



Promoting and Protecting Nonprofit Advocacy

COMMUNITY-BASED NONPROFITS increasingly are participating in the legislative arena, as they recognize that the ability to influence public policy can be a powerful complement to the programs that they operate in New York neighborhoods. The economic downturn also has led many nonprofits to intensify their legislative advocacy to preserve funding and meet the rising demand for their services. Yet, many nonprofits do not have sufficient research, legal guidance or other resources to support their advocacy goals, and many have little understanding of the regulatory framework that applies to nonprofit advocacy activities.

The growing role for nonprofits has been the impetus for Lawyers Alliance to expand its efforts to promote and protect nonprofit advocacy. In 2009 and 2010, Lawyers Alliance staff and volunteers provided business law and transactional legal services to 60 nonprofit organizations in support of their advocacy efforts. Many of these organizations primarily have an advocacy mission. Others offer direct services to low-income New Yorkers but also seek to participate in advocacy and other public policy activities on issues of particular significance to those they serve.

Promoting Nonprofit Advocacy

Our work promoting nonprofit advocacy takes two forms. First, Lawyers Alliance frequently works on statutory and regulatory issues that affect the entire nonprofit sector, with the goal of making it easier for nonprofits to pursue their charitable missions. Here Lawyers Alliance often works in concert with umbrella groups or other coalitions. These sector-wide issues, from reform of the New York incorporation process to streamlining the dissolution procedures, to everything in between in the life cycle of a charity, go to Lawyers Alliance's core mission and capitalize on our decades of experience in the legal disciplines affecting our clients' work.

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Photo: Chris Johnson

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Awards for Lawyers Alliance

Lawyers Alliance Celebrates Lawyers, Nonprofits, and Communities At Business Law & Leadership Gala

On May 12, 2010 nearly 300 guests gathered at Gotham Hall in Manhattan to celebrate the partnership between lawyers and nonprofits and their collective power to transform communities in New York City. Event proceeds will support Lawyers Alliance's valuable programs. Led by Master of Ceremonies Jeff Greenfield, Senior Political Correspondent, CBS News, the Business Law & Leadership Gala honored three New York leaders for their exemplary commitment to public service:

C. Robert Henrikson, Board Chairman, President and CEO, MetLife, Inc.

For over 140 years MetLife has stood for stability, security and strength, and through MetLife Foundation giving, it has helped nonprofits to secure a better future for individuals and communities. Through its health, education and civic affairs programs, MetLife Foundation has supported nonprofits working on aging issues, school improvement (K-12), community improvement and services, families and youth, and more.

Gladys Carrión, Commissioner, NYS Office of Children & Family Services.

The public agency serves as the primary funder and regulator of New York City's vast networks of children's services. As well, Ms. Carrión has first-hand experience as a former Lawyers Alliance client as Executive Director of Inwood House.

Mike Pratt, President and Executive Director of the Scherman Foundation.

For more than 30 years, the Scherman Foundation has been a philanthropic partner of Lawyers Alliance's work, providing the critical general operating funds necessary to remain responsive to the changing needs of New York's nonprofit sector. Mr. Pratt also is serving New York communities as Chair of the Board of the Pratt Institute and especially his work with the Pratt Center for Community Development.

Lawyers Alliance Board of Directors Chair **Edward F. Greene** noted that, "Over the past 40 years, Lawyers Alliance has grown from a cherished public service organization founded by young law firm associates to a national model connecting all lawyers with a firm, nonprofits, and communities to improve the quality of life for low-income urban families. We proudly celebrate that connection."

For more information on Lawyers Alliance's 40-plus years of history, visit: www.lawyersalliance.org/history.php

BUSINESS LAW &
LEADERSHIP
— G A L A —



Photo: Chris Johnson

Left to right: Master of Ceremonies, Jeff Greenfield, Senior Political Correspondent, CBS News; Honoree, C. Robert Henrikson, Chairman of the Board, President and CEO, MetLife Inc.; Honoree, Gladys Carrion, Commissioner, NYS Office of Children & Family Services; Sean Delany, Executive Director, Lawyers Alliance for New York; Mike Pratt, President and Executive Director, The Scherman Foundation.



