

Legal Advice

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Topic: General

When and Why You Need It

From time to time, every nonprofit needs legal advice. Whether administered as a vaccine—to ward off or prevent violations of law or other missteps by the nonprofit—or as an antidote—to help the nonprofit survive harm that has already infected its operation, sage legal advice is medicine that a healthy nonprofit can't do without.

Most nonprofits in the United States can't afford to retain full-time, in-house legal help. As a result, they must rely on the services provided by an outside lawyer called in occasionally, or an attorney working in a pro bono capacity. Generally, what is most important is that the lawyer enters into an attorney-client relationship with the nonprofit (and that the attorney-client privilege is protected), provides expert advice based on appropriate training and experience, and knows when a referral to other resources is needed. The success of legal-oriented lists such as [CharityLaw](#) (one of the offerings of CharityChannel, LLC) has opened up countless topics for discussion amongst executive directors and counsel to nonprofits. But even the folks at CharityLaw will admit that there's no substitute for the legal advice provided by an attorney who has special knowledge of your nonprofit's environment, operating circumstances, and special needs. Questions about the potential liability of your nonprofit should be directed to such a professional.

Tips When Hiring a Lawyer/Law Firm

Ideally, you want a lawyer/law firm familiar with nonprofits and the law of tax-exempt organizations, as well as an individual or firm with specific subject matter expertise. If you're unable to find a firm that meets both criteria, hire a firm with the expertise you require, but explain how your board and organization work and be very clear about your budget realities and priorities as a nonprofit organization. When negotiating with lawyers for new business, don't be shy about asking for lower rates, or for the work to be done by an associate at the law firm, who is supervised by a partner, in an effort to control rates. You also can ask up front for a) an estimate of the total fees expected to be billed for the project, b) for a flat fee, or c) for a fee cap on a particular project; to be alerted before the bills reach the upper limit; and to not exceed that limit without your prior consent. You also may be able to negotiate lower billing rates than those billed to larger, for-profit companies.

Soliciting Retained Counsel

A growing number of nonprofits are recruiting law firms to serve on a retained basis to advise the nonprofit on legal matters on an as-needed basis. Under a retainer agreement, the nonprofit may pay a fixed monthly fee for a certain agreed-upon amount of legal services to be provided each month (plus actual out-of-pocket costs incurred), with an understanding that additional fees may be charged for projects that exceed the scope of the retainer. Other nonprofits will hire a lawyer or law firm but simply pay by the hour for time incurred by the lawyer/firm on behalf of the nonprofit. While fee caps and flat fees can still be applied within such a structure, some projects don't lend themselves to such fixed fee arrangements. Requesting estimates of time and fees to be incurred and requiring prior approval before exceeding such estimates can be useful in this regard, as well.

The Nonprofit Risk Management Center welcomes questions and comments at 703.777.3504.