur in defending themselves against suits based on their work as board members. Consequently, most nonprofit organizations obtain D&O coverage so that they are better able to fulfill their promise to indemnify. Board members of all nonprofit organizations should consider whether D&O insurance, or some other coverage, is necessary and affordable for the organization. The board may even appoint an individual to serve as the manager of the organization's insurance program.

Endnotes

- ¹ HOWARD W. BENTL, *LAW OF DAMAGES* § 33:1 (5th ed. 2004).
- ² *Id.*
- ³ *Spence v. Yaghi*, 236 Ark. 509, 512, 367 S.W.2d 238, 240 (1963).
- ⁴ *Robinson Ins. & Real Estate Inc. v. Southwestern Bell Telephone Co.*, 366 F. Supp. 307, 311 (W.D. Ark. 1973).
- ⁵ *Dodson v. Allstate Ins. Co.*, 365 Ark. 458, 464, 231 S.W.3d 711, 716 (2006).
- ⁶ *Id.*
- ⁷ *Id.*
- ⁸ Ark. CODE ANN. § 4-33-830(d) (Repl. 2001).
- ⁹ Ark. CODE ANN. § 16-120-103(a) (Repl. 2006).
- ¹⁰ Ark. CODE ANN. § 16-120-103(a).
- ¹¹ Ark. CODE ANN. § 16-120-102 (Repl. 2006).
- ¹² *Clayborn v. Bankers Standard Ins. Co.*, 348 Ark. 557, 563, 75 S.W.3d 174, 177 (2002) (overruled on other grounds, *Low v. Insurance Company of North America*, 364 Ark. 427, 220 S.W.3d 670 (2005)).
- ¹³ Ark. CODE ANN. § 16-120-102(a)(1) & (2) (Repl. 2006).
- ¹⁴ Ark. CODE ANN. § 4-33-833(b) (Repl. 2001).
- ¹⁵ Ark. CODE ANN. § 4-33-831(a)(1)-(3) (Repl. 2001).
- ¹⁶ Ark. CODE ANN. § 4-33-140 (11) (Repl. 2001).
- ¹⁷ *See* Ark. CODE ANN. § 4-33-1302(a) (Repl. 2001).
- ¹⁸ Ark. CODE ANN. § 4-33-1401 (Repl. 2001).
- ¹⁹ Ark. CODE ANN. § 4-33-1302(c) (Repl. 2001).
- ²⁰ Ark. CODE ANN. § 4-33-833(a) (Repl. 2001).
- ²¹ Ark. CODE ANN. § 4-33-853(a) (Repl. 2001).
- ²² Ark. CODE ANN. § 4-33-833(b) (Repl. 2001).
- ²³ Ark. CODE ANN. § 4-33-851.
- ²⁴ Ark. CODE ANN. § 4-33-852.
- ²⁵ Ark. CODE ANN. § 4-33-857.

CHAPTER IV

Volunteers

K-Child's Directors Consider the Risks Associated with Volunteers

"We have the best volunteers in the state," commented director Henry Gonzales over a cup of coffee before the monthly meeting of K-Child's board. Henry was a fifth grade teacher at Little Dipper Elementary and took pride in the fact that all of his students participated in K-Child sports programs. "We had a minor accident during a K-Child bike safety course last week and that got me thinking. What will happen if someone gets injured while volunteering for us? Will K-Child be responsible for the medical bills? What if one of our volunteers hurts someone else? Is the volunteer liable? Is K-Child?"

"Chill out," responded Zoey and Tim almost simultaneously. Zoey was accustomed to the nearly risk-free pet care business; Tim was used to the dangerous world of firefighting and felt prepared for risks.

Although Claire secretly agreed with Tim and Zoey, she was wary of factions developing on the K-Child board. She wisely decided to bring in an outsider for guidance. "Maybe it's time for Sandy to attend one of our meetings," Claire suggested. "She could help answer these questions."

Introduction

Like other nonprofits, K-Child needs volunteers to achieve its mission. Volunteers are the life blood of most nonprofit organizations. Over sixty million Americans donate over three billion hours of time to organizations each year.¹ Recent trends in volunteering include families participating in volunteer projects together, for-profit corporations providing volunteer teams for special events, short-term volunteer assignments, and web-based volunteerism.² Volunteers increasingly donate highly specialized skills that nonprofit organizations need and could not necessarily afford to purchase.³

All volunteer programs create risk of liability. This chapter discusses some of the most common risks and the scope of federal and state volunteer-protection acts. Risks associated with volunteer programs can be reduced with the use of tools such as screening and orientation, followed by ongoing training and supervision of volunteers. These preventive techniques are discussed in Chapter V.

