Legal Pitfalls for Divisions and How to Avoid Them
APA legal team

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Look, I'm not saying it is going to be today -- but someday -- someday -- you all will be happy that you have taken along a lawyer!
What We Will Cover

- Duty of Care/Loyalty
- APA Bylaws/Association Rules for Divisions
- Lobbying
- Tax Exempt Status/Risks
- Conflict of Interest/Whistleblower/Document Destruction
- Contracts:
  - Association Management Companies/Meeting Planners
  - Journal/Book
  - Hotel
- Antitrust
- Listserv Rules
- Social media
Your Fiduciary Duty to Your Division and to APA

- Duty of care
- Duty of loyalty
- Entitlement to rely on experts
- Information sources
  - Legal risk management
  - Handouts
  - Division services
  - Your lawyers
APA Bylaws, Policies, and Rules that Govern Divisions

- APA bylaws
  - Article IV.5
    - “A Division remains autonomous in all matters within its field that are not reserved to the Association and Council by these Bylaws or Association Rules.”
APA Bylaws, Policies, and Rules that Govern Divisions

- Divisions may not establish or enforce standards for ethics, accreditation, certification, or credentialing of specialty recognition.

- Divisions must comply with all APA Bylaws, Association Rules and current policies.”

- Association Rules—Rule 100!
  - File your annual report
Public Statements on Behalf of the Division

• Authorized? Rule 100-1.5
  – Official status
  – Disclaimer

• Not in conflict with APA policy?
  – APA policy manual
  – Political process is appropriate way to oppose APA policy
Public Statements on Behalf of the Division

• Construed as a standard or guideline?

“Standards” include any criteria, protocols, or specifications for conduct, performance, services, or products in psychology or related areas....

“Guidelines” include pronouncements, statements, or declarations that suggest or recommend specific professional behavior, endeavor, or conduct for psychologists or for individuals or organizations that work with psychologists. Association Rule 30-8.1
Public Statements on Behalf of the Division

- Disclaimer or put it through the guideline process
- Amicus briefs or lobbying
- Important for APA to speak with one voice
Biggest Legal Risk: Maintaining the tax-exempt status

• **501(c)(3) (APA and its Divisions)**
  – Most preferential tax-exempt status
  – Greatest Benefits, greatest restrictions

• **Permissible Purposes** - organized and operated “exclusively” for charitable, educational, scientific, religious and, literary purposes
Limitations:

- Total prohibition on “electioneering” i.e., supporting or opposing any candidate for public office (Rule 100-1.10)

- NO Communication (listserve, verbal, writing, etc.)
  - With members or the public
  - That discusses: candidates, elections, voting, political parties

- No contributions to candidates or PAC

- Can’t use assets to support or oppose a candidate

- This is different from lobbying, which is allowed
  - Can’t engage in activities that benefit individuals rather than the public: must stick to charitable mission
  - Can’t just give money or resources to non-charitable organizations
Biggest risk—Maintaining tax-exempt status

• 501 (c)(6) – (APAPO) (State Associations)
  – Purposes – association of persons with common business interests
  – Benefits – preferential tax treatment
  – Less restrictions on activities

• 501(c)(3) can’t just give assets to these organizations
Division Lobbying

- Divisions can engage in advocacy
- Must be for 501(c)(3) appropriate purpose
- Coordinate with APA Government Relations
- Careful planning and record keeping is required

Division Lobbying Information Site:
https://apateamsites.apa.org/sites/lobbying/divisions

Username: APAINT\DivisionUser
Password: D1vision (password is case sensitive)
Legal Risk: Complying with Governance and Management Laws:

– Conflict of Interest Policy: this applies to your Board of Directors

– Whistleblower Policy

– Document Destruction Policy

• Other Division Policies

http://www.apa.org/about/division/officers
WE THOUGHT WE’D PUT IN THE DETAIL LATER...
Association Management Companies

- **Need** to have a detailed contract for your protection
- What are they doing for you?
  - Finances? Can be tricky b/c of tax status
  - Membership?
  - Mailings?
- What will it cost you to hire an outside company?
- Get References (not just who they tell you)
  - Call OGC and Division Services to ask what our experience has been
WE FIND THIS WORKS BETTER FOR US!
Meeting Planners

- Need to have a detailed contract for your protection
  - Who gets the hotel miles?
  - Commissions?
  - Who negotiates the hotel contract? Who signs it? Who is on the hook?
    - We can assist with negotiations
- Get References (not just who they tell you)
  - Call OGC and Division Services to ask what our experience has been
FYI

