

# Working Effectively with Outside Counsel: What Every Nonprofit Should Know

Monday, July 11, 2016, 12:30 – 2:00 pm ET  
Venable LLP, Washington, DC

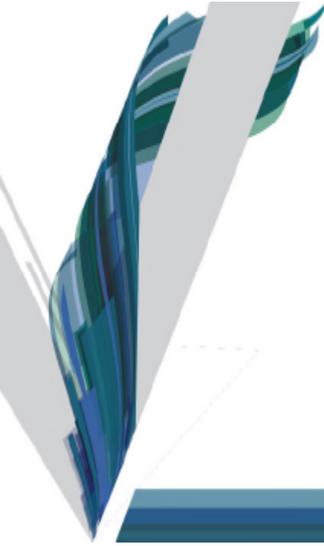
## Moderator

**Jeffrey S. Tenenbaum, Esq.,**  
Partner and Chair of the Nonprofit  
Organizations Practice,  
Venable LLP

## Speakers

**Anita Drummond, Esq.**  
Counsel, Nonprofit Organizations Practice,  
Venable LLP

**Daniel Koslofsky, Esq.,**  
Chief Privacy & Compliance Officer, AARP



# Presentation

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## Upcoming Venable Nonprofit Events

Register Now

- **August 17, 2016:** [Key Trademark and Copyright Developments Around the World: Implications for Nonprofits in China, Europe, Cuba, and Beyond](#)
- **September 20, 2016:** [How to Protect Nonprofits' Federally Funded Programs with Global Anti-Corruption Controls, co-sponsored by Venable LLP and InsideNGO](#)



## Agenda

- Assess legal needs – for today and the future
- Draft a scope
- Establish communications approaches
- Cost-effective pricing models
- Legal basics for volunteer and staff leadership in operations and strategic planning

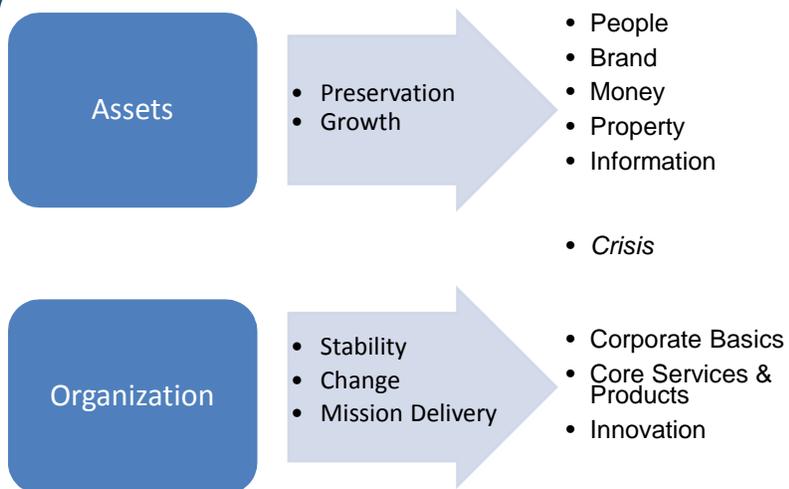
## Assess Legal Needs



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## Assess Legal Needs



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## Examples

- First employee hire in California
- Increasing reliance on grants from a European multi-national organization
- New service program sold to individuals not qualified to be association members
- IT breach causes loss of your prospect contacts in database that is on the organization's server



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## Scope the Work

- Urgent or longer term
- One-time fix, long-term implications, or process-oriented
- Risk management of existing situation or change or growth planning
- Geographic expertise
- Affiliates or related entities
- Expected work product form
- Budget

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## Case Study #1

- New technology system is being purchased for keeping donor data
- International sharing is planned
- The director of IT was told to talk to lawyer who did your nonprofit's lease agreement for a quick review of the technology contract



## Considerations in Engaging Counsel

- Counsel who knows your organization versus a new firm or attorney
- Expertise in the legal area
- Experience with specific implications of a nonprofit
- References
- Proper legal, financial, and operational planning for new programs
- Reserves for unexpected and insurance

## Case Study #2

- A long-time vendor that provides the platform for your online trainings proposes a change contract that would create a revenue-sharing model.



## Case Study #3

- A long-time senior manager at your association was not promoted to an executive position and begins to complain to HR, other employees, and members, saying board chairman does not like her.





