

Information Quarterly



Highlighting Funding, Promotion, Publicity,
Programming and Booking Assistance
Available for Presenters and Performers
Nationwide

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FOCUS ON: LEGAL & ACCOUNTING ASSISTANCE FOR THE ARTS

- * A group performs under a stage name. Another group with the same name sues for \$250,000.
- * A series presenter books a performing group, advertises, sells advance tickets - the performers cancel with two days notice.
- * A small dance company performs out of state. The performance is poorly advertised and not well attended. The presenter fails to pay the agreed-upon fee, and the dancers have to hitchhike home.
- * A major dance company classifies all its dancers as "independent contractors" to avoid paying employee-related taxes. After the production ends, one of the dancers sues because he is ineligible for unemployment compensation.
- * A small arts organization does not apply for nonprofit because of the apparent complexity of accounting.
- * A performing group is sued for libel by its manager.

These are only a few of the many legal and accounting problems that can arise for performers and presenters. A lawyer is usually consulted only after the fact - in response to a lawsuit. An accountant might be hired only after a large amount of time has been consumed deciphering the complex accounting instructions for a nonprofit application.

In this issue, we hope to promote the "preventive approach" to legal and accounting services, and alert readers to situations where advance consultation can help avoid future lawsuits or auditing problems.

Normal fees for the services we need could easily run into thousands of dollars. Performing arts budgets are frequently limited, and many who need legal or accounting services feel they cannot afford them. VOLUNTEER LAWYERS FOR THE ARTS (VLA) and ACCOUNTANTS FOR THE PUBLIC INTEREST (API) are organizations that provide us with - or refer us to - professionals who are, in many cases, experienced in the arts and who offer their services free or substantially discounted. These organizations are funded, in part, by federal, state, foundation and corporation monies.

There is a crucial and ongoing need for lawyers and accountants who are well-versed in the performing arts. Many situations are unique to our field, and we need people with experience in the applicable laws and regulations. We in the performing arts must not only encourage those professionals already offering their services, but also give others good reasons to join them. PARS feels that we should back the lawyers and accountants serving the arts, and let them know how much their expertise is appreciated, not only by those needing pro bono (free) services, but also by the many arts organizations who can pay full fees. We strongly recommend that financially stable organizations contact VLAs and APIs for full-fee referrals to participating lawyers and accountants. Not only will you find professionals experienced in our field, but you will support their support of the arts.

INTRODUCTION: VOLUNTEER LAWYERS FOR THE ARTS (VLA)

There are 36 independent VLAs providing legal assistance and information. Some have full-time staff members and a variety of programs and publications; others may be still in the development stage, or less active in their referrals and/or programs.

A VLA may offer several types of programs (see p.6 for complete listing of VLAs). One program all VLAs provide is a referral service, offering not only referrals to lawyers for specific problem assistance, but also to lawyers (and sometimes accountants) who are willing to serve on a Board of Directors. We have attempted to generalize the procedures and costs for this specific program, but found many variables, as not only do VLA programs vary, but also the eligibility, fees charged by the VLAs and actual legal fees, if any, charged by the attorney. Each organization should be contacted directly to obtain specific details.

To get an overview of the referral programs, we first need to understand terms used and types of fees which may or may not be charged. We stress this for a very important reason - to emphasize that, because of the wide variety of services, fees, eligibility, etc., we feel it wise to check with a second VLA in your area (if there is one) if the first you contact cannot meet your needs. NOTE: A few VLAs also offer accountant referral programs, which usually follow the same procedures.

MEMBERSHIP FEE: This is an annual fee, which in most cases is not required to obtain free or discounted legal or accounting services. The few exceptions we've found that do require membership do not charge additional administrative fees for referrals (see below). Members usually receive additional benefits of discounts on publications, reduced fees for workshops, newsletters, etc.

ADMINISTRATIVE FEES: These are fees charged by the VLAs themselves, and payment entitles the client either to actual legal or accounting services/assistance by the VLA's legal/administrative staff or to an initial consultation with an outside lawyer who is on their referral list. Administrative fees are usually charged on a per-problem basis and, since the client must re-contact the VLA to obtain the free or discounted services each time legal or accounting assistance is needed, these fees can be charged several times per year. Some VLAs do not charge any administrative fees, and many will discount, or waive, these fees if the financial situation of the client indicates the need for this.

LEGAL FEES: When a situation requires an attorney outside their staff, and a referral is made, there are several possible fee arrangements to which the lawyer/accountant will have agreed in advance. Most VLAs and their referral attorneys have agreed that all legal services will be provided free of charge to eligible clients. Others, however, offer discounted services only, or have agreed to have the attorney and client

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negotiate a reasonable fee based upon the client's income.

LEGAL COSTS: These are the client's out-of-pocket costs for the service provided, including filing fees, photocopies, etc.

STATUS & INCOME ELIGIBILITY: These vary considerably. In general, the services are available to any arts-related individual or organization meeting the income eligibility requirements. There are exceptions, however: some require the client to either be a nonprofit organization currently, or intend to apply for that status - others are for arts-related individuals only. Once the status has been approved, the income eligibility requirements are verified (see p.6 for income ranges). In general, the maximum eligible income listed by any VLA is \$15,000 net income for individuals and \$150,000 for organizations, though a few have no restrictions.

We hope eventually to see at least 2 VLAs in every state (and preferably one in each major city). For performers and organizations who currently do not have a state-organized VLA (or API) see below or pps. 5 and 10 for alternative groups to contact for similar services.

HIGHLIGHTING....

VOLUNTEER LAWYERS FOR THE ARTS (VLA) NEW YORK (NATIONAL) OFFICE

INCOME ELIGIBILITY:

INDIVIDUALS: Gross annual income under \$10,000

ORGANIZATIONS: Annual operating budget under \$100,000

ADMINISTRATIVE FEE: \$25-\$100 per problem.

