

Impact

An Overview of Current Legal Events of Concern and Interest

Spring 2005

Organization as a Nonprofit

By: William O. Williamson
and James G. Heldman



William O. Williamson



James G. Heldman

Starting a nonprofit organization or incorporating an existing organization as a nonprofit can offer several advantages. In order to obtain nonprofit status, however, several steps must be taken. This article will provide a brief overview of the incorporation process, as well as the necessary steps to obtain tax exempt status under the Internal Revenue Code.

Incorporating an organization as a nonprofit corporation offers several advantages. First and foremost, nonprofit corporations enjoy limited liability (which means that the officers and trustees/board members cannot be personally liable for actions of the organization), provided that all legal formalities and requirements are followed. In addition, nonprofits are exempt from federal and state income taxation, allowing donors to claim charitable income tax deductions for donations of money or goods to the organization. Further, incorporation of a nonprofit can provide credibility to the organization, a clear organizational structure, and accountability within the corporation.

Incorporation under Ohio State Law

The first step to incorporating a nonprofit organization is to file articles of incorporation with the Ohio Secretary of State, thereby establishing it as a legal entity. Acceptance of the articles of incorporation by the Secretary of State has the effect of creating a “contract with the state,” enabling the entity to have all of the benefits of corporate status under state law. The articles do not have to be complicated, but are required by statute to contain certain information regarding the newly formed entity. For example, the Ohio Revised Code requires the articles to contain the name of the corporation (distinguishable from all other corporations authorized to do business in the state), the address of the corporation’s principal office, and the purpose for which it is formed. The statute lists other information the articles may, but are not required, to include.

The next step for incorporation is the appointment of a statutory agent. A corporation’s statutory agent is a legal representative to accept service of process and other notices for the corporation. Once these steps have been completed, the corporation begins its legal existence. At that time, initial organizational matters, such as adoption of a set of regulations and appointment of the officers, should be undertaken in accordance with law.

Obtaining Tax Exempt Status

While formation of the corporation in accordance with state law is a prerequisite to applying for tax exempt status, such incorporation does not entitle a nonprofit organization to federal tax-exempt status. To obtain such status, the organization must comply with the rules set forth in the Internal Revenue Code.

If your organization qualifies as a so-called 501(c)(3) organization (so named after the applicable section of the statute), a Form 1023 application for recognition of exemption must be submitted. Section 501(c)(3) organizations include those organized for charitable, religious, educational, scientific, or literary purposes. Although the filing of a form may sound easy, the Form 1023 application is very comprehensive and requires submission of a number of different documents. For example, applicants must provide copies of their state organizational documents and corporate bylaws and must make a detailed disclosure of the activities of the corporation.

In addition to the Form 1023 application, the Internal Revenue Service requires a Form SS-4 (application for Employer Identification Number) and a Form 8718 (User Fee). As with any federal filing, the directions accompanying the forms must be closely followed.

After completing the above application procedure, the IRS issues a ruling or determination letter if the organization’s application and supporting documents meet the applicable requirements of the Internal Revenue Code. The IRS determination letter is generally effective as of the date of formation of the organization.

Organizations not qualifying for tax-exempt status under section 501(c)(3) may still qualify for exempt status under another portion of section 501(c).

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Strauss & Troy’s Rising Stars

Update On Ohio Living Wills

By: Marilyn J. Maag



Like most Americans, we have followed the Terri Schiavo case in the news. Briefly, Ms. Schiavo suffered cardiac arrest in 1990 and settled into a persistent vegetative state. She had not signed a Living Will Declaration or left any written instructions regarding her future medical treatment. Her husband and guardian believed it was against her wishes to remain in such a state indefinitely and, therefore, sought a court order to remove her feeding tube. Family members disagreed about what Ms. Schiavo would have wanted and went through a bitter, public struggle. Litigation spanning ten years eventually led to Court decisions that upheld the neurologists' findings that medical treatment would not improve her condition, and her feeding tube was ultimately removed.

In the wake of the *Schiavo* case, many of our clients have asked how such an unfortunate situation could be avoided if tragedy strikes. Accordingly, a brief update regarding living wills is in order.

Residents of Ohio have the option of signing a Living Will Declaration (usually referred to as a "Living Will"), in which the person signing may decline medical treatment or procedures that would artificially prolong the inevitable if he or she develops a terminal condition or falls into a permanently unconscious state. The Living Will defines "permanently unconscious state" as:

an irreversible condition in which I am permanently unaware of myself and my surroundings. My physician and one other physician must examine me and agree that the total loss of higher brain function has left me unable to feel pain or suffering.