## Case Study #3: Scope This Work and Select Counsel

- Assets affected?
- Urgent or long-term?
- Process-oriented or one-time fix?
- Any geographic considerations?
- Any affiliates or related entities affected?
- What form would you like advice?
- What is the budget?
- Attorney who knows you and your organization?
- Expertise?

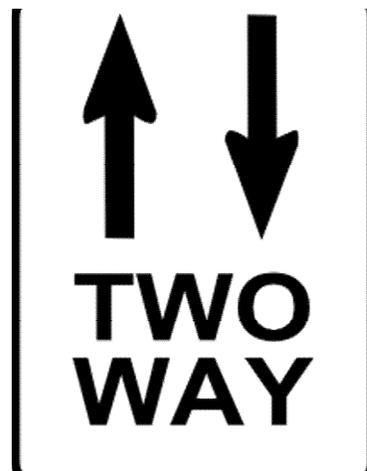
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## Establish Communication as Two-Way Street

- Establish expectations up front for communications
- Frequency and form
- Voice concerns quickly and resolve



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## Cost-Effective Legal Counsel

- Expertise considerations
- Hourly
- Retainer
- Capped
- Fixed-fee
- Timely billing
- General counseling value

## Building a Foundation of Legal Basics

- Basics: Bylaws, policies, and filings
- Leadership is counseled and sets the standard
- Practice
  - Trainings
  - Complying
  - Maintaining
  - Processing issues
  - Planning for growth



## Case Study #4

- Complaint by trade association member to director of membership about not being nominated for the board
- Association bought services from the board chairman's company (a major competitor of complaining member)



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## Work Effectively with Outside Counsel

**Assess your legal need** by knowing what your organization wants to protect or grow



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**Know your attorney** by engaging them in your organization, setting communication expectation, and finding the right expertise and fit

**Scope your legal requests** by defining, as urgent fixes or long-term changes, geography, related entities, and budget

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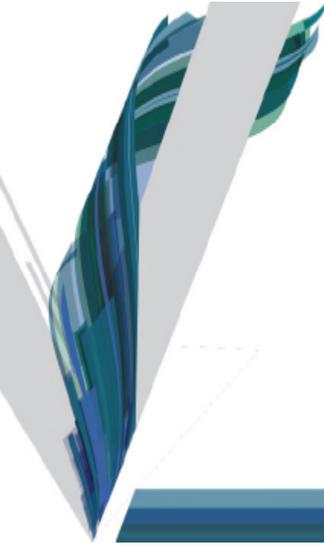
## Questions?

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# Speaker Biographies

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## Jeffrey S. Tenenbaum

Partner

Washington, DC Office

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### AREAS OF PRACTICE

Tax and Wealth Planning  
 Antitrust  
 Political Law  
 Tax Controversies and Litigation  
 Tax Policy  
 Tax-Exempt Organizations  
 Regulatory

### INDUSTRIES

Nonprofit Organizations and Associations

### GOVERNMENT EXPERIENCE

Legislative Aide, United States House of Representatives

### BAR ADMISSIONS

District of Columbia

### EDUCATION

J.D., Catholic University of America, Columbus School of Law, 1996

B.A., Political Science, University of Pennsylvania, 1990

Jeffrey Tenenbaum chairs Venable's Nonprofit Organizations Practice Group. He is one of the nation's leading nonprofit attorneys, and also is a highly accomplished author, lecturer, and commentator on nonprofit legal matters. Based in the firm's Washington, DC office, Mr. Tenenbaum counsels his clients on the broad array of legal issues affecting charities, foundations, trade and professional associations, think tanks, advocacy groups, and other nonprofit organizations, and regularly represents clients before Congress, federal and state regulatory agencies, and in connection with governmental investigations, enforcement actions, litigation, and in dealing with the media. He also has served as an expert witness in several court cases on nonprofit legal issues.

