

- Expectations for volunteer interaction with families and caregivers;
- Emergency exit procedures;
- Depth of staffing (to ensure that volunteers understand that they are required to work in pairs or groups with clients);
- Prohibition against fraternization with clients;
- Drug and alcohol policy;
- Sexual harassment policy; and
- Consequences of violating the organization's rules and procedures.³⁰

The organization should provide written materials on these topics along with the orientation presentation, compiled into a volunteer handbook for easy reference.

In addition to the orientation program, a nonprofit should offer specific on-the-job training to provide volunteers with the information and skills necessary to perform their assignments. The timing and methods of such training should be appropriate to the complexity of the position and the capabilities of the volunteer.³¹ Furthermore, if the volunteers will be working with clients from a vulnerable population, it is very important for the organization to prepare the volunteers to address abuse-related

issues, such as (1) identification of abuse, (2) the actions to be taken if a volunteer suspects a service recipient has been abused, and (3) the volunteer's legal responsibilities.³² The organization should also consider making continuing education available to its volunteers, either by providing educational programs or recommending educational programs offered by other groups.

A nonprofit also must consider the type of supervision its volunteers require and how it will be accomplished. Nonprofits may have a volunteer coordinator to supervise volunteers or may appoint other staff members.³³ In any event, the supervisor should dedicate sufficient amount of time to answering questions, addressing issues, and providing guidance to volunteers. In an all-volunteer organization, the supervisors themselves will be volunteers, presumably those with the most experience, skill or history with the organization.

K-Child, for example, has no paid staff and works with children, a population that is vulnerable to accidental and intentional injury. The K-Child board will need to develop policies and procedures to protect the children in its program. One concern is who will supervise the release of children to authorized caregivers.³⁴ The responsible volunteer must know who is authorized to leave with the child and the parents or caretakers must know that, if someone new will be picking up

the child, they must provide that information to K-Child. If there is any doubt about the identity of the person picking up the child, the volunteer must understand the importance of verifying that person's identity before letting the child leave the facility or event.³⁵

Evaluation and Disciplinary Action

Like paid employees, volunteers deserve periodic performance reviews. Most want feedback and will appreciate an opportunity to improve their skills and effectiveness. Evaluation is a multi-faceted process designed to improve the performance of both the volunteer and the agency. The organization should examine the volunteer's work, note contributions and achievements, and make suggestions for changes and perhaps further training. The volunteer should appraise his own performance, set goals, and provide feedback on the strengths and weaknesses of the organization's volunteer management program. Together, the parties should discuss how to strengthen the relationship between the volunteer and the organization and how to maximize the effectiveness of the volunteer. The organization should keep a written record of the evaluation session. If the organization is unhappy with the volunteer's performance, it may be appropriate to take corrective action, which can occur following the evaluation. Corrective

action could include the requirement of additional training, re-assignment of a volunteer to a new position, suspension of the volunteer, or dismissal from volunteer service.³⁶

Discrimination

Title VII of the federal Civil Rights Act of 1991 prohibits employers of fifteen (15) employees or more, whether for-profit or nonprofit, from discriminating on the basis of race, color, religion, sex, or national origin.³⁷ The Age Discrimination in Employment Act of 1967³⁸ and the Americans with Disabilities Act of 1990³⁹ prohibit discrimination based on age and disability. Although state civil rights laws vary, the Arkansas Civil Rights Act of 1993 also prohibits discrimination and applies to employers of nine (9) or more.⁴⁰ Unless they fall under a specific exemption, all employers must comply with both federal and state employment laws. Churches and other religious entities have some leeway in that they may require their employees to adhere to their religious doctrines.⁴¹

Definition of Employee

Under the federal Civil Rights Act of 1991, the term "employee" means an individual employed by an employer, excluding any person elected to public office or any person

chosen by an elected official to work for her, as a staff member or immediate adviser.⁴² The Arkansas Civil Rights Act of 1993 defines “employee” by stating that “employee does not include: (A) any individual employed by his or her parents, spouse, or child; (B) an individual participating in a specialized employment training program conducted by a nonprofit sheltered workshop or rehabilitation facility; or (C) an individual employed outside the State of Arkansas.”⁴³ These definitions do not specifically address whether a volunteer would be considered an employee for purposes of a claim of employment discrimination. Nevertheless, a nonprofit should implement non-discriminatory practices and procedures even if it has few “employees” who may sue for discrimination. The most obvious reason is that it is the right thing to do; a more practical consideration is that the organization may eventually grow into civil rights law coverage.

One of the most effective ways to avoid discrimination and the appearance of discrimination is to make sure that the organization reflects the diversity of the community served. Directors, officers, volunteers and employees should reflect diversity of, for example, age, race, sex, religion, national origin and disability. Many groups also feel the need for other types of diversity, such as geographic and socio-economic.