The Ohio Living Will Declaration includes a specific provision allowing the declarant (the person who signs the document) to indicate his or her decision to authorize the withholding or withdrawing of a feeding tube if the declarant falls into a permanently unconscious state in the future.

In those cases where there is no Living Will, the issue of withholding or withdrawing nutrition and hydration is more complex. First, an individual qualified to make medical decisions on behalf of the patient (the patient's guardian, for example) must specifically consent to withholding or withdrawing nutrition and hydration. Such specific consent must be given in good faith, and must be consistent with any intentions previously expressed by the patient. In the absence of any expressed intentions, the patient's intentions are inferred from his or her lifestyle, character, or other evidence of the patient's desires.

Second, the patient's attending physician and a qualified consulting physician who has examined the patient must determine, to a reasonable medical certainty, that nutrition and hydration will not provide the patient comfort or alleviate pain.

Third, for such consent to be effective, the individual giving consent must apply to the probate court for an order permitting withholding or withdrawing of nutrition and hydration. The court sets the matter for hearing, and gives notice to the applicant (the person requesting the court order), the attending

and consulting physicians, and other family members. At the hearing, individuals who oppose the request may testify and present evidence. This is what occurred in the *Schiavo* case and resulted in the protracted legal proceedings.

The court will issue an order permitting withholding or withdrawing nutrition and hydration from the patient only if the applicant establishes by clear and convincing evidence, to a reasonable medical certainty, and in accordance with reasonable medical standards, **all** of the following: (1) the patient is, and for the immediately preceding twelve months has been, in a permanently unconscious state; (2) the patient is no longer able to make informed decisions regarding the administration of life-sustaining treatment; (3) there is no reasonable possibility that the patient will regain that capacity; and (4) the decision is consistent with the patient's previously expressed intentions or with the type of informed decision the patient would have made.

Carefully considering and signing a Living Will Declaration is certainly preferable to requiring family members to seek court intervention regarding your medical care if you develop a terminal condition or fall into a permanently unconscious state. It is also the only way to ensure that your intentions are carried out. Each of us has the opportunity to give clear written instructions regarding the future medical care we do and do not want, and we should take advantage of this opportunity.

There are additional advantages to signing a Living Will. You may name a person to be contacted in the event your attending physician determines that life-sustaining treatment should be withheld or withdrawn. Thus, you are able to select the family member or friend you would like to work closely with your physicians to make sure the intentions expressed in your Living Will are followed.

Finally, the Living Will affords you the option of electing to make anatomical gifts (e.g., organ donations) by completing the form that is now included within Ohio's Living Will Declaration.

Marilyn Maag regularly practices in the areas of estate planning and probate law. For more information on estate planning, including Living Wills, please feel free to call Ms. Maag at (513) 629-9485.

Gone "Phishing"

By: Charles C. Ashdown



According to the 2005 Identity Fraud Report, an estimated 9.3 million Americans were the victims of identity theft last year. Identity thieves are becoming more sophisticated about the way they obtain your personal financial information. While identity theft most commonly occurs when a wallet or checkbook is lost or stolen, other methods are on the rise. These include theft of information from information brokers or merchants themselves, and increased on-line computer fraud schemes.

Earlier this year, ChoicePoint, an information broker with a database of 19 billion personal records, was itself the victim of theft. It inadvertently provided sensitive information to as many as 50 criminal firms masquerading as legitimate users of information. As many as 145,000 files containing

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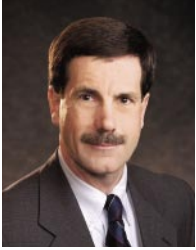
News of the Firm

Attorneys on the Move



Charlie Melville

Charlie Melville was featured in an article entitled *Attorney Advises Put It In Writing* in the April 2005 *Agency Sale* magazine, which is published by the Manufacturer's Agents National Association (commonly known as MANA). Additionally, Mr. Melville was the guest speaker at the February meeting of the Manufacturers' Agents of Cincinnati. His presentation addressed recent court decisions relating to commission disputes between principals and sales representatives.