Mr. Tenenbaum was the 2006 recipient of the American Bar Association's Outstanding Nonprofit Lawyer of the Year Award, and was an inaugural (2004) recipient of the *Washington Business Journal's* Top Washington Lawyers Award. He was only a handful of "Leading Lawyers" in the Not-for-Profit category in the prestigious *Legal 500* rankings for the last four years (2012-15). Mr. Tenenbaum was recognized in 2013 as a Top Rated Lawyer in Tax Law by *The American Lawyer* and *Corporate Counsel*. He was the 2015 recipient of the New York Society of Association Executives' Outstanding Associate Member Award, the 2004 recipient of The Center for Association Leadership's Chairman's Award, and the 1997 recipient of the Greater Washington Society of Association Executives' Chairman's Award. Mr. Tenenbaum was listed in the 2012-16 editions of *The Best Lawyers in America* for Non-Profit/Charities Law, and was selected for inclusion in the 2014-16 editions of *Washington DC Super Lawyers* in the Nonprofit Organizations category. In 2011, he was named as one of Washington, DC's "Legal Elite" by *SmartCEO Magazine*. He was a 2008-09 Fellow of the Bar Association of the District of Columbia and is AV Peer-Review Rated by *Martindale-Hubbell*. Mr. Tenenbaum started his career in the nonprofit community by serving as Legal Section manager at the American Society of Association Executives, following several years working on Capitol Hill as a legislative assistant.

### REPRESENTATIVE CLIENTS

AARP  
 Academy of Television Arts & Sciences  
 Air Conditioning Contractors of America  
 Airlines for America  
 American Academy of Physician Assistants  
 American Alliance of Museums  
 American Association for the Advancement of Science  
 American Bar Association  
 American Cancer Society  
 American College of Cardiology  
 American College of Radiology  
 American Council of Education

## MEMBERSHIPS

American Society of Association  
Executives

New York Society of Association  
Executives

American Friends of Yahad in Unum  
American Institute of Architects  
American Red Cross  
American Society for Microbiology  
American Society of Anesthesiologists  
American Society of Association Executives  
America's Health Insurance Plans  
Association for Healthcare Philanthropy  
Association for Talent Development  
Association of Clinical Research Professionals  
Association of Corporate Counsel  
Association of Fundraising Professionals  
Association of Global Automakers  
Association of Private Sector Colleges and Universities  
Auto Care Association  
Biotechnology Industry Organization  
Brookings Institution  
Carbon War Room  
CFA Institute  
The College Board  
CompTIA  
Council on Foundations  
CropLife America  
Cruise Lines International Association  
Democratic Attorneys General Association  
Design-Build Institute of America  
Erin Brockovich Foundation  
Ethics Resource Center  
Foundation for the Malcolm Baldrige National Quality Award  
Gerontological Society of America  
Global Impact  
Good360  
Goodwill Industries International  
Graduate Management Admission Council  
Habitat for Humanity International  
Homeownership Preservation Foundation  
Human Rights Campaign  
Independent Insurance Agents and Brokers of America  
InsideNGO  
Institute of International Education  
International Association of Fire Chiefs  
International Rescue Committee  
International Sleep Products Association  
Jazz at Lincoln Center  
LeadingAge  
The Leukemia & Lymphoma Society  
Lincoln Center for the Performing Arts  
Lions Club International  
March of Dimes  
ment'or BKB Foundation  
Money Management International  
National Association for the Education of Young Children  
National Association of Chain Drug Stores  
National Association of College and University Attorneys  
National Association of County and City Health Officials  
National Association of Manufacturers  
National Association of Music Merchants  
National Athletic Trainers' Association  
National Board of Medical Examiners  
National Coalition for Cancer Survivorship  
National Coffee Association  
National Council of Architectural Registration Boards  
National Council of La Raza  
National Defense Industrial Association  
National Fallen Firefighters Foundation

National Fish and Wildlife Foundation  
National Propane Gas Association  
National Quality Forum  
National Retail Federation  
National Student Clearinghouse  
The Nature Conservancy  
NeighborWorks America  
New Venture Fund  
NTCA - The Rural Broadband Association  
Nuclear Energy Institute  
Peterson Institute for International Economics  
Professional Liability Underwriting Society  
Project Management Institute  
Public Health Accreditation Board  
Public Relations Society of America  
Romance Writers of America  
Telecommunications Industry Association  
Trust for Architectural Easements  
The Tyra Banks TZONE Foundation  
U.S. Chamber of Commerce  
United States Tennis Association  
Volunteers of America  
Water Environment Federation  
Water For People  
WestEd  
Whitman-Walker Health

## HONORS

Recipient, New York Society of Association Executives' Outstanding Associate Member Award, 2015

Recognized as "Leading Lawyer" in *Legal 500*, Not-For-Profit, 2012-15

Listed in *The Best Lawyers in America* for Non-Profit/Charities Law (Woodward/White, Inc.), 2012-16

Selected for inclusion in *Washington DC Super Lawyers*, Nonprofit Organizations, 2014-16

