

NEXT CHALLENGE. NEXT LEVEL.

NEXSEN | PRUET

LITIGATION ISSUES FACING NON-
PROFIT ORGANIZATIONS

TRADE GROUP SYMPOSIUM 2018 WITH

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Risks in serving Alcohol

- What is the venue?
- Social gathering
- Networking
- Fundraising
- Meal event
- Meeting
- Lobbying



The Aftermath

- Guest or member attended event
- Became intoxicated
- Causes an accident or incident of some kind
- The guest or member OR someone else is killed or injured



The Social Host Rule

- Alcoholic beverages are not sold
- Members and guest are all adults
- With some exceptions then--
- No liability for accidents/injuries after the event
- Lawsuit dismissed



BEWARE THE EXCEPTIONS

- Minors—serving underage guests will lead to liability
 - If you knew or SHOULD HAVE KNOWN they were under 21
 - Reasonable person test
 - Usually goes against the server



"STOP! Underage Drinking" mark

CONDUCT EXCEPTIONS



- If the focus of the event is alcohol consumption
 - Alternate beverages are not offered
 - Drinking encouraged or worse yet required
 - *Ballou v. Sigma Nu Gen. Fraternity*
- Drinking games
 - S.C. Code Ann. § 61-4-580(A)(7) (permit holder)

How To Minimize the Risk

- Adopt a written policy about responsible drinking
 - Vet with attorney—don't create a possible contractual claim
- Provide a ride home program
- Consider out-sourcing alcohol service
 - Insured bar tending/catering service
 - Rent out portion of a restaurant, event venue or hotel and let them handle



SELLING ALCOHOL

- As a non-profit trade organization that doesn't sell alcohol regularly, you must get special permit for the event
- It can be beer and wine, liquor, or all three
- You become a permit holder
- While we have no case law yet, it appears you would switch to the same liability scheme that applies to bars and restaurants



SELLING ALCOHOLIC BEVERAGES COMPLETELY DIFFERENT

SELLER

- As a permit holder, liable for injury caused by over served person
- If you knew or should have known adult was intoxicated, liability
- Essentially strict liability for a minor served
- Clear rule, no drinking games

SOCIAL HOST

- Not liable for injury caused by an intoxicated adult guest/member absent an applicable exception
- Liable for minor only if you knew or should have known the person was underage
- Not sure if drinking game prohibition will apply

If the Group Does Sell Alcoholic Beverages at an Event



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- Get insurance!!!! Your standard general liability probably excludes coverage
 - Need a rider
 - Or a special “dram shop” policy
- Train or contract trained staff to serve
- Have a method to observe those leaving the event and provide rides if needed

VOLUNTEERS ARE A GOOD THING

- An organization will only be liable for the conduct of a volunteer acting under its direction for acts within a narrow scope
- No workers compensation liability
- Much more narrow than responsibility for employee conduct
- No negligent hiring type liability



How Do You Tell the Difference?

Employee

- Expects to and has a right to be paid
- Works at the time chosen by employer
- Works at direction of employer, not limited to a specific event or project
- Appointed by employer—a contract of employment even if at will

Volunteer

- No right or expectation of payment
- May be reimbursed for expenses
- Chooses when to work
- Work limited to an event or function or specific type of duty
- No contract of employment/appointment by employer



Questions?

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