

Changes to Not-for-Profit Corporation Law Affect All New York Nonprofits

THE NONPROFIT REVITALIZATION ACT (the Act), effective on July 1, 2014, makes comprehensive changes to New York's Not-for-Profit Corporation Law for the first time in forty years. Lawyers Alliance for New York is supporting nonprofit managers and board members as they bring their organizations into compliance with the new law's requirements and take advantage of its opportunities. The Act affects both established organizations and those that are newly forming.

Lawyers Alliance is offering comprehensive legal assistance to nonprofit organizations that serve low-income residents or communities in New York City. Legal work includes reviewing corporate governance practices, developing new and updated procedures and documents, and counseling boards of directors. We also offer a wealth of practical educational resources. Since the adoption of the Act in late December, Lawyers Alliance has educated over 400 nonprofit leaders on the new law through webinars, clinics offered in partnership with PricewaterhouseCoopers and Viacom, and telephone resource calls; thousands have received a legal alert and a Frequently Asked Questions document that is available at www.lawyersalliance.org. At the same time, Lawyers Alliance is providing pro bono attorneys with the information and tools necessary to assist their nonprofit clients.

All nonprofits incorporated in New York State, both charitable and non-charitable entities, will be legally required to adopt policies and procedures that until now were considered best practices. Nonprofits must have a conflict of interest policy with mandated provisions, including a process for

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Lawyers Alliance and volunteer attorneys worked with SCO Family of Services to update its policies in advance of the Act.



Photo: SCO Family of Services



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2014 Business Law & Leadership Gala Celebrates 45 Years



New York State Attorney General Eric T. Schneiderman with Honoree Matthew J. Mallow



Antony L. Ryan, Cravath, Swaine & Moore LLP; Samira Shah, Cravath, Swaine & Moore LLP; and Honoree Diana Weiss



Hon. Elizabeth Stong; Honoree James R. Silkenat; Stephen P. Younger, Patterson Belknap Webb & Tyler LLP; Hon. Judith Kaye; and Barry H. Garfinkel, Skadden, Arps, Slate, Meagher & Flom LLP

On May 7, 2014, more than 420 members of the legal, financial, corporate, and nonprofit sectors gathered at Gotham Hall for Lawyers Alliance’s Business Law & Leadership Gala. Lawyers Alliance alumni and current supporters joined the celebration of Lawyers Alliance’s 45 years as the leading provider of business and transactional legal services to nonprofits.

Aric Press, Senior Vice President and Editor in Chief, ALM Media, served as Master of Ceremonies. He set a warm and personal tone for the evening, noting in his introduction, “I have witnessed up close both the remarkable work of Lawyers Alliance and the evolution of pro bono legal services in this city and throughout the United States.” Deputy Executive Director **Elizabeth Guggenheimer** welcomed the guests on behalf of the staff and introduced a new video montage that highlights the work of Lawyers Alliance’s nonprofit clients, volunteer attorneys, and staff. (Visit www.lawyersalliance.org/videos-gala2014.php to view the video.)

The recipients of the 2014 Business Law & Leadership Award for distinguished service are:

► **Matthew J. Mallow**, *Senior Managing Director and General Counsel, BlackRock, Inc.* BlackRock’s philanthropic focus is providing young people around the world with financial education and tools, as well as the mentoring and training they need to build better futures for themselves and their families. Mr. Mallow was a founder of the Council of New York Law Associates (Lawyers Alliance’s original name) in 1969, and he served on the Board beginning in 1970 and on the Steering Committee in 1972. Over the past 40 years, he has continued to champion pro bono legal services by members of the private bar, and he currently serves on Lawyers Alliance’s Board of Advisors.

Attorney General **Eric T. Schneiderman** presented Mr. Mallow with the Award, noting, “Any award that has business law and leadership in it clearly should be going to Matt Mallow.” Mr. Mallow remembered the impetus behind the Council, saying, “Lawyers at big firms in those days had no formal way to connect with the not-for-profit sector and not-for-profit organizations in search of good counsel. So we, self-appointedly, stepped up to fill the gap.”

