Legal Pitfalls for Divisions and How to Avoid Them

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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
  • Know your Bylaws, Association Policies, Division Policies
  • CE Sponsorship, Lobbying Filings
  • Journal Obligations
  • State and Federal Filings, Regulations
  • Sections and Chapters Activities

• Duty of loyalty
Your Fiduciary Duty to Your Division and to APA

- Entitlement to rely on experts
- Information sources
  - Legal risk management
  - Handouts
  - Division services
  - APA Division Accounting
  - Your lawyers
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.”
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
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
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
APA Tax Status/501c3

Biggest risk—Maintaining 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
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
501c3 Limitations:

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

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 (State or Federal)
Can’t use assets to support or oppose a candidate
This is different from lobbying, which is allowed
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)
CONTRACTS
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. That’s why we ask for things in writing.
WE THOUGHT WE’D PUT IN THE DETAIL LATER...
Association Management Companies/Meeting Planners

Detailed contract for your protection

- Finances? Can be tricky b/c of tax status
- Membership?
- Mailings?
- Admin?
- Conferences?
  - Commissions/hotel miles/hotel contract – who signs?

True cost?

References
WE FIND THIS WORKS BETTER FOR US!
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...
Hotel Contracts

- Attrition Fees
- Cancellation Fees
- Force Majeure Clause
- Construction?
- ADA
- Hotel points?
- Free internet/wireless, parking, gym?
- 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
Intellectual Property

❖ Protect your assets
  ▪ Registration
  ▪ Consultation with OGC
  ▪ Be on the look out for copyright and trademark infringement on the internet

❖ Copyright and Trademark
  ▪ Valuable assets to the Division and to APA
  ▪ Potential sources of revenue to the Division
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

Would they pay for it otherwise?

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+
• Twitter
• SECOND LIFE
• NING
• and growing...
APA Social Media Policy

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

• Don’t use Division or APA logos on social media sites unless authorized and business-related.
  – Use your logo to make it “official”

• Treat like any other professional communication.
“Get all the information you can, we’ll think of a use for it later.”
Timely Topics:

- Outside Counsel
- Finances/Accounting
  - Who is guarding the door?
- Review of Grants and Partnerships
- Website Companies
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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