

# Compliance & Ethics

## PROFESSIONAL



Vol. 7 / No. 2  
04 / 2010

A PUBLICATION OF THE SOCIETY OF CORPORATE COMPLIANCE AND ETHICS

### TOP STORIES INSIDE

- 4 Effective ethics and compliance training
- 9 In memory of Linda Lipps
- 26 Making the most of online networking opportunities
- 30 The risk of e-discovery sanctions for in-house counsel
- 36 Proposed revisions to the Federal Sentencing Guidelines for Organizations
- 44 Handling subpoenas and search warrants: An interview with Latour "LT" Lafferty



Meet Compliance & Ethics Professionals on

# SCCEnet

<http://community.corporatecompliance.org>

JOIN THESE COLLEAGUES: NETWORK, SHARE, AND LEARN

## 2009—The year from heck for professional associations

Roy Snell



This picture depicts our staff doing work they could easily have hired temps to do. The staff in this picture include many people (e.g., our CFO) who could justifiably claim stuffing binders or conference bags is beneath them. This picture depicts why we are where we are. Several times a month we need to put together binders or marketing materials. A call goes out from a staff member to all of the staff to come help for a couple of hours. 2009 was a wildly successful year for us, despite the economy. If I could select one picture to symbolize why we survived/thrived in 2009, this would be the picture.



This is just one example of what we do to save our members money. Many associations outsource everything that isn't nailed down. Most association executives and staff are more worried about what wine to serve at dinner than they are worried about running an association. Many associations would rather pay a for-profit company to do work that they think is beneath them. They pay others to do work they don't feel like doing. Some outsourcing (e.g., the annual audit) is necessary; most outsourcing is not necessary, nor is it advisable. Companies we outsource to have the same expenses we do. However, for-profits are there for a profit. They add 10% or 20% so they can buy the owner a condo in Bolivia. It is inconceivable to me how people can think outsourcing simple things like copying, graphic design, meeting management, etc. can be done more cheaply by someone else. If an association is

inefficient and hires the wrong people, they might be better off outsourcing. However, the real fix for that is to fire the leadership and hire staff who can get the work done.

We not only save money by doing the dirty work, we build a better culture. Rather than a culture of laziness, we build a culture of hard work. Rather than a culture of elitism, we build a culture of humility. Rather than building a culture of individuals, we build a culture of teamwork. Rather than building a culture of extravagant spending, we build a culture of cost containment. Rather than a culture of me, we build a culture of you, the member. We don't have everyone (including supervisors) drop everything to fill binders, answer the phone, or respond to an e-mail, just to save money. We do it to build a positive culture.

Prior to about 8 years ago, we outsourced the management of this organization to an association management firm. They outsourced some jobs that they didn't feel like doing. They didn't care, because we (you) paid those bills. In the end, their membership service was horrible, their inefficiencies were significant, and our membership growth was stagnant. In our first full year of in-house management, we performed better financially than all of the years they managed this organization *combined*. We pulled almost everything they outsourced back in-house. It was an incredible condemnation of outsourcing. The second year our financial performance doubled. Fast forward to 2009. Because of the economy in 2009, we were able to test our governance structure, management, and our staff like never before. This article is about our model and the result of the test of 2009.

In the fall of 2008, many people were unsure how deep this recession would be. Even now, in the first quarter of 2010, some are still unsure. The fall of 2008 was a terrifying time for professional associations like ours. Members of every professional association have a travel and education budget. Quite often, the first thing to be cut in a recession is the members' budget for education

*CONTINUED ON PAGE 13*

and travel. That is a real problem for professional associations. The average association generates about 30% of their revenue from conferences. Our percentage is much higher. When conference attendance falls, the revenue loss comes right off the top. In other words, for every attendee who doesn't come to the meeting, the association's net profit drops. If you lower your net long enough, it becomes a loss. I have seen several estimates of the average conference attendance drop last year. Most estimates are around 25% to 30%. Some individual conferences dropped as much as 50%. Some meetings were canceled. Our 45 conferences dropped an average of about 15%.

Non-profits are not concerned about net profit as much as net losses. We are different from for-profits in that we want to limit our profit. However, like for-profits, we don't want the profit to go away entirely. The average association keeps approximately one half of their annual expenses in reserve (savings). In other words, if they have no revenue for six months, they can still pay their bills. If the loss of revenue continues into the seventh month, they need to get a loan. If you lose that much in six months, a loan is hard to come by. Of course, revenue will never drop off entirely overnight, but there is a limit to the time you can sustain a net loss. One association I know of filed Chapter 11 last year, because their annual meeting went badly. They had no reserve and no one would loan them money.