Liability of the Organization for Acts of Volunteers

The K-Child board is wise to educate itself about the risks associated with volunteers, particularly since the organization's

focus is on children. The children participating in K-Child's activities and programs will see adult volunteers as trusted authority figures. Sadly, some volunteers might abuse that trust. K-Child could be liable for any resulting injury.

Where no immunity protects a volunteer organization,⁴ the organization may be subject to direct liability for negligent hiring, retention, or supervision when third parties are injured by the acts of unfit, incompetent, or unsuitable employees or volunteers.⁵ Negligent hiring litigation, which includes lawsuits arising from the acts of volunteers, is a growing problem. Volunteer organizations that work with vulnerable populations such as children and the elderly are particularly susceptible to infiltration by unsuitable volunteers with histories of violence, molestation or other unacceptable behavior. A volunteer in such an organization may have access to otherwise unsupervised children or vulnerable adults. Child molesters and other criminals sometimes use volunteer opportunities to target their victims.⁶

The doctrine of negligent hiring requires a volunteer organization to perform reasonable investigations to determine the fitness of applicants wishing to work with the organization when members of the public are likely to come into contact with such volunteers.⁷ This rule does not necessarily impose a duty to supervise directly the activities of a properly screened volunteer

if such supervision is inconsistent with the organizational structure.⁸ The reasonableness standard of the negligent hiring doctrine is flexible enough to take into account and “balance both the unique financial character of nonprofit organizations and the availability (in terms of access and cost) of new screening techniques.”⁹

In order to recover, an injured party must show that the organization knew, or in the exercise of ordinary care should have known, that its volunteer's or employee's conduct would expose members of the public to an unreasonable risk of harm.¹⁰ Allegations that a particular background check was “inadequate” must include evidence that an alternative background check would have discovered the employee's propensity to engage in the conduct which caused the injury.¹¹ See Chapter V for more information on recruitment, screening, training, placement and supervision of volunteers.

Liability of the Organization to Volunteers

Providing recreational opportunities for children, youth and families is part of K-Child's mission, so it's not unlikely that a volunteer will be injured during one of K-Child activity. If so, the volunteer might look to K-Child to help, particularly if he has no medical insurance himself. Volunteer claims against

nonprofits usually seek: (1) payment of medical expenses for injuries suffered while volunteering; or (2) damages for the organization's negligence in supervising the program or activity in which the volunteer was injured.¹² While prevention is the first line of defense (see Chapter V), a nonprofit has options for covering the cost of such claims.

The organization could acquire a volunteer accident insurance policy, which is a policy that typically pays the costs of emergency-room services and follow-up treatment to predetermined limits based on the nature of the injury.¹³ Such a policy will pay a claim regardless of who is at fault for the volunteer's injury, provided that the injury resulted from the organization's operations or on its premises.¹⁴ These policies are relatively inexpensive because they normally provide only excess coverage, which means they "kick in" only after other available insurance is exhausted, does not apply, or is subject to a deductible or co-payment provision. Essentially, a volunteer accident policy covers any additional costs, up to a limit, if the volunteer's personal health insurance is inadequate to cover his or her medical expenses.¹⁵

Another option for the organization is to obtain a commercial general liability ("CGL") policy, which typically has a section providing coverage for medical expenses associated with

an injury arising from an organization's operations or on its premises.¹⁶ Many CGL policies, however, do not cover volunteers.¹⁷ If a volunteer sues the organization seeking damages for harm suffered because of the organization's negligence, a CGL policy can usually protect the organization. A third option, a directors' and officers' ("D&O") policy, may also protect an organization against claims made by a volunteer, although a typical D&O policy does not cover bodily injury or property damage.¹⁸

Finally, an organization may have a Workers' Compensation policy, which covers accidental injuries. A Workers' Compensation policy pays for medical expenses as well as lost wages resulting from a "work-related" injury.¹⁹ If an organization has a Workers' Compensation policy, it may consider including volunteers on that policy. Thus, if a volunteer is injured while "working" for a nonprofit organization, the volunteer could have his medical expenses covered. A Workers' Compensation policy is also beneficial to the organization, as it limits injured volunteer's remedies to the benefits provided under the policy. This means that the volunteer may not have his medical expenses covered and also bring a lawsuit against the organization.²⁰ For more information on insurance, see Chapter VI.