Paul Calico

Paul Calico was a guest speaker at the University of Cincinnati College of Law on the topic of *Ethical Issues in Civil Litigation: The Client-Lawyer Relationship, Confidentiality, and Conflicts of Interest*. He was also the featured speaker at two Cincinnati Bar Association functions. At a meeting of the Probate Law Committee, he made a presentation on *Mediation of Probate Court Matters*. He also addressed the CBA Employment Law Committee, presenting *The Top Ten Ways to Guarantee Failure in Mediation*. Mr. Calico was again quoted extensively in Andrea Kay's nationally syndicated *At Work* column, on the topic of employer responsibilities to employees returning to work following military service.



Bill Strauss

Bill Strauss was recently elected to the Board of Trustees of Downtown Cincinnati, Inc. ("DCI"). DCI is a private, non-profit organization dedicated to the growth and vitality of Greater Cincinnati's center city.



Joe Braun



Matt Chasar



Jason Tonne

Joe Braun, Matt Chasar, and Jason Tonne served as legal advisers to three St. Xavier High School teams competing in the annual state-wide mock trial competition. Mr. Braun's all-freshman team, competing against more experienced teams, finished second in Hamilton County after two rounds of trials. The team then advanced to the state competition in Columbus, where it continued winning before falling in the round before the finals.

Tom Glass (team captain), Jim Heldman, Charles Ashdown and Tony Barlow, members of Strauss & Troy's cycling team, will once again participate in two important bicycle riding events for charity. For the fifth consecutive year, the team will ride in the MS 150, a two-day 150-mile ride to raise money for the National Multiple Sclerosis Society. For the second time, the team will ride in the Tour de Cure, a 60-mile ride to raise money for the American Diabetes Association. The Strauss & Troy cycling team is comprised of Strauss & Troy attorneys, staff, clients, family and friends.

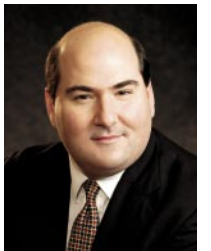
Tom Stachler and Charles Atkins are once again teaching a trial practice class to third-year students at the University of Cincinnati College of Law. This marks Tom's eighth year and Charlie's twenty-second year teaching the class.



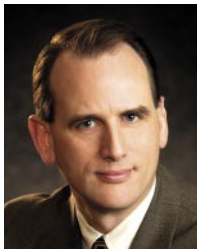
Tom Glass



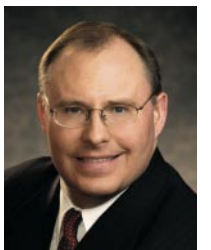
Jim Heldman



Charles Ashdown



Tony Barlow



Tom Stachler



Charles Atkins

Sponsorships

Honoring our commitment to the community, Strauss & Troy is proud to have sponsored and contributed to a number of worthy causes in the past quarter. We are pleased to have supported the following programs and events, continuing our tradition of sharing our gifts and talents with others in the Greater Cincinnati community:

- American Diabetes Association
- Cedar Village
- Cincinnati Children's Hospital Medical Center
- CREW, Inc.
- Down Syndrome Association of Greater Cincinnati
- Federal Bar Association
- Inner City Youth Opportunities
- Jewish Community Center
- Jewish Family Services
- Maccabi USA
- Northern Kentucky Chamber of Commerce
- OPC Cincinnati Section
- S.H.A.P.E. (*Sycamore High School After Prom*)
- Susan G. Komen Foundation
- The Midwesterners
- University of Cincinnati College of Law
- Working in Neighborhoods

Client Spotlight

In 1972, Hubert M. Collet and his wife, Marinette, founded the Cincilingua Inc. Intensive Language Training Center with the goal of turning the center into an "isolation booth," where executives could leave the pressures of personal and business commitments behind and be immersed full-time in a language without the distractions of normal work activities.

The Collets, who already had ten years of experience in language training both in France and the United States, felt that conversation-based immersion courses were the best means of helping busy executives reach a functional ability in a language in a very short period of time. To further facilitate language acquisition, they began offering all-inclusive, comprehensive language training packages, thus providing top-quality training at the lowest possible price. Their son, Pierre, joined the company in 1991 and currently manages all corporate accounts.

Cincilingua personalizes and individualizes each course based upon the needs of the student. In addition to the grammar, listening and pronunciation exercises, the terminology and situational vocabulary incorporated into each program are based on individual students' particular jobs or positions, thus allowing them to use the language where their needs actually begin – in important business situations. Each course is administered by highly-qualified and experienced instructors, and is monitored by program coordinators to assure continuous progress. A high success rate has brought client satisfaction and return business.

