



Working Together: *Legal Issues for Advocacy Coalitions*

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What Is a Coalition?

- **working group** – share knowledge, coordinate activities
- **concerted campaign** w/ a distinct goal – time limited
- **common funder(s)** – directly funds each organization & tells them to work together, or funnels funding through one group that makes subgrants
- **leadership** – one leader who convenes everyone and decides direction, or more democratic process?



Liability issues for coalitions



Who can speak on coalition's behalf, claim credit for its work?

Options

- Members can't claim to represent the coalition unless authorized by Executive Committee or certain members may speak on behalf of the coalition
- Members have the right to identify themselves publicly as members of the coalition
- Members must identify themselves as coalition members on their website, on publications, etc.
- The coalition's name may not be used for any purpose not related to the coalition's purposes



Data sharing and confidentiality

Types of sensitive information

- individuals' medical, legal or financial information
- member organizations' internal information
- coalition strategy documents

Protocols

- Get consent from individuals before sharing data
- Data-sharing agreement
 - promise to maintain confidentiality of information: be aware of legal requirements
 - what level of security is reasonable?
 - anti-hacking measures
 - liability & indemnification



Who owns jointly created materials & data?

Coalition's products

- Publications
- Website & social media accounts
- Mailing lists
- Internal documents

Options

- everyone owns what they create; participants grant each other a **license** to use certain materials during the course of the coalition
- coalition owns certain materials (harder if coalition is not a legal entity)
- joint ownership (not recommended)



Who is the employer?

- **An employee may have more than one employer at the same time.**
- **Whoever manages the payroll and authorizes checks is the “primary” employer.**
 - True even if an employee is not actively supervised by the payroll employer.
- **Other coalition members may become secondary employers if they:**
 - Hire or fire
 - Supervise or control work schedule or conditions of employment
 - Determine the rate or method of compensation
 - Maintain employment records, or
 - Agree to share the employee’s services



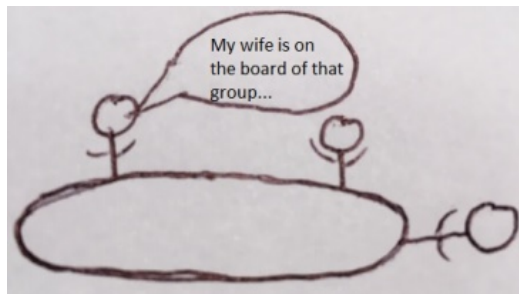
Minimizing risks associated with joint employment

Have a written agreement

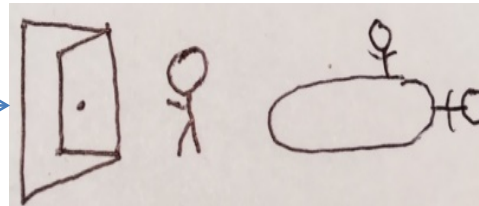
- memorialize the intention not to be joint employers
- spell out each coalition member's responsibilities regarding people performing work for the coalition
- make sure employees know they are working for a single coalition member
- provide for indemnification

Conflicts of Interest

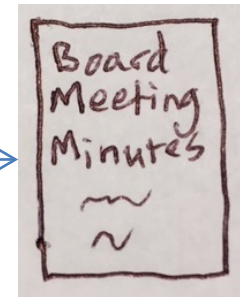
- competition for funds
- everyone wants credit
- side deals
- non-coalition work that members (or their funders) disapprove of



Disclose



Recuse



Document



Ways to reduce liability of individual coalition members

Agree to

- Indemnify
- Defend
- Hold harmless
- Maintain insurance – for self, name other coalition members?



Advocacy-related legal issues for coalitions



Internal Revenue Code

Ability to engage in political activity depends on tax status...

501(c)(3)

- May not "participate in, or intervene in ... any political campaign on behalf of (or in opposition to) any candidate for public office."
- Absolute prohibition.
- Violation can → lose tax exempt status.



Who are your partners?

	501(c)(3) Public Charity	501(c)(4) Social Welfare 501(c)(5) Union	Political Committee
Lobbying	Yes, if insubstantial part	No limit	Yes
Political Activity	No	Yes, but not primary purpose	Yes



Permissible activities

A 501(c)(3) **can** do these things but must be careful about coordinating with a political entity

- Register voters
- Get out the vote (GOTV)
- Voter guides
- Candidate questionnaires
- Candidate forums & debates
- Educate candidates
- Advocacy campaigns during election season



Websites

Shared website

- must clearly distinguish between 501(c)(3) content & 501(c)(4) content
- 501(c)(3) logo, name etc. shouldn't appear on 501(c)(4) pages
- if the 501(c)(4) engages in partisan political activity, it's always risky

Links

- 501(c)(3) must be careful about linking to website with political content



Joint & separate fundraising for coalition work

- Who pays for fundraising expenses?
- How will funds be split?
- Beware of conflicts of interest
- c3/c4 joint fundraising – special precautions:
 - \$ can't support c4 political activities
 - each org. should pay fair share of costs
 - tell donors that c4 contributions aren't tax deductible



Lobbying

- Doesn't matter what words you use to describe your work – *actions* matter
- You may be lobbying if you're trying to ...
 - influence legislation (includes city or state budget, discretionary funds)
 - change agency rules, regulations
 - affect government procurement
 - and more
- For specifics, see Lawyers Alliance FAQ's on Nonprofits & Lobbying



Why do we need to know how much lobbying we do?

IRS limit -- *501(c)(3)'s only*

- substantial part test or
- expenditures test ²⁰

Lobbyist registration & disclosure laws -- *all organizations*

- federal Lobbying Disclosure Act (\$14k/quarter & 1 lobbying employee)
- NYS & NYC lobbying laws (\$5k/calendar year)



Lobbying in a coalition

Basic rule: Each organization tracks and reports its own lobbying expenditures.

Exceptions:

- **Internal Revenue Code**: lobbying expenditures of affiliates are aggregated *if* organization can control affiliate's lobbying activity through interlocking boards or governing instrument.
- **Federal Lobbying Disclosure Act, NYS & NYC Lobbying Acts**: if the organizations pool money to hire a lobbyist (or for NYS if the members lobby under a common name), call to ask how the coalition members should report
 - **U.S. House Legislative Resource Center**: (202) 226-5200
 - **U.S. Senate Office of Public Records**: (202) 224-0758
 - **NYS COELIG** (518) 408-3976
 - **NYC Clerk's Lobbying Bureau** (212) 669-8171



Resources

- Lawyers Alliance, Advocacy Coalition Agreements, https://lawyersalliance.org/userFiles/uploads/legal_alerts/Advocacy_Coalition_Agreements_Legal_Alert.pdf
- Lawyers Alliance, FAQs on Nonprofits & Lobbying, https://lawyersalliance.org/userFiles/uploads/legal_alerts/Nonprofits_and_Lobbying_FAQ.pdf
- Bolder Advocacy, Coalition Checklist <https://bolderadvocacy.org/wp-content/uploads/2018/03/BA-Coalition-Checklist-1.pdf>



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