Interview with Barry Slinker, Program Director

Many cities (and several states) do not currently have VLAs. Can VLA services be easily provided by mail - or can you refer them to other sources of assistance?

We receive many calls from all parts of the country. Some services can be provided by mail, but many others require expert advice from in-state authorities. Therefore, we attempt to link clients up with attorneys from the clients' states, or to state Bar Associations, who will usually be able to refer them to individuals or organizations similar to VLA.

A few VLAs also provide referrals to accountants specializing in the arts field. Do you expect more VLAs to include this type of referral?

As VLAs continue to grow, some will no doubt begin providing accounting referral services. In New York, we refer our organizational clients to API (see p.5). We are currently considering the feasibility of offering accounting services in our VLA-NY programs.

Your headquarters offers bi-weekly seminars on not-for-profit incorporation, as well as other educational workshops. What are the fees and average attendance of these seminars, and do other VLAs offer them?

The fee is \$10, and we average 30 people at each seminar. At least 15 other VLA organizations offer a continuing program of seminars, workshops and the like (see p.6), but the contents of these may vary widely and from year to year.

Since many of the lawyers do not receive fees for their services, why do they participate in VLA?

Some participate out of public spirit, some because of a special interest in the arts - and some for both reasons. It should also be noted that some law firms require their attorneys to volunteer a certain percentage of their time to pro bono work; VLA is a beneficiary of this requirement.

No VLA-NY volunteers receive any legal fees.

We directed specific legal questions to VLA-NY staff attorney Tim Jensen.

If a VLA lawyer agrees to serve on a Board, does that mean that he/she would also handle or advise on legal matters that arise for that organization in the future?

Not necessarily, although that might often be the common practice. A lawyer on a Board of Directors is not automatically the counsel for the organization. In the attorneys we have assigned to non-profit clients in New York, the attorney would be a general sounding board for advice and information, and when the attorney realizes that the situation is not within his/her experience, they would give me a call to get the name of somebody else to call for advice. So it doesn't always work that they are the general counsel, though they would certainly give legal advice within the background that they do have. And, often they are just in a position of being quite an intelligent, very reasonable person, which some of the nonprofits have need of.

What kinds of legal situations could performers or organizations find

What legal services are most frequently requested by performers and presenters - and what are the costs?

VLA-NY charges only administrative fees - no legal fees are charged, so the following examples are the approximate total costs involved, if services are provided through VLA-NY.

- 1) An arts organization desires nfp incorporation and tax exemption status. (\$100 administrative fee plus about \$100 in other fees required by state and federal tax agencies)
- 2) A presenter requires a contract with a performing group or performer. VLA will draft, review and negotiate. (\$50 administrative fee per contract)
- 3) A presenter needs a lease reviewed for a performance space. (\$50 administrative fee)
- 4) A performer or performing group requires a contract with a collaborator, employer, sponsor or manager. VLA will draft, review and negotiate. (\$25 administrative fee for individual, \$50 for group)

How many office personnel staff your phones and do any of those people have legal backgrounds?

We have 8 full-time employees (2 staff attorneys). Even so, just trying to keep our 6 lines open is one of our biggest challenges here, as they are constantly busy. In addition to our 2 staff attorneys, we have 900 attorneys on our referral list.

We also have interns. Right now, we have 4 summer interns from law schools around the country. An internship here is a very competitive position. During the school year, they are all from Columbia University; during the summer we have people from all around the country apply. It's a really good training ground, with a lot of "hands-on" experience. We train them in the first few days they are here and supervise them closely.

themselves in where they should say, "We need to be careful in this area?"

Some possible nightmares that could arise...

If an organization is not properly advised on its obligations toward the people it employs, it may find itself (and its Board of Directors individually) liable for unpaid federal taxes, contributions to the unemployment insurance fund, etc. - a lot of financial responsibility goes along with being an employer. If the group doesn't consult an attorney, it may not realize that the people working for it are employees, rather than independent contractors.

I think another area is that, without consulting an attorney, an organization might attempt to stage a production of a show, musical, or music performance, without obtaining proper permissions, and the night before the initial performance, be

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HIGHLIGHTING...

CALIFORNIA LAWYERS FOR THE ARTS (CLA)

formerly Bay Area Lawyers for the Arts (BALA) and VLA-Los Angeles

INCOME ELIGIBILITY REQUIREMENTS:

No set requirements. Determined case by case.

MEMBERSHIP FEE:

INDIVIDUALS: \$20 for Performers

ORGANIZATIONS: \$40 (budget under \$50,000)

\$75 (budget over \$50,000)

ADMINISTRATIVE FEE: \$20 for Members, \$30 for Non-Members

Interview with Michael Liener, Public Relations Coordinator

Is membership in CLA required to receive the services you provide and are there any qualifications for membership?

Membership is not required; as a strong incentive, members receive discounts on everything that we offer: e.g. 30% discounts on attorney referrals, 20%-66% discounts on educational programs, 10% discounts on BALAbooks - plus free use of the BALA library and subscriptions to BALAgram and Metier Arts Quarterly.

The only qualification for membership is an interest in the arts.

BALA has been a familiar name for many years. You have recently reorganized and changed your name to CLA. What will be the differences in the new organization?

Instead of mainly serving the Bay Area, we will have lawyers available to people throughout California.

We will keep our San Francisco headquarters at this address - and we will open a Los Angeles office, hopefully by the end of the year.

Can you explain your particular referral process and administrative/referral fees?

CLA refers clients to members of our attorney panel and charges a referral fee (administrative fee) of \$20 to members and \$30 to non-members each time a new problem arises; this fee has nothing to do with the fee charged by the lawyer.

