

November 2012

A Publication of Law Bulletin Publishing Company

# Chicago Lawyer®

Volume 35 Number 11 • [chicagolawyer magazine.com](http://chicagolawyer magazine.com)

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(From left to right) Jodi Patt Pellettiere of Quarles & Brady, Monte Dube of Proskauer Rose and Michael Dorf of Adducci, Dorf, Lehner, Mitchell & Blankenship all handle matters related to nonprofit organizations and say they enjoy that aspect of their practices. Photo by Ben Speckmann.

## Lawyers represent nonprofit groups, find great job satisfaction

By Richard Weiner

**R**epresenting tax-exempt, nonprofit organizations can do a lawyer's soul good. But it also can become a significant practice for those same lawyers.

Nonprofit corporations make up a sizeable percentage of both the U.S. Gross National Product (GNP) and the Illinois Gross State Product (GSP) — accounting for many billions in income and assets.

Nationally, nonprofits in all of their various forms comprised 5.5 percent of the GNP and accounted for 9.2 percent of all wages and salaries paid in the U.S., the National Center for Charitable Statistics reports. The nonprofit sector contributes an even higher percentage to the Illinois GSP.

Many law firm lawyers dedicate their prac-

tices, primarily or exclusively, to the nonprofit arena. Some law firms practice mainly in this area, while some maintain practice groups that focus on a section of this group. While some offer their pro bono services to these groups, a large group makes this area a part of their billable practice.

For example, Kimberly T. Boike helped found the not-for-profit and mission-based organizations practice group at Chuhak & Tesson. Twelve attorneys work in this practice group, which while formed just recently, reflects work the firm has done since it was founded 25 years ago, Boike said.

"There may be some firms who created nonprofit practice groups just for publicity's sake, but that is not true for us," said Boike, noting

that the firm's founding members started out working with nonprofits and that remains a substantial part of the firm's business model.

She said the firm decided to concretize a specific practice group to let their clients know exactly what the firm's skill set was in this area.

"I started work here when I was in law school in 2006," she said. "I had always found it troublesome that I spent almost all of my time working in the nonprofit space, but that nothing was really formalized in what we were doing."

Forming a definitive practice group in this space allowed all of the firm's clients and potential clients to see how the firm could serve the needs of nonprofits, she said.

## Many definitions

"There are numerous different types of nonprofits," said Michael Dorf of Adducci, Dorf, Lehner, Mitchell & Blankenship, who handles corporate law issues related to nonprofit organizations.

For instance, Dorf said, "people don't generally realize that political parties, county governments and political action groups all fall under a 527 exemption."

Attorneys who work for charities and other nonprofits perform a variety of tasks, as varied as the nonprofits themselves.

Generally, they may help form the organizations and give tax advice, but they also can sit on the board, consult on contracts and negotiations, work with employment law situations and handle mergers and acquisitions, international contracts, elections and a variety of other legal functions and areas of advice.

While many people may consider nonprofit corporations strictly in terms of those that claim a 501 (c)(3) federal tax exemption, in fact, 33 total categories of tax-exempt organizations exist in the Internal Revenue Code.

The 501 (c)(3) exemption exists for organizations defined as "Religious, Educational, Charitable, Scientific, Literary, Testing for Public Safety, to Foster National or International Amateur Sports Competition, or Prevention of Cruelty to Children or Animals Organizations" under the code.

But beyond that, there are 32 other separate 501 (c) designations for other types of organizations, including various other kinds of churches, veterans groups, governmental agencies, insurance groups, farmer co-ops, child care organizations, art and cultural organizations, child advocacy organizations, civic and community service groups, educational institutions, health-care providers, local governments, professional and industry associations and political organizations, among other institutions.

"A lot of firms may see some of their attorneys practicing in this area and just change the labels on their websites," said James Casey, a partner at Mayer Brown.

His firm, for instance, does not maintain a separate nonprofit practice group, but has always worked with nonprofits as a part of its basic law practice, he said. Casey uses his background in accounting when working in this area.

"For decades, all of the partners in the firm have represented nonprofit organizations as a part of our wealth management practice,"

Casey said.

## Large segment

Tax-exempt organizations form a larger part of the economy, both locally and across the country.

"It is a pretty meaningful part of our economy," said Richard L. Sevcik, a partner at K&L Gates. Sevcik heads the firm's tax-exempt organizations/nonprofit institutions group.

