

**COMMITTEE ON NON-PROFIT  
ORGANIZATIONS**

DAVID G. SAMUELS  
CHAIR  
41 MADISON AVENUE  
NEW YORK, NY 10010-2202  
Phone: (212) 889-0575  
Fax: (212) 743-8120  
david@perlmanandperlman.com

KARIN HOLMBERG WERNER  
SECRETARY  
425 LEXINGTON AVENUE  
NEW YORK, NY 10017-3954  
Phone: (212) 455-3871  
Fax: (212) 455-2502  
kwerner@stblaw.com

May 3, 2006

Gerald Rosenberg, Esq.  
Assistant Attorney General-in-Charge  
Charities Bureau  
New York State Department of Law  
120 Broadway  
New York, New York 10271

Re: Attorney General's Legislative Program Bill #63-05  
Assembly Bill #07580 and Senate Bill #04111

Dear Mr. Rosenberg:

This letter is submitted by the Committee on Non-Profit Organizations (the "NPO Committee") of the Association of the Bar of the City of New York (the "Association") for the purpose of communicating the NPO Committee's endorsement of the Attorney General's Legislative Program Bill #63-05 (the "Bill"), subject to the inclusion in the Bill of the changes suggested herein.

The NPO Committee: As you are aware, the members of the NPO Committee are lawyers in the New York City area with an interest in legal issues affecting non-profit organizations. NPO Committee members include attorneys in private practice and others who serve as "in-house" counsel to non-profit organizations. This

group includes a former Deputy Bureau Chief with the Charities Bureau of the New York State Office of Attorney General. A list of committee members is attached to this letter. The NPO Committee believes the collective professional experience of its members provides a perspective that is pertinent to the Office of the Attorney General, as well as to the Senate's and Assembly's consideration of the Bill. However, the views expressed in this letter reflect the views only of the NPO Committee, not necessarily the views of any non-profit organizations with which members of the NPO Committee are affiliated or whom they represent.

Background: As submitted, this Bill seeks to amend New York's Executive Law regarding the solicitation of charitable contributions and enhance the available enforcement actions to prevent fraudulent charitable solicitations. Currently, Executive Law §175 authorizes the Attorney General to commence a Court proceeding to enjoin fraudulent charitable solicitation, cancel a registration statement and seek restitution for the public. Alternatively, Executive Law §177 authorizes administrative proceedings to suspend or revoke the charity's registration and to impose civil penalties. However, Executive Law §177 expressly prohibits such administrative proceeding if a court proceeding has been commenced, thereby preventing the Attorney General from seeking a court injunction and then administratively revoking the charity's registration and obtaining civil penalties.

Further, the Executive Law presently limits civil penalties to a maximum of \$1,000 per violation, which according to the Office of the Attorney General has been viewed as a mere cost of doing business and not a deterrent by the violators.

Reason to Change Law: This Bill provides that the Attorney General may commence a civil penalty proceeding while simultaneously seeking to enjoin the fraudulent solicitation. As stated in the Attorney General's memorandum in support of the Bill, its purpose is to "enhance efforts to prevent fraudulent charitable solicitations, particularly fraudulent campaigns that divert funds from firefighter support organizations." The memorandum further states this proposal seeks to "help ensure that charitable donations intended to benefit firefighter and correction officer support organizations are not improperly diverted to those engaged in fraudulent solicitations and . . . enhance the State's ability to prevent fraudulent solicitations in general."

A summary of the bill's key provisions, *if enacted*, are as follows:

"firefighter support organizations" will now be subject to Article 7-A registration and reporting requirements in the same manner as "law enforcement support organizations," thereby providing for regulatory oversight;

organizations of corrections officers will be explicitly included in "law enforcement support organizations" and also subject to the registration and reporting requirements;

fire departments are not subject to the registration and reporting requirements of Article 7-A;

firefighter support organizations are exempt from the registration requirements of Article 7-A when solicitation of contributions is limited to their membership; and

available enforcement options and penalties are increased for those who engage in illegal activities with regard to charitable solicitations.

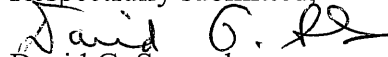
It has been noted by the Attorney General that some individuals have been fraudulently claiming to raise funds on behalf of local law enforcement personnel and firefighters, stating that funds will be used to support widows and orphans of law enforcement officers and firefighters who die in the line of duty. Currently, the charitable solicitation laws do not explicitly protect donors to, or the beneficiaries of firefighter support organizations. This bill serves the laudatory purpose of bringing firefighter support organizations within the oversight of the Attorney General through the registration and financial reporting mechanisms of Executive Law 7-A, as was previously accomplished with respect to law enforcement support organizations.

Conclusion: Because this Bill raises concerns regarding the resources required for small charitable organizations to defend themselves in both judicial and administrative forums at once, and because pursuing both proceedings at the same time could result in inconsistent rulings, the Committee believes that a better approach would be to amend the Bill to provide that all remedies could be sought in a judicial proceeding to enjoin fraudulent solicitation. In addition, while the Committee agrees that it is desirable to authorize the imposition of civil penalties of up to \$1,000 or twice the amount of the violator's gain, whichever is greater, the Committee recommends that the violator's "gain," as referred to in line 12 of page 8 of the Bill, should be defined.

Attached for your consideration is a definition of a "violator's gain." Note that it ties into the definition of "professional fund raiser" in Sec. 171-a 4. This definition also it places the burden on the violator to show that a penalty of 200% of gross compensation or other consideration received is unreasonable in a particular situation.

In closing, the NPO Committee would very willing to support the Bill if such changes were made. In this regard, I would be pleased to arrange a meeting with representatives of the NPO Committee if you feel such a meeting would be useful with respect to the amending of this Bill in the manner described above.

Respectfully submitted,

  
David G. Samuels  
Chair

## COMMITTEE MEMBERS

Karin H. Werner, Secretary  
Aida E. Bekele  
Professor Kathleen M. Boozang  
Professor Dana Brakman Reiser  
Ronna D. Brown  
Laura E. Butzel, Deborah Ann Buyer  
Cynthia S. Carlson  
Heather Bridgid Conoboy  
John J. Diehl  
Allison N. Engel  
Beth R. Essig  
Douglas Hayward Evans  
Professor James J. Fishman  
Linda R. Franciscovich  
Stephanie C. Gevirtz-Guberman  
Morton J. Goldfein  
Jeffrey Daniel Haskell  
Howard A. Jacobson  
Miree Kim  
Marc A. Kusher, Esq.  
Michael S. Kutzin  
Michael A. Lehmann  
JoAnn Luehring  
Kevin T. Matz  
Patrick J. McKenna  
Charles D. Mooney  
Edward A. Morgan  
Sandra B. Otero  
Michael A. Salberg  
Nuno M. Santos  
James Sisson Sligar  
Sunita Subramanian  
Philip T. Temple  
James A. Woehkle

Sec. 177. Administration and enforcement by attorney  
general and supreme court.

\*\*\*\*\*

Upon a finding by the supreme court that any person has  
committed or is committing a violation of any provision of  
this article, the supreme court may:

\*\*\*\*\*

(b) assess a civil penalty against the violator of not  
more than the greater of one thousand dollars or two times  
the gross compensation or other consideration received by  
the violator for each act or omission constituting a  
violation . . .