

GUIDE FOR USE OF TRAINING MATERIAL

Description of the Program

Overview

The Non-Profit Legal Assistance Program (Program) was designed to provide limited legal assistance to non-profit organizations in the 21st NY Congressional District and to provide an educational opportunity for law students in the area of non-profit board governance and legal issues, currently confronting non-profit organizations.¹

The Program utilized an applied research and education process from which these training modules resulted. The Program staff, with the assistance of the Program Advisory Group, selected four community organizations for the four Student Fellows to engage with in the development of "training modules" focusing on legal aspects of non-profit board governance issues and other general issues confronting the non-profit community. This interactive process started with the development of a Memorandum of Understanding (MOU) to define the relationship between the Program, the Fellows and each of the four participating community organizations. The process of acceptance of the MOU with each of the four participating organizations was dynamic indeed.

The immediate outcomes of these interactions were: Review at each of the four organization's board meetings of the Memorandum of Understanding (MOU) and acceptance of its terms. The process employed to develop and communicate the MOU to the respective Boards enabled the Student Fellows and their respective participating organizations to clearly understand the role of the Program/Fellows and the expectations of the respective Boards/Program for the academic year in the conduct of the Program's work. Each of these "learning experiences" served as a barometer to help the Program discern the level of "technical" knowledge to impart in these training modules.

Training Modules' Objectives

Building Awareness and Understanding of "Good Governance" concepts for use by Not-for-Profit Leaders

The training modules are designed to serve as aids to Directors, Officers and Not-for-Profit Corporation leaders. They encourage the application of "good governance" practices to the conduct of NFP Board management and governance of NFP corporations. The objectives of

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these training modules are to help NFP leaders to expand awareness and develop a better understanding of the significant responsibilities and duties that Directors, Officers and NFP corporate leaders are entrusted with upon taking their respective directorship, office or leadership position in the Not-for-Profit Corporation. Most everyone encountered by the Program staff and Fellows had different opinions on what leading a Not-for-Profit Corporation means. There are many scholarly texts and articles that discuss not-for-profit leadership in corporate terms and with analogies between the for-profit sector. The Program found that many not-for-profit leaders are not engaged in leadership roles in private sector for profit ventures. As a result those educational analogies to such business entities to explain leadership roles to not-for-profit leaders often create confusion for the "lay" not-for-profit leader.

A more universal comparison that most people can relate to is to say that leading a not-for-profit corporation is like owning and operating a car. You are now probably asking how that can be. Try to remember back to when got your drivers' license. You probably took a written exam, which at some point you passed, and then you got your learners' permit. Then you actually learned how to drive, with a licensed driver teaching you. After the hands-on training you took and passed your road test. Now try to recall the last time you read-up on the rules of the road or took a driver's training course since you got your license. For the not-for-profit leader the analogy would be looking at the New York Not-for-Profit Corporation Law or the Internal Revenue Code and the IRS rules and other laws and regulations affecting the not-for-profit sector. Were you even aware of the various laws, rules and regulations that govern the not-for-profit sector? These training modules will address not-for-profit governance issues by providing information and insights gleaned from the law and practical not-for-profit leadership experiences.

Going back to the concept of car ownership, there are many responsibilities with owning a car. A car in good tune, properly registered, and properly insured is certainly important and the law calls for cars to be insured and registered. But in New York, a car is only required to be inspected annually, and there is a "public" assumption that your car is roadworthy at all times... So the individual car owner must voluntarily service the car to make it roadworthy all of the time. Tires wear out, between inspections, oil needs to be changed, parts need to be replaced or the car will not operate as desired.

Going back to our analogy, who actually owns the NFP Corporation? No one and everyone, but the Directors and if relevant the Members would come closed to "owning" the NFP corporation. Who is responsible for the Corporation? The Directors and Officers. Who should be operating the car/NFP Corporation? The Board of Directors.

Let's say we have a NFP Corporation (GOCO). GOCO has seven people on its board. So do we have seven people at GOCO's steering wheel? Figuratively, yes and practically no. There are very few cars that can accommodate seven people at the steering wheel at once. And only "drivers' education cars" have a dual set of brakes. So, the Board usually designates an officer (usually President sometimes Chairperson – if the organization has staff) of the Board to actually sit in the driver's seat. What about the other 6 Directors?

They still are responsible for the navigation. But where do they turn for the road map (as well as an operator's manual)? To the Purpose(s) Statement of GOCO: GOCO's Purpose statement

should be found in its Certificate of Incorporation. Probably some prior Board of Directors or GOCO's Founder developed its purpose statement and turned it into an action oriented Mission. You may still be asking how this is the same as an individual owning and operating a car.