Some associations believe that they should not save any of the members' money in reserve, but rather pour it all back into member services. The association that filed Chapter 11 thought pouring all their money into member services was a good policy. Ironically, as a result of their "member service" philosophy, their member services are now severely hampered. They gained nothing by not saving. It is possible they won't even survive this series of poor decisions. Smart associations save some money and

when they have met their goal for reserve, they pour all the money they receive back into member services. They make money off their savings and, if there is financial trouble, member services are not adversely affected, because the association can use the reserve.

We saved money prior to the stock market crash. We made approximately 3% annually on our savings in the 3 years prior to the 2008 stock market crash. We had none of your money in the stock market. We lost nothing. Your Board and Finance Committee made great decisions. In the fall of 2008, they moved it all into Treasury Bills to protect it further. Other associations lost millions of dollars. We have since invested it in very low-risk areas and have taken advantage of the recent upturn in the economy.

In the fall of 2008, our association's president said, "We can't control revenue as easily as we can control expenses." As a result, we started cutting. Many associations tried to cut costs, but many associations took too long, or cut too little. Many were prevented from making significant cuts because members, staff, and/or the board were reluctant to act. Many associations have many committees, and many of their decisions have to be approved/reviewed/watered down by many committees. They meet infrequently and delay decisions. They cannot act quickly, and decisions are muddled by a myriad of people all pointing in different directions. They do not operate efficiently, because they don't delegate to the right people and they don't trust them. Trust is a risk. Bureaucracy is not a risk; it is a guarantee of mediocrity.

This issue was discussed in a recent article written by Dadie Perlov and Linda Shinn entitled "Shrink Your Governance Structure."<sup>1</sup> The authors said, "In many cases, the size of Boards of directors and the proliferation of committees and task forces have stifled innovation and hindered member involvement, resulting in swollen governance structures that make it difficult for associations to react quickly to challenges and changes in the marketplace." The hidden gem in this albeit run-on sentence is the fact that bureaucracy limits member involvement. It's a gem because it is counterintuitive. It's also part of the reason they created the bureaucracy. They wanted to give more people the opportunity to be involved. If you get people involved by adding bureaucracy, and that slows decisions and dilutes innovation, fewer people get to be involved in the long run.



CONTINUED ON PAGE 14

# Compliance & Ethics PROFESSIONAL ADVISORY BOARD

## PUBLISHER:

Society of Corporate Compliance and Ethics  
+1 952 933 4977 or 888 277 4977

## EDITOR-IN-CHIEF:

**Rory Jaffe**, MD, MBA, CHC, *Executive Director, California Hospital Patient Safety Organization (CHPSO) Sacramento, CA, rsjaffe@gmail.com*

## EXECUTIVE EDITOR:

**Roy Snell**, CCEP, CHC, CEO, *roy.snell@corporatecompliance.org*

## ADVISORY BOARD:

**Charles Elson**, JD, Edgar S. Woolard, Jr. Chair in Corporate Governance, Director of the John L. Weinberg Center for Corporate Governance at University of Delaware.

**Jay Cohen**, President, J.M.Cohen, LLC.

**John Dienhart**, PhD, The Frank Shrontz Chair for Business Ethics, Seattle University; Director, Northwest Ethics Network; Director, Albers Business Ethics Initiative; Fellow, Ethics Resource Center

**Odell Guyton**, JD, Senior Corporate Attorney, Director of Compliance, U.S. Legal-Finance & Operations, Microsoft Corporation

**Rebecca Walker**, JD, Partner, Kaplan & Walker LLP

**Rick Kulevich**, JD, Senior Director, Ethics and Compliance, CDW Corporation

**Steve LeFar**, General Manager, Mediregs, Wolters Kluwer Law and Business

**Stephen A. Morreale**, DPA, CHC, CCEP, Principal, Compliance and Risk Dynamics

**Marcia Narine**, JD, Vice President Global Compliance and Business Standards, Deputy General Counsel, Ryder System, Inc.

