

PBPA Podcast Transcript
Nonprofit Collaborations:
Legal Considerations & Best Practices
(17:51 minutes)



[00:00:01] **Sireesha:** Collaborating with other nonprofits can be a powerful way to stretch limited resources and amplify impact. By pooling expertise, staff time or funding, partnerships can help organizations do more with less. But successful collaboration doesn't happen by accident. It requires clear expectations and defined roles from the start. In this episode of the PBPA podcast attorney Gail Gunnels joins us to discuss how nonprofits can maximize the benefits of collaboration while minimizing the legal risks.

Hello and welcome to the PBPA Podcast. In each episode of the PBPA Podcast, we explore legal questions relevant to Georgia nonprofits. I'm your host Sireesha Ghanta, Counsel and Education Director at the Pro Bono Partnership of Atlanta. PBPA strengthens our community by engaging volunteer attorneys to provide nonprofits with free business legal services. We provide numerous free resources via our website, including articles and webcasts specific to Georgia nonprofits and their business legal concerns. We also provide direct legal services to our clients. For more information on client eligibility requirements, to apply to be a client or to access our vast learning center, visit our website at pbpatl.org. Before we jump into this episode's topic, keep in mind that this podcast is general information, not legal counsel, contact your attorney for guidance on your nonprofits' specific situation.

Gail Gunnels has extensive experience providing legal expertise across multiple specialty areas for Fortune 500 companies, government and nonprofit organizations. Whether in her role as a big law firm partner, university legal counselor, tech company general counsel, or PBPA volunteer attorney, Gail has advised for clients through a myriad of contract considerations. And contract considerations are key to a successful nonprofit collaboration. I'm thrilled to have you, Gail here to speak with me about nonprofits and how they can make the most of collaborating with other nonprofit partners. Thanks for being here.

[00:02:39] **Gail:** Thanks for having me.

[00:02:42] **Sireesha:** So Gail, there are a number of ways that nonprofits can partner with other nonprofits. So let's frame the topic of today's conversation with "what is a collaboration and how does that differ from other types of nonprofit partnerships"?

[00:02:59] **Gail:** Cooperation would be an informal relationship where they, everybody does their own thing, submits their own application, maybe reference each other, but you don't legally or formally join together to apply for an opportunity for funding. Collaboration in a more legal sense is probably a good idea in that, especially if you have different skills that you're bringing to the table.

It's possible that certain nonprofits could be joined together to go after grant funding or maybe some sort of government contract, a teaming relationship. Or a collaboration agreement where one partner brings a certain skillset and set of resources to the relationship and the work. And another partner brings in a different set of skills and a different set of resources. But together they work well to put the best foot forward for both companies, both the nonprofits, in order to make the best case for getting the funding for the group.

[00:04:00] **Sireesha:** so it sounds like there's a bit of a spectrum here. And on one end is a cooperation is informal agreement between nonprofits. On the other extreme is a merger where nonprofits are combining legally, financially into one organization and in the middle somewhere is a collaboration where nonprofit organizations are partnering in the way that you just described.

Now, Gail, can you give us an idea of what are some of the pros of collaboration?

[00:04:31] **Gail:** One of the pros of collaboration is that, when you join together with other groups, you can combine your financial resources, you can combine your personnel resources and your skillsets. The different nonprofits, obviously have a mission, each one is a little different from the other, but together you have less duplication of efforts. You have a wider variety of personnel and resources and skills to bring to the table. And all the risk is a little bit more spread out, to the extent there is risk and responsibilities, is spread out amongst the parties. So there's definitely some benefits to coming together with others.

[00:05:09] **Sireesha:** And now let's look at the other side. What are some of the challenges for nonprofits that are collaborating?

[00:05:16] **Gail:** I think one of the first things you have to do is decide what is everybody looking to get out of this? 'Cause each organization is gonna have a little bit different desire of what they would like.

[00:05:26] **Sireesha:** Let's talk a little bit more about that. If a nonprofit is considering entering into a collaboration, what are some important first steps for them to take?

[00:05:39] **Gail:** I think, probably the most important step to my mind is just because somebody approaches you and wants to do a joint application or a joint project doesn't mean you have to say yes.