Sexual Harassment

Any nonprofit developed enough to have written policies should address the issue of sexual harassment. Every nonprofit should have a written policy, make sure every member of the board, staff and volunteer corps is aware of it, and enforce it with a strict and even hand. Some organizations also need policies and procedures to prevent sexual harassment by clients. Nonprofits serving vulnerable populations such as children and youth, the elderly and people with disabilities should be particularly vigilant to prevent sexual harassment and abuse. An emerging organization like K-Child, which has no paid staff, may establish a grievance committee to address the concerns of volunteers.

Grievance Procedure

Like employees, volunteers should have access to appropriate grievance procedures. A volunteer should know who to go to with problems or concerns related to his volunteer service. If an organization finds it necessary to discipline or terminate a volunteer, there should be a procedure in place for the volunteer to appeal the decision. An emerging organization like K-Child, which has no paid staff, may establish a grievance committee to address volunteers’ concerns.

Dismissal and Resignation

Dismissal of a Volunteer

A nonprofit must be ready and willing to discharge a volunteer when necessary. All volunteers should be held to a high standard and expected to adhere to organizational rules and procedures. Volunteers should be advised of grounds for discharge, which may include theft, being under the influence of alcohol or drugs during volunteer service, mistreatment of clients or co-workers, inappropriate dress or language, and unsatisfactory performance. The organization should address its standards, reasons for dismissal, and dismissal procedures during volunteer orientation and in its volunteer handbook.

Except in an emergency, such as when a volunteer's actions put a client at immediate risk, a volunteer's supervisor should meet with her prior to dismissal to discuss the problem and possible remedies. An organization should make every attempt to be fair and to hear all sides of the story before discharging a volunteer. If discharge becomes necessary, it is important to document the problem, the steps that were taken to correct it, and the ultimate reasons for the discharge.

Resignation of a Volunteer

Volunteers may, of course, resign at any time. Since volunteers are vital to the functioning of most nonprofit organizations, they should be asked to give notice of their resignations as soon as possible. Job descriptions should include information about how much notice the organization requests for that particular job, depending on the needs of the organization.

Ideally, a nonprofit will conduct an exit interview with each departing volunteer. Of course, the organization wants to know why the volunteer is leaving. A final interview also provides an opportunity to thank the volunteer for his service and to ask for suggestions about improving the organization. If the volunteer is leaving with negative feelings, an exit interview may actually prevent the resignation, or at least give the organization an opportunity to address the problem. Volunteers and former volunteers are ambassadors from the organization to the community, so a nonprofit should do all that it can to see that volunteers leave on a positive note.

Endnotes

- ¹ See <http://www.managementhelp.org/staffing/outsrcng/volntee/volntee.htm#anchor1405909> (follow "Recruitment Techniques" hyperlink) (This provides further information and advice on recruiting and managing volunteers).
- ² MELANIE L. HERMAN ET AL., MANAGING RISK IN NONPROFIT ORGANIZATIONS, A COMPREHENSIVE GUIDE 138 (2006).
- ³ Mark C. Lear, *Just Perfect for Pedophiles? Charitable Organizations That Work with Children and Their Duty to Screen Volunteers*, 76 Tex. L. Rev. 143, 181 (1997); see also Chapter IV for a more detailed description of the negligent hiring doctrine.
- ⁴ *Id.* at 147-48, 160-61.
- ⁵ *Id.* at 148.
- ⁶ <http://www.archidtrns.org/volunteer>.
- ⁷ See, e.g., <https://www.drivingrecords.com/home>.
- ⁸ *Guidelines for Screening of Prospective CASA and GAL Volunteers and Employees*, available at --> <http://www.casnet.org/program-management/volunteer-management-guide-screening-volunteers.htm> (last visited Oct. 16, 2008).
- ⁹ <http://www.arkansas.gov> (follow "Business" hyperlink; then follow "Professional Information" hyperlink).
- ¹⁰ Lear, *supra* note 3, at 168.
- ¹¹ Ark. Code Ann. § 12-12-1604(a) (Supp. 2007).
- ¹² Ark. Code Ann. § 12-12-1607(a)(2)(B) (Supp. 2007).
- ¹³ Ark. Code Ann. § 12-12-1605(a) (Supp. 2007).
- ¹⁴ <https://www.ark.org/ornal/index.php>.
- ¹⁵ Ark. Code Ann. § 12-12-1605(c).
- ¹⁶ Ark. Code Ann. § 12-12-1606(a)(1) (Supp. 2007).
- ¹⁷ Ark. Code Ann. § 12-12-1606(a)(2). Criminal information requests performed online require the applicant's first and last name, date of birth, race, and gender. See <https://www.ark.org/criminal/index.php>.
- ¹⁸ Ark. Code Ann. § 12-12-1607 (Supp. 2007).
- ¹⁹ Ark. Code Ann. § 12-12-1607(b) (Supp. 2007).
- ²⁰ Ark. Code Ann. § 12-12-1607(b)(4) (Supp. 2007).
- ²¹ Ark. Code Ann. § 12-12-1607(c). Moreover, any responses to a request for criminal background check information shall not be subject to disclosure under the Freedom of Information Act. Ark. Code Ann. § 12-12-1610(c) (Supp. 2007).
- ²² Ark. Code Ann. § 12-12-1608 (Supp. 2007).
- ²³ <http://www.acic.org/sof/index.php>. The sex offender risk scale ranges from 1 to 4, with "1" being the lowest risk.
- ²⁴ http://www.backgrounderret.com/free_background_check_resources.htm#Sexual%20Offender%20Registry.
- ²⁵ <http://www.nsopr.gov>. A criminal offense against a minor refers to the following range of offenses: kidnapping/false imprisonment of a minor (except by a parent), criminal sexual conduct toward a minor, solicitation of a minor to engage in sexual conduct, use of a minor in a sexual performance, solicitation of a minor to practice prostitution, any conduct that by its nature is a sexual offense against a minor, production or distribution of child pornography, or an attempt to commit any of these offenses. 42 U.S.C. § 14071(a)(3)(A) (Supp. 2005). A "sexually violent offense" refers to aggravated sexual abuse or sexual abuse, or an offense that involves engaging in physical contact