Learning Language

The Cincilingua method, through its Intensive Training Program, employs three basic principles: first, language is learned through an inductive process of associating certain sounds with certain concepts. Second, it is necessary to associate the concept directly with the sound in order to begin to think in the language. And third, direct association, without translation, is the shortest path to fluency.

Therefore, students learn to speak a second language much the way they learned to speak their mother tongues: through direct association, constant practice and consistent correction. Instructors teach by speaking to the student in the target language and by requiring him or her to respond in the same language. This rapid, question-and-answer drilling technique sets the course's pace from the very beginning and characterizes the teaching throughout the course. Performed orally and exclusively in the target language, this drilling technique teaches the basics of the language. The student's progression will be steady and systematic, from general structures to technical and business matters.

When a student begins a course, he or she receives textbooks, which are used mainly in the evenings to reinforce material taught in class. The core of the course is what occurs in class – the presentation and practice of functional concepts. The instructor also keeps a notebook during class, providing the students with a summary of every lesson. Thus, the student's attention is not divided between note-taking and the lesson itself. The notebook also avoids repetition of material and mistakes in spelling and grammar that the student might make. Students take these notes home at the end of each class for review.



In addition, a synopsis of the day's class is recorded onto cassette tape, so that the student can study both the written and the spoken work simultaneously.

An Ideal Location

Cincinnati has proved to be the ideal location for the Collets' center. Cincinnati is easily accessible and geographically located within a short distance of many of the top Fortune 500 companies. It offers the leisure

opportunities of a large city, including sports events, excellent museums and amusement parks, all in a friendly, small-town atmosphere and at very reasonable costs. Its many hotels ensure comfortable surroundings for short and long-term stays.

From small beginnings, with only ten classrooms and a small staff, Cincilingua showed steady growth, quickly necessitating expansion from its original location. The company currently operates from its own building on east Fourth Street in downtown Cincinnati. With 50 classrooms, ample administration offices, and a staff of more than 100 instructors, Cincilingua is exceeding the original dreams of the Collets. Cincilingua is accredited by the North Central Association Commission on Accreditation & School Improvement and the Commission on International and Trans-Regional Accreditation. Accreditation provides an external mark of quality and a proven process for school improvement, since to earn accreditation schools must meet each commission's high standards, be evaluated by a team of professionals from outside the school and implement a continuous school improvement plan focused on increasing student performance.

The firm is most proud of the fact that it has become a top center for intensive training in the Midwest, counting as clients many major companies, such as General Motors, Ford, Chrysler, Dow Chemical, Eli Lilly, Caterpillar, Deere & Company, AT&T, Procter & Gamble, Toyota, and Honda. Cincilingua also has an excellent reputation as a center for intensive training in American English for executives from Mexico, Central and South America. Its future goals include expanding its market area to the entire United States, Asia and Europe.

"Throughout the world," says Hubert M. Collet, "Cincilingua is becoming synonymous with cost-effective, efficient intensive language training."

Translation Services

In the late 70's a separate department for the language-related services of translation and interpretation was created within Cincilingua to more efficiently administer these activities. The result: a firm with 33 years of customer-oriented experience and access to a worldwide network of resources in all major languages. As a single point of contact to businesses in the global marketplace, long term business partnerships and large projects are not new to this company.

Cincilingua Translations, currently managed by the Collets' son-in-law, Michael Sum, is a Corporate Member of the ATA, a national accrediting organization for translation professionals. All translation professionals have college degrees and significant professional experience in diverse fields, allowing the assembly of effective project/personnel match-ups.

Organization as a Nonprofit *continued*

Obtaining Ohio Franchise Tax and Sales Tax Exemptions

Nonprofit corporations are generally exempt from Ohio corporation franchise taxes and sales taxes. It is, of course, necessary to file the necessary forms with the State and to maintain and file required records and forms on a periodic basis.

Registration with the Ohio Attorney General

The Ohio Revised Code requires every charitable organization, unless specifically exempt from the requirement, to file a registration statement with the Ohio Attorney General. Charitable organizations required to file such a registration may not, prior to such registration, solicit contributions in the state by any means. The registration statement must include a significant amount of information about the organization, allowing the state to keep a close regulatory watch on corporate activities.

Conclusion

Incorporating an organization as a nonprofit corporation is a step many organizations should, and do, take. Forming the nonprofit corporation is not the end of the legal road, however. Nonprofit corporations are subject to a number of continued reporting requirements from a variety of state and federal regulatory agencies. Continuing compliance with all applicable legal and regulatory requirements is essential to the nonprofit, tax-exempt, limited liability status of the organization. For more information on these going concern requirements, it is important to seek legal or other professional advice.