In total, in 2010, public charities in the U.S. reported about \$1.51 trillion in total revenues and \$1.45 trillion in total expenses, the National Center for Charitable Statistics reports.

In 2010, there were 1,563,596 registered tax-exempt organizations in the U.S., a figure which included 966,597 public charities, 98,797 private foundations and 498,202 other types of nonprofit organizations, including chambers of commerce, fraternal organizations, political parties and civic leagues, the National Center for Charitable Statistics says.

The Urban Institute's Center on Nonprofits and Philanthropy reported that in 2009 there were about 65,000 registered nonprofits in Illinois, accounting for about \$89 billion in revenue and \$573 billion in assets.

Cook County was home to 42 percent of these tax-exempt organizations, or about 25,000 of them. About 20,000 of those filed a 990 tax return, which is the annual reporting return that certain federally tax-exempt organizations must file with the IRS, providing information on the filing organization's mission, programs and finances, the IRS website says.

"The trend has been to do less nonprofit work because the funding is down, especially in the last two years, where the nonprofit sector has seen the double whammy of a bad economy affecting private donations and governments cutting back on grant-making ... " said Michael Cramer, who counsels and represents employers on a wide variety of labor and employment-related legal matters at Ogle-tree Deakins.

"One of my longest-term nonprofit clients used to insist on paying legal fees, even if we offered to work for them pro bono. Now, they are accepting more pro bono work.

"We don't have a nonprofit practice group per se, but over the years in our labor and employment practice we have done a fair amount of work for nonprofits."

Boike, from Chuhak & Tecson, said representing nonprofits versus for-profits can vary.

"Nonprofits have a higher level of scrutiny than for-profit businesses," she said.

Changes to laws governing nonprofits recently occurred, particularly in executive compensation and in tax forms, she said. Because of that, she said, more care must be given to even maintaining organizations' tax-exempt status.

"The IRS changed the form 990 about three years ago and really increased the amount of information that a nonprofit has to disclose on its tax returns," she said. "It has to be more detailed and transparent."

## Political organizations as nonprofits

In this election year, one tax exemption receiving constant attention from the public and the media is the 527 organization.

The IRS said: "Political parties; campaign committees for candidates for federal, state or local office and political action committees are all political organizations subject to tax under IRC Section 527 and may have filing requirements with the service."

Section 527s receive constant attention from the media and public. Dorf of Adducci, Dorf, Lehner, Mitchell & Blankenship has worked with numerous 507 organizations, including with a then-young, up-and-coming Barack Obama.

Dorf became Obama's first lawyer when he ran for Congress and worked as a campaign lawyer when the future President ran for the Senate. He also became a co-convenor of Obama's arts policy task force.

"My background is in government and the arts," Dorf said. "I worked for Sid Yates (former longtime congressman) on the congressional arts committee that funded the National Endowment for the Arts."

Over the years, Dorf said he "represented a number of nonprofits — small arts organizations, private foundations and trade associations. I also represent a number of 527 organizations."

Some of his representative nonprofit clients include the Pulmonary Fibrosis Foundation and the Gabriella and Paul Rosenbaum Foundation. He worked as the attorney for the startup Chicago History Theatre. He also sits on several boards, including Arts Alliance Illinois and Illinois Humanities Council.

"The basic thing with small arts groups is to remind them that they are a business and that they have to follow the rules," he said. "They are subject to the same rules as any other corporation. The same permits, licenses and taxes

as everybody else is. Where arts organizations can go wrong is when they forget that they have to make payroll, pay withholding tax, conform to zoning and so on. They still have to have good business practices.”

Political organizations can also run into tax difficulties, Dorf said.

Section 527 organizations may believe they don't need to pay taxes, “but if they take political donations and invest them, the profit on those investments are taxable,” he said.

### Choosing this area

Richard Del Giudice of Gozdecki, Del Giudice, Americus & Farkas chooses to represent nonprofit organizations because “this is our way to give back.”

Although his firm does not operate a specific nonprofit practice group, he said that in working for nonprofits, “everybody pitches in; typically, we set up the nonprofit and maintain it at a corporate level, advising and explaining the pertinent issues.”

Jodi Patt Pellettiere, part of the 12-member nonprofit practice group at Quarles & Brady, said her background involves the arts, once having been a dancer.