with another person with an intent to commit aggravated sexual abuse or sexual abuse. 42 U.S.C. § 14071(a)(3)(B).

- ²⁶ Lear, *supra* note 3, at 178.
- ²⁷ HERMAN ET AL., *supra* note 2, at 158.
- ²⁸ HERMAN ET AL., *supra* note 2, at 199.
- ²⁹ *Id.* at 201.
- ³⁰ *Id.* at 201-02.
- ³¹ See <http://www.casnet.org/program-management/volunteer-management/sample-manage.htm> (follow "Volunteer Training and Development" hyperlink) (providing further information and suggestions on training employees).
- ³² HERMAN ET AL., *supra* note 2, at 202.
- ³³ <http://www.casnet.org/program-management/volunteer-management/essen/vol.htm> (follow "Supervision" hyperlink).
- ³⁴ *Id.* at 202-203.
- ³⁵ *Id.* at 202.
- ³⁶ <http://www.casnet.org/program-management/volunteer-management/sample-manage.htm>.
- ³⁷ 42 U.S.C. §§ 2000e(b); 2000e-2(a) (2003).
- ³⁸ 29 U.S.C. 621 *et seq.*
- ³⁹ 42 U.S.C. 12101 *et seq.*
- ⁴⁰ Ark. Code Ann. § 16-123-101 *et seq.* (Repl. 2006).
- ⁴¹ 42 U.S.C. § 2000e-1(a) (2003); Ark. Code Ann. § 16-123-103(a) (Repl. 2006).
- ⁴² 42 U.S.C. § 2000e(f) (2003).
- ⁴³ Ark. Code Ann. § 16-123-102(4) (Repl. 2006).

CHAPTER VI

Risk Management

K-Child's Directors Consider Ways to Reduce Risks

Kim's presentation on personnel issues in volunteer management was received with great enthusiasm. "This is a lot to digest," admitted Zoey, "but this information is going to help me manage employees in my business. I didn't realize how much I didn't know about managing people." Tim nodded in agreement.

"And, we're also preparing for the day when we hire staff for K-Child," said Claire.

"Now that we're getting a handle on how to minimize the risks associated with volunteers," noted Henry, "I'd like to see us step back and look at the bigger picture. What are the other risks K-Child faces and how can we best protect the organization?"

"I see where you're going," agreed Claire. "Some combination of prevention and insurance, I would think. Let's set aside some money in our budget and hire Sandy to prepare a presentation on risk management." The resolution passed unanimously.

After the meeting, Claire called Sandy, who agreed to make a presentation at the next board meeting without charge. To help focus her presentation, she asked that each board member email questions and concerns to her before the meeting. Sandy also asked Claire to copy and distribute some simple printed materials on risk management so that board members would be prepared to discuss the subject.

Introduction

Like any individual or organization, a nonprofit entity like K-Child is subject to various kinds of risks. Internal risks include potential loss of the nonprofit's property through theft, flood or fire. Other areas of exposure, such as the risk of being sued, are external. The board of directors, in conjunction with the executive director, should discuss potential risks and establish policies and procedures to reduce the organization's exposure.