By time the individual gets behind the wheel of the car, the individual has hopefully made sure the car has enough gas for the trip, is "tuned up", properly registered, and properly insured. Probably the easiest of the those requirements to meet (although ever more expensive) is the gas requirement. On most routes of travel one can find adequate gas stations for most trips. But what about those other basic requirements?

GOCO's Board is responsible for governing the NFP Organization, which includes annual inspections (usually filing the appropriate tax returns, undertaking reviews or audits of the corporate books) and filing reports with the appropriate federal/state agencies. Additionally, GOCO's Board has to make sure there is "fuel in the tank", which generally in the not-for-profit world implies having needed financial and human resources. Money and people (volunteers and often staff) often make the NFP Corporation work.

Many Boards of NFPs will delegate some of the responsibilities of fundraising and program/service(s) delivery to staff or committees, although the Board will still ultimately be responsible for the organization's finances and its program. Over time the Organization will develop an administrative and management structure to keep the Organization in operation.

So, you have been asked to serve on the Board of GOCO, what would you want to know? Some of the same things you would want to know if you were buying a used car. Has the car been properly maintained, how much will it cost to insure the vehicle, how many miles of gas per gallon does the car use, has the car been in any accidents, and what was the car used for by the prior owner? (Think about the stereotypical sales pitch: the car was driven by a "little old lady" only to church and back and she was never in an accident).

Has the organization had any financial difficulties, have there been any lawsuits against the organization, how does the organization carryout its mission, and what types of risks are associated with being a Director of this Corporation? We all know the speed limit on a road when we see the posted speed limit. But, do we all know what the safe speed is on that same road, when the weather is bad or the road markings are faded and hard to see at night?

For a Board (and its Directors) the practice of good governance in the management and oversight is a critically important function that is often misunderstood or placed behind the immediate demands of getting money in the organization's accounts or delivering its program and services. Being on the Board of Directors of a Not-for-Corporation represents a tremendous set of individual responsibilities. It also can offer many rewards for the community minded individual.

Good governance for any organization starts with the individuals that are part of the organization. The Training modules have been designed to help not-for-profit leaders become more aware of the roles of Directors and Officers in an organization, then build an understanding of good governance concepts and hopefully as a result they will build a resolve to place good governance practices at the forefront of all that the organization does.

Application of Training Module Knowledge to Develop and Orientation Guidebook for Not-for-Profit Leaders

If you are a new Director or Officer, or you are an executive staff member of a NFP having to keep your Board informed you may decide to look at the modules as an Orientation guide for Board Director, Officers and NFP leaders. After reviewing the training modules you or your own organization may develop a "handbook" for your Board and leaders. Below is demonstrative list (of course it does not include every item) of topics/items to be expanded on to start to build your organization's "good governance" handbook.

1. Certificate of Incorporation, By-Laws, IRS filings to establish Tax-Exempt Status, NY AG. Filings
2. Organizational History – Including Mission Statement and the Goals and Objectives
3. Job Descriptions for Directors and Officers & a List of Current Board Members and Officers
4. Description of Corporate Structure, including Committees and assignments.
5. Description of Programs/Services and Policies
6. Financial Information including Audit Reports
7. Strategic Plans, if any.
8. Oaths of Office and any information describing Responsibilities, Expectations and what to expect of Directors and Officers.

Understanding Framework of "Law"

Most people are familiar with the United States Constitution until you ask them the specific language of the document. But the Constitution is what affords us the ability to join together and engage in NFP corporate endeavors. (See – United States Constitution Amendment I – Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. And Amendment X – The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.) These provisions of the Constitution provide the foundation of not-for-profit law and regulation by the Federal and State government.

From there we can briefly move to State Statutes (specifically in New York) to get an idea of where to start to build awareness and understanding of the governmental authority to regulate NFP corporations. A look at the New York NOT-FOR-PROFIT CORPORATION LAW (chapter 35 of the Consolidated Laws includes 15 Articles) would help orient anybody who is a not-for-profit leader with the framework that NY NFPs operated under. For example, Article 2 – Corporate Purposes and powers and Article 4 – Formation of corporations provide the launch pad to empower the corporation. Article 6 is exclusively for corporations with Members. Article 7 – Directors and officers - details the basics for Board Directors and officers. The other articles take deal with special corporations, corporate dissolution and several other items. The statutory law with annotations takes up two books of text (see McKinney's Volume 37). This alone could

overwhelm most any non-lawyer board member.

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