

UNCERTAIN FUTURE FOR NONPROFIT LEADERSHIP

A recent report sheds light on an issue of concern in the non-profit sector: Who will be the next generation of nonprofit leaders? The study, "Ready to Lead? Next Generation Leaders Speak Out" released by the Annie Casey Foundation, CompassPoint Nonprofit Services, Idealist.org, and the Eugene and Agnes Meyer Foundation, finds that great numbers of nonprofit organization employees are not interested in pursuing top-level leadership positions and are threatening to leave the nonprofit sector all together.

While nonprofits do well recruiting recent college graduates for entry-level positions, they struggle to retain these employees. Financial worries top the list of concerns relating to long-term employment in the nonprofit sector. Among those surveyed, 69% feel that they are underpaid in their current positions, and many worry about financial planning for retirement.



Another concern is quality of personal life, as many nonprofit employees work long hours in high-stress environments. Many also find that they are not given opportunities for career growth within their organizations.

How can nonprofits curb this discouraging trend? The study recommends that non-profits allocate more resources to their employees. If possible, nonprofits should offer their employees higher salaries and increased benefits. Nonprofits should also provide more career direction for their young employees, perhaps through a career mentoring program. Nonprofits should actively seek to make their workplaces more marketable and attractive to young employees, the next generation of nonprofit leaders.

BIG BROTHERS AND BIG SISTERS FIGHT OVER NAME

Apparently, these siblings were never taught not to call each other names.

Big Sister Association of Greater Boston recently filed a trademark lawsuit against Big Brothers Big Sisters of Massachusetts Bay in Boston federal court. Big Brothers was previously named Big Brothers of Massachusetts Bay, but added the words Big Sisters in its name after it merged with two other Big Brothers Big Sisters groups.

Big Sister says that this name change created significant confusion among donors and volunteers. Both organizations are affiliates of the national organization Big Brothers Big Sisters of America, which owns federal trademark rights in the "Big Brothers Big Sisters" name.

It is more than filial bonds at risk when affiliate organizations working for a common purpose and under the same parent organization are fighting over naming rights. Trademark disputes between affiliate organizations such as Big Brothers Big Sisters can largely be avoided with written agreements between the parent organization and its affiliates.

⇒ National organizations that have local affiliates should have written trademark license agreements that clearly establish the terms and conditions by which the affiliates can use the name. The national organization should also protect its trademark by registering it with the U.S. Patent & Trademark Office. Just as good parents enforce family rules between siblings, a parent organization can prevent unnecessary disputes by carefully establishing the terms by which its affiliates can use its trademark.

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TEXAS COURT EXONERATES CHURCH AND PASTOR SUED IN CHURCH DISCIPLINE MATTER

If a pastor discloses information learned in the course of his counseling capacity in order to implement church discipline, is he liable for professional negligence for breaching confidentiality? The Texas Supreme Court has published a decision holding that secular confidentiality interests fail to override the strong constitutional presumption in favor of preserving the church's interest in managing its affairs. This decision represents one of the most extensive discussions of church discipline by any court.

A Texas church had adopted a constitution that outlined a disciplinary policy providing a mechanism for the revocation of membership. Church members agreed

to abide by the constitution as a condition of membership. The pastor of the church engaged in marital counseling with a couple in his church in his capacity as a licensed professional counselor. During a counseling session with the pastor, the wife disclosed information that triggered the church's disciplinary process. In accordance with this process, the pastor and church elders wrote a letter to the membership of the congregation disclosing that the woman had engaged in a "biblically inappropriate" relationship and urging the congregation to break fellowship with the woman in order to obtain her repentance and restoration to the church body.

The woman sued the pastor and the church for defamation, professional negligence, breach of fiduciary duty, and emotional distress. She based the professional negligence claim, which was the only claim not dismissed at the trial or appeals court level, on the pastor's breach of his duty as a counselor to refrain from disclosing confidential information shared with

him during counseling sessions. The court held that while the elements of the plaintiff's professional negligence claim can be defined by neutral principles without regard to religion, the application of those principles to impose civil liability on the pastor would unconstitutionally impinge upon the church's ability to manage its internal affairs and hinder adherence to the church disciplinary process that its constitution requires. The court also rejected the plaintiff's

assertion that since she had resigned from church membership just prior to the church disciplinary process, the disciplinary actions were outside the scope of constitutionally protected activity.



