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**AUTHORS:**

**William H. Devaney**  
[whdevaney@Venable.com](mailto:whdevaney@Venable.com)  
212.983.8204

**Doreen S. Martin**  
[dsmartin@Venable.com](mailto:dsmartin@Venable.com)  
212.983.1179

**Nicholas M. Buell**  
[nmbuell@Venable.com](mailto:nmbuell@Venable.com)  
212.808.5660

**Jeffrey S. Tenenbaum**  
[jstenenbaum@Venable.com](mailto:jstenenbaum@Venable.com)  
202.344.8138

## Preventing Fraud and Embezzlement in Your Nonprofit Organization

There are several proactive steps nonprofit organizations can and should take immediately (if they are not doing so already) to prevent and detect employee fraud and embezzlement.

### Double Signatures, Authorizations and Back-up Documentation

Multiple layers of approval will make it far more difficult for embezzlers to steal from the organization. For expenditures over a predetermined amount, require two signatories on every check and two different signatories on every authorization or payment. Where the professional staff of a nonprofit is too small to effectively implement a double signatory/authorization policy, consider having a (volunteer) officer or director be the second signatory. Similarly, all check requests and requests for cash disbursements should be accompanied by an invoice or other document showing that the payment or disbursement is appropriate. Never pre-sign checks. With credit cards, require prior written approval, again from two individuals, for costs estimated to exceed a certain amount. Require back-up documentation demonstrating the bona fides of the expense. And again, the person using the card should not be the same person authorizing its use.

### Segregation of Duties

Hand-in-hand with multiple authorizations goes the segregation of duties. At a minimum, different employees should be responsible for authorizing payments, disbursing funds, and reconciling bank statements and reviewing credit card statements. If the nonprofit does not have enough professional staff to effectively segregate duties, a (volunteer) officer or director should be tasked with reconciling the bank statements and reviewing credit card statements. Because embezzlement also can occur when funds are coming into an organization, no single individual should be responsible for receiving, depositing, recording, and reconciling the receipt of funds. By the same token, all contracts should be approved by a manager uninvolved and personally uninterested in the transaction and, wherever possible, larger contracts should be the product of competitive and transparent bidding.

### Fixed Asset Inventories

At least annually, the organization should perform a fixed asset inventory to ensure that no equipment or other goods are missing.

### Automated Controls

Use electronic notifications to alert more than one senior member of the organization of bank account activity, balance thresholds, positive pay

exceptions, and wire notifications.

## **Background Checks**

Background checks on new employees and volunteer leaders can unearth things such as undisclosed criminal records, prior instances of fraud, and heavy debt loads that can make it more likely that an employee or volunteer leader might succumb to fraud. The Association of Certified Fraud Examiners reports that 6% of embezzlers have been convicted of a previous fraud-related offense.

## **Audits and Board-Level Oversight**

The control measures discussed above only work if someone is checking. In addition to management, who should be ensuring that the measures discussed above are followed, nonprofits also should undertake regular external audits to ensure that these measures are effective. Organizations should establish audit committees on their boards of directors, containing at least one person familiar with finance and accounting, who would serve as the primary monitor of these anti-fraud measures. In lieu of an audit committee, smaller nonprofit organizations should consider putting a CPA or other financially knowledgeable person on the board of directors to serve a similar function.

## **Encourage Whistleblowers**

While nonprofits should encourage the reporting of suspected wrongdoing to management or a designated board member, employees must have a means of anonymous communication if they do not feel comfortable reporting to their supervisor or management. Employees may not report theft or mismanagement if they believe that their job is in jeopardy. The board of directors must ensure that these reports are taken seriously, that the reporting employee is protected, and that outside legal counsel is brought in as appropriate.

## **Strong Compliance Program**

The best way to prevent fraud and embezzlement and to protect nonprofits is a comprehensive and vigorous compliance program that must be more than a "mere paper program." An effective compliance program must be tailored to the specific organization, include a written code of ethics, be effectively implemented through periodic training, have real consequences for violations of the policy, have an effective reporting mechanism, and be periodically audited to ensure its effectiveness.

