

MINUTES

Hawaii Writers Guild

September 4, 2018

Rev.1

Hawaii Writers Guild (HWG) Special Board of Directors (BOD) Meeting

Held at the home of Eliza Cahill

Officers and Directors of the Guild present:

Eliza Cahill – *President*, Bruce Stern – *Vice-President*, Diane Revell – *Secretary*, Bob Lupo – *Treasurer*, Duncan Dempster – *Webmaster*, Joy Fisher – *Public Relations Director*, Eila Algood – *North Kohala Director*

Others Present:

None

[Note: Items in **bold** indicate decisions made or actions required. Items in square brackets are usually information that became available after the meeting had been adjourned.]

President Eliza Cahill called the meeting to order at 1:35pm. This **was a special meeting called to specifically address organizational issues of the Hawaii Writers Guild** and whether, and if so, how to proceed to become a legal non-profit organization. The meeting followed the proposed agenda and accomplished the intent of the meeting.

1. *Determine options for HWG legal organization and pros/cons* – This was done via reference to a table (provided previously as part of an attachment to the minutes of the meeting held with the attorney, Shawn Nakoia) that included comparing options (a) and (b) below with the goals of the Hawaii Writers Guild kept in mind. This table is again provided at the end of the minutes. For option (c) the “other” discussed included an option for 501(c)(5) where Joy had noted some writing related unions existed, but it required the members to be mainly employees in their profession; not all of our members are professional writers with many having come to writing as retirees or having other professions for their primary income. It was agreed this did not seem to apply to the Guild. Another other was the hope to just do what we do and ignore the other bureaucratic options, but this was deemed unrealistic especially if we want to apply for grants or do any fundraising.
 - a) *Social Club 501(c)(7)* – Restricts fundraising cap as a relation to dues collected. Not likely eligible for grants. Must inform donators that their donation is not tax deductible. Need to report annually with IRS (same as option b). Less complex to create. Organization can be self-proclaimed as a non-profit versus filing, but attorney consulted recommended registering in any case (Form 1023-EZ) to avoid questions on being a non-profit.

- b) *Qualified Charity 501(c)(3)* – More complex to file and qualify for this category. That equates to more legal expenses especially for the initial filing and creation of Articles of Incorporation. Requires annual reporting (same as option a). Allows donations to be tax deductible for donors. Allows for fundraising without limits based on membership dues. Allows selling of Guild items to non-members (unlike option a) such as t-shirts. Allows application for grants that often require qualified charity status.
 - c) *Other* – Either 501(c)(5) Labor Union, or “as is without filing”: Both deemed inappropriate for the Guild’s make-up and goals.
2. *List how each option meets the current/future goals for HWG* – Summarized above in the positive points for options a and b with our goals including providing classes and workshops for members (free) and outsiders (fundraising) and perhaps holding fund raising contests (like a poetry slam). Opens opportunities to apply for grants to further writing skills in our communities. It was suggested the Board members should start to scout for appropriate grants the Guild could apply for our use.
3. *Decide on way forward* – **We voted** (also moved, seconded) **unanimously after much discussion to hire attorney Shawn Nakoa to assist us to become a qualified charity under section 501(c)(3) of the Internal Revenue Code.**
- a) *If Qualified Charity 501(c)(3) Board will need to agree to proceed with work by Shawn Nakoa to develop our Articles of Incorporation* – This was agreed to be done with Joy as the contact person. She was given a few questions we wanted Shawