

The FPLG Blog Favorites Continue

12.13.24 | Linda J. Rosenthal, JD



“Ten years ago, in early summer 2014,” the For Purpose Law Group [“formally leaped into the blogosphere.”](#)

It was still a relatively new phenomenon; indeed, it could not have happened at all without the magic of the rapidly evolving internet, and the proliferation of self-publishing and other exciting technology. Blog historians [peg 1994](#) as the date of the first site.

The [earliest dozen or so](#) law-related “weblogs” popped up around the turn of the 21st century. Apparently, by about 2007 or so, there had been such warp-speed progress that the genre moved from the [“Stone Age” of legal blogging](#) to the “Modern Era.” Back then, it was primarily an activity of law professors who quaintly referred to the niche as the “blawgosphere.” Soon, though, lawyers and law firms recognized the possibilities as a communications, training, and idea-exchange opportunity – in addition to the clear marketing value.

A Blank Canvas

When we plunged into this adventure in 2014, there were no rules or boundaries. It was more or less a blank canvas.

Early on, we drew in a few lines and shapes.

First, we decided on a broad subject-matter range. Many of the posts relate “to the central topic of federal tax exemption law and procedure. But our [mission to educate and inform is much broader](#), reflecting the reality that a wide variety of laws beyond the Internal Revenue Code can and do affect the nonprofit sector. We also like to highlight news, trends, reports, and ideas from thought leaders.” A decade and more than 875 posts later, that framework still seems to work, although narrowing the scope would have been the easier path.

Second, we didn't artificially limit the target audience. Who knew what readership the blog would interest or attract? From the get-go, however, it has been broad and diverse, both in terms of experience in the charitable sector as well as awareness and understanding of the mountain of federal, state, and local laws and rules that apply. Somehow or another – we hoped – it would work itself out: The same post might be an introduction in plain English for some readers but a useful refresher (with updates and new insights) for others.

Third, whenever possible, we've tossed in some levity. There's no law that says that reading *about* the law has to be as dull as dry toast.

For instance, our three 10th-Anniversary "favorites" so far deal with the building blocks of nonprofit operation and good governance: How to do it right and how (not) to do it wrong. Such serious topics benefit from a light-hearted touch. See [*A Look Back At Some FPLG Favorites From the Past Decade*](#) (August 13, 2024), featuring [*Bylaws are Sometimes Like a Decades-Old Hairstyle*](#) (June 11, 2014) and [*Who is Robert and Should Nonprofits Follow His Rules Of Order?*](#) (August 28, 2014).

See, also [*More Tenth-Anniversary FPLG Blog Favorites*](#) (October 24, 2024), featuring [*Breach of Fiduciary Duty by Ogling the Doughnuts*](#) (October 8, 2014).

Today's Selection

For this third installment in the FPLG Blog Tenth-Anniversary Favorites series, we have chosen a post from May 1, 2015: [*A Recipe for How To Get Noticed by the California Attorney General*](#).

This one about brazen charity fraud by trustees has always been on our greatest-hits list and would have been selected for this "favorites" series even if it didn't relate directly to our latest post a week ago: [*Major Revisions to California AG's Guide to Charities*](#) (December 5, 2024) and some other current themes.

Setting the stage: Back in late spring 2015, we were doing a series that kicked off with [*Say What? We're Monitored by How Many Government Agencies?*](#) (March 5, 2015). The oversight jungle through which 501(c)(3) organizations generally – and California nonprofits in particular – must navigate is much more than the mind-boggling array of federal tax-exemption laws as regulated by the federal Internal Revenue Service.

There are state and local players as well – most notably, the California attorney general. A few weeks later, we published [*The Charity Oversight Role of the California Attorney General: An Introduction*](#) (April 24, 2015). There is some overlap among various agencies but each has its own power and jurisdiction.

The "... [Attorney General regulates charities and the professional fundraisers](#) who solicit on their behalf. The purpose of this oversight is to protect charitable assets for their intended use and ensure that the charitable donations contributed by Californians are not misapplied and squandered through fraud or other means." The AG "...represents the public beneficiaries of charities, and acts on their behalf."

There is a Charitable Trusts Section that's granted broad legal powers to poke and prod charitable organizations and trusts as well as any person or entity holding or soliciting charitable funds or

assets. This jurisdiction applies also to non-California 501(c)(3) corporations that raise funds, do business, or hold property in California.

The attorneys and auditors “...investigate misuse of charitable assets or fraudulent fundraising activities. They get leads from required document filings filed as well as tips and complaints by the general public, the media, or interested groups.” They have “broad authority under State statutes to ... commence law enforcement investigations and legal actions to protect the public interest.”

What types of activities might trigger an inquiry? They include: “self-dealing transactions by insiders, including loans and excessive compensation; substantial losses of funds or assets in a single year; losses from speculative investments; unauthorized and unfair sale or conversion of the charity or assets for profit or to a profit-making entity; illegal use of money; channeling funds and assets away from their intended, charitable purposes to unauthorized, non-exempt purposes, and possible criminal activities.”