Liability of Volunteers to Third Parties

K-Child's volunteers may also be concerned about their own liability for accidents or injuries occurring during K-Child activities.

Volunteer service, like virtually any activity, carries some risk of personal liability for harm caused to people or property. Federal and state laws, the federal Volunteer Protection Act of 1997²¹ and the Arkansas Volunteer Immunity Act, enacted in 1987,²² limit this liability, but do not prevent lawsuits against volunteers.

Unless protected by state or federal law (the uncertainty of the scope of that protection is discussed below), a volunteer can be held liable if his behavior is negligent. Even when an individual is not being paid and acts with the best of intentions, he may be liable for negligence if he fails to use ordinary care, as described in Chapter III.

Volunteers may carry personal insurance that covers certain types of negligence. For example, individuals who provide transportation in their own vehicles as part of their volunteer activities may be covered for liability arising from that transportation. Some vehicular insurance policies, however, may exclude such coverage, especially if the volunteer is being "paid" with reimbursement for gas or other expenses. Alternatively, a nonprofit may have liability insurance covering acts of volunteers

or may agree to indemnify its volunteers. A nonprofit that indemnifies its volunteers agrees to cover the costs of legal defense, fees and damage awards arising from volunteer activities.

Generally, neither insurance nor any other form of indemnification covers liability resulting from an intentional act, such as a volunteer striking a client. Of course, a volunteer is subject to prosecution if she commits a crime

Volunteer Protection Act of 1997

In 1997 Congress passed the Volunteer Protection Act of 1997 (the "VPA").²³ The goal of the VPA is to encourage people to serve as volunteers by shielding them from liability for harm that they may cause while serving as volunteers. The VPA provides protection for volunteers of a nonprofit organization or a governmental entity. Under the VPA, a "volunteer" is an individual performing services for a nonprofit organization or a governmental entity whether she is a volunteer serving as a director, officer, trustee, or direct service volunteer.²⁴ Furthermore, the individual is only treated as a "volunteer" if she does not receive (1) compensation (other than reasonable reimbursement or allowance for expenses actually incurred); or (2) any other thing of value in lieu of compensation, in excess of \$500 per year.²⁵

Several conditions must be satisfied for a volunteer to benefit from the protection of the VPA; a volunteer will not be liable for harm caused while serving a nonprofit organization or a governmental entity if:

- (1) the volunteer was acting within the scope of her responsibilities in the organization or entity at the time of the act or omission;²⁶
- (2) when appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities;²⁷
- (3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the harmed individual;²⁸ and
- (4) the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the state requires an operator's license or insurance.²⁹

A close examination of these requirements illustrates that the VPA does *not* provide absolute protection to all volunteers all of the time.

For example, often a volunteer's responsibilities are vague or undefined, which makes it difficult to determine whether the

first condition has been satisfied. Furthermore, it is not always clear when it is "appropriate" for a volunteer to be authorized to act. Additionally, plaintiffs often use the third condition to their benefit by alleging "willful misconduct" or "flagrant indifference to the rights or safety of the harmed individual." In doing so, the plaintiff makes it much more difficult for the volunteer/defendant to find protection under the VPA, often requiring the volunteer/defendant to spend time and money defending the claim.

Nonetheless, even if the above-mentioned conditions have been met, and the volunteer is entitled to the protection of the VPA, the volunteer is not necessarily home-free. Often if a volunteer is protected by the VPA, the plaintiff will sue the organization rather than the volunteer. If the plaintiff obtains a judgment against the organization, the organization may look to, or sue, the volunteer for contribution or indemnification. In other words, if a volunteer causes harm that the organization must pay for, the organization likely will demand that the volunteer reimburse the organization, whether in part or in full.