Once a referral is made, the client receives 1/2 hour free with the attorney. If a consultation goes beyond the half hour, the individual can negotiate a comfortable fee arrangement with the attorney.

Fees for legal services are determined by the client's income; special pro bono and moderate fee panels are maintained. Our focus is to match the client with an attorney who can handle the problem. Then we back out and they negotiate the exact fee on their own.

Do you have a maximum income cut-off for pro bono services?

No, we don't. However, if the client informs us of the need for pro bono (free) legal services, our referral coordinator will look for attorneys who have told us they are willing to take pro bono cases and, once the client sits down with the attorney, this should be agreed upon beforehand.

What is the difference between CLA panel lawyers and CLA volunteer staff lawyers?

We have no staff attorneys. We have panel attorneys who, in their applications, have said, "My expertise is in this area and I would like to be placed on this related panel," or, "I would like to join your organization and take any case that comes up, but I would also be more than happy to lecture once in a while on certain subjects." So we have different panels covering different areas of expertise. The largest one is the Attorney Referral Panel, and that panel is made up of attorneys willing to take cases on a pro bono or reduced fee basis. Other attorneys work on our Arbitration/Mediation Panels, as they have been trained in this area. We have a Workshop/Seminar Panel, of attorneys who are willing to speak at these. Some attorneys appear on all panels. We have about 200 attorneys on all our panels.

Approximately how many clients contact you each year, and what are the major requests?

On the average, at least 7-10 clients a day call CLA for attorney referrals. A high proportion of calls relate to copyright. We've initiated a walk-in clinic, which is held the 4th Saturday of every month, from 10:00AM-1:00PM or so. Artists meet with attorneys on a one-on-one basis and ask copyright-related questions. The charge is \$5 for members and \$15 for non-members, which is a tremendous discount from the usual hourly legal rate.

Do you also hold regular "Nonprofit" seminars?

We hold all-day nonprofit seminars twice a year. We also have an on-going tax seminar called "Relax with Tax," from January to March, before tax season. An attorney and an accountant, step-by-step, show what deductions will be allowable for artists and arts organizations, how to fill out certain tax forms - and explain to them how to prepare their taxes.

Do you currently offer accountant referrals?

Although CLA does not provide an accountant referral service, we do give out accountants' names who specialize in working with artists. These "referrals" are not guaranteed by CLA; they are only made as part of an informational service.

Who are the lawyers who participate in this program - and what benefits do they receive in exchange for discounting their fees to arts-related organizations?

Referral Panel membership is open to members of the California State Bar. In addition to the benefits listed for members, panel membership entitles attorneys to consult with more experienced attorneys on CLA's panel without charge, and to receive clinical law students placed by CLA. The panel fee is waived for attorneys accepting only pro bono cases. Attorneys who enjoy lecturing to groups and leading workshops, seminars and the like can be listed with CLA's Speaker's Bureau.

Do you also have interns?

Students from across the country work as interns. They are put on projects like monitoring arts legislation in Sacramento or doing research. For instance, there is an intern now doing a research project on NEA disbursements, comparing New York and California, and showing the disparity.

What has been your experience regarding "allowable salaries" for nonprofits?

Nonprofits can make money and be profitable; they don't have to run in the red. The corporation can pay the performers a "reasonable salary." I would suggest that the Board of Directors vote on salaries initially. Then if the company starts to get very prosperous and the performers require or demand more money, the Board of Directors can vote on whether to increase the amount within the "reasonable salary" limit. The government looks solely at compliance with the 501(c)(3), which says the organization is formed for educational or charitable purposes. The main concern in acceptance of nonprofit is the purpose of the organization, rather than the money coming in.

What problems can you foresee for performing groups who may wish to file for nonprofit status?

We'll use a hypothetical situation. Four musicians want to form a quartet. They say, "We are accomplished musicians individually - we have played around - we have gotten press coverage because we are good individually. We are tired now of simply playing at bar mitzvas and weddings or cocktail hours. Let's form a group - a nonprofit organization - so we will not only make money, but introduce young children to the delights of classical chamber music." The performers want to devote all their time to this, so a foremost goal is to support themselves (which is reasonable) and help realize their altruistic goal.

They form the organization, and find that they are not going to make a lot of money. A lot of start-up money is needed, and they are not heavily capitalized, so they have to "donate" all their time - try to play at different places to bring in money to pay the phone bills, postage, etc. There is not a lot of money left for the individual performers. A lot of groups don't understand how long it takes to get off the ground.

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HIGHLIGHTING...

TEXAS ACCOUNTANTS AND LAWYERS FOR THE ARTS (TALA)

INCOME ELIGIBILITY REQUIREMENTS:

INDIVIDUALS: Net annual income not to exceed \$15,000
ORGANIZATIONS: No income eligibility requirements

MEMBERSHIP FEE:

INDIVIDUALS: \$20 ORGANIZATIONS: \$25-\$50

ADMINISTRATIVE FEE: None

Interview with Dinah Godwin, Program Director

Lawyers and accountants are a natural combination, as many arts-related individuals and organizations also have difficulty locating (or paying for) accountants familiar with the arts field. How many of each are on your referral lists?

Approximately 275 lawyers and 200 accountants. TALA was the first VLA to provide accountants as well as attorneys, and remains one of the few such groups providing accounting services on a regular basis.

You list no income eligibility requirements for arts organizations. Do you have restrictions on this?

We help only nonprofit organizations, but there is no budgetary limit. It could be \$1,000,000 or \$500.

Individual clients, of course, do not need nonprofit status.

Does TALA require membership for clients to obtain services?

We encourage this if a client requires more than a telephone call or a single office visit. However, this fee is an annual fee, which entitles them to all the benefits of membership, plus the legal and accounting services for the entire year. There is no separate administrative fee for each legal and accounting matter.

Are the procedures for accounting services different from those for legal assistance?