Served as member of the selection panel for the *CEO Update* Association Leadership Awards, 2014-16

Recognized as a Top Rated Lawyer in Taxation Law in *The American Lawyer* and *Corporate Counsel*, 2013

Washington DC's Legal Elite, *SmartCEO Magazine*, 2011

Fellow, Bar Association of the District of Columbia, 2008-09

Recipient, American Bar Association Outstanding Nonprofit Lawyer of the Year Award, 2006

Recipient, *Washington Business Journal* Top Washington Lawyers Award, 2004

Recipient, The Center for Association Leadership Chairman's Award, 2004

Recipient, Greater Washington Society of Association Executives Chairman's Award, 1997

Legal Section Manager / Government Affairs Issues Analyst, American Society of Association Executives, 1993-95

AV® Peer-Review Rated by *Martindale-Hubbell*

Listed in *Who's Who in American Law* and *Who's Who in America*, 2005-present editions

## ACTIVITIES

Mr. Tenenbaum is an active participant in the nonprofit community who currently serves on the Editorial Advisory Board of the American Society of Association Executives' *Association Law & Policy* legal journal, the Advisory Panel of Wiley/Jossey-Bass' *Nonprofit Business Advisor* newsletter, and the ASAE Public Policy Committee. He previously served as Chairman of the *AL&P* Editorial Advisory Board and has served on the ASAE Legal Section Council, the ASAE Association Management Company Accreditation Commission, the GWSAE Foundation Board of Trustees, the GWSAE Government and Public Affairs Advisory Council, the Federal City Club Foundation Board of Directors, and the Editorial Advisory Board of Aspen's *Nonprofit Tax & Financial Strategies* newsletter.

## PUBLICATIONS

Mr. Tenenbaum is the author of the book, *Association Tax Compliance Guide*, now in its second edition, published by the American Society of Association Executives. He also is a contributor to numerous ASAE books, including *Professional Practices in Association Management*, *Association Law Compendium*, *The Power of Partnership*, *Essentials of the Profession Learning System*, *Generating and Managing Nondues Revenue in Associations*, and several Information Background Kits. In addition, he is a contributor to *Exposed: A Legal Field Guide for Nonprofit Executives*, published by the Nonprofit Risk Management Center. Mr. Tenenbaum is a frequent author on nonprofit legal topics, having written or co-written more than 700 articles.

## SPEAKING ENGAGEMENTS

Mr. Tenenbaum is a frequent lecturer on nonprofit legal topics, having delivered over 700 speaking presentations. He served on the faculty of the ASAE Virtual Law School, and is a regular commentator on nonprofit legal issues for *NBC News*, *The New York Times*, *The Wall Street Journal*, *The Washington Post*, *Los Angeles Times*, *The Washington Times*, *The Baltimore Sun*, *ESPN.com*, *Washington Business Journal*, *Legal Times*, *Association Trends*, *CEO Update*, *Forbes Magazine*, *The Chronicle of Philanthropy*, *The NonProfit Times* and other periodicals. He also has been interviewed on nonprofit legal topics on Fox 5 television's (Washington, DC) morning news program, Voice of America Business Radio, Nonprofit Spark Radio, and The Inner Loop Radio.



## Anita K. Drummond

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### AREAS OF PRACTICE

Regulatory

Tax-Exempt Organizations

### INDUSTRIES

Nonprofit Organizations and Associations

### GOVERNMENT EXPERIENCE

Advocate and Assistant Chief Counsel, Small Business Administration

### BAR ADMISSIONS

Virginia

Not admitted in the District of Columbia

### EDUCATION

J.D., George Mason University, 2000

Chief Justice, Moot Court

President, George Mason American Inn of Court

Dean Scholar

B.A., University of Central Florida, 1988

Anita Drummond is a member of Venable's nonprofit organizations practice group. She has significant experience working in-house for nonprofit organizations and for the federal government, as well as in private practice. She is well versed in the broad range of legal issues facing nonprofits, and is very focused on using the law to help nonprofits further their mission and achieve their goals.

Prior to joining Venable, Ms. Drummond spent nearly a decade at The Nature Conservancy, an international NGO, most recently as associate general counsel. In this role, she managed the organization's internal and external legal counsel on federal tax exemption and charity regulation, private and public funding, government relations, finance and taxes, human resources, insurance, conservation services, marketing, intellectual property, and technology. She also led the development and implementation of a focused internal legal practice for innovative programs, such as social impact investment, and for the specialized legal needs of domestic and international clients.

