

BASICS OF REPRESENTING NONPROFIT CORPORATIONS

SESSION 1

JONATHAN R. WHITEHEAD

1. Common misperceptions about nonprofit law.
 - a. It's *simple*.
 - b. It's not for profit.
 - c. It's a job for *volunteer, attorney-directors*.
 - d. It's no *harm*, no *foul*.
 - e. With all these exemptions, we'll have more *time to do good!*
 - i. *Tax* exempt does not mean *paperwork* exempt.
 - ii. Just like the for-profit world, *execution* trumps *ideas*.
2. Terms
 - a. Nonprofit: *a company where profits are not distributed to owners, and do not benefit the owners*.
 - b. Missouri Nonprofit Corporation: *a Missouri corporation formed under Chapter 355, RSMo. (52 / 94/ 08)*.
 - c. Not-for-profit: *A kind of activity, not a kind of organization*.
 - d. Benevolent or Pro Forma Corporation: *a Missouri corporation formed under Chapter 352, RSMo*.
 - e. Tax-exempt: A tax status; a *nonprofit* is not necessarily *tax-exempt*.
 - f. Charity: a subset of tax-exempt organizations.

3. Legal oversight and liability has *drastically* increased.
 - a. Charitable *immunity* = Gone.
 - a. *Abernathy v. Sisters of St. Mary's*, 446 S.W.2d 599 (Mo. 1969); Mo. Ann. Stat. § 354.125 (Noel v. Menninger Foundation, 267 P.2d 934, 943(Kan. 1954).
 - b. Religious *deference* = Gone.
 - a. *Presbytery of Elijah Parish Lovejoy v. Jaeggi*, 682 S.W.2d 465 (1984).
 - c. Free pass for people with a good heart = *if it ever existed, gone.*
 - a. *(Intermediate Sanctions).*
 - d. But, for *volunteers*:
 - i. *VPA, 1997 (42 U.S.C. 14501-05)*
 - ii. *MVPA - RSMo. § 537.118.1*

4. Missouri's two kinds of nonprofit corporations, Chapter 352 and Chapter 355.
 - a. The wrong reason to choose: *attorney time at startup.*
 - b. Newer is not always better.

Chapter 352 versus Chapter 355.

Chapter 352:

Requires three persons.

Formation and dissolution are a return to older customs.

Three to form = Roman. "tres faciunt collegium"

Court oversight = English (King's Visitation power limited to King's Bench).

Articles of Agreement = English concept of *charter*.

Sovereign's consent = English/Roman (SOS).

Encompasses all kinds of governing structures.

Churches.

Historical Colleges (Overseers / Trustees). (bicameral)

"Board."

- c. Or is it *three kinds?* **RSMo. 347.187.**

- 5. Multiple regulators of nonprofits.
 - a. **Attorney General.**
 - b. **IRS.**
 - c. **Fiduciary and Contractual Duties**

Filled versions of this outline at: www.whiteheadlawllc.com/mobaracle2014

Jonathan Whitehead jon@whiteheadlawllc.com
Law Offices of Jonathan R. Whitehead LLC
229 S.E. Douglas St., Ste. 210
Lee's Summit, Mo 64063
816.398.8305 - Phone