**Ann L. Straw**, CCEP, Global Compliance Program Consultant, CNH America, LLC

**José A. Tabuena**, JD, CFE, CHC, VP Integrity and Compliance/Corporate Secretary, MedicalEdge Healthcare Group, Inc.

**Greg Triguba**, JD, CCEP, Principal, Compliance Integrity Solutions, LLC

**Dr. Daniel W. Kwong**, Economic and Public Affairs Committee Member, Hong Kong Institute of Directors

## STORY EDITOR/ADVERTISING:

**Marlene Robinson**, SCCE, +1 952 933 4977 or 888 277 4977  
*marlene.robinson@corporatecompliance.org*

## COPY EDITOR:

**Patricia Mees**, CCEP, CHC, +1 952 933 4977 or 888 277 4977  
*patricia.mees@corporatecompliance.org*

## DESIGN & LAYOUT:

**Sarah Anondson**, SCCE, +1 952 933 4977 or 888 277 4977  
*sarah.anondson@corporatecompliance.org*

**Gary DeVaan**, SCCE, +1 952 933 4977 or 888 277 4977  
*gary.devaan@corporatecompliance.org*

COMPLIANCE & ETHICS PROFESSIONAL (C&EP) (ISSN 1523-8466) is published by the Society of Corporate Compliance and Ethics (SCCE), 6500 Barrie Road, Suite 250, Minneapolis, MN 55435. Subscriptions are free to members. Periodicals postage-paid at Minneapolis, MN 55436. Postmaster: Send address changes to Compliance & Ethics Professional, 6500 Barrie Road, Suite 250, Minneapolis, MN 55435. Copyright © 2009 the Society of Corporate Compliance and Ethics. All rights reserved. Printed in the USA. Except where specifically encouraged, no part of this publication may be reproduced, in any form or by any means without prior written consent of the SCCE. For subscription information and advertising rates, call +1 952 933 4977 or 888 277 4977. Send press releases to SCCE C&EP Press Release, 6500 Barrie Road, Suite 250, Minneapolis, MN 55435. Opinions expressed are those of the writers and not of this publication or SCCE. Mention of products and services does not constitute endorsement. Neither SCCE nor C&EP is engaged in rendering legal or other professional services. If such assistance is needed, readers should consult professional counsel or other professional advisors for specific legal or ethical questions.

## 2009—The year from heck for professional associations CONTINUED FROM PAGE 13

I will share more on how to get more people more effectively involved later.

We reacted quickly to the recession. We had very little resistance. Everyone helped think of ideas to save money. Most of all, we were very surgical. We tried to cut expenses that would not visibly affect member services. We, like many associations, were worried about the potential for significant losses in 2009.

I don't think the cuts we made affected member services in a significant way. I listen to our members by sitting in the lobby at our meetings, and occasionally, I answer our toll-free number. Everyone on our management team looks at the problems/questions that come into the general e-mail box. I talk to anyone I can throughout the course of the day about how things are going. I firmly believe that our cuts were barely perceptible to our members. I must admit, though, the idea to cut the drink tickets at our meetings did cause a ruckus. After having such a good year last year, we have "surgically" put back in some of the expenses, including the drink tickets. As a result of our efforts last year, we avoided losing money. In fact, 2009 was one of our best years ever financially because we cut our expenses.

Many associations lost money last year. In contrast, we made a significant contribution to our reserve. This is helpful because this recession has caused most professional associations to change their reserve policy. Most are now shooting for a full year of annual expenses in reserve rather than just six months. Needless to say, few associations increased their reserve last year. Many had to dip into their reserves to pay their bills. We are now more prepared for hard times than we were last year. Our revenue was actually down a little in 2009. Membership was up. We still marketed very heavily, but did it more efficiently than we had in the past. Our success was a result of our expense management, and our expense management was possible because of our governance and management structure.

We are more nimble than others because we don't set up countless committees to appease people who give lots of money or want something for their resume. We don't take money from people who expect to buy a seat at the table. We pick our leaders and volunteers based on their specific experience. We pick people who have expertise related to what we are asking them to do. By selecting people based on their ability, we get better decisions. Other associations' volunteers think that because they have attended a conference,

they can run a conference. Other associations' volunteers think that because they are a member of an association, they can run an association. Other associations' members think that because they give more money or have a big title or come from a prominent organization, they are automatically qualified to make decisions for all of the other members. Our board governs, and they hire people to run their association.

What really caused our success? Why did we succeed when so many struggled? Is there an overarching philosophy that has made the difference? There is. However, it is not a difference most people would tie to our success. We have a system where all members are created equal. We have no way to buy your way into more volunteer opportunities. Many of our members help with projects and decision making. However, their involvement is specific, effective, efficient, and geared to their expertise. Members who become more involved do so because of what they know.

This might be a good place for a disclaimer. Many of my comments and claims in this article are generalizations. There is an exception to all of my generalizations. Things don't always work as planned, but they generally work as planned. They work often enough to make my comments and claims in this article reasonable.