► **Diana Weiss**, *General Counsel, PricewaterhouseCoopers LLP* Through programs such as Earn Your Future, PwC’s \$160 million national commitment to youth education with a focus on financial literacy, and PwC’s 55,695 hours spent volunteering in the nonprofit community last year, PwC and Ms. Weiss embody a civic-minded spirit. The PwC legal team recently conducted a pro bono clinic to help Lawyers Alliance clients understand their responsibilities under the new Nonprofit Revitalization Act.

Mitch Cohen, Vice Chairman of PwC, introduced Ms. Weiss, noting that she is dedicated to “bringing her legal skills and the legal skills of people at PwC to bear on helping the nonprofit sector.” While accepting the Award, Ms. Weiss stressed the importance of pro bono work, stating, “I hope that you will reward yourselves by spending some time volunteering. Together we can use our experience to enable nonprofits to succeed in their missions and to make this city a better place.”

► **James R. Silkenat**, *President, American Bar Association and Partner, Sullivan & Worcester LLP* Mr. Silkenat is President of the 400,000 member American Bar Association. He has a long and distinguished ABA record

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directed at strengthening the legal profession and promoting services to underrepresented and underserved communities. Mr. Silkenat's public service is rooted in his participation as a key member of the Council of New York Law Associates, serving as Board Chair and Steering Committee member in the mid-1970s. He regularly notes this connection when recounting how he first got involved in the ABA.

Honorable **Judith Kaye** presented Mr. Silkenat with the Award and noted, among Mr. Silkenat's many initiatives, the creation of the ABA's Legal Access Job Corps, which attempts to address the vast unmet need for legal services for disadvantaged communities by utilizing the current oversupply of lawyers. Upon accepting the Award from the former Chief Judge, Mr. Silkenat stated, "Being here tonight is a homecoming for me. Lawyers Alliance played a very formative role in my career."

Lawyers Alliance Board Chair **John D. Lobrano** presented a surprise, special tribute to **Edward Greene**, a founder of Lawyers Alliance, former Chair of the Board of Directors, and current Chair of the Board of Advisors, citing his long-term service and dedication to the organization. Mr. Lobrano noted, "Ed's contributions to Lawyers Alliance span the entire history of the organization."

Executive Director **Sean Delany** presented the evening's closing remarks. He congratulated the honorees, stating, "They all have the professional and personal qualities that we expect of those who receive the Business Law & Leadership Award."

Lawyers Alliance is grateful to all 45 sponsors of the Gala, whose financial support allows us to continue to provide high quality services. We invite you to view their greetings at www.lawyersalliance.org/gala.php. We especially thank our Anniversary Sponsors: BlackRock, Inc.; Cravath, Swaine & Moore LLP; King & Spalding LLP; Kirkland & Ellis LLP; Latham & Watkins LLP; PricewaterhouseCoopers LLP; and Skadden, Arps, Slate, Meagher & Flom LLP.

Please join us next spring for the 2015 Business Law & Leadership Gala.



Master of Ceremonies Aric Press, left, with Executive Director Sean Delany, and former Lawyers Alliance Senior Staff Attorney Jean Berman



Greg Garrison, Caroline Nolan, Kate Hannah, Mitch Cohen, Genevieve Girault, and John Carter, all of PricewaterhouseCoopers LLP

Alum Profile: Edward F. Greene



Edward F. Greene with Diana Greene

Edward F. Greene, Senior Counsel at Cleary Gottlieb Steen & Hamilton LLP, is currently Chair of Lawyers Alliance's Board of Advisors. However, his mark on this organization began about 45 years ago, when he was among the small group of attorneys who created the Council of New York Law Associates in 1969. He served as the first Chairman of the Steering Committee along with another key founder, Neal Johnston, recruited early members, and helped shape the Council's initial course. Mr. Greene's support and inspiration continued as he pursued his distinguished legal career in private practice, including a more than 20 year tenure with Cleary Gottlieb, as well as his work at the Securities Exchange Commission, Citigroup, and as a law professor.

In 2004, Mr. Greene joined Lawyers Alliance's Board of Directors, serving as Chair in 2007 to 2010. He led the strategic planning process that helped shape Lawyers Alliance's current priorities and direction. As a result, today Lawyers Alliance is a leading provider of business and transactional law services to nonprofits that help low-income New Yorkers, an advocate for the nonprofit sector, and a national business law pro bono leader. After his Board term ended in 2011, Mr. Greene helped create Lawyers Alliance's Board of Advisors, which provides strategic, development, and operational guidance to the organization. When Board Chair John Lobrano recognized Mr. Greene's contributions to Lawyers Alliance during the 2014 Gala awards presentation, Mr. Greene responded, "This is the most touching award I've ever received."