The VPA also places limitations on protection depending on the type of misconduct involved. The VPA does not protect a volunteer if the volunteer's misconduct (1) constitutes a crime of violence or an act of international terrorism; (2) constitutes a hate crime; (3) involves a sexual offense for which she has

been convicted; (4) involves a violation of a federal or state civil rights law; or (5) occurs while the volunteer is under the influence of intoxicating alcohol or any drug.³⁰ The fourth limitation may be of greatest consequence to a volunteer because most lawsuits against volunteers are employment disputes, which primarily involve civil rights claims. This is yet another reason for a volunteer to be aware of potential lawsuits and liability rather than assuming that the VPA will be her steadfast shield.

Arkansas Volunteer Immunity Act

Arkansas's Volunteer Immunity Act limits the civil liability of qualified volunteers for personal injury or property damage resulting from their volunteer efforts.³¹ A "qualified volunteer" is "any person who, of free will, provides goods or services without financial compensation to or through any volunteer agency in connection with a volunteer program."³² A "volunteer agency" is "any volunteer program of all departments, institutions, and divisions of state government, community volunteer organization, or any not-for-profit corporation which has received a 501(c)(3) designation from the United States Internal Revenue Service, other than one established principally for the recreational benefit of its stockholders or members."³³

Under the Volunteer Immunity Act, qualified volunteers

cannot be held liable in damages for personal injury or property damage sustained by anyone participating in or using the services or benefits of the volunteer.³⁴ In addition, a volunteer is not liable for the negligence of another person in connection with his or her volunteer activities.³⁵

However, the Volunteer Immunity Act does not eliminate liability for qualified volunteers completely. Volunteers are still liable when acting outside the scope of the volunteer program,³⁶ for gross negligence, when acting in bad faith,³⁷ and for negligently operating a motor vehicle, aircraft, or boat.³⁸ Because few cases have interpreted the Act, it is unclear how broadly these exceptions will be interpreted. They could take away much of the protection given by the Act. For example, "acting in bad faith" might include any negligent act. If so, the Act would not protect a volunteer found to be negligent.

In most instances, the federal VPA pre-empts state law.³⁹ Therefore, if state law provides *less* protection to volunteers than the VPA, the VPA overrides that state law. On the other hand, if state law provides *greater* protection to volunteers than the VPA, then the state law applies.⁴⁰ It is difficult to measure and compare the amount of protection that the Arkansas Volunteer Immunity Act provides as opposed to the amount of protection that the VPA provides. Under the Arkansas Act, a volunteer

may be held liable when she causes personal injury or property damage if she is covered by an insurance policy, but her liability will be limited to the amount of coverage provided.⁴¹ Under the VPA, a volunteer may be protected when she causes harm, whether or not she is covered by an insurance policy; however, the VPA expressly recognizes that the protection afforded to volunteers is *not* protection from a suit brought by the nonprofit organization against the volunteer. At first glance it may seem that the VPA offers greater protection than the Arkansas Act. Nonetheless, after considering the possibility of a suit by the organization against the volunteer, the Arkansas Act and the VPA may be of equal value to a volunteer.

Endnotes

¹ *Giving and Volunteering in the United States* (2001), study by the United States Department of Labor Bureau of Labor Statistics, available from the Independent Sector, <http://www.independentsector.org/programs/research/lyresources.html>.

² MELANIE L. HERMAN ET AL., MANAGING RISK IN NONPROFIT ORGANIZATIONS, A COMPREHENSIVE GUIDE 149-50 (2004).

³ *Id.* at 151.

⁴ See Chapter VI, Charitable and Governmental Immunity.

⁵ See *Sparks Reg'l Medical Ctr v. Smith*, 63 Ark. App. 131, 134-35, 976 S.W.2d 396, 398-99 (1998).

⁶ Mark C. Lear, *Just Perfect for Pedophiles? Charitable Organizations That Work with Children and Their Duty to Screen Volunteers*, 76 TEX. L. REV. 143, 143 (1997).

⁷ *Id.* at 181.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Smith*, 63 Ark. App. at 135, 976 S.W.2d at 398-99. The court distinguished negligent hiring from liability under the theory of *respondent superior*, which requires the tortious employee's act to be within the scope of the employment. *Id.* Negligent hiring, on the other hand, is premised upon the employer's negligence being the proximate cause of the plaintiff's injury. *Id.*

¹¹ See *Mark v. Borough of Harbor*, 51 F.3d 1137, 1155 (3rd Cir. 1995) (finding that because a volunteer fire company did perform criminal background checks on each applicant, any allegation that the need for psychological screening was "obvious" would have to measure the extent to which

psychological screening provides a better benchmark for discovering potential arsonists than the police background check already employed); accord *Porter v. Harshfield*, 329 Ark. 130, 138-39, 948 S.W.2d 83, 87 (1997) (recognizing that the mere fact that a man has engaged in homosexual conduct "in no way indicates that he would commit a sexual assault").