Charitable and Governmental Immunity

While there are no Arkansas statutes that provide immunity for nonprofit organizations themselves, a nonprofit may be entitled to protection from tort liability under the common law doctrine of charitable immunity.¹ This doctrine has a long standing history in Arkansas,² although the vast majority of other states have completely abandoned it.³ The doctrine of charitable immunity protects "charities" from financial disaster by disallowing the execution of judgments against them due to the negligent acts of their agents.⁴ In other words, this doctrine is designed to protect a charity's assets from being diminished because of an injury caused by the charity's agent or employee.⁵

As an example of how this doctrine works, assume K-Child

is entitled to charitable immunity. Suppose that K-Child has organized a kickball game for the children of the community.

One of K-Child's volunteers, Meredith, is driving a K-Child van, picking up those children needing a ride to the game. After stopping to pick up Erin at his house, Meredith places the van in reverse and begins backing out of the driveway. At the same time, Bobby, Erin's younger brother, is wandering behind the van. Meredith, not seeing Bobby, hits him with the van and injures him. Bobby's family sues K-Child. Even if Bobby's family prevails in the suit, the family's judgment against K-Child is meaningless because K-Child's property is sheltered from that judgment. Thus, even though K-Child is found liable, K-Child does not suffer any penalty or punishment because of the protection provided by the charitable immunity doctrine.

Not all organizations that consider themselves nonprofits will qualify for immunity under this doctrine. The following factors often are used to determine eligibility for charitable immunity:

1. whether the organization's charter limits it to charitable purposes,
2. whether the organization's charter contains a "not for profit" limitation,
3. whether the organization's goal is to break even,
4. whether the organization earned a profit,

5. whether any profit or surplus must be used for charitable purposes,
6. whether the organization depends on contributions and donations for its existence,
7. whether the organization provides its service free of charge to those unable to pay, and
8. whether the directors and officers receive compensation.⁶

While these factors are not exhaustive, the doctrine of charitable immunity is applied very narrowly.⁷ For example, a court decided that a juvenile rehabilitation camp housing juvenile offenders and funded by the Arkansas Department of Human Services, Division of Youth Services, could not benefit from the doctrine of charitable immunity.⁸ Several facts contributed to this conclusion: the camp's charter did not limit it to charitable purposes; although it was tax exempt, there was no evidence that its goal was to break even; it was funded by the state, rather than being dependent upon donations, and had to return surplus funds to the state treasury instead of using them for charity; and its officers were compensated for their services.⁹

In another case, however, the Arkansas Supreme Court decided that a regional medical hospital was entitled to charitable immunity, despite the fact that it sought yearly profits, paid substantial salaries and bonuses to its CEO and CFO, and only

received six percent of its budget from donations.¹⁰ The court reasoned that a sizable hospital such as this could not be expected to operate in the same humble manner as other non-profits because of the complex nature of the industry.¹¹

Since Arkansas courts have been somewhat inconsistent in applying the doctrine of charitable immunity to various organizations utilizing volunteer workers, the best guidance for a current volunteer organization is to align oneself as closely as possible with the eight factors above. Ultimately, the totality of the circumstances (especially who is injured and how foreseeable the injury was) will dictate whether a nonprofit organization will fall under the protection of charitable immunity.

Arkansas nonprofits may not be able to count on charitable immunity in the future. The Arkansas Supreme Court has urged the General Assembly to consider abolishing the doctrine, as other state legislatures and courts have done.¹²

Direct Action Statute

Arkansas has a statute, known as a “direct action statute,” which allows an injured person to directly sue an organization’s liability insurer, but only under certain circumstances.¹³ The direct action statute applies only if the organization that would be

the proper defendant enjoys charitable immunity, and therefore would be immune from any tort liability.¹⁴ Hence, the direct action statute provides recourse for a plaintiff that would otherwise have no real remedy against the organization itself. If a plaintiff sues under the direct action statute, he is limited to recovering the amount that would otherwise be paid under the terms of the insurance policy.¹⁵ This statute makes it clear that simply because an organization may be entitled to charitable immunity (and is therefore immune from tort liability), such an organization is *not required* to carry liability insurance.¹⁶

Evaluating Liability

Insurance policies designed for nonprofits can be tailored to include essentially any individual within the organization, including directors, officers, trustees, committee members, executive directors, faculty members, employees and volunteers. The nonprofit can also insure itself as an entity, typically by negotiating a separate agreement. Insurance companies generally insure a broader range of liabilities for nonprofits than for their for-profit counterparts, and nonprofits often are able to obtain coverage for typically uninsurable risks such as libel, slander, and plagiarism.