⇒ This decision affirms First Amendment protections for churches and pastors. Here, the pastor who learned of issues with disciplinary implications in a counseling role, was permitted to divulge otherwise confidential disclosures for the purpose of adhering to the church's disciplinary policy. Although this case upheld religious freedoms for churches, it is a lesson in the importance of implementing prudent measures in church discipline policies, including (1) requiring members to affirm in writing a church covenant that describes the church discipline process, (2) clarifying in writing expectations of confidentiality with individuals seeking counseling from church staff (3) limiting the circle of disclosure, and (4) consistently and fairly applying church discipline policies without unlawful discrimination.

AMERICANS SAY CHARITY OVERHEAD IS TOO HIGH

Results gathered from a recent survey indicate that the American public may be losing confidence in how charities are spending donor dollars. Research conducted by a prominent market research company indicated sixty-two percent of those polled believe charities' overhead expenses are too high. The study showed Americans perceive that charities spend about thirty-six cents of every dollar received on overhead



in contrast to the twenty-two cents the public thinks is acceptable to run a charity. The study differentiates between older and younger donors, finding that younger donors tend to trust charities' expenses more than those over fifty-five. However, even among the more optimistic younger donors, the assumption prevails that charities are essentially wasting donors' money on overhead, adding bricks to the wall of public skepticism and future fundraising challenges for nonprofits.

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EXEMPT ORGANIZATION UPDATES FROM THE INTERNAL REVENUE SERVICE

IRS Issues Draft of New Form 990 Instructions

Draft instructions for the new Form 990 that will be effective for tax years starting in 2008 have recently been unveiled by the IRS. The draft instructions, which can be found at <http://www.irs.gov/charities/article/0,,id=181091,00.html>, cover the core Form 990 and its 16 schedules. The IRS is accepting comments on the draft until June 1.

Small Nonprofits Beware: E-Postcard Now On-line

The IRS Form 990-N, commonly called the “e-postcard,” is now ready for use at www.irs.gov. Charities that are not required to file the Form 990 because their annual revenues average less than \$25,000 must now file the e-postcard within four and a half months of the end of their

fiscal year. **Organizations failing to file the Form 990-N for three consecutive years will lose recognition of tax exempt status.** Information required on the e-postcard includes the organization’s legal name and mailing address, EIN, any other name the organization uses, name and address of a principal officer, and confirmation that the organization’s gross receipts are normally \$25,000 or less. The e-postcard may be completed and filed at <http://epostcard.form990.org/>.

IRS Posts Exempt Employer’s Toolkit

The IRS recently posted on its website a page that summarizes federal employment tax obligations of tax exempt organizations. Nonprofit organizations with employees may find this a useful starting point for their federal employment tax questions. You may view this webpage at <http://www.irs.gov/charities/article/0,,id=172794,00.html>.

IRS Clarifies How to File Complaints Alleging Charity Abuses

In February, the IRS issued a memo describing how the general public, as well as members of Congress and federal and state government agencies, can file complaints alleging that an organization is abusing its tax exempt status. The person filing the complaint must complete IRS Form 13909, Tax-Exempt Organization Complaint Referral Form, which is downloadable from www.irs.gov and requires the complainant to provide the name and address of the organization and the nature of the alleged violation. Among the violations the form identifies in a checkbox format are:

- Directors and officers using organizational assets for personal gain.
- Engaging in commercial, for-profit activities.
- Income/assets being used to support illegal or terrorist activities.
- Excessive lobbying.
- Political campaign involvement.
- Deceptive or improper fundraising practices.

The form leaves space for the complainant to elaborate further on the violations he has identified, to describe other types of violations, and to submit supporting documentation. The complainant may choose to file anonymously, but if he discloses his identity, the IRS will send an acknowledgement letter to confirm receipt.

Upon receipt, the IRS conducts research to confirm the identity of the organization in question, and refers the complaint to an Exempt Organizations revenue agent, who performs a technical analysis of the allegation made on the referral. The agent uses a “reasonable belief” standard to evaluate the facts and to determine whether the IRS should take further action. Before taking action, the revenue agent must determine that the facts create a reasonable belief that the allegations may be true when considered fairly and in light of other reliable information.

Among the possible outcomes:

- The information does not warrant further action. Case closed.
- The complaint involves activities in the future, so the IRS schedules a later date to re-evaluate the information.
- The referral contains characteristics requiring the expertise of a committee of career IRS Exempt Organizations managers and agents, which will evaluate referrals at least once a month using the “reasonable belief” standard.
- The information warrants an examination of the organization. The agent investigates and makes a decision regarding appropriate action by the IRS.