During the Spring, we have a very hard time finding an accountant who can do anything tax-related. Otherwise the procedure is the same. Usually, the lead time is roughly two weeks from first call to referral appointment, if one is needed.

Who uses your service most frequently?

Out of the 497 cases that we handled out of Houston alone, there were 40 dance clients (individuals or groups), 18 arts councils, 88 musicians and music groups, 62 theatre groups, and about 20 support organizations, such as the Texas Commission on the Arts, etc.

For what situations are legal and accounting services most frequently used or requested?

Some typical arts-related problems handled by TALA volunteers:

- * Royalty and fee collections
- * Not-for-profit incorporations
- * Applications for tax-exempt status
- * IRS disputes
- * Bookkeeping assistance
- * Resolution of contract dispute
- * Form 990, annual information returns
- * Lease preparation
- * Franchise and sales tax questions
- * Copyright information
- * Negotiation and drafting of contracts

In the accounting area, a good 40% of requests are for nonprofit incorporation and application for tax-exempt status - answering questions relating to that and explaining the legal and business aspects. We spend as much time discouraging it for certain groups as we do encouraging it for others.

Why would you discourage a performing group, or arts organization from becoming nonprofit?

Certain groups come to us with purposes not appropriate for nonprofit incorporation. If they come to us as more a private club than a nonprofit group which is supposed to serve the public, we discourage them because we think they would have a hard time getting tax-exempt status, which is their main reason for incorporating.

Certain groups come to us with very unrealistic projections as to the money they will be able to raise. If there are, for example, 20 chamber music groups in the region, and they want to start another, we encourage them to talk to potential funding sources, get some idea of how much money they intend to raise and where they intend to

raise it, before we go ahead and incorporate them. We do this because, in the past - especially with the Texas economy as it's been - we've gone ahead and incorporated just about everyone who wanted this - and then a lot of them ended up dissolving because they really had no public support. We encourage them to talk to the local arts councils to get a feel for how many groups are doing the same thing that they are doing - what grants are given, as opposed to grants requested. We don't want someone go to all the trouble of creating a legal entity - a corporation - and then not be able to support it.

We understand that you have videotapes available of your educational programs. What types of programs are included?

In the past, we have had programs quarterly. We have an annual series for visual artists and are now instituting a 5-part series for musicians and musical groups, called "Legal and Business Aspects of the Music Industry." It is still in the planning stage, but should be held by this November.

Our videotapes are something new. So far, we have only 2 taped programs - one on taxation for individual artists of all types, and the other was our series for visual artists. We have started videotaping all of our programs (though getting the equipment for this has kind of been a borrow, stand there and shoot type of situation). We intend to provide these tapes free of charge throughout Texas, and I don't see why we couldn't sell them (for just the cost of the tape and mailing, etc.) to out-of-state performers or organizations.

TALA offers referrals to lawyers who are willing to serve on eligible nonprofit Boards. Do you also offer this type of referral for accountants?

Yes, we have a very informal policy about that. If we have a volunteer who says he is interested in serving on a Board at some point, we keep that in mind. Then, if an organization makes this request, we try to assign them a volunteer we think might work well with that group to do their initial accounting work, so they can get to know each other a little bit better. We try to encourage groups to know their potential Board members quite well before they take them on their Board. So we don't make actual assignments of Board members in advance, because the personalities may not click.

Do your services cover all of Texas?

Although Houston-based, TALA has served artists and arts groups in over 50 localities throughout Texas, through our Affiliates program. Each affiliate operates slightly differently, but all the affiliates handle their own referrals. If a client calls us from out of town, we give the number of the closest affiliate. Our most formal affiliate is our Dallas program, operated through the Dallas Division of Cultural Affairs.

Could you give a few examples of specific arts problems you have handled?

One small touring theatre group in Texas had been donated some hotel rooms in one of the cities they were touring, and they had a formal letter of agreement with the hotel manager. The manager left the hotel and the new manager didn't think it was a good idea to donate the rooms. The group already had the bookings, they were spending everything they had on the productions, and they didn't have the money to pay for the hotel rooms. They were afraid they would have to cancel the tour. In this case, the new manager did, I believe, have the legal right to cancel the agreement. But we were able to negotiate with the new manager to donate them the hotel rooms for 2 nights. The hotel was listed as co-sponsor of the production, and we persuaded him that it would be to their advantage to sponsor this.

Another situation, involving a group of dancers from New York City, is still in progress. They called us regarding a collection matter. They had had a performance sponsored by a couple of Houston individuals. The agreement had been to pay their air fare as well as their performance fee.

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INTRODUCTION: ACCOUNTANTS FOR THE PUBLIC INTEREST (API)

Accountants For The Public Interest (API) is a national network of accountants who work on volunteer public service projects. Their work helps nonprofit organizations and, frequently, small businesses and individuals who cannot afford professional accounting services.

Unlike VLAs, APIs do not focus their services on the arts, though they usually do emphasize assistance for nonprofits in all fields. API affiliates have collectively serviced over 2400 organizations, providing over 15,000 hours of their time.

API affiliates are in major cities across the country (see p.7 for complete listing). API programs and eligibility, like VLA's, vary; Some require that you be nonprofit, and others also serve individuals and "for-profit" small businesses.

Unlike VLAs, APIs never charge for accounting services, although a few APIs do charge small administrative fees, on a sliding scale based on the client's ability to pay.

API programs can include:

- * Direct assistance to nonprofit organizations and small businesses.
- * Educational programs for employees, officers and Board members of nonprofit organizations, through conferences, seminars and workshops.
- * Tax assistance programs for low-income individuals and tax calendars for nonprofits.
- * Publications, including manuals on financial management and tax guides for nonprofits.
- * Studies on a range of public policy issues and government assistance programs.
- * Placement of accountants on Boards of nonprofit organizations.