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addressing related party transactions. New York State has been closely tracking federal excess benefit transaction regulations. In keeping with the law, when evaluating a transaction in which a board member or key employee has a financial interest, the interested party will need to disclose the conflict and recuse themselves from deliberations. The board will have to consider alternative transactions, determine the transaction to be in the best interest of the corporation, and approve the transaction without the vote of the interested party.

Case Example: The Bed-Stuy Campaign Against Hunger (BSCAH) was founded in 1998 as a small traditional food pantry operating out of a church basement. It is now the largest pantry in Brooklyn, providing the basic staples of a well-balanced diet to more than 25,000 low-income individuals a month. As part of a comprehensive review of the governance practices, Lawyers Alliance and volunteer attorneys from Sutherland Asbill & Brennan LLP are assisting BSCAH to adopt a conflict of interest policy and amend its bylaws for compliance with the Nonprofit Revitalization Act.

Larger nonprofits with more than 20 employees and \$1 million or more in annual revenue must have a whistleblower policy protecting employees, directors, officers, and certain volunteers. This requirement is broader than the protection against retaliation many organizations already offer employees who report instances of discrimination or harassment in an employment context. Existing whistleblower policies will have to be revised to encompass reporting of suspected violations of laws or corporate policies.

Case Example: SCO Family of Services (SCO) each year helps 60,000 vulnerable children, teens, adults, and families in New York City and Long Island. Through 93 programs in 115 locations, SCO works to get young children off to a good start, launch youth into adulthood, stabilize and strengthen families, and unlock potential for children and adults with special needs. Lawyers Alliance and volunteer attorneys from Farrell Fritz, P.C. are helping SCO update its bylaws, board committee charters, conflict of interest policy, and whistleblower policy to be in compliance with the Nonprofit Revitalization Act.

In order to lessen the burden on smaller organizations, the annual revenue threshold for filing audited financials with the Attorney General's

office has been increased to \$500,000 (from \$250,000) for filings due after July 1, 2014. Boards of nonprofits required to file audited financials must take specific steps to oversee the audit process, including selection and retention of an auditor and meeting with the auditor to discuss the findings. This oversight must be carried out by either an Audit Committee composed solely of "independent directors" or the entire board.

The law modernizes certain nonprofit procedures: notices of membership and board meetings may now be sent electronically, as can waivers of notice and members' proxy authorization, as well as unanimous written consent. Attendance at board (but not membership) meetings may now be by videoconference.

Finally, the new law reduces the levels of regulatory review necessary for amending certificates of incorporation as well as for nonprofit transactions such as substantial asset transfers and mergers.

Now is the time for organizational leaders to review their bylaws and governance policies in light of the Act and make appropriate changes to ensure compliance. Lawyers Alliance connects clients with volunteer lawyers who can guide them through the process.

All Lawyers Alliance staff attorneys are familiar with the Act and available to support our nonprofit clients and the pro bono attorneys who represent them. If you have questions regarding the Act, please contact Lawyers Alliance Legal Director **Linda Manley** at (212) 219-1800 ext. 239 or lmanley@lawyersalliance.org.



SCO Family of Services (SCO) each year helps 60,000 vulnerable children, teens, adults, and families

In Brief

Lawyers Alliance Welcomes New Staff

Tory Messina, Pro Bono Manager, ensures that Lawyers Alliance's pro bono program operates smoothly, including client intake and screening, pro bono case placement, and volunteer support and recognition. She also coordinates Lawyers Alliance's Continuing Legal Education Program.



Faith Thomas and Tory Messina

Responsible Philanthropy: Contracts and Intellectual Property

Lawyers Alliance welcomes the opportunity to team up with dynamic businesses committed to corporate responsibility to ensure that nonprofits receive appropriate legal information to operate strong programs. The clinic model can be an effective way for nonprofit managers and pro bono attorneys to focus on a particular topic and identify further legal needs.