Some people get involved in professional associations by constantly complaining, bullying, lobbying, or trying to manipulate their way into the system. Few people behave this way, but enough do that, if it is not controlled, it can ruin an organization. Many people who run professional associations want to avoid conflict. They are willing to avoid short-term minor pain for long-lasting bigger pain. I can assure you that it takes great strength and constant effort to make sure people are picked for their abilities. As you can imagine, it is easier to go along and get along.

Last year was the greatest test of our approach, when all professional associations were severely tested. The economic challenges of 2009 were a test for us and for other associations. Many associations have succumbed to the rich and the powerful. Many have set up committees for every action and decision they need to make. They have acquiesced to the loud and overbearing. They have given decision making to people for the wrong reasons, and last year, the recession magnified their problem. What is the alternative? The alternative is delegation and trust.

We have trust. Our board trusts the staff. Our staff trusts our board. Our board members trust each other. The latter is important, because large/important tasks can be delegated to a staff member and a board member, or a staff member and a volunteer. Without a committee to appease, decisions can be executed quickly. Tasks can be executed without unnecessary compromise often found in excessively committee-based associations. It doesn't mean there is no oversight; it means there is no micromanagement. It doesn't mean there is no compromise. We have our problems like everyone else, but we have a great system.



We don't spend a lot of time figuring out what wine to order for dinner. We go to board meetings to serve the members. Our board meets two times a year. All of the "ancillary" tasks are delegated to individuals or a small group of individuals with a very specific objective and a specific date of completion. They receive a very specific mission and instructions. They move quickly and efficiently, and they have some oversight to make sure they don't deviate from our overarching mission. In other words, we have a governance system, not a bureaucracy designed to pad resumes and egos. We trust and delegate to people who are selected for their knowledge and experience.

As a result, we have grown into the largest compliance professional organization in the United States. In fact, depending on what organizations you consider a "compliance and ethics professional association," we may be larger than all of the other organizations like ours, in the world, combined. Because we are so big, we have more opportunities for volunteers. This is one of the world's great ironies. If you let people set up countless, pointless, micromanaging committees, you will end up with fewer volunteer opportunities in the long run. Committees need to feel a sense of purpose. They can't just meet. They have to decide things.

*CONTINUED ON PAGE 16*

They have to oversee things. They need to approve things. If you have too many committees, you will limit growth. It's ironic, because associations set up committees to give people more volunteering opportunities. Because of the bureaucracy, they stifle growth and decision making, and that stifles volunteer opportunities. Our results in 2009 indicate that the delegate-and-trust philosophy works.

About 5 years ago we hired the number one association management consultant in the business. He had written several books, and he teaches the premier management workshops for association leadership for ASAE (American Society of Association Executives, the association for associations). He submitted a proposal for \$6,000. Halfway through the project, he was telling us about all the committees he was going to add to our organization. I called our board president and shared my concerns. He said he had the same concerns. We called the consultant and offered him \$3,000 to end the engagement. He took it, but was dumbfounded.

He called back a couple of times to tell me how his system was one of the most effective in the business. I told him we were worried about the number of committees. He said his system streamlined most associations' complex committee systems. We resisted finishing the project. His logic was that the bureaucracy he proposed was much better than the average bureaucracy, so it was okay. He said this had never happened to him before. Of that I have no doubt. Most associations have so many committees that his complex system was less complex. Our point was: just because his system was more effective than most didn't mean it was more effective than ours. That's how bad it is out there. That's why so many associations lost so much money last year. That's why so many associations can't get anything done in a timely manner.

Our system doesn't come without a cost. In fact, we have to stand strong when people want to move toward a more bureaucratic system. It seems everyone wants to make decisions with the aid of committees. Our success has helped ease this burden, because people see that our way is working. What many associations don't know is that adding one committee is bad. They think, "What's one more committee?" It's the fact that so many people want to add so many committees that will end up getting you in trouble. The worst part is that committees are like superglue. Once you set them up, they stick. People never

recommend getting rid of committees; they just think of ways to add more. I have an interesting example of how the push for adding committees is a constant phenomenon.

I was at a Christmas party. I met a woman who was an independent marketing consultant for associations. She listed some big-name organizations to establish her credibility. I was very excited to talk. I hate parties and I love marketing.