HIGHLIGHTING... ACCOUNTANTS FOR THE PUBLIC INTEREST (API) NATIONAL OFFICE - API-D.C.

Interview with Peter Rosenstein, Executive Director

CVAS (below) requires the client to be nonprofit, or applying for nonprofit. Does VLA-DC have that restriction?

No. Each affiliate has different guidelines. There are affiliates that will also deal with small businesses, whether "for profit" or nonprofit. Still, the guidelines are that it is a business that, for one reason or another, could not afford to purchase accounting services. About 75% of them would deal with small businesses or individuals.

Can you help a presenter or performer who does not have an API in his state?

We recommend they call either their state chapter of the National Association of Accountants or their state Society of CPAs. One or the other, very often, can refer them to somebody in the state who is willing to offer either a reduced rate or pro bono service.

In general, is membership required, or administrative fees charged, to utilize API services?

Not at all. No client is required to be a member of any sort, and there is never a charge for the actual accounting assistance provided. However, those APIs which are coordinated by the Support Centers



sometimes charge a per-problem administrative fee. It is always done on a sliding scale, based on the client's ability to pay. This charge is because the Support Centers that APIs are sometimes coordinated through do a whole gamut of management assistance as well, and sometimes, when they are working with a client, the client comes in with what they deem is only an accounting problem but turns out to be a management problem. The Support Centers will put together a "package" for that client, and charge a sliding scale on the management piece of it.

You are planning to have a new affiliate open in the Houston area. Do APIs and VLAs generally work together?

Of the ones that exist in the same areas, yes. In fact, the Texas Accountants and Lawyers for the Arts was at our first planning meeting for API in Houston, because we wanted to make sure that we were not, in any way, covering territory that they were dealing with. If it turns out that they only deal with the arts, most of our work in that location will be for other nonprofits, and arts groups will be sent over to them.

HIGHLIGHTING... CLEARINGHOUSE FOR VOLUNTEER ACCOUNTING SERVICES (CVAS) (API-CA)

Many nonprofit organizations require accounting services or consultation, but do not have the budget to afford accountants' fees; in recognition of this, many members of the profession (and firms) are willing to volunteer their time and services. CVAS' primary function is to act as a "clearinghouse" for the profession, in order to coordinate providing volunteer accounting services to nonprofits.

CVAS is the California affiliate of the national Accountants for the Public Interest, providing volunteer accounting services throughout the state of California under contract to the State Board of Accountancy, the licensing and regulatory agency for the profession in California. As the sole statewide source for pro bono accounting services in California, CVAS typically receives 35 requests a month for accounting assistance from California nonprofit organizations. Many of those requests are for urgent help to resolve crises; others seek professional guidance to accomplish essential budgeting, bookkeeping or reporting problems.

Between 1983 and 1986, CVAS coordinated over \$700,000 worth of such accounting services, provided by individual accountants at no charge to a thousand nonprofit organizations in California. Through CVAS' Board bank, an additional 85 accountants have been placed with nonprofit organizations seeking such professionals for their Boards of Directors. 90% of all CVAS volunteers are Certified Public Accountants in practice in California.

Interview with Stephen Nett, Executive Director

Can you describe CVAS' programs?

We provide three distinct types of services to nonprofit performing arts organizations. First, we can arrange for a professional accountant or CPA to provide no-charge services (such as establishing or reviewing accounting systems, assisting with budgeting, tax filings, and the like) on a short-term basis to qualified nonprofits. Qualification is established by: 1) an inability to pay for such services, 2) annual administrative expenditures of \$200,000 or less, and 3) demonstration of tax-exempt status under IRS code 501(c)(3).

Second, CVAS maintains listings of CPAs and accountants interested in serving on nonprofit Boards of Directors. This Board Bank referral

service is open to all nonprofit organizations, and is of great value to groups seeking professional accounting expertise on their Boards.

Third, CVAS presents training workshops on a regional basis throughout the year, on a variety of topics relating to nonprofit Accounting and Financial Management. These workshops cover the gamut from basic introductory courses, for staff or Board members unfamiliar with basic accounting, to more specialized training in Budgeting, Financial Management for Board Members, and Computerized Accounting Systems.

CVAS does not charge for services other than workshop programs, where a modest registration fee is usually required. CVAS is not able to provide volunteers to perform audits.

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TALA...continued from page 4

Apparently, the performance was fairly sloppily organized, and very few people attended. No payment was made, and the dancers ended up stuck in Houston. A couple of them had to hitchhike back to New York City. We're still working on this, but, unfortunately, one of the people who put together the performance has left the city and cannot be located; the other claims to have no income at all.

Are there situations where performers or presenters should be especially sensitive to potential legal problems?

There is one area where we've seen a bit of activity lately; that has been with theatre groups, but could apply to music or dance groups just as easily. It's involving the issue of "employees" versus "independent contractors." Many organizations are considering their dancers, musicians, etc., independent contractors, and not paying social security, unemployment tax, etc., on these people. The dancers, musicians, etc. consider themselves employees and, then, when the agreement is terminated, they decide to file for unemployment - and they can't do so because nothing has been paid into that account. We encourage individuals and nonprofits to have in their contracts how they are going to be considered. A lot of the preventive areas are in contracts, including provisions that people don't realize need to be in the contract, such as how the payment is going to be made.

Have there been any other problem areas?

There are some cases that I think non-profit organizations, especially performing groups, need to know about. Some of the problems that these groups face with the tax-exempt status arise when they don't plan in advance, and just blindly file all their paperwork.

VLA...continued from page 2

informed that they have no right to present the show - and may not do so and, as a result, lose everything that they put into the show so far, including all the anticipated box-office income.