She entered law with an eye toward work in the nonprofit sector and her position at Quarles & Brady gives her that opportunity.

The firm calls its nonprofit section the tax-exempt practice group, Pellettiere said, “based on our belief that that tax-exempt status is the key framework to work in.”

“We were one of the first firms to put together a team of lawyers dedicated to serving tax-exempt clients day in and day out,” she said.

“(This) dedication to this practice area enables us to answer questions for clients (quickly), where other firms may have to do more research. We have this expertise and a client base that supports this work, which is to help create and maintain 501 (c)(3)s. We work with a whole range of organizations — grant makers, foundations, religious organizations, health care and the arts.”

Her firm's clients include the MacArthur Foundation, the Field Museum and the Robert R. McCormick Foundation. And one area she focuses on is the creation of tax-exempt organizations.

“I don't really know how many small tax-exempt organizations we have created since I have joined the firm, but I would estimate between 40 and 50,” she said.

“We are seeing a number of tech incubators seeking tax-exempt status. The question with those organizations is: Are they charitable? We work with them within the regulatory framework to help them achieve tax-exempt status.

“Tax-exempt clients have all of the business issues that other clients have. We find ourselves often acting as general counsel for many of these clients. We advise them on taxation, IT, labor and employment. It is very intellectually stimulating. It is also helpful to be a part of a large firm that we can draw expertise from.”

### Hybrid for-profit/nonprofit deals

Quarles & Brady also works with the new hybrid organizations — part for-profit, part nonprofit.

“We help them to get going and to see what is really permissible beyond the hype,” Pellettiere said.

Monte Dube of Proskauer Rose handles matters involving local, national and international mergers and acquisitions in the health-care field and works with the new wave of hybrid mergers, in which one of the parties to the merger is a for-profit hospital and the other is a nonprofit hospital.

He also represents numerous Chicago-area health-care providers and has been counsel to high-profile mergers between local health-care providers.

His firm also publishes a nonprofit law blog. “Firmwide we have about 25 lawyers focusing on nonprofits, but 100 percent of our lawyers deal with issues like taxation that all nonprofits face,” Dube said.

He said representing nonprofits “was a natural outgrowth of my health-care practice. There are about 5,000 hospitals in America and about 4,000 of them are nonprofit. I was attracted to the area because of its unique legal needs.”

“The nonprofit area of law practice is very big, very important and very complex,” he said.

“I focus on compliance or merger strategies, (particularly in the hybrid mergers), where board members may have expertise in other areas, but precious little in nonprofits. There is a need there for expert guidance and education.”

Things can get even more complex when dealing with international legal and tax issues in the nonprofit sphere.

An example would involve technology

grants for water treatment and delivery for a South American Indian village, said Sevcik of K&L Gates. The grant-writing body would want to track the project in measurable ways that many private foundations have not historically done.

“The issues arising with international donor organizations are fairly complex,” Sevcik said.

“My interest in this area sprung from a combination of work with corporate and tax clients and my interest in tax-exempt organizations. I was fairly active in those organizations as a volunteer or board member. The area of the law that most interested me was cultural organizations.

“The focus traditionally of work with tax-exempt organizations has been in the areas of colleges, hospitals, private foundations and cultural organizations. There is now a trend toward entrepreneurship, including international grant-making that focuses on the return for these investments. There is more of a hands-on role.”

### Job satisfaction

Beyond the work itself, many attorneys find great satisfaction in working for organizations dedicated to helping communities.

Cramer of Ogletree Deakins said, “There is a high degree of satisfaction in working for nonprofits and in helping them to solve problems and it is nice to help people who are helping other people. Lots of nonprofits don't have big in-house counsel teams, so we can really add value by providing guidance to them and helping them to save money.”

Casey of Mayer Brown said when working with arts-based nonprofits, most clients dedicate their lives to this area and the organization's mission.

Lawyers can help make these organizations stronger and ultimately help them preserve their assets for charitable purposes, he said.

Pellettiere of Quarles & Brady said: “This is complicated legal work that is critical and rewarding. The work makes a difference in our communities and I feel very good about the work that we are doing.”

“I have always been interested in nonprofits, dating from back in high school,” said Boike, who considers her Chuhak & Tecson practice a natural outgrowth of her interests. “I always volunteered.” ■

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