

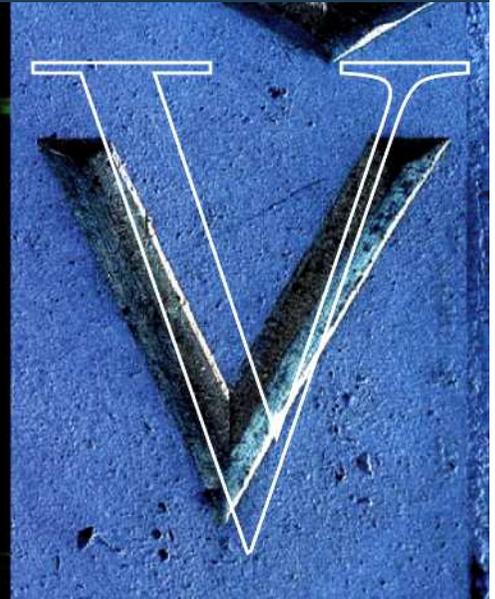
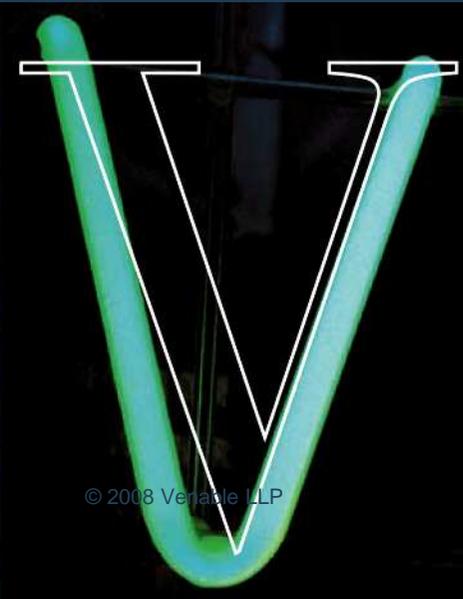
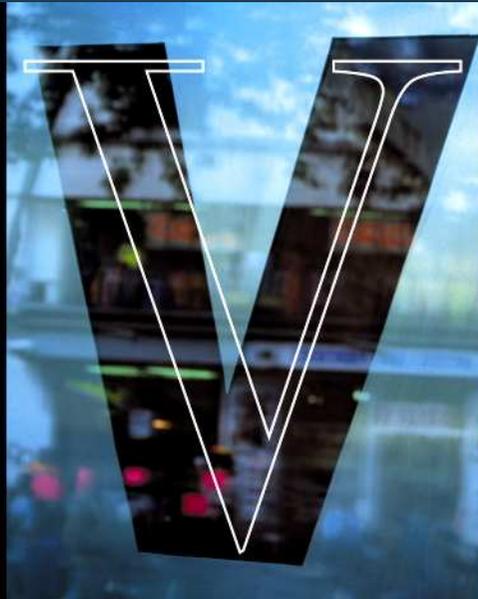
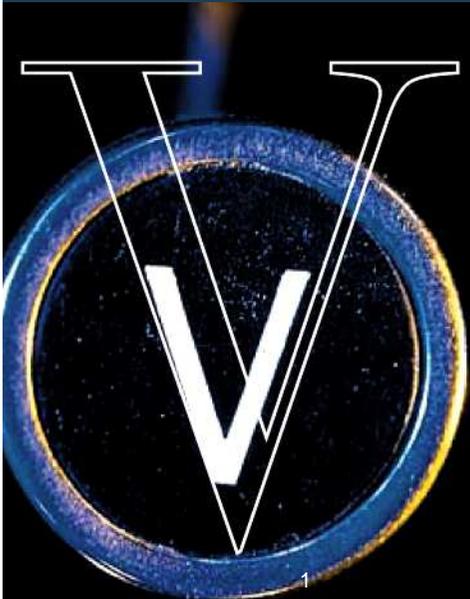
Top Ten Things Every New Nonprofit GC Should Know

By George E. Constantine, III, Venable LLP

Association of Corporate Counsel Nonprofit Organizations Committee

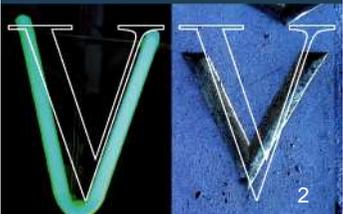
Legal Quick Hit

January 10, 2012



Introduction

- About the topic—how the list came about
- Disclaimers
 - Different types of nonprofits
 - One-person shops to large legal departments
 - The power of ten



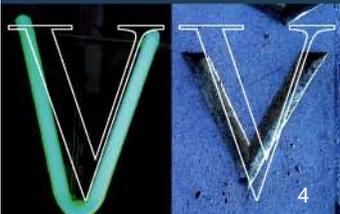
1. Litigation

- Get a good idea of where the files are located and who is managing each piece of litigation—you should investigate beyond the confines of the old GC's files.
- Not just traditional dispute-based litigation, but think of amicus briefs, third-party subpoenas.
- Meet as soon as possible with outside counsel engaged in litigation—get an idea about looming deadlines, chances of success, etc.