Photo: Chris Johnson

Lawyers Alliance Board Chair Edward F. Greene

Cover photo, L to R: Bill Toppeta, President, International, MetLife, Inc.; Gwenn Carr, Executive Vice President, Office of the Chairman, MetLife, Inc. and former Lawyers Alliance board member; and Wolcott Dunham, Jr., partner, Debevoise & Plimpton LLP.

Lawyers Alliance would like to say a very special "thank you" to Chris Johnson for donating his professional photography services and helping to make the evening a great success!

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Example: Revisions to IRS Form 990 – When the Internal Revenue Service proposed the first comprehensive overhaul of Form 990 in 2007, community-based organizations were certain to be affected by any additional burdens in record-keeping and any changes in the presentation of their work that resulted from that update. Lawyers Alliance led a network of pro bono legal services providers from around the United States to develop comments on the new Form 990 based on the interests of smaller organizations, enabling the IRS to hear a perspective not offered by many of the other tax experts and exempt organizations law practitioners that reacted to the new Form.

Second, Lawyers Alliance also supports advocacy campaigns that are specific to the missions of a significant number of our clients. This work includes legal research, policy analysis, and legislative drafting. Our decision to become involved in these issues will depend upon the significance of the issue and the ability of Lawyers Alliance and its volunteers to bring about a positive outcome.

Example: Policy Analysis on Homeless Young Adults – Lawyers Alliance and pro bono attorneys from Jenner & Block LLP are assisting a client in developing a whitepaper relating to issues of runaway homeless persons between the ages of 21-24, a particularly vulnerable segment of the population. The paper will examine issues faced by nonprofit providers serving this population, applicable regulations, and any responsibilities that the relevant regulatory agencies may have to this population.

Over the past 18 months, our advocacy support also has helped groups of nonprofits to understand and confront the challenges created by government budget cuts. Nonprofits that share similar missions have formed coalitions to advocate with state and local representatives, and increasingly Lawyers Alliance has been advising these informal coalitions about upcoming regulatory and legislative issues.

Example: Head Start Funding Cuts– When the **Agency for Children’s Services (ACS)** announced plans to reduce dramatically the per-child allocation available to many of the 75 Head Start providers, Lawyers Alliance staff researched the legal impli-

cations of the proposed cuts. They then advised citywide Head Start Policy Council members from over 20 nonprofits and trained leaders from 25 Head Start programs on the legal issues, so that these groups could better respond to ACS and seek to maximize their allocations.

Protecting Nonprofit Advocacy

Many community-based nonprofit managers, unaware of the extent to which the Internal Revenue Code permits legislative advocacy by tax-exempt organizations, unnecessarily shy away from permissible activities that would benefit the communities they serve. At the same time, others are active in the legislative arena but not complying with state and local registration and disclosure laws that apply to all who engage in lobbying, including nonprofit organizations. Lawyers Alliance protects nonprofit advocacy by offering educational programs and legal counsel on lobbying regulation, including the registration and disclosure statutes, with a goal of encouraging participation in the legislative process with full legal compliance.

Example: Affordable Housing – Supportive Housing Network of New York (SHNNY), a coalition of 200 nonprofits and corporate partners, advocates at the federal, state and local levels to increase the supply of supportive housing and enable housing providers to expand their service capacity. Lawyers Alliance and pro bono attorneys from Patterson, Belknap, Webb & Tyler LLP assisted SHNNY with registration, reporting and compliance under federal, state and New York City lobbying laws. This legal work has helped SHNNY to lobby effectively for funding for housing programs, as well as to work with state and city agencies to improve government regulations and policies related to supportive housing.