For more information on how Strauss & Troy can assist you in creating your Ohio nonprofit organization or with any other legal issues that arise, please feel free to contact Mr. Heldman or Mr. Williamson at (513) 621-2120.

Gone “Phishing” *continued*

personal information such as names, addresses, and social security numbers were stolen. Other purveyors of information, such as Lexis-Nexis, have also suffered breaches. Criminals accessed personal information of 310,000 people whose files were maintained in a Lexis-Nexis database. Recently, the Associated Press reported that data was apparently stolen from retailer Polo Ralph Lauren, forcing banks and credit card issuers to notify thousands of consumers about the breach. State and Federal law makers are considering tighter regulations on information brokers to better protect consumers' privacy.

On a more personal level, on-line computer thieves seeking personal information are also on the rise. While computer-based fraud made up just 12% of all identity fraud cases, instances of “phishing” increased by 1400% in 2004. “Phishing” is computer jargon for an e-mail scam – where the scammers fish for private information.

A phishing scam usually begins with a legitimate looking e-mail message that appears to be from your bank, mortgage company, credit card company, or other merchant or credit provider. The message urges you to click on an embedded link to verify your account information. Some of the more sophisticated schemes even suggest that you may be the victim of identity theft and request your legitimate information to be checked against information allegedly provided by a con artist. In most instances, the embedded link

will take you to what appears to be a legitimate site operated by your lender. But the site is **not** legitimate. Once there, you are encouraged to enter sensitive financial data, such as a password, account number, or social security number, which information is then stolen. A recent phishing scam targeted users of Yahoo and eBay. Once victims entered their user names and passwords, that information was used by con artists to conduct fraudulent on-line auctions.

In a variation of these scams, the user is redirected to the legitimate site of the lender, but a pop-up window is superimposed in front of the page, asking for account information. While the actual site is legitimate, the pop-up window forwards your user name, account number, and password, directly to the scammers. Recent company names used by phishers in their scams include eBay, Washington Mutual, KeyBank, Huntington Bank, Charter One Bank, and PayPal.

To avoid becoming a victim of a phishing scheme, remember these tips:

1. Legitimate companies do not ask for personal or financial information by e-mail. Likewise, they do not conduct investigations of suspected on-line fraud by e-mail. If you are in doubt about the validity of a request for verification from what appears to be a legitimate lender, contact that institution directly by telephone, using contact information provided in your monthly statement, for example. Do not use links in the e-mail. Be especially suspicious of e-mails that refer to you as “Dear Valued Customer” instead of your name.
2. Review and monitor your monthly statements for unauthorized charges. Follow the procedures set out by each institution for contesting unauthorized charges. Always make your objections in writing, and keep copies of what you send.
3. Avoid accessing your on-line accounts at public terminals, such as in libraries. Scammers will often install software to capture that information and retrieve it later, long after you have completed your transaction.
4. Monitor your credit report. A new law gives consumers the right to one free credit report annually from each of the three major credit bureaus. You can go to www.annualauditreport.com for more information on this new law. In addition, each credit bureau also offers for a fee a credit monitoring service that will alert you in the event of changes to your credit report. While these protections may be too costly for everyone, they may be valuable for high risk consumers, such as prior victims of identity theft.

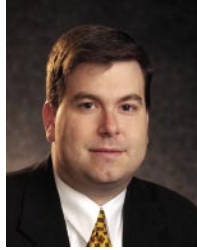
Ultimately, vigilance in protecting your personal financial data and monitoring your monthly statements and credit reports is still the best defense against identity theft.

Charles Ashdown is a partner of the firm and regularly practices in the area of real estate and general commercial law with an emphasis on business-related litigation. For more information on identity theft, please call Mr. Ashdown at (513) 629-9464.

Strauss & Troy's Rising Stars

Strauss & Troy is pleased to announce that seven of its attorneys have been selected as "2005 Ohio Rising Stars," in connection with the Ohio Super Lawyers program. This designation is awarded only to attorneys age 40 and under, and only 2.5% of the eligible attorneys are selected, based on an attorney-led research process.

We are honored to introduce the firm's **2005 Ohio Rising Stars:**



Joseph J. Braun



Jeremy A. Hayden



August T. Janszen



Nicole M. Lundrigan



Lori A. Ross



Michael A. Ruh



Pete A. Smith

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