If one wants to present a piece of choreography, or a musical piece, one must obtain permission from the choreographer - or the musician or music publisher in question. Failure to do that (with a few exceptions) will remove any legal performance right and, therefore, one can be stopped from doing any performance.

Are you speaking of ASCAP, BMI and SESAC?

Yes, those apply for non-dramatically performed music. If one wants to perform plays or operas, one would often have to contact the agents for the playwright. There are a lot of different groups that represent the copyright holders and work out licensing arrangements.

I know that ASCAP is getting quite aggressive in contacting every performance space imaginable - every dance studio, every school, etc., and reminding them that, if they intend to carry any programming involving public performances of musical compositions which are in the ASCAP or BMI repertory, they must obtain permission from ASCAP or BMI first. Failure to get what is usually known as a blanket license in advance - a license which will allow the performance of anything within the repertory of ASCAP or BMI, for a single, flat, yearly fee (based upon the size of the place, its gross revenues, etc.) can result in a much, much higher charge per piece of music played. ASCAP will actually monitor this. Generally, if one approaches ASCAP in advance, one can work out a very reasonable licensing arrangement with them.

In some cases, if you are presenting a performance in a theatre, then the theatre itself may have a blanket license from ASCAP or BMI, but if you are performing in a non-traditional space (which is increasingly the case since performance spaces in New York are so expensive), the chances are very low that the institution will have a license from ASCAP, and you will have to do it yourself.

Are you aware of many actual lawsuits between manager/artist representative and performers, and is there any recourse for a performer if he feels a contracted management has been inept, unprofessional or unethical?

Such behavior is very difficult to prove, given the typical management contract. Some of our attorneys have been able to get clients out of such contracts with buyouts, or occasionally by showing sufficient proof of management misconduct or nonperformance.

A VLA client, a musical group, was recently sued for libel because it denounced its management in a letter that sought to terminate the management contract. This letter was sent by the band not only to the management, but to other groups and individuals as well, which was the problem. The management sued for libel (the case has not yet been decided).

For example, a regional theatre group recently had applied for tax-exempt status. They received back a letter from the IRS with various questions - which had to be answered in 3 days. "How are you going to be recruiting actors? Do you have open auditions? Where do you advertise these auditions?..." - very detailed questions. The problem concerns the legality of who is placed on the Board of Directors and how many of them can receive payment - or any benefits - from the organization. There is no problem with staff members serving on the Board; they can't be compensated for their service on the Board, but they can be paid for services to the organization in other capacities. But at least a majority of the Board must consist of people that do not get any form of compensation or benefit from the organization. In many cases, the majority of the Boards have been the actors or dancers in a group. Aside from the fact that this is often not the best organizational choice - I mean, you need to have business people on a Board as well as artists - it can be a real legal problem with the IRS. The IRS has been denying tax-exempt status more often and asking more detailed questions before approval.

A dance group, let's say, starts out very enthusiastically - they really want to get a group going. They want to serve on the Board of Directors - they also want to dance in their productions and get paid for their performance. Frequently, the IRS is looking at this and saying, "Are these people trying to start a dance group as a vehicle for themselves? They dance in their own organization and get paid for this, as well as serving on the Board of Directors and directing the future of the organization." So you need to consider your Board carefully.

If what the band said was true, and could be proven to be true, than that would not be a cause for libel?

Absolutely. But, in this case there is a lot of dispute as to whether the band's assertions about the management's lack of efforts on behalf of the band was accurate. From what the band told us, there had been a lot of verbal assurances given by management that, "We'll have you playing every week, we'll have your name in such and such paper." None of that appeared in the written contract (and management contracts traditionally are extraordinarily minimal in what they require a manager to do). But, it was very clear that the group signed with this management based upon the assertion of a certain level of activity - and the group feels this was not provided.

Is there a valid possibility for a lawsuit if promises are not made in writing?

Absolutely. In this case, the defendant (the band) would present its position, indicating that, "These are the complaints we have about the management - they assured us, initially, that they would do such and such. They didn't return our phone calls, etc.," and explaining that they never would have had any motivation to sign with a management that didn't offer these things. And the management would present its picture and, either the judge or the jury (depending upon the situation) would decide. Quite frequently, as is happening in this case, there is some effort made to settle the situation. I think it is very important for performing artists who feel that the management they are dealing with is unsatisfactory to document the nature of their complaints. Verbal contracts and verbal assurances may be absolutely submissible - it depends on the situation.

Often a performing group chooses and establishes a name without previous investigation of current usage. Can this lead to legal difficulties?

Most definitely. For example, a musical group may use a name for many years, developing a substantial following and name recognition, without securing the right to use that name. They might then be forced to modify their name or drop it completely.

In the case of the musical group "Bootsy's Rubber Band," the group was found to have infringed upon the previously named "The Rubberband." Interestingly, while "Bootsy's" was ordered to pay "The Rubberband" \$250,000, it was not forced to change its name, because its relative success (compared to the career of "The Rubberband") had ended any practical possibility that "The Rubberband" could continue using its name.

NON-PROFIT STATUS FOR ARTS ORGANIZATIONS - OVERVIEW

We directed the following questions to VLA-NY's Tim Jensen

We understand there are detailed requirements for nonprofit status - could you give a general description of what a 501(c)(3) organization is, with a basic overview of the requirements?

A 501(c)(3) organization is tax-exempt (meaning that it does not pay taxes on any money that it takes in, earned or unearned). It is also tax-deductible (meaning that private contributions will qualify for IRS charitable contribution deductions). That motivation usually means being able to attract corporate and individual support. Nonprofit, 501(c)(3) organizations are supposed to be performing services or offering products which generally benefit the public - by entertaining, educating or offering exposure to art which might not otherwise be exposed.