¹² MELANIE L. HERMAN ET AL., NO SUPERVISOR, MANAGING RISK AND REWARD IN VOLUNTEER MANAGEMENT 108 (2004).

¹³ *Id.* at 108.

¹⁴ *Id.* at 109.

¹⁵ *Id.* at 108-09.

¹⁶ *Id.* at 109.

¹⁷ *Id.*

¹⁸ *Id.* at 112; see also Chapter VI for more information on D&O policies.

¹⁹ See HERMAN ET AL., *supra* note 2, at 109.

²⁰ *Id.* at 111; see also Chapter VI for more information on Workers' Compensation.

²¹ 42 U.S.C. § 14501 *et seq.* (2005).

²² ARK. CODE ANN. § 16-6-101 *et seq.* (Repl. 1999).

²³ 42 U.S.C. § 14501 *et seq.*

²⁴ 42 U.S.C. § 14505(b) (2005).

²⁵ 42 U.S.C. § 14505(a)(1)-(B).

²⁶ 42 U.S.C. § 14503(a)(1) (2005).

²⁷ 42 U.S.C. § 14503(a)(2).

²⁸ 42 U.S.C. § 14503(a)(3).

²⁹ 42 U.S.C. § 14503(a)(4).

³⁰ 42 U.S.C. § 14503(0)(1).

³¹ See ARK. CODE ANN. § 16-6-101, *et seq.* (Repl. 1999).

³² ARK. CODE ANN. § 16-6-103(1) (Repl. 1999).

³³ See ARK. CODE ANN. § 16-6-103(2).

³⁴ ARK. CODE ANN. § 16-6-105 (Repl. 1999).

³⁵ ARK. CODE ANN. § 16-6-104(a) (Repl. 1999).

³⁶ ARK. CODE ANN. § 16-6-104(b).

³⁷ ARK. CODE ANN. § 16-6-105(2).

³⁸ ARK. CODE ANN. § 16-6-105(3).

³⁹ 42 U.S.C. § 14502(a) (2005).

⁴⁰ 42 U.S.C. § 14502(a).

⁴¹ ARK. CODE ANN. §§ 16-6-105(1), (3)(B), (4)(B)(i).

CHAPTER V

Personnel Issues in Volunteer Management

K-Child Learns to Recruit and Supervise Volunteers

News spreads fast in Dipper County, and the K-Child board is especially attuned to the local grapevine. The next meeting was abuzz with news of what had happened in the nearby city of Ursa Minor.

Following the lead (as always) of Little Dipper, Ursa Minor had instituted its own children's fitness organization called the "Star Bears." Unfortunately, the Star Bears' first annual track meet was the scene of a small crime wave. It seems that the volunteer in charge of safekeeping the participants' property was a kleptomaniac.

Henry quickly brought up the issue of liability. "Most of our volunteers are terrific, but it's always possible we'll get a bad apple. And, even the best volunteer can have a bad day or take on something he can't handle," said Henry. "We have to take our volunteers and their activities seriously; essentially, they're unpaid employees."

Claire turned to Ron, who was known to have his own personnel problems in the retail sporting goods business. "Ron, you have dealt with employee supervision and screening before. Can you help us learn how to screen and supervise volunteers?"

Ron replied sheepishly, "Honestly, that's something my wife Kim handles as our store's Human Resources Officer. What

if I ask her to prepare a summary of personnel issues related to volunteer management for the next board meeting? We'll make a presentation and let the board decide what else we'd need to know about these matters."

The board enthusiastically supported Ron's proposal. They all hoped that Kim would be willing to help!

Introduction

The K-Child board is onto something here. Volunteer managers have many of the same concerns as employers.

Establishing a comprehensive volunteer management program will help K-Child avoid trouble and keep its volunteers happy and productive. Board members will also gain some valuable information and skills that will serve them well if they later decide to hire staff for K-Child.