You need to look at it from the perspective of your nonprofit, your mission, your capabilities. Do a little self-assessment. Are you ready to do a project like this? Do you have the capabilities right now? Think about, is this organization that maybe has approached you the right fit you need, wanna do some due diligence? Do you share this a similar or enough culture and enough aligned goals that you're not working at cross purposes to each other, but you are more complimentary to each other, and one of you brings a certain set of skills to the table that is complimented by the skills and the resources that the other one brings.

And then how is your structure set up? Do you and the partner have a similar structure in that you could anticipate, putting down a pathway for how the agency you interact with the agency is there a governing committee to govern the project. That group of people at each organization responsible for being the project team, things like that and how that's gonna work out are important to consider right up front as you do your self- assessment.

[00:06:54] **Sireesha:** These are all important steps that a nonprofit can easily take themselves : self-assessment, ensuring that they find the right fit in their nonprofit partners, and trying to figure out what are the options for structuring the collaboration. As you mentioned, Gail, either all the organizations can participate or you choose one nonprofit to be the lead agency. Or you choose

maybe one person from each organization to be on a governing committee to lead and drive the decisions.

[00:07:24] **Gail:** And there's a lot to consider: who will be the actual applicant for this funding or will the parties apply as a joint applicant? Outline each party's duties in enough detail in your application so that it's clear who's responsible for what. Such as there's typically, with grant funding and government funding, there's required reporting -who's gonna take responsibility for the reporting? Are you gonna split that amongst the applicants? Sometimes you might have a larger nonprofit reaching out to a smaller one, and the larger one may for purposes of resources be able to lead the proposal submission 'cause some of these proposal submissions can be very involved and very detailed. And so the smaller nonprofit may have a lesser role to play, but it may be beneficial to them to partner up with the larger nonprofit and take advantage of those resources that the larger nonprofit has. And the smaller nonprofit is filling a niche that the larger one does not necessarily have the skillset set in. It's important to think about the duties and the requirements. And the key personnel. So you wanna be sure to just think through all of that, a little bit of a self-assessment of what's important and what you need to flesh out before you go forward.

[00:08:35] **Sireesha:** And I'll mention that some of the challenges that we have come across arise when the organizations don't have a clear understanding of what their roles and responsibilities are, or they're unable to fulfill their role or responsibility. And this is especially a problem when there's not a contract that was signed, a contract that clarifies the roles and outlines what might happen in the event one collaborator being unable to fulfill their responsibilities.

And another challenge is around financials. Where do funds come from? How are they distributed? What do they cover? Are they being distributed prior to expenditure or upon a show of expenses? And sometimes money isn't actually exchanged, but some other benefit is. And that too needs to be clear among the parties 'cause if it's not clear, a misunderstanding about financials can be a major challenge for collaboration success.

And now, do you have some guidelines to help nonprofits minimize and manage challenges of a collaboration?

[00:09:43] **Gail:** It's really good to have it all written down and put it in writing so that it's clear who's doing what, who's bringing what to the table, who has responsibility for what. And oftentimes, I hear a lot of nonprofits who are looking to get into some sort of a more formal relationship with another talk about MOUs, memorandums of understanding, of course, under contracts, collaboration agreements, letters of intent, it almost doesn't matter what you call it. As long as just before you start the collaboration to put something in writing so that everybody is on board with who's doing what and who's responsible for should there be decisions to be made or individual personnel who are important to the project. Just lay it all out.

Emails are not good enough. Some clients have sometimes asked, can we just do this over email? That's usually not good enough. It's good in the sense of looking back and seeing maybe what somebody's intent was, but from a purely legal standpoint and mediating disputes or concerns as they play out over the course of the project, emails are not the best way to do it. So you really should try to look at some sort of more formal MOU contract, whatever you wanna call it.

And then, maybe one of the things to consider is your personnel because if you are working on a collaboration with another organization. That means that at some level, your personnel working on

that project are not gonna have as much bandwidth to help with your organization's regular programming and responsibilities. So you don't wanna do this for every circumstance, but if it's important enough funding or service project grant, this would be an important thing to realize: what kind of personnel you might be able to devote to the time and the bandwidth required to submit this application and try and go after this funding.

And then on that note, thinking through, if we do go and do this joint collaboration and we do win this work, and so we do get this funding jointly. There's some risk involved in that and that's where we get back to the MOU or the collaboration agreement. Something in writing that lays out how are we gonna track the funds? Who's gonna be recipient of the payment of the funds? Is it gonna be split? That might not be possible to split it. It may have to go to one organization, and then they subcontract it to the other organization. With regard to the other organization's set of services that they're actually providing.