## **Self-Audits**

Bringing in outside expertise – such as CPAs experienced in conducting fraud audits (different from the standard annual financial statement audit) and attorneys experienced in evaluating and enhancing internal controls as well as training staff on best practices – can be a critical tool in both identifying fraud and embezzlement that may be occurring and in shoring up weak controls and other process deficiencies that may make the organization more susceptible to theft.

While there will always be instances where a determined thief manages to beat an organization's controls, the steps suggested above will go a long way toward deterring and preventing embezzlement and other types of fraud at nonprofit organizations.

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For more information, please contact William Devaney at [whdevaney@Venable.com](mailto:whdevaney@Venable.com), Doreen Martin at [dsmartin@Venable.com](mailto:dsmartin@Venable.com), Nicholas Buell at [nmbuell@Venable.com](mailto:nmbuell@Venable.com), or Jeffrey Tenenbaum at [jstenenbaum@Venable.com](mailto:jstenenbaum@Venable.com).

THE AUTHORS



**William H. Devaney, Partner**

William (Widge) Devaney is co-chair of Venable's Foreign Corrupt Practices Act (FCPA) and Anti-Corruption Group.

Mr. Devaney's practice includes white-collar criminal defense in federal and state proceedings, SEC enforcement investigations and actions, complex civil litigation, civil RICO, defending individuals and corporations in multi-national investigations, including FCPA and export control, as well as conducting national and international internal investigations on behalf of corporate management, audit committees and special committees of boards of directors.

Mr. Devaney has significant jury trial and appellate experience, as well as significant experience leading investigations.

Mr. Devaney was an Assistant United States Attorney in the District of New Jersey, where he was most recently a member of the Securities Fraud Unit. As a federal prosecutor, Mr. Devaney investigated and prosecuted numerous cases involving securities fraud, bank fraud, mail and wire fraud, tax evasion, money laundering, terrorism, government program fraud, computer trespass, and export violations. Prior to joining the Department of Justice, Mr. Devaney practiced white-collar criminal defense and complex civil litigation, representing clients in federal and state criminal investigations, SEC and CFTC investigations, as well as attorney disciplinary proceedings.

Mr. Devaney's recent matters have included the defense of corporations and individuals in areas such as the FCPA, export control and economic sanctions, antitrust, tax evasion, insider trading, accounting fraud, Medicare/Medicaid fraud, visa fraud, and mail and wire fraud, civil RICO, securities litigation and consumer fraud actions by state attorneys general. Mr. Devaney has also recently conducted several national and multi-national internal investigations for companies in the insurance, chemical, software, retail, and logistics industries.



**Doreen S. Martin, Partner**

Doreen Martin's practice includes white-collar criminal defense, corporate investigations and complex commercial litigation. A former New York State prosecutor, Ms. Martin has extensive trial and appellate experience. Ms. Martin is the Hiring Partner in the New York office of Venable. She also serves on the firm's Pro Bono and Diversity Committees.

Ms. Martin has advised and represented public companies and individuals in civil and criminal government enforcement actions including actions brought by the Securities Exchange Commission, the United States Attorney's Office and the New York Attorney General's Office. Ms. Martin has conducted internal investigations on behalf of corporate management, audit committees, and special committees of the board of directors for companies in the insurance, retail, financial services, and logistics industries. In addition, Ms. Martin handles all aspects of complex civil litigation in federal and state courts including civil RICO actions, securities fraud and products liability defense.

Ms. Martin's has advised and defended a non-profit credit counseling company in a class action lawsuit alleging violations of various consumer protection statutes; defended former directors and officers of an international manufacturing company in connection with Civil RICO and fraud claims; and defended the former CFO of a national bank in a class action and shareholder derivative suit alleging securities violations, Sarbanes Oxley violations and common law commercial tort and fraud claims.



**Nicholas M. Buell**

Nicholas Buell is a member of the firm's Commercial Litigation Group.

While in law school, Mr. Buell was a member of the Fordham Law Review and served as the Managing Editor of the Fordham Law Moot Court Board, where he wrote and edited moot court competition problems and oversaw the program's day-to-day operations.