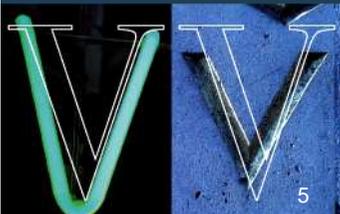
2. Tax Filings

- Tax lawyer or not, working familiarity with tax exemption matters is a must.
 - Requirements and restrictions apply to virtually all organizational activities.
 - Risk of inattention here is huge.
- Start with deep reviews of the Forms 990.
 - Keep instructions nearby.
 - Meet with form preparer.



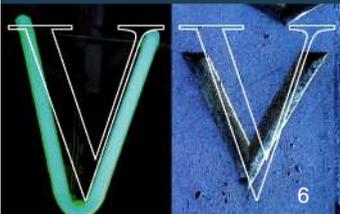
2. Tax Filings (continued)

- Familiarize yourself with exemption application.
 - Is the organization still doing what it said it would be doing?
 - How is it different from application time?
- Review audited financials and management letters—
 - FIN 48 issues?
 - UBIT exposures?



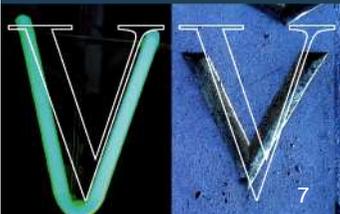
3. Document Retention Policy

- First among equals when it comes time for a review of all the organization's policies.
 - When and how was it created?
 - How closely is it being followed?
 - Litigation holds in place? Should there be?



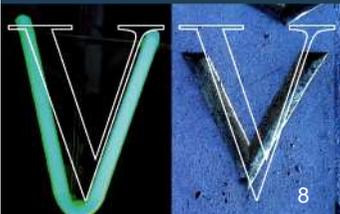
4. Recent Employment Actions

- EEOC reports steady upward swing of charges being filed.
- Work with HR manager to determine areas of risk and concern:
 - Problem areas within the organization?
 - Types of claims more prevalent in the past
 - Opportunities for improved practices and policies?
 - Recent adverse actions?



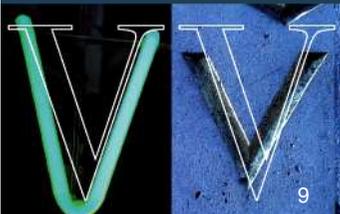
5. Governance Documents

- Take a close look at Bylaws and Articles of Incorporation with an eye toward compliance with existing statutes as well as to make sure the organization is following its own rules.
- Don't rely on the documents in the internal file—very often the “most recent” version of the articles of incorporation on file at HQ is different from the version on file with the state.
- Confirm:
 - Good corporate standing;
 - Registration and reporting requirements (like charitable solicitation) are being followed; and
 - All appropriate foreign corporation registrations have been made.



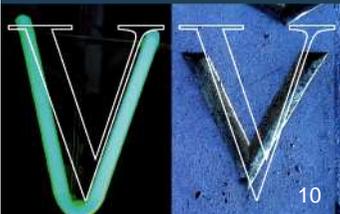
6. Leases and Other Contracts

- Familiarize yourself with all the major contracts.
- Is there a renewal date coming up?
- Familiarize yourself with the contract management procedures and review processes.
 - Many organizations remain somewhat decentralized when it comes to contract management.
 - Legal review is at times lacking or nonexistent.



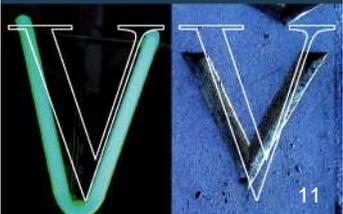
7. Lobbying and Political Filings

- If applicable.
- Like the Form 990, the lobbying disclosure and FEC filings related to your organization are public and often used as a basis for media coverage.
- Note that states have their own separate requirements.
- Be familiar with the interplay between IRC and lobbying/political law requirements.



8. Policies Review

- Employee handbook;
- Conflict of interest policy;
- Whistleblower protection;
- Etc.
- Consider starting with the big picture before delving into a complete top-to-bottom review.



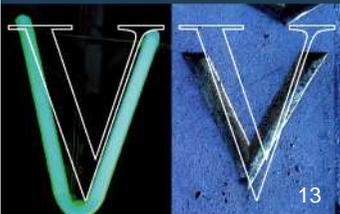
9. Internal Controls

- Can be reviewed in connection with review of Forms 990 and audited statements.
- Fraud and embezzlement among nonprofit corporations is rampant, both from dishonest employees and volunteers.
- Look at issues like check-signing authority, handling payments and deposits, and bank account access.
- Check contracts with third parties to see if they are offering protection against fraud or embezzlement.



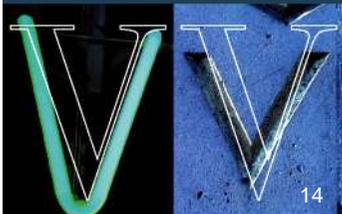
10. Insurance

- Take a look at the scope of the insurance coverages.
- Any risk management reviews conducted that might provide insight into the scope of the coverages?
- Gather feedback from your colleagues and others on the policies—ask around.
- Check also on the application forms submitted to your insurers—are they comprehensive enough to identify the full scope of the organization’s activities?



11. And That's Not All

- Trademark protection
- Antitrust risks
- Copyright matters
- Employee benefit issues



Questions

<http://www.venable.com/nonprofits/publications>

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