It sometimes gets very difficult to draw the line between what is a nonprofit organization and what is not, in areas such as chamber music. A few chamber music groups are wildly successful and yet their activities don't differ substantially from the activities of nonprofit chamber music groups. In both cases, they perform in a variety of locations, etc. The real distinction would be that the nonprofit would, technically speaking, not focus its activities on performances for private, corporate or individual social events, but rather on performances open to the public.

An underlying general requirement is that the activities and the performances any 501(c)(3) performing arts group offers would be public - and that the public would be benefited - not necessarily all segments of the public, but the public in general.

Usually the process of acquiring tax-exempt status is preceded by establishing non-profit corporate status in the state. The first step would be to incorporate under the non-profit laws of the state. The second step is going for federal tax-exempt status.

Can you be a 501(c)(3) organization without incorporating?

Yes. You can be either an unincorporated association, which is often known as a cooperative - or you can be a nonprofit corporation. You cannot acquire tax-exempt status as an individual, a for-profit corporation or a partnership.

I have never had a group presented to me which would not benefit by incorporating. That is legal protection, as well as, perhaps, expediting the IRS' granting of tax-exempt status, because they will be dealing with an entity with which they are familiar - a nonprofit corporation. Very few performing artists realize that if they are participants in a dance company, theatre company, or chamber music group, and anything goes wrong - if a member of the group becomes ill and the group has to cancel a performance, costing a promoter a lot of lost income - or if, during a performance, an accident befalls an audience member - or if the group performs music without authorization - all members of the organization, even those who had absolutely no knowledge of the event, are fully liable on a personal level. In other words, it erases any separation between one's personal life and one's professional life. I think that is a risky proposition - especially since many nonprofits don't carry insurance policies and they are out there in public, exposing themselves to risks. So, I can't really think of any good arguments against incorporating not-for-profit prior to going to the IRS.

One of the most common questions regarding nonprofit status is, "How much salary am I allowed?"

The IRS offers no dollar guidelines. Their only stated rule on this is that you can only offer "reasonable compensation for services rendered." The field of comparison is what other individuals in similar nonprofit organizations are making for similar work. If there are not enough people in similar positions in the nonprofit world, they look at the "for-profit" world. I remind people that the Metropolitan Museum of Art is a nonprofit institution, and certainly Thomas Hoving and other upper-ups in the administration are making very healthy salaries.

Is there any relationship between "reasonable compensation" and the income of the organization?

As a rule of thumb, if any individual within an organization is receiving a salary which accounts for over 50% of the total budget, there is almost automatically going to be an inquiry. But with modern dance companies, for example, a substantial portion of the budget is salaries, or fees, for the dancers, rather than expensive sets or costumes. In such cases, the budget would be top heavy with salaries - and that would not be improper.

This does not, though, insulate the group from charges that the primary purpose of the group is to advance individual careers. If, at any time, a nonprofit institution or performing arts organization becomes indistinguishable from a comparable "for-profit" organization, it is subject to IRS attack or question.

Of course, one can always look at a dance company and say, "The choreographer is being benefited - it is mostly his/her choreography that is being performed, and isn't this a career advancement?" The answer is, "Yes, he indirectly does benefit, but the benefits he receives are outweighed by the benefit the public receives by having this kind of dance available to them."

Generally speaking, the chamber music groups that we counsel have been able to show that, because of their nonprofit status, they could attract funding allowing them to perform in schools, in homes for the elderly, in community centers that would never be able to pay the normal rates. But there really is not a standard rule of thumb; it is very much a case-by-case basis.

What other kinds of purposes could be allowable for performers and presenters of music?

Offering the public performances which they would not otherwise be exposed to - offering a place to give performances. In New York, for example, it can be easily demonstrated that there are so few affordable places for performers to use for public presentations that if a group gets nonprofit status in order to offer a space at reduced rates for such performances, that in itself is a service to the public. Offering exposure to works that are not otherwise exposed - offering encouragement and assistance to all those involved in the creative process - the choreographers, the playwrights, the composers, the dancers, the actors and musicians - all of those things are entirely legitimate.

One reason arts-related groups and organizations file for nonprofit status is to become eligible for funding. But once nonprofit status is obtained, they may find it difficult to actually get the outside grant funding or donations on a regular basis. Is there any 501(c)(3) requirement as to a minimum amount or percentage of unearned funding?

No. In fact, the key word now seems to be "earned" income, and the government is encouraging groups to be as supported by earned income as they can. The Children's Museum in Denver earned, I think, over 90% of its total budget, and that is absolutely fine. There is no requirement for a particular percentage of unearned income to maintain the tax-exempt status.

Could you define the term "public support," and the sources of income that qualify?

After one has been granted 501(c)(3) status, the IRS will determine whether the organization is a private foundation or a publicly-supported charity. There is a distinction between the two, based upon the manner in which they are supported. In order to be considered a publicly-supported organization rather than a private foundation, the group is supposed to show that, in general, it receives at least one third of its income from public sources. And those public sources are quite broadly defined; they can include any government funding of whatever magnitude, from any governmental source, any private foundation support, and individual contributions by members of the general public - up to a limit of \$5,000 per contributor.

Board Member contributions don't count, and this is where a lot of groups get into trouble during their early years. They don't do much activity because they don't have the money to do so, and they are supported substantially by members of the Board out of their own pockets, and maybe the principals in the dance or theatre company are also on the Board - putting in money out of their own pockets. The IRS looks at this after a few years and says, "You are being substantially supported by these two people - you are, therefore, a private foundation." Now, having been found a private foundation, one does not lose the 501(c)(3) status. You keep that, so you are still tax-deductible and still tax-exempt. The problem is that there are more limitations on how you can spend the money you receive and, in addition, you can't usually receive support from other private foundations, which cuts out a valuable funding source for nonprofits.

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So once they obtain "start-up" money for the corporation, the next step is to get outside income in terms of grant funding?