The first step in selecting insurance is to understand the

potential liability of the individuals involved in a nonprofit organization and potential liability of the organization itself. Liability issues for an unincorporated nonprofit association vary somewhat from those of an incorporated nonprofit.

Directors and Officers

The directors and officers of an incorporated nonprofit are subject to liability of three main types: (1) liability to the organization for a breach of fiduciary duty; (2) liability to third parties who have been injured by the organization; and (3) personal liability by statute for the organization's violation of a state or federal law. Officers of an unincorporated nonprofit face similar liability; they are statutorily excused from vicarious liability arising out of the nonprofit's actions but may be held personally liable for their behavior within the nonprofit.¹⁷

Arkansas allows an incorporated nonprofit to indemnify a director against liability if the director conducted herself in good faith, reasonably believed that her conduct was not opposed to the corporation's best interests, and had no reasonable cause to believe her conduct unlawful.¹⁸ That means that the nonprofit may pay the legal expenses of a director or officer provided that the expenses are not the result of dishonest or unreasonable conduct. Furthermore, a nonprofit must indemnify a director

when the director successfully defends himself against a suit in his personal capacity.¹⁹ However, such indemnification is not required if the organization's articles of incorporation provide otherwise. On the other hand, indemnification is not allowed when a director is personally liable to the corporation or for receiving an improper personal benefit.²⁰ These indemnification statutes cover officers as well as directors,²¹ although they almost certainly do not reach unincorporated and charitable trust nonprofits. Additionally, indemnification can sometimes be court-ordered.²²

Volunteers and Employees

The federal Volunteer Protection Act of 1997 limits lawsuits against *volunteers* serving through nonprofits and government agencies, when the volunteers are acting within the scope of their responsibilities, properly licensed, not willfully or recklessly causing harm, and not operating a vehicle requiring a license.²³ See Chapter IV for more information on the Arkansas Volunteer Immunity Act and the Volunteer Protection Act of 1997. The difference between a volunteer and an employee appears to be that a volunteer acts without being compelled to act, and “without promise or expectation of compensation,” while an employee receives *some* form of compensation and takes part in commercial activity.²⁴

The Organization Itself

A nonprofit, whether incorporated or unincorporated, seems to be subject to the same liabilities as any corporation or business association. While the doctrine of “charitable immunity” might be used to shield these organizations from liability, the doctrine has gradually fallen out of favor.²⁵

Types of Insurance

Arkansas law Ark. Code Ann. § 4-33-857 allows an incorporated nonprofit to maintain insurance on behalf of directors, officers, employees, and “agents” of the corporation against liability “asserted against or incurred by him or her in that capacity or arising from his or her status as a director, officer, employee, or agent.”²⁶ An “agent” is someone who is authorized to act for the organization, usually an officer, employee or independent contractor such as an accountant or attorney.

Liability insurance serves two main functions for nonprofit organizations: (1) it pays damages for which the nonprofit is found liable, and (2) it defends the organization in court when it is sued. This coverage is especially important for a nonprofit, which typically does not have the financial resources to support itself in legal proceedings; even if the nonprofit successfully

defends, it still may be forced into bankruptcy. There are several different types of insurance available to nonprofit organizations.

Commercial General Liability

Commercial General Liability is the most common type of liability insurance. This policy generally covers most claims arising from bodily injury, damage to property owned by others, and some types of personal injury.²⁷ General liability coverage usually will cover the costs that accompany a lawsuit, as well as any settlement or damages that are awarded. While it is not a comprehensive policy, it can be combined with other coverage as part of a package, and typically excluded claims can be added in exchange for a higher premium.²⁸

Workers' Compensation

Workers' Compensation insurance is created by state statute and covers certain workers injured in job-related accidents. Insurance rates are based on a number of factors, including salaries, firm history, and risk of occupation.²⁹ Workers' compensation basically would shield the nonprofit against further liability to its employees. Under Arkansas law, every

“employer” must comply with workers’ compensation laws and provide workers’ compensation benefits to injured employees.³⁰ An “employer” is any individual or organization that carries on any “employment.” “Employment” means every employment in Arkansas in which three (3) or more employees are regularly employed by the same employer in the course of business *except* “a person performing services for any nonprofit religious, charitable, or relief organization.”³¹ This suggests that Arkansas nonprofit organizations are exempt from liability under workers’ compensation law.³²

However, it may be wise for nonprofits to consider participating in workers’ compensation because the “exclusive remedy” doctrine applies to this type of coverage. This means that the worker is limited to receiving benefits under the organization’s workers’ compensation policy, and is likely to be precluded from pursuing a liability claim against the organization.³³