The most common causes of legal action against nonprofits, and their directors and officers, are related to employment. Complaints include discrimination, wrongful termination, sexual harassment, and wage and hour disputes. Any organization with employees should be familiar with basic employment law, a subject that is beyond the scope of this publication. Because volunteers should be treated with the same fairness and respect as employees, this book will touch on those personnel issues of particular relevance to volunteer management.

A nonprofit also has a responsibility to protect its employees, clients, and the general public from harm caused by its volunteers. Consequently, an organization should take the same care in recruiting, screening, training, supervising, and evaluating volunteers as it does paid employees. A comprehensive volunteer management program will help minimize an organization's legal exposure.

The essence of volunteer service is that it is given freely. Sometimes a nonprofit may unknowingly make an employee out of a volunteer by giving cash, gift certificates, or other taxable benefits. Non-cash gifts of nominal value are generally safe, but cash equivalents are taxable and cast doubt on an individual's volunteer status. More information is available at the IRS website, www.irs.gov, at the link to the workshop on employment issues.

From Recruitment to Placement

Recruitment

Most nonprofits are in constant need of volunteers, so they need a vigorous and ongoing recruitment program. A successful recruitment effort will look beyond the "usual suspects" and seek volunteers from all walks of life. There are talented people

everywhere who do not volunteer simply because they haven't been invited or haven't found a program that fits their interests and needs. Volunteer programs should strive to be as diverse as the communities they serve in terms of race, religion, socioeconomic status, age, sex and disability. An organization's mission or programs, however, may necessitate restricting volunteers. For example, a church-based project may require volunteers to be members of the congregation. Such restrictions should be implemented only when necessary to achieve the objectives of the program. Children and teenagers can be great volunteers, but minors should be required to submit written consent from their parents or guardians.

As part of its recruitment efforts, an organization should consider making presentations to local clubs and other groups. By reaching out to the community in this way, an organization not only recruits new volunteers, but also has an opportunity to inform the public about the organization's mission and activities. An organization that chooses to make presentations as part of its recruitment efforts should consider the following tips.

- Target groups should be chosen carefully. The best groups are (1) those whose members regularly participate in community service, and (2) those whose members likely have a common interest in the mission or activities of the organization.

- The presenter must be carefully selected; she must be able to explain what the organization does and what the organization needs from potential volunteers. The presenter should directly ask the audience to volunteer.
- The presenter should use visual and auditory aids, if possible. There are many different learning styles; audiences are much more likely to respond when they are engaged and enjoy what they are learning. A University of Minnesota study shows that people are 43% more likely to be persuaded with the use of visual aids.
- The presenter must be prepared for audience members to volunteer by taking along brochures, descriptions of jobs that need to be filled, sign-up sheets, and other necessary materials. The presenter and/or other members of the organization should be sure to get contact information for anyone expressing interest in volunteering.¹

Job Descriptions

Volunteer job descriptions serve several purposes. They set out what a particular volunteer is expected to do and define what a volunteer is authorized to do on behalf of the organization. A well-written job description will clarify the risks associated with

the position, minimize misunderstandings, and guide decisions about screening, training and supervision. If a volunteer goes beyond the scope of his designated duties and injures someone in the process, a job description could help insulate the organization from liability.

A comprehensive volunteer job description may include the following elements: purpose, duties, qualifications (including degrees, licensure or certification, if necessary), supervisor, where volunteer activities will take place, number of hours required per week or month, specific days and times the volunteer will be needed, and required references and background checks. A job description might also include prohibited activities, such as inviting clients to the volunteer's home or lending money to clients. Some organizations include a term of service, such as two years, renewable by mutual agreement. A well-written job description will help a potential volunteer decide whether the job is right for her and will also enable the organization to evaluate the match between volunteer and position.

Before placement, job descriptions are an important screening tool. Specific information about necessary abilities, skills, knowledge and personal qualities will help match volunteers to appropriate volunteer duties. After placement, job descriptions provide structure for training, supervision, and evaluation.

Volunteer Applications

An application form is an important tool for recruiting and screening volunteers, and matching potential volunteers to the organization's needs. A smaller nonprofit might choose to have one general application form, but many organizations will need specialized forms for particular volunteer positions. An application form might include the following inquiries, tailored to the needs of the organization and the role for which the volunteer is applying.