APA has no “preferred” vendors
Can you do another draft of this? There’s still a couple of sentences that people might actually understand…
CONTRACTS

• Over $10,000, *review* required by legal counsel and finance (Association Rule 100-1.8)

• Contracts or grants

• Under $10,000, discretionary but why not?
"No, Jimmy, I distinctly said that you can *halve* your allowance if you mow the lawn.
• Hotel Contracts
  – Attrition Fees
  – Cancellation Fees
  – Force Majeure Clause
  – Do you have a conference planner?
• Publishing Agreements
  – Journals
  – Books
  • Legal issues include copyright protection/preservation which relate directly to revenue for the Division
  • Business issues include money, length of contract term, distribution, cost to members for subscriptions
• Other Contracts
  – Vendor Agreements
    • Software
    • Website
    • Services?
  – Editor Agreements
Listservs/Social Media Websites

- Copyright
  - Do not violate others copyright/Trademark
- Defamation
  - Easy to lob f-bombs from behind your keyboard
- Apparent authority
  - Who are you speaking on behalf?
- Political statements
  - avoid electioneering or endorsing a candidate for federal, state, or local political office.
- Antitrust risks
- Commercial use
Major Legal Risk: Activities that Have Antitrust Implications

- Civil and criminal penalties for agreements among competitors that are “unreasonable restraints of trade” or involve inappropriate use of monopoly power
- Examples: boycotts, agreements about price or markets, exclusionary practices
Commercial Use

- Communications whose “primary purpose is to advance the business or financial interests of any person or entity or otherwise to promote a financial transaction for the benefit of the author directly or indirectly.”
Examples:

– advertisements for products or services
– notices regarding rental or office space, or
– direct solicitation of listserv members to purchase products or services.
• Not Commercial:
  – news of job listings or position openings,
  – discussion of professionally-related products or services where the listserv member conveying the information is not in the business of selling the products or services.
• Monitor the lists
• Implement Policies/Procedures for warning/removal of violators.
• Contact OGC with questions/concerns
• Social Networking
  – FACEBOOK
  – GOOGLE+
  – SECOND LIFE
  – NING
Why Social Media Matters?

• Gen Y outnumbers Baby Boomers – and 96% of them have joined a social network

• Years to Reach 50 millions Users: Radio (38 Years), TV (13 Years), Internet (4 Years), iPod (3 Years)...Facebook added 100 million users in less than 9 months

• If Facebook were a country, it would be the world’s 3rd largest, between India and the United States

• What happens in Vegas stays on YouTube, Flickr, Twitter, Facebook

• 1 out of 8 couples married in the U.S. last year met via social media
“Get all the information you can, we’ll think of a use for it later.”
Tag, You’re “It” -- No Right to Avoid Tagging?

- The court held that “[t]here is nothing within the law that requires [one's] permission when someone takes a picture and posts it on a Facebook page. There is nothing that requires [one's] permission when she [is] “tagged” or identified as a person in those pictures.”

- But: could be harassment/defamation?
In February 2009, Facebook sued “Spam King” Sanford Wallace for violations of federal anti-spam law by his posting of millions of messages on users’ walls.

On Oct. 29, 2009, a Northern California District Judge awarded Facebook $711 million in damages in a default judgment.

Email Use
NPR, June 18, 2008

• INSKEEP: Is it true that you can’t delete an email; it’s impossible?

• MS. CHARNOCK: Unless you’re very fortunate, it’s impossible. It can get backed up before you know it, it could’ve been sent to other people, it could be archived without your realizing it. So really, emails are like the cockroach of the electronic world. It’s very difficult to get rid of.

“We have to be forthright with the public. We have to have their confidence. We have to convince them we’re working for the common good. Then we can invade their privacy.”
APA Social Media Policy

• Never disclose confidential or proprietary information on social media sites.

• Don’t use an APA e-mail address to establish personal social media page or account (unless platform is specifically designed for professional information exchange related APA job duties -- LinkedIn, for e.g.) Set up personal email address from commercially available sites, e.g., Yahoo, Hotmail, etc.
APA Social Media Policy

• Don’t use APA logo or APA tag lines on social media sites unless authorized and business-related.
• Treat like any other professional communication.
• Intellectual Property
  – Protect your assets
    • Registration
    • Consultation with OGC
  – Copyright and Trademark
    • Valuable assets to the Division and to APA
    • Potential sources of revenue to the Division
When in doubt, call your lawyers!

- We are free
- We problem solve
- Most flexibility if we are with you from the beginning in addressing a problem

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