Motor Vehicle

If an employee or volunteer gets into an automobile accident while performing services for the nonprofit, both the organization *and* the individual may be liable. Individuals driving their own cars may be covered by their own policies. Nonprofits that own vehicles probably should purchase commercial auto insurance,

which normally applies only to employees but can be extended to volunteers for an additional charge.³⁴

Umbrella Liability

Umbrella liability insurance is usually a supplementary policy purchased in addition to and above the ordinary primary liability coverage.³⁵ This coverage typically overlays most major policies by increasing the limits of each liability, offers broader coverage by decreasing excluded claims, and provides first-dollar liability coverage in many areas of potential liability.³⁶

Professional Liability

If a nonprofit performs “professional services” such as legal or medical, claims arising out of these services typically are *not* covered by commercial general liability insurance. As a result, separate professional liability insurance is needed to adequately protect against these risks.³⁷

Association Professional Liability or Directors’ and Officers’ Liability

This type of policy goes by different names: Association Professional Liability, Directors’ and Officers’, or simply D & O. It is similar to regular professional liability insurance. D

& O, however, is structured in a more complex manner. The protected individuals are not necessarily “professionals” as much as they are fiduciaries of the organization.³⁸ This type of insurance protects both the corporation from sizable losses it could experience because of indemnification statutes like the ones discussed above and directors and officers for losses against which the company does not or cannot indemnify them.³⁹

Property Insurance

Property insurance covers repair or replacement costs caused by most risks to the building, improvements, and contents owned by the nonprofit.⁴⁰

Selection of Insurance

In determining which insurance policy is the best fit for any given nonprofit organization, the organization must first analyze the specific level and types of risk that it faces. Factors to be considered include the probability of the risk’s occurrence, the extent of potential damage, and the involvement of outside parties.⁴¹ Once the organization has completed this self-evaluation, it must decide which insurance package best addresses its particular risks and needs; for example, if the nonprofit provides substantial professional services, it will likely be wise to

acquire professional liability insurance. In the same vein, if the nonprofit will be dealing with risks that could impose astronomical damages, then umbrella insurance would seem necessary.

Ultimately, most nonprofits mix and match these policies in order to sufficiently guard against risk; however, as a practical matter there will always be some level of risk left unaddressed. The job of the nonprofit’s decision-makers is to determine which risks are prudent to cover and which are best left internalized.

Reducing Risk

A nonprofit board of directors sets policies to guide the organization. Comprehensive written policies reduce risk by establishing expectations and standardizing practices within the organization. Any nonprofit with paid staff should have written personnel policies; likewise, an organization should develop policies covering the recruitment, supervision and activities of its volunteers.

Although it is usually the prerogative of the board to review and approve policies, staff members and volunteers can be helpful in developing and reviewing policies related to their duties. For example, an organization’s bookkeeper or accountant will certainly have something to contribute to the development of financial policies.

To be effective, policies must be: (1) up-to-date, (2) well written, and (3) followed. To ensure that policies are up-to-date, they should be reviewed regularly.

Litigation Preparedness

It is still fairly uncommon for a nonprofit organization to be sued; however, it is a possibility that nonprofits should not ignore. A nonprofit organization is more likely to be sued as the organization grows, increases its staff membership, purchases more buildings, and negotiates complex agreements.⁴² No matter how large or small, every organization can take steps to be better prepared for litigation. For example, every organization should be careful to document all decisions made by the board, and all incidents with employees, volunteers, and clients. Furthermore, organizations should create and follow comprehensive procedures for dealing with incidents, such as injuries suffered by a client, or complaints made by an employee. Lastly, an organization should have a relationship with an attorney that it trusts.

“Being on the K-Child board has been a real education,” said Claire to Sandy. The two were back at Dipper Diner, this time for its famous plate lunch. “I never imagined how much is involved in starting and running a nonprofit organization.”

It’s really worth the effort, though. Did you see the latest report from the Department of Education? The kids at Little Dipper Elementary have made dramatic improvements in overall fitness. And, they’re having a ball!”