- Identification: name, address, phone numbers, email address.
- Specialized identification that may be required for some volunteer positions and background checks: Social Security number, driver's license number, insurance information.
- Qualifications and Interests: educational background, occupation, relevant skills and knowledge.
- Limitations: health concerns, time constraints.
- References: employers, teachers, friends.

When appropriate, volunteers should also provide written permission to conduct a background check. References are particularly important if the volunteer is not well known to the organization or if he

will not be directly supervised at all times. The application form also should include a certification that the information provided is true and a waiver of any right of confidentiality.

Screening

Volunteer screening procedures vary greatly depending on the nature of the organization's activities and the risks involved in the specific volunteer position. Common categories of screening include: general references, health, criminal background and driving records. Because of privacy concerns, background checks should be no broader than necessary and should be tailored to the requirements of a specific volunteer position. In most circumstances, an organization should avoid conducting a background check on a volunteer if the volunteer's tasks are considered low risk, or she is not working with vulnerable client populations, such as children, dependent adults, and individuals with disabilities.²

If a volunteer is performing a service that ordinarily requires a specific license or other qualification, the organization should ensure that the volunteer has the appropriate credentials. Specialized insurance may also be necessary. For example, a volunteer attorney should be licensed to practice law and have malpractice insurance that covers volunteer activities.

Screening usually starts with a job description and corresponding volunteer application form, followed by a personal interview and appropriate background checks. For some positions, such as food preparation or working with medically fragile clients, health screening may be necessary. Similarly, if the volunteer position requires certain physical abilities, such as lifting, the organization may require the applicant to bring a medical release to demonstrate that he can safely perform the necessary tasks.

Organizations must be particularly careful in screening volunteers who work with children or other vulnerable populations. In addition to conducting a criminal background check, an organization can find out more about a potential volunteer by asking for addresses and employers for the past several years. This information should be verified and if the applicant has moved or changed jobs frequently, the applicant should provide an explanation. Frequent moves sometimes signal a serious problem.

A nonprofit should decide what screening procedures are appropriate for each volunteer position and enforce those procedures uniformly. Any potential volunteer who refuses to cooperate with reasonable and necessary screening should be disqualified. It is both risky and discriminatory to make

exceptions. If the prescribed screening is unnecessary, the screening policy should be changed, not ignored.

Negligent Hiring

Negligent hiring is a doctrine that imposes a duty on employers to conduct *reasonable* investigations of potential employees to determine whether a potential employee would pose an unreasonable risk of harm to others.³ The idea is that if the employer, through reasonable efforts, could have obtained information that would have warned the employer that a potential employee was unfit for employment, the employer should be held responsible for any harm that that employee causes. Although this doctrine traditionally has been applied to employer-employee relationships, there is a strong argument that it does, or should, apply to organization-volunteer relationships.⁴ The argument is that a volunteer is an instrument of the organization's charitable activity and is acting under the guidance of the organization, and this is sufficient to establish an "employment" relationship.⁵ Consequently, it is within the realm of possibility that an injured party could make a claim of negligent hiring against a nonprofit organization for injuries caused by a volunteer.

In the interest of safety and risk management, nonprofits

should examine their screening techniques to determine whether those techniques are as effective as they should be. After such an examination, nonprofits should at least consider the feasibility and/or necessity of using more extensive or advanced screening resources. Having a good screening system in place is a precaution that may be well worth an organization's time and money.

Health Screening

Depending on the organization and the duties of its volunteers, it may be necessary to conduct health screening of prospective volunteers. For example, Arkansas Children's Hospital requires that all volunteers who have direct contact with patients must provide a current tuberculosis (TB) skin test.⁶ It is particularly important to obtain an individual's consent before conducting any health screening, especially drug or blood screening.

Resources

Many companies, like ChoicePoint, DrivingRecords.com, and TC logIQ, offer a wide range of background screening services, such as driving records, social security number validation, personal reference checks, civil and criminal court records, professional credential validation, workers compensation reports, and education verification.⁷ Outsourcing extensive background

checks to commercial search services can be expensive, but it can save time and resources.⁸ All professional licensing boards in Arkansas provide a license verification service. These licensing boards are listed on the state website at www.arkansas.gov.⁹ Most of these licensing boards charge a fee to verify the status of a professional's license.