Yes. This is a Catch-22 - a lot of grants available to musicians and performers require a nonprofit track record. They want to see what you have done, where you are going, your budget, your plans. But as a new nonprofit organization, you are only talking theory. You have no background - no history. That creates a big stumbling block, so a lot of groups have to hang tight for the first few years, perform and develop a name, start getting a little press, etc. They can start applying for nonprofit and they need to act as a nonprofit. Say there are 4 people in the group. Pretend there are 5, and split the whole pot 5 ways: each performer as one, and a separate member - the organization - as the other, and place this in a savings account. When they do form a nonprofit organization, they are already capitalized and have enough to get going. They should go ahead and start the name search, start to do the paperwork required, go to a VLA seminar on forming a nonprofit corporation, and do all the basic research. And, though they can't really be called a nonprofit because they haven't gone through all the necessary paperwork, they can at least act as one. That will help show a history of acting that way.

Is there a federal or state regulation on how long you can be in existence before you apply for nonprofit?

No. You can be a nonprofit anytime you want, if you meet the criteria.

Can you give a few examples of specific legal problems that CLA has handled?

There are situations where, literally at the 11th hour, performing groups have come here and actually had a mediation so that the show could go on. In one particular case, a contract situation involved a costume designer and a company. The company kept saying, "We'll pay you." The time came and he had all the costumes ready to go - the show was ready to open, and he hadn't been paid, so he just walked out with all the costumes. The show was going on in 9 hours, so we brought both parties in and negotiated so the show could go on.

What advice can you give regarding contract problems?

If you are going to be an employee or volunteer of a nonprofit organization, be sure you know what you are signing on to do. What have you agreed to, and what does your contract say?

Is a verbal agreement valid?

Yes, but it is certainly very difficult to prove in court. Many people have called and said, "We agreed to this and this." I say, "Do you have it in writing?" They say, "No, we just agreed to this; I've done this, and they don't pay." I say, "Talk to them on the phone

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Do you provide your services only to nonprofit organizations?

Generally, though we will also help organizations that are in the process of applying for nonprofit status or tax exemption. Aside from that, we won't be able to provide services to individuals or groups that are not nonprofit, or not intending to become nonprofit. California has experienced a rapid growth in the number of nonprofits operating in the state; nearly 50,000 now exist, and an additional 5,000-6,000 are expected to incorporate this year.

Since there is not an API for every state, can an organization in a nearby state contact you for assistance?

We are limited specifically by our contract to the state of California. But those groups can contact the state Societies - or directly approach accounting firms themselves. Many firms have policies that set aside a certain number of hours a year for pro bono work.

How many of your clients are arts organizations?

Nearly 40% of the approximately 450 organizations CVAS assists each year are arts and performing arts organizations. Like other nonprofits, these groups often find themselves in need of professional assistance in completing required accounting tasks, or in dealing successfully with a changing financial environment. Particularly in the performing arts, the ability to manage, control, and account for limited dollars is often the key to continued survival and success.

Small performing arts organizations in particular may be unable to

and simply state what you thought the oral agreement was. After the conversation, go to your typewriter and send a letter dated that day, and cc it to CLA, cc it to your files, saying, 'According to our conversation, these are the facts as I see them and the agreement that we had reached,' and send it out." I try to explain to people that we need to create a paper trail, something in writing.

The following questions were directed to CLA attorney Steven Baker

Once nonprofit status has been established, what minimum reporting requirements must be met to maintain this status?

Most groups must file IRS Form 990 "Return of Organizations Exempt From Income Tax." Each state has its own minimum reporting requirements. In California, for example, three informational reports per year must be filed with the state. These forms are filed yearly and are due several months following the end of the organization's fiscal year. Usually, there are accounting, not legal costs involved.

Is it necessary to establish a Board of Directors to obtain nonprofit status?

It is necessary to establish a governing body for a nonprofit organization. In most states, the governing body (usually the Board of Directors) must be composed of a majority of individuals who are uncompensated and have no financial interest in the organization. At least 3 directors are preferred in forming the Board.

Can a Board member be held liable in lawsuits against the nonprofit and, if so, why would an individual agree to hold such a position?

Basically, a Board member can be held liable where there is sufficient showing of negligence or acts of bad faith. Some states afford additional protection for non-compensated Board members to encourage volunteer work. Typically, one might become a Board member for an arts organization because he/she is committed to the arts or interested in associating with other involved individuals.

One CLA service is providing an attorney to serve on a Board. What are the qualifications and procedures to obtain this Board member?

The attorney must be on the CLA Referral Panel and have met the qualifications necessary to become a panel member. It is left to each individual's discretion whether he/she would like to become a Board member of a particular organization.

fulfill their accounting responsibilities, due to limited time, experience or training. In such cases, CVAS provides a professional resource for training, direct services, Board membership or consultation, which can keep the group out of trouble. Managing a small performing arts organization is often an exercise in overcommitment; CVAS provides an alternative to hit-or-miss accounting practices. Most importantly, every nonprofit's ability to demonstrate sound financial planning and management is enhanced by professional review and assistance.

Do you refer arts organizations to accountants who specialize, or have a special expertise, in the arts-related accounting and budgeting area?

When we go through the process of finding the volunteer, we notify individual accountants who have expressed an interest in arts that there is a need for their services - there is a self-selection process among the accountants themselves. If they don't feel that they have a particular expertise, or interest, they decline and we will find someone who does. Our referral lists do, however, include accountants who have expressed a particular interest in the arts.

When are your workshops usually held?

Generally, toward the end of the fiscal year (April, May and June). We also, however, customize workshops for groups (generally 10 or more individuals) on any topic that they would like. Based on 10 individuals, the per-person registration fee runs anywhere from about \$35 to \$65 for a full-day program.