As challenging times continue, Lawyers Alliance is committed to amplifying the voice of the nonprofit sector on public policy issues of importance to New York City communities. We invite community-based nonprofits involved in advocacy campaigns to reach out to us, and we encourage volunteers in our pro bono network to join us in this important work. For further information, please contact Deputy Executive Director **Elizabeth Guggenheimer** at (212) 219-1800 ext. 231.

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In Brief

Pro Bono Forum

On May 5th, Lawyers Alliance for New York hosted a special program, “Business and Transactional Pro Bono and the Evolving Law Firm Paradigm.” Law firm pro bono leaders, along with public interest representatives and Lawyers Alliance program staff, engaged in an important discussion on how the economic downturn has impacted law firms and corporate legal departments and how such changes may affect the delivery of pro bono legal services by business and transactional lawyers. Participants also learned of the widening array of legal needs that nonprofit organizations are experiencing. The program, moderated by Deputy Executive Director **Elizabeth Guggenheimer**, was enhanced by the following panelists: **Katie Brethel**, Columbia Law School; **Diane Costigan**, Shannon & Manch LLP; **Kevin Curnin**, Stroock, Stroock & Lavan LLC; and **Ken Walters**, United Neighborhood Houses of New York. Simpson, Thacher & Bartlett LLP hosted.



Lawyers Alliance Deputy Executive Director Elizabeth Guggenheimer

Program Preservation: Alternative Revenue Generation Creates Opportunity But Also Compliance Considerations

During the economic downturn, a diversified income stream is especially important for nonprofits to maintain their programs, especially when government contracts are cut and foundations that lost money in the stock market have slashed their grants. To counter this squeeze, nonprofits are looking at other ways to bring in revenue, including subletting space, leveraging assets such as software or other products that they own or manage, or charging a fee for their services.

There are, however, exempt organization law issues for nonprofits to consider when generating additional revenue. While charitable organizations are allowed to charge fees for service, this practice is barred by some government contracts. Under certain circumstances, commercial or other revenue generating activity unrelated to the organization’s mission may generate Unrelated Business Income Tax. If taxable income grows to be a substantial part of the organization’s revenues, its tax exempt status could be jeopardized. For more information on unrelated business income, visit: www.irs.gov/charities/article/0,,id=96104,00.html

These potential pitfalls, however, should not deter an organization from considering revenue generating activity. Rather, the organization should seek counsel that can advise it on the best way to structure these activities.

Please visit www.lawyersalliance.org/economic_downturn.php for monthly Board talking points created as part of Lawyers Alliance’s Program Preservation Initiative.

Lawyers Alliance Thanks Program Preservation Initiative Funders

The past eighteen months Lawyers Alliance has made it a priority to help nonprofits cope with the legal impact of decreased funding and increased demand of their services. The following are lead funders of Lawyers Alliance’s initiative to offer legal representation and educational programs to enable nonprofits to adopt strategies that foster stability and preserve vital programs during this challenging financial period:

Altman Foundation

American College of Bankruptcy

The Clark Foundation

**Frances L. and Edwin L. Cummings Memorial
Foundation**

Linklaters

The New York Community Trust

Tiger Foundation

Creating Bylaws to Guide Board Conduct

Bylaws are not very helpful if left undisturbed in a drawer or computer file. Bylaws are meant to be read, reviewed, and regularly used throughout the life of a nonprofit organization. A perception that an organization's bylaws read like "legalese" or are "out-of-date" should not hold the organization back. Instead, bylaws can be modified to reflect current realities, existing law, and reasonable sentence structures. Helping nonprofit clients prepare and follow clear and practical bylaws and related corporate governance documents is an area where Lawyers Alliance's staff and pro bono attorneys can be of valuable assistance.

Although bylaws usually are not complex documents to draft, part of the challenge and benefit is creating bylaws that will be well-utilized. As organizations confront evolving questions about finances, funding, programs, real property and strategic direction, understandable and realistic bylaws make it easier for directors and officers to make meaningful and properly authorized decisions. Lawyers Alliance volunteers can assist nonprofits with the following guiding principles:

Make basic decisions about the organization's structure. Before drafting or revising bylaws, the Board should discuss what corporate structure works best for the particular organization. Legal counsel can help nonprofit managers evaluate the pros and cons of different options for director qualifications, terms, quorum, voting rights, ex officio positions, officers, membership, classes, committees, and indemnification.