She was telling me, "It is all about membership retention." She said, what you need to do is get members involved. She suggested that you should tell new members to get involved in a committee (in the new member welcome package). I asked how many committees we would need to accommodate 7,800 members. The conversation quickly spiraled out of control. Okay, maybe I drove it out of control. I would rather get along with people. However, I have difficulty going along to get along when I believe our organization's success will be affected in a material way. I would rather fight off poor decisions than get along. She had been consulting for years. That means she might have been helping run professional associations into the ground for years. I wasn't interested in doing that to ours. We decided to talk about something else.

By the look of many other professional associations, a lot of people are getting along just great. They get along. They go along. They would rather switch than fight. They add a committee every time someone thinks about it or someone gives money with a catch. It is very difficult to prevent micromanagement from seeping into an organization. It is a constant battle. How can you argue with adding one committee? "It gets more people involved." "You get better decisions, because there are more ideas." "It ensures there is proper representation of multiple interests." That's what an academic would tell you. That is logical. That makes sense. The problem is that it's simply not true.

The poorly run associations paid for it last year. A bad economy is like holding up a magnifying glass to a business. The average association lost money in 2008 and 2009. Bad management and bad governance structures are magnified by a bad economy. Good management and good governance are magnified by a bad economy. We may have some tense days, but in the long run, we are better for it.

The great irony is that people believe that to get the members involved, you have to be on a committee. It's like they haven't given this any thought at all. Committees

are not the only way to volunteer. You can get involved in many other ways to get something of value you can proudly put on your resume.

We have a lot of opportunities to volunteer. We have 1,000 opportunities a year to be a presenter. That includes conferences, audio conferences, social media guest stars, etc. With 1,000 opportunities to present each year, we have to reuse some speakers. We had 45 different people speak at our Academies in the last two years. Most associations use outside consultants for their workshops. We use volunteers. Most of our other 30 conferences have 60% to 70% turnover each year. With 1,000 opportunities each year, there is going to be some repetition of speakers; however, we have more opportunities than most organizations our size.

We get our members many opportunities to speak at other associations' meetings. We had 254 people involved in planning conferences last year. We may have more people involved in planning conferences than most organizations have speakers (of associations our size). We publish 200 articles each year, all written by our members. Hundreds of people have contributed blogs, documents, articles, and comments to our Social Network. We have six certification programs that have involved dozens of volunteers over the years.

We would like to involve everyone. No association can involve everyone. However, we want to try, so we set up our Social Network. We have 50 different subspecialty groups in the Social Network. Anyone can contribute a website link, a document, an article, a presentation, a comment, an answer to a question, etc. More than 4,000 people now participate in our Social Network in one way or another. All members are invited to volunteer at any time. We have essentially set up a system that connects all our members anytime they want. Anyone can "speak" anytime they want. Anyone can contribute anything whenever they please. We essentially have taken the "control" of volunteer selection out of the hands of the organization and put it in the hands of the members.

Some of the people who contribute the most to our Social Network are becoming more well known than those who speak on a regular basis. Many of those involved in the Social Network are increasing the size of their personal network faster than those who sit on several committees.

We have a lot of ways to become involved. We have a non-bureaucratic system of delegation and trust. We have

a great staff. We have an effective board. We have a tremendous number of experienced and talented members. We survived/thrived during the economic downturn in 2009 because of the way we do things. It doesn't always work the way I have claimed. However, our system has proven itself a successful system in the worst year any professional association has gone through in 50 years. Kudos to our staff, our board, our volunteers, and our members. ♦

**Note:**

- 1 Dadie Perlov and Linda Shinn: "Shrink Your Governance Structure." *Forum magazine*, January/February 2010. More at [www.theforumeffect.org](http://www.theforumeffect.org).

## BE SURE TO GET YOUR CCEP CEUS

Complete the *Compliance & Ethics Professional* quiz related to the articles below:

**A culture of respect**—By Frank J. Navran, page 28

**The risk of e-discovery sanctions for in-house counsel**—By Ann L. Straw, page 30

**Proposed revisions for the Federal Sentencing Guidelines for Organizations**—By Rebecca Walker, page 36

### New CEU Credit Procedure

Visit [www.corporatecompliance.org/quiz](http://www.corporatecompliance.org/quiz) to obtain one CEU per quiz. Select a quiz, fill in your contact information, and answer the questions. The online quiz is self-scoring and you will see your results almost immediately.

Or, you may FAX or MAIL the completed quiz to Liz Hergert at SCCE. Questions? Please call Liz Hergert at +1 952 933 4977 or 888 277 4977.

Please note that credit will be given only for quizzes received before the expiration date indicated on the quiz.