It’s important to note that during the 2014-15 time frame – (and not for the first time in modern American history) – the Internal Revenue Service was the subject of some outside interference. Certain elements in Congress had the knives out for the Exempt Organizations Division – although several years later, the allegations were exposed as meritless. The bottom line, though, is that the EO Division, already being pummeled by draconian budget cuts and neglect since about 2000, was well into a downward spiral which has severely hampered its ability to productively act a watchdog of the nation’s charities.

At the same time, attorneys general around the nation were moving center stage. “Over the last two decades,” we explained in last week’s post, “the attorneys general of the individual states have aggressively reasserted their longstanding – but mostly dormant – power to regulate charities and charitable trusts within their borders.”

Fraud on the Menu in Napa

The red-flag list of “what not to do” on the California AG’s website in 2015 (and currently) is an intriguing clue into how and why state charity investigators back in 2014 decided to report all the way up the line to Kamala Harris’s office that “...two fellows in Napa, California [had] been cooking up a hearty feast of trouble....”

That’s not the exact language that Supervising Deputy Attorney General Elizabeth S. Kim and her staff used to get the ball rolling on the lawsuit filed in Napa County Superior Court on October 9, 2014.

And the 16-page “Petition to Remove Trustees, Appointment of Receiver or Temporary Trustee, An Accounting, And to Void the Transfer of Trust Property to Trustee,” was so well-drafted (in plain English!) that any reader could easily understand how closely the enumerated misdeeds, misappropriations and malfeasance tracked the AG’s explicit warnings.

We could have left it at that.

But we worried that some readers might wonder: “Is this a morality tale that we concocted to teach a lesson about how not to run a charitable organization? We wish we could claim credit, but it’s not a

fable.”

No. It’s all true.

And “[e]ach tasty morsel was so delicious that the telling of this saga cried out for a bit of embellishment with extra helpings of sarcasm and humor.”

Bon Appetit!

Here’s What Happened

An “elderly gentleman – let’s call him Mr. A – set out to get his affairs in order.” He “had done well for himself,” but had no heirs. “He wanted his estate to assist needy students with scholarships. In 2004, with the help of his attorney pal – we’ll call him Mr. B – he created an estate plan towards this goal.”

When Mr. A died in 2009, Mr. B swooped in like a vulture. Having failed entirely to create the nonprofit foundation that the decedent had instructed him to set up, Mr. B then took over the fully funded testamentary charitable trust that remained. “Now armed with keys to the kitchen, and a plum appointment as executor and trustee, Mr. B was off and running planning a menu of misdeeds – along with a compliant co-trustee.”

The story unfolds as a banquet presented first in preliminary courses and then all the way through to dessert. A few examples to pique your interest:

- “First brought to the table was a half-baked appetizer: a Petition for Probate of Will and for Letters Testamentary with only certain ingredients listed, along with a similarly prepared Petition for First and Final Accounting. This delicacy was spread liberally with misinformation about the estate....”
- “The soup course was a steaming bowl of self-dealing, sprinkled with nepotism and topped with large chunks of private benefit....”
- “Abundant side dishes were served. First, there was a plate overflowing with defaults on the (interest-only) mortgage payments. Not a single payment was made in full, and in many months, the payment was not made at all. It was accompanied with a large basket of ‘expenses’ including overpayment of trustee fees and other questionable amounts....”
- “The entree? It was ... served nouvelle-cuisine style. Tiny morsels of food artfully arranged around a huge plate, to deceive the eater into thinking that it is a satisfying portion. What’s here? In 2010, there was just \$5,000 spent for the trust’s charitable purposes, compared with \$97,134 that year in expenses.”
- “A distasteful scent had been wafting out of the premises – all the way, in fact, to Sacramento. The California Attorney General crashed the party, just in time for dessert!”
Next served was “... a flaming dish of high-priced legal and accounting fees to try to erase the evidence of this unappetizing experience.”

Conclusion

This “favorites” post from May 1, 2015 – A Recipe for How To Get Noticed by the California Attorney General – was about an enforcement action at an early stage. “[A]ll of this is still just a matter of

allegations; nothing has yet been proved or disproved. We'll all have to wait and see, but – seriously, folks – we couldn't have made it up better ourselves to teach a lesson about how not to run a charitable organization or trust.”

So what happened? The wrongdoers did not fold even in the face of these brutal allegations. Instead, it was several years of litigation before the Attorney General's Office was able to claim victory and obtain restitution for “the People of California.”

The pressing issue for today – which we'll continue to discuss over the next weeks – is this: Charity fraud remains pervasive and prevalent but the instruments of investigation and enforcement are dangerously diminishing.

See for instance: [*Hot Dogs, Charity Oversight, Nonprofit News, and Democracy*](#) (November 14, 2024) [“Which agencies or organizations – in the uncharted government waters ahead – will have de facto primary regulatory responsibility for the nation's charities?....”]. See also: [*Nonprofit Newsrooms and Charity Oversight \(Part One\)*](#) (November 21, 2024) [“Charity fraud is a major challenge for philanthropy....A serious question ahead for all of us concerned about the proliferation of charity fraud is: Who is minding the store?”]

– Linda J. Rosenthal, J.D., FPLG Information & Research Director