Endnotes

- 1 See *Quachia Willness Institute, Inc. v. Mergen*, 329 Ark. 405, 418, 947 S.W.2d 780, 787 (1997) (citing *Masteron v. Stambuch*, 321 Ark. 391, 902 S.W.2d 803 (1995)).
- 2 Christa S. Clark, Note, *Tort Law-Tort Immunity for Non-Profits – Is the Charitable Immunity Defense Becoming an Offense for Arkansas Hospitals?* *George v. Jefferson Hospital Ass’n*, 337 Ark. 206, 987 S.W.2d 710 (1999), 22 U. Ark. Little Rock L. Rev. 125, 132 (1999).
- 3 Mark C. Lear, *Just Perfect for Pedophiles? Charitable Organizations That Work with Children and Their Duty to Screen Volunteers*, 76 Tex. L. Rev. 143, 169 (1997) (“[S]uch general charitable immunity is now observed by only one state, [Arkansas] and just six others provide partial immunity.”).
- 4 See *George v. Jefferson Hosp. Ass’n, Inc.*, 337 Ark. 206, 211, 987 S.W.2d 710, 712 (1999), 5 *Id.*
- 5 *Masteron v. Stambuch*, 321 Ark. 391, 401, 902 S.W.2d 803, 809 (1995).
- 7 See *id.*
- 8 *Mergen*, 329 Ark. at 418-19, 947 S.W.2d at 787.
- 9 *Id.*
- 10 *Jefferson Hosp.*, 337 Ark. at 214, 987 S.W.2d at 714.
- 11 *Id.*; see also Clark, *supra* note 2, at 145.
- 12 *Scarnardo v. Jagers*, 356 Ark. 236, 248, 149 S.W.3d 311, 318 (2004).
- 13 Ark. Code Ann. § 23-79-210 (Supp. 2007).
- 14 *Low v. Insurance Co. of North America*, 364 Ark. 427, 440, 220 S.W.3d 670, 680 (2005).
- 15 Ark. Code Ann. § 23-79-210(a)(1) (Supp. 2007).
- 16 Ark. Code Ann. § 23-79-210(c)(1) (Supp. 2007).
- 17 Ark. Code Ann. § 2-48-506(b) & (c); see also Phillip Carroll, *Uniform Laws in Arkansas*, 52 Ark. L. Rev. 313 (1999).
- 18 Ark. Code Ann. § 4-33-851(a).
- 19 Ark. Code Ann. § 4-33-852.
- 20 Ark. Code Ann. § 4-33-851(e); see also Ark. Code Ann. § 4-33-855.
- 21 Ark. Code Ann. § 4-33-856.
- 22 Ark. Code Ann. § 4-33-854.
- 23 42 U.S.C. 14503.
- 24 *Tony and Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290, 295 (1985) (citing *Wellington v. Portland Terminal Co.*, 330 U.S. 148, 152 (1947)).
- 25 Olson & Hatch, § 13.1; see, e.g., *President and Directors of Georgetown College v. Hughes*, 130 F.2d 810 (App.D.C. 1942).
- 26 Ark. Code Ann. § 4-33-857.
- 27 *Insurance Basics*, <http://www.nonprofitrisk.org> (last visited October 29, 2008); see also MELANIE L. HERMAN ET AL., *MANAGING RISK IN NON-PROFIT ORGANIZATIONS: A COMPREHENSIVE GUIDE*, 269 (2004).

- 28 *Id.*
- 29 *Glossary of Terms*, www.business.gov (last visited October 29, 2008).
- 30 ARK. CODE ANN. § 11-9-103(a) (Repl. 2002).
- 31 ARK. CODE ANN. § 11-9-102(1)(A)(v) (Supp. 2007).
- 32 *Stoan v. Voluntary Ambulance Service*, 37 Ark. App. 138, 142, 826 S.W.2d 296, 298 (1992).
- 33 HERMAN ET AL., *supra* note 27, at 111.
- 34 *Insurance Basics*, *supra* note 27.
- 35 George I. Head, *Increasing Your Liability Protection*, <http://www.nonprofitrisk.org> (last visited October 29, 2008).
- 36 *Id.*
- 37 *Insurance Basics*, *supra* note 27.
- 38 Olson & Hatch, § 12.1.
- 39 *Id.*
- 40 Liability Insurance for Small Nonprofit Organizations, *supra* note 26.
- 41 VICTOR FUTTER ET AL., *NONPROFIT GOVERNANCE AND MANAGEMENT* 440 (2d ed. 2002).
- 42 MELANIE L. HERMAN, *READY IN DEFENSE, A LIABILITY, LITIGATION, AND LEGAL GUIDE FOR NONPROFITS*, 87-88 (2003).

Appendices

- A. Selected Resources
- B. Sample Conflict of Interest Policy
- C. Outline of Subjects Typically Covered in Bylaws
- D. Arkansas Statutes of Special Interest to Nonprofits
 - The Arkansas Nonprofit Corporation Act of 1963
 - The Arkansas Nonprofit Corporation Act of 1999
 - Act 569 of 2007
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 - The State and Local Government Volunteers Act
 - The Arkansas Civil Rights Act of 1993
 - The Fair Labor Standards Act and Arkansas Wage and Hour Law

Appendix A

Selected Resources

Accountants for the Public Interest (API)

Accountants for the Public Interest (API) is a national nonprofit organization whose mission is "to encourage accountants to volunteer their time and expertise to nonprofits, small businesses and individuals who need, but cannot afford, professional accounting services." To find out more about API's program and services, visit its website at www.geocities.com/api_woods/api/aphome.html.