Case Example: Helen Owen Carey Child Development Center in Brooklyn provides child care and early education for children ages two to five years. Following a review of the Center and other child development centers by the NYC Mayor's Office of Contract Services (MOC), the Center updated its bylaws, formalized a board committee structure and developed conflict of interest procedures. Lawyers Alliance and volunteer attorneys from **Orrick, Herrington & Sutcliffe LLP**

assisted the Center with drafting these corporate documents, enabling the Center to comply with MOC's recommendations and implement best practices in governance.

Simplify. Bylaws should allow the Board to act expeditiously and make well-informed decisions without unnecessary logistics. For example, having a quorum requirement at the statutory minimum makes it easier to assemble a sufficient number of directors to take corporate action. Legal counsel can advise the Board about the minimum requirements imposed by the New York Not-for-Profit Corporation Law, a regulatory agency, or funder agreement.

Case Example: Eden II School for Autistic Children, based in Staten Island, offers numerous programs and services for children and adults with autism. As a result of its growth and as a part of a strategic plan, Eden II sought to update its certificate of incorporation and bylaws to reflect current activities and reconsider the role of members. Lawyers Alliance and volunteer attorneys from **DLA Piper LLP** assisted Eden II in revising these documents. This made it possible for the client to modify its structure, streamline decision-making procedures, and clarify roles and responsibilities of directors.

Review periodically and make easily accessible. Legal counsel can advise the organization on the importance of maintaining current bylaws, with proof of adoption, as part of the corporate records, and of keeping extra copies readily available for reference. A Board committee may review the bylaws and recommend changes to the full Board for comment and vote. The bylaws should specify the amendment procedures, including what type of vote (e.g., majority, super-majority) is required.

Please contact Program Associate for Client Relations **Avie Bertaccini** at (212) 219-1800 ext. 278 or abertaccini@lawyersalliance.org for further information about Lawyers Alliance's legal services related to bylaws.

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Lawyers Alliance announces its newest publication for nonprofit managers, *Bylaws That Work: A Manual for New York Nonprofits*. For details or to order online, visit www.lawyersalliance.org/publications.php.

Lawyers Alliance Is Honored

On May 6, 2010 at Yankee Stadium's Hard Rock Cafe, BronxWorks honored Lawyers Alliance Executive Director **Sean Delany**, who for many years served as the organization's Board Chair or legal counsel, at their annual event – BronxWorks Rocks! Mr. Delany was joined by fellow honorees **Bill Aguado**, President of the Bronx Council on the Arts and a BronxWorks board member and **John Fouhey** of Davis Polk & Wardwell, pro bono legal counsel for BronxWorks and former BronxWorks treasurer. Mr. Fouhey is also a longtime pro bono attorney and former board chair of Lawyers Alliance.



On Wednesday, April 14, 2010, Lawyers Alliance for New York received a Keystone Award from the Federation of Protestant Welfare Agencies (FPWA). Every year FPWA presents the Award to organizations and individuals who have provided outstanding service in the New York City social services sector. Lawyers Alliance was honored for its “comprehensive and high quality trans-

actional legal services to nonprofits serving low-income communities.” The award is part of FPWA's annual conference series, this year titled, “Real Life Collaborations in the Nonprofit World.”

Help Us Make the Connection

Lawyers Alliance exists to help nonprofit organizations make a positive and enduring impact in New York City by connecting lawyers, nonprofits, and communities. If the work of our volunteers or staff attorneys has resulted in a success story for your organization – stronger programs, a greater number of people helped, or more money saved or raised – we would love to hear about it! Email Marketing Coordinator **Anoush Bagdoyan** at abagdoyan@lawyersalliance.org with details.

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