In that MOU or agreement, you wanna have a clear scope that you delineate exactly what the scope of the project is, how the decisions are gonna be made, who's responsible for what is there a fiscal agent is, which one of you is that? Is everybody required to retain documents? A lot of these, especially if it's a government grant or a government opportunity, there are Federal Freedom of Information Act requirements. That means that you know anything that you're doing is subject to disclosure to the public. That might be something to take into consideration before you even make the application, because if it's something where you're not prepared or it's not the right scope of services to have subject to Freedom of Information Act and public transparency rules, it might not be the right thing. And one of them goes for that opportunity, another one does something else.

And then in the general performance of the grant and the services, communication on a day-to-day basis is critical because the last thing you want is for one organization to be pulling more than their weight or the other organization to not be pulling their weight. And then there's a problem with your funding agency or organization where there's some disconnects there.

But again, main thing is to just be sure to put it all down into writing. And when you start doing that, you will find out that a lot of things that everybody was assuming maybe everybody's not assuming the same things. And when you start putting it down in writing, then it becomes very clear where you need to flesh out more delineation of duties and responsibilities and where there, the risk that might need to be addressed that somebody hasn't thought about yet.

[00:13:44] **Sireesha:** Gail, my next question was going to be, if there's one takeaway that you want our listeners to hold onto from this episode, what is that takeaway? And I think that might be what you just mentioned.

[00:13:56] **Gail:** Yeah, and I think just to reiterate some of that, know your organization's strength and weaknesses. Protect your organization through a signed agreement.

I do a lot of contract and negotiation work in my career as a lawyer. And I always like to say that if you are having difficulty on the front end of getting your contract negotiated, and there's a lot of big sticking points and a lot of difficulty reaching agreement. I like to say contract negotiation is like a marriage. At the beginning, the engagement period is everybody's happy and on their best behavior. But if the engagement period is rough then the marriage is gonna maybe be worse. So if you're having difficulty, getting all the contract pieces worked out in the front end, it might be that you think twice about whether this organization or this opportunity is the right fit for you.

It's a good opportunity as you go through the negotiation to think about. How are we working well together or not during the negotiation? 'Cause that will give you some insight as to how it might be to actually be in a relationship, contractually, with this organization, with the requirement that you manage funding from a third party, that will likely have some reporting requirements and other things that they will flow down to you and to your partner organization that you need to be very thoughtful about if that's something that you're willing to go into with this other organization.

[00:15:14] **Sireesha:** Determining personnel allocation, how fundraising would be pursued and strong PR are important discussions to have prior to finalizing and agreeing to the collaboration. And those are all steps a nonprofit can do themselves. The collaboration agreement, which like you mentioned, Gail is preferably not just in an email, should really have a clear, well-defined scope, which all of the nonprofits in the collaboration are in an understanding about what they are collaborating about and what they are not collaborating about.

[00:15:47] **Gail:** I would say do have a lawyer involved, if at all possible. 'Cause there are many times when I've seen organizations think, oh, we've got this little MOU and we've all signed it, it is so great. And then a lawyer takes a look at it and everything that the business people found to be very clear, the lawyer had 30 questions about. So have somebody take one quick read of it from a pure legal perspective to make sure that the words on the paper are consistent with everybody's intent and there's not room for confusion in the event of a dispute.

And if you do that, I feel there's a lot of great funding out there and opportunities down the road when people come together and work with each other to make something good out of something that would not have been as wonderful and as productive done separately and independently .

[00:16:33] **Sireesha:** This is such great information that you have shared here, Gail. I know several nonprofits are looking for ways to stretch a dollar right now, and so this is gonna be fantastic information for them to have going forward. Thank you so much for sharing your time and expertise with us today.

[00:16:49] **Gail:** My pleasure. Glad to help out any way I can.

[00:16:53] **Sireesha:** We hope that you found this episode of the PBPA Podcast to be informative and helpful. We add new episodes every month with short conversations about general, yet important legal information for Georgia nonprofits. Remember that this is not legal counsel. Talk to your attorney about your organization's specific concerns. Thanks for tuning into the PBPA Podcast. And to all nonprofits listening out there, thank you for all the good work you continue to do in our community.