Time Warner, HBO, and DC Comics hosted a clinic on contracts and intellectual property for community arts and other nonprofit organizations.

Prior to joining Lawyers Alliance, she was Associate Director of Public Interest and Government Counseling at University of Pennsylvania Law School, New York Program Coordinator at Pro Bono Net, and an associate at Fried, Frank, Harris, Shriver & Jacobson LLP. Ms. Messina received her J.D. from University of Pennsylvania Law School and B.A. from Brown University.

Faith Thomas, Office Administrator, is often the first point of contact for Lawyers Alliance's callers and visitors. She supports a wide range of office facility and administrative functions. Prior to joining Lawyers Alliance, she worked with nonprofit organizations engaged in museum sciences, emergency food services, and educational programming for children. Most recently, Ms. Thomas was the Resource Navigator at Emmaus House, a community center in New York City. She received her B.A. from Salem College.

Such was the case on March 26, when 13 community arts and other nonprofit organizations gathered at Time Warner Center to learn more about contracts, intellectual property, the Internet, and social media issues. They first attended an educational training, and then proceeded to individualized consultations, where each organization was paired with a pro bono legal team to discuss the organization's particular questions. Examples of consultation topics included the meaning of a clause in a services agreement, best practices for copyright protection, and sound website policies. Time Warner, HBO, and DC Comics hosted the clinic, invited their grantees, and recruited 23 of their attorneys and paralegals to provide pro bono expertise. Also instrumental were eight pro bono attorneys from Paul, Weiss, Rifkind, Wharton & Garrison LLP, who prepared the training materials and participated along with Lawyers Alliance staff. Says one nonprofit participant, "I have already proposed two important changes to a contract with a public relations and talent firm we intend to work with, based on the counsel I received."

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Director of Finance and Administration

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Legal Director

Tory Messina
Pro Bono Manager

Judith Moldover
Senior Staff Attorney

Hedwig O'Hara
Senior Staff Attorney

Elizabeth Perez
Senior Staff Attorney

Aaron Perlson
Information Systems Manager

Mariel Read
Associate Director of Development

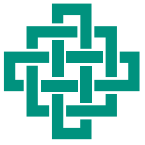
Kelsey Ripper
Equal Justice Works Fellow sponsored by Sutherland Asbill & Brennan LLP

Neil Stevenson
Senior Staff Attorney

Jamie Stockton
Extern Staff Attorney

Kendra Sykes
Program and Database Assistant

Faith Thomas
Office Administrator



Lawyers Alliance
for New York

171 Madison Avenue
Sixth Floor
New York, NY 10016



Dechert Receives New York's Highest Pro Bono Award



Suzanne Turner, Dechert's Pro Bono Partner (center left) and Adam Wasserman, a partner and member of Dechert's Pro Bono Committee (center right), accepted the NYSBA award. Also shown are Maurice Segall, Pro Bono Partnership (far left) and Tory Messina, Lawyers Alliance (far right).

Lawyers Alliance congratulates **Dechert LLP** for receiving the 2014 New York State Bar Association President's Pro Bono Service Award in Albany on April 30.

During 2013, 99% of the lawyers in Dechert's New York office engaged in pro bono, averaging approximately 105 hours a year per attorney. The work related to strengthening nonprofits, indigent criminal defense, immigration, access to justice, and core poverty issues. According to **Suzanne Turner**, the firm's Pro Bono Partner, "As long as the legal needs of the poor continue to go unmet, Dechert will continue to aspire to play a role in narrowing that justice gap."

During the past 20 years, Dechert has represented 79 nonprofits on 90 matters with Lawyers Alliance. Recently Dechert attorneys:

- reviewed and negotiated a lease for **The Carter Burden Center for the Aging** for new space that will house a gallery for older artists.
- provided **Beach 116th Street Partnership** with board governance and bylaws advice.
- counseled **Manhattan New Music Project (MNMP)** on a strategic alliance with another organization that ensures continued services for 3,000 special needs children.

Along with Lawyers Alliance, Dechert's nomination was sponsored by The Legal Aid Society, New York Lawyers for the Public Interest, and Pro Bono Partnership, with supporting materials from the City Bar Justice Center, Immigration Equality, and the New York City Family Court Volunteer Attorney Program.