Keep in mind that a suit alleging negligent hiring would be based on the nonprofit's failure to conduct a reasonable investigation of a potential employee. If the cost to conduct background checks is much greater than the organization can afford, requiring such a background check likely would be unreasonable and the organization would not be liable for negligent hiring.¹⁰

Criminal Background

The Criminal History for Volunteers Act, enacted in April 2005, specifically authorizes volunteer organizations in Arkansas to request and receive criminal background information from the state police department and the Arkansas Crime Information Center (the "ACIC").¹¹ Such criminal background information includes all records of an individual's Arkansas felony arrests, criminal convictions, and whether the person is a registered sex offender.¹² To be eligible, the volunteer organization must first register with the Arkansas State Police Department.¹³

Currently, the State Police charge a \$11.00 fee for conducting criminal background checks on behalf of registered volunteer organizations.¹⁴ Criminal background information from the Federal Bureau of Investigation is also available if the volunteer organization submits a copy of the minutes from its most recent board meeting that lists offenses that it considers sufficient to disqualify a volunteer applicant.¹⁵

Once a volunteer organization is registered with the State Police, it must make its request for criminal background information through the State Police Identification Bureau (the "Identification Bureau").¹⁶ This can be done through the Identification Bureau's website at <https://www.ark.org/criminal/index.php>. The requesting organization must provide its name, the identifying information of the volunteer or applicant, and a form signed by the volunteer or applicant authorizing the release of criminal history information.¹⁷ The Identification Bureau will then conduct the search through the ACIC records.¹⁸ Upon completion of the state records search, the volunteer organization may then ask the Information Bureau to conduct a national criminal information search through the FBI.¹⁹ However, only the Information Bureau can view the FBI report, and it will then notify the volunteer organization of whether the volunteer or applicant meets the qualifications already submitted for serving as a volunteer with the organization.²⁰

All information that the volunteer organization receives in response to a criminal background check is confidential.²¹ Any organization that obtains criminal background information is subject to prosecution for a Class A misdemeanor if it knowingly releases such information to any unauthorized volunteer organization or person or if it obtains the information for an unauthorized purpose.²²

Free Resources

While full criminal background checks will indicate whether an individual is a registered sex offender in addition to having other convictions, internet searches of registered sex offenders are available to the public for free through the ACIC website, www.acic.org/soffi/index.php. This registry provides only the names of those sex offenders who have registered and who have been assigned a risk level of 3 (high risk) or 4 (sexually violent predator).²³ Information about sex offenders from other states is available through the respective state websites or through the National Sex Offender Public Website, available at www.nsopr.gov.²⁴ The national website includes access to information about offenders who have been convicted of a criminal offense against a minor or a sexually violent offense.²⁵

Privacy Concerns

If an organization plans to conduct any screening of a prospective volunteer, that individual's privacy will be jeopardized. Nonprofits cannot ignore this privacy issue, since an organization's screening techniques could work as a deterrent to innocent individuals wishing to volunteer.²⁶ An organization should strive to conduct the least invasive screening possible. On the other hand, an organization must recognize that the safety of its clients, especially if they are members of a vulnerable population, is extremely important.

A good practice for a nonprofit is to advise the prospective volunteer about its screening process and to request written permission from the individual to conduct a background check.²⁷ Additionally, if the organization uses a written application form, the signature block should include a statement of consent to verification of the information on the application and a waiver of any rights to confidentiality.²⁸

Management

A nonprofit generally should treat paid employees and volunteers similarly when it comes to training and supervision. Like an employee, a volunteer should be prepared to undertake her assigned duties and should be given the support she needs

to perform well. If necessary, a volunteer should be disciplined and even terminated. Some policies, such as attendance requirements, may be quite different for volunteers than for employees. Nevertheless, basic standards for job performance and behavior should be enforced across the board. Many nonprofits have far more volunteers than employees, so volunteers may be the primary force behind the organizations' effectiveness, reputation and general corporate culture.

Training and Supervision

Volunteers in most positions need comprehensive orientation before they go to work. By conducting an orientation program, the organization reduces the risk that a volunteer will behave inappropriately. An orientation program also increases the likelihood that a volunteer will understand the organization's mission, policies, procedures, and expectations.²⁹ Following is a list of topics commonly covered during volunteer orientation:

- Mission and purpose of the organization;
- Identifying and reporting abuse;
- Confidentiality;
- Working with clients who have physical impairments;
- Definitions of appropriate and inappropriate behavior;