Ms. Drummond's other in-house nonprofit experience includes stints as Director of Legal and Regulatory Affairs for the Associated Builders and Contractors, Director of Government Relations for the American Subcontractors Association, and Manager of Public Affairs for the American Council of Independent Labs. She also worked for the U.S. Small Business Administration as an advocate and assistant chief counsel. In private practice, Ms. Drummond represented corporate and individual clients in civil litigation and served as a court-appointed child advocate.

### PUBLICATIONS

- June 2016, Federal Grants and Contract News for Nonprofits - June 2016

### SPEAKING ENGAGEMENTS

- October 17, 2016, "Operating Abroad: A Primer for US Nonprofit Operations Overseas" at the 2016 ACC Annual Meeting (Nonprofits Organizations Committee)
- August 15, 2016, "Nonprofit Fundraising and Revenue Generation through a Legal Lens: Everything Non-Attorneys Need to Know" at the 2016 ASAE Annual Meeting & Expo
- July 12, 2016 - July 14, 2016, "How to Scope, Select and Use Outside Counsel," InsideNGO 2016 Annual Conference
- June 16, 2016, "Non-Profit and Associations and Global Issues Forum: Taking Your Organization Global – An Overview for NFP Organization," hosted by Association Corporate Counsel



**Dan Koslofsky, Esq.**

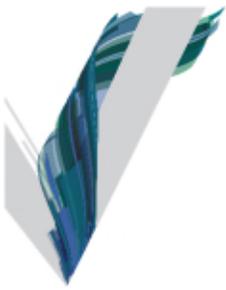
Chief Privacy & Compliance Officer  
AARP

Dan currently serves as the Chief Privacy & Compliance Officer at AARP where he is responsible for ensuring compliance with an array of federal, state, local and industry regulations governing data privacy & security, telemarketing, email marketing, social media advertising, mobile marketing and behavioral advertising. Dan previously served in several legal services positions including Director of the Senior Citizen Law Project at New Hampshire Legal Assistance and Senior Staff Attorney in the Consumer Fraud and Financial Abuse Unit at Legal Counsel for the Elderly. He litigated numerous consumer protection matters involving unfair and deceptive acts and practices, predatory lending, credit reporting abuses and financial exploitation. Dan began his legal career as a staff attorney at the New Hampshire Public Defender representing clients facing misdemeanor and felony criminal charges.



# Additional Information

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# Nonprofit Considerations for Legal Counsel

July 2016

## Scope the Work

- Organization-wide, governance, program or project-specific
- Legal issue specific
- Claims or crisis
- Policy, system or process-based advice
- Location-based
- Related or affiliate entity based
- Time restricted or ongoing
- Budget

## Assets/Revenue

Having procedures and controls in place secures the means to the mission ends –

- Brand Protection
- Investments and banking relationships
- Individual donations
- Institutional grants
- Public grants and contracts
- Service, goods, educational and event income
- Dues
- Royalties
- Taxable income

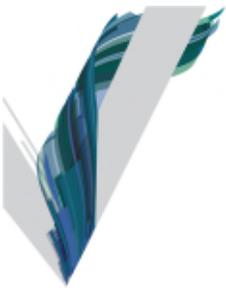
## People

- Employees – pay and benefits, policies, travel, safety, insurance
- Board – policies, training
- Members
- Volunteers
- Served populations (e.g. children)
- Public

## Core Mission

What are core mechanisms, contracts and staff to deliver mission?

- Mission services
- Mission products
- Delivery systems
- Educational programs
- Accreditation or certification
- Moving mission among jurisdictions



## Information

Data security for limiting legal liability and delivering mission –

- Financial and accounting data
- Employee data
- Donor data
- Personal information of third parties
- Sector or industry data

## Property

Intellectual property – trademark, copyright and patents

Real property ownership – controls on use and management

## Corporate Basics

Bylaws and articles

Board training and management

Policies, e.g., conflicts, executive compensation and anti-discrimination

Compliance program

Brand management

Contract and grant management

Financial controls, loans, bonds, auditors

Technology service and data security

Insurance for entire organization, mission and places

Form 990

State and country registrations and reporting requirements

Lobbying monitoring and reporting

Leases, offices, facility, and other mission operations

Affiliates and related entities

## Innovation + Growth

New locations

Joint ventures

New revenue or programs

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