API offers the following excellent low-cost publications for nonprofits.

API's Complete Guide to Accounting Procedures for Nonprofit Organizations

This 96 page book is *new in 2002*. In an easy-to-read format, this 96 page book references the latest accounting pronouncements pertinent to non-profit organizations, explains the principles of non-profit accounting and key management concerns of nonprofits, and illustrates how they differ in many important ways from for-profit businesses. It includes a glossary of accounting terms and numerous examples of various IRS forms. \$28 each, postpaid.

API's Complete Guide to the Nonprofit Audit

This 88 page book, written in layman's terms, is a must for non-profits who want to train their staff and volunteers on how to prepare for an audit. Accounting information processing is described, and a glossary defines key accounting terms. There are sections on the recording and processing transactions, basic concepts of internal controls and how to implement

them, and on how to select an auditor and negotiate the audit contract. \$28 each, postpaid.

What a Difference Knowledge Makes: A Guide to Intermediate Sanctions for Non-Profit Organizations and their Leaders

In January, 2002 the IRS finalized its Intermediate Sanctions regulations for non-profits and began enforcing them. This important book describes Intermediate Sanctions, a bill signed into law in 1999 as part of the Taxpayer's Bill of Rights II, and which penalizes insiders who receive an excess benefit from their involvement with non-profit organizations. The guide defines excess benefits and gives real life examples of how non-profits and their leaders can run afoul of the law. \$28 each, postpaid.

What a Difference Understanding Makes: Guides to Non-Profit Management

This series of five easy-to-read and understand booklets are excellent resources for managers of non-profit organizations. The booklets, which sell for \$8 each or \$35 for all five, postpaid, are:

Tracking Special Monies

Selecting Computer Software

Filing Non-Profit Tax Forms

Making Public Disclosures

Classifying 501(c) Nonprofits

API Account

Accountants for the Public Interest's quarterly newsletter, distributed to 3,500 readers internationally, describes the services and activities of API's affiliates in the United States and Japan. \$40 annually.

Arkansas Coalition for Excellence

Arkansas Coalition for Excellence (ACE) is Arkansas's nonprofit for nonprofits. It is a membership organization made up of nonprofits, individuals, foundations and businesses united by their commitment to nonprofit success in Arkansas. ACE is dedicated to elevating capacity and promoting the success of Arkansas' nonprofit sector. Visit the ACE website at <http://acenonprofit.org>.

Arkansas Department of Human Services – Division of Volunteerism (DOV)

Since 1974, the Division of Volunteerism has offered training, technical assistance and information at no cost to Arkansans as well as inquirers across the country and around the world. It is the oldest state office of volunteerism in the United States. DOV provides training and technical assistance in board development, risk management, applying for nonprofit tax exempt status, grant seeking, volunteer management, and numerous other areas. DOV also provides certificates, Governor's letters, and recognition bookmarks to volunteer organizations. It is a co-sponsor of the annual Community Service Awards and Arkansas Volunteer Community of the Year Awards. Funding for AmeriCorps national service programs is available from the Arkansas Service Commission, which is located in the Division of Volunteerism. More information is available at the DOV web site: <http://www.arkansas.gov/dhs/adov/>.

Independent Sector

The Independent Sector offers many useful publications including The Sarbanes-Oxley Act and Implications for Nonprofit Organizations, available at <http://www.independentsector.org/PDFs/sarbanesoxley.pdf>.

Internal Revenue Service On-Line Resources

General Information for Charities

The IRS website page for charities, found at www.irs.gov/charities/index.html, offers various resources for tax-exempt organizations, including forms, news and answers to frequently asked questions.

Workshop for Exempt Organizations: Tax Basics for 501 (c)(3)s

The IRS offers a free interactive workshop designed to familiarize users with tax compliance issues of interest to tax exempt organizations. The workshop, available at www.stayexempt.org, consists of five modules:

- Tax-Exempt Status – How can you keep your 501(c)(3) exempt?
- Unrelated Business Income – Does your organization generate taxable income?
- Employment Issues – How should you treat your workers for tax purposes?
- Form 990 – Would you like to file an error-free return?
- Required Disclosures – To whom do you have to show your records?

Nonprofit Risk Management Center

The Nonprofit Risk Management Center is an excellent resource, providing free technical assistance on a wide range of topics related to legal risks inherent in nonprofit governance and management. The Center's website and reasonably-priced