**Jeffrey S. Tenenbaum**

Jeffrey Tenenbaum chairs Venable's Nonprofit Organizations Practice Group. He is one of the nation's leading nonprofit attorneys, and also is an 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 one of only seven "Leading Lawyers" in the Not-for-Profit category in the prestigious 2012 *Legal 500* rankings, and one of only eight in the 2013 rankings. Mr. Tenenbaum was recognized in 2013 as a Top Rated Lawyer in Tax Law by *The American Lawyer* and *Corporate Counsel*. He was 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 2012-14 editions of *The Best Lawyers in America* for Non-Profit/Charities Law, and was named as one of Washington, DC's "Legal Elite" in 2011 by *SmartCEO Magazine*.

**OVERVIEW OF VENABLE'S NONPROFIT ORGANIZATIONS AND ASSOCIATIONS PRACTICE**

With more than 600 nonprofit clients nationwide, Venable has the largest concentration of attorneys in the country providing counseling and advocacy for charities, trade associations, professional societies, foundations, advocacy groups, private schools, colleges and universities, hospitals, and other types of nonprofit organizations.

Our clients—ranging from some of the nation's largest philanthropic charities to a "who's who" of trade and professional associations—call on us for assistance with matters of general nonprofit law and matters unique to their industries, professions, causes or issues.

**The Venable advantage: deep experience with nonprofit legal issues.**

As a result of our extensive experience in representing nonprofit organizations, virtually no legal issue or problem is new to us. Experience with the most common and the most unusual issues enables us to provide precise answers and workable solutions with a legal style marked by ingenuity and pragmatic judgment.

**Legal experience, reinforced by personal involvement.**

Our understanding of the nature and business of nonprofits—derived not only from our legal practice, but also from our deeply rooted participation in the nonprofit community—enables us to offer broader and more useful counseling that recognizes the practical management, political, and business considerations involved in the issues faced by nonprofits.

Our attorneys contribute to the nonprofit community in many ways, including giving speeches, writing articles, serving on boards and committees, and offering their time and resources to numerous nonprofit events and initiatives. For example, we give dozens of presentations a year to nonprofit executives and regularly publish articles on nonprofit legal issues (see [www.Venable.com/Nonprofits/Publications](http://www.Venable.com/Nonprofits/Publications), [www.Venable.com/Nonprofits/Events](http://www.Venable.com/Nonprofits/Events) and [www.Venable.com/Nonprofits/Recordings](http://www.Venable.com/Nonprofits/Recordings)).

**Seasoned attorneys who have walked in your shoes.**

Venable maintains a core team of approximately 20 attorneys who concentrate exclusively on the legal needs of nonprofit organizations. Our teams work day-in and day-out addressing the legal issues of nonprofit clients. Our attorneys are leaders in what they do, with comprehensive résumés of credentials and achievements in their respective areas of concentration.

Venable has several attorneys who have previously worked in-house at nonprofits. This wide-ranging experience has proved invaluable in understanding and relating to the unique needs of our clients. Both as individuals and as a team, we provide the responsive, efficient service needed by the nonprofit community.

Additionally, Venable operates the Venable Foundation, its own charitable vehicle to promote the health and well-being of the communities where Venable’s clients and attorneys work and live. As such, we are more than just attorneys—we are partners with our clients in bettering our cities and communities.

**Integrated legal services that bring a deep bench and a one-stop-shop to the full range of nonprofit legal challenges.**

While members of our nonprofit team spend their time addressing the legal issues affecting nonprofit clients, our practice is much broader than that. We are fully integrated with the rest of our firm and frequently draw on the knowledge and experience of hundreds of attorneys in every Venable office. This carefully selected network of attorneys not only brings an unmatched wealth of experience in areas such as those listed here (and many others), but also brings an understanding of how these other areas of law apply to the unique characteristics of nonprofits, due to the frequency with which these attorneys work with these clients.

Our clients frequently remark how much they appreciate Venable’s ability to serve as a “one-stop-shop” for all of their legal needs. Our deep “bench” in virtually every legal area and issue affecting nonprofits enables us to tap into the experience required to deal with the most complex and nuanced legal challenges. Venable’s attorneys throughout the firm—coupled with our core nonprofit practitioners—form a powerful team that works seamlessly to provide our nonprofit clients with everything they could need or want from a law firm, in a manner that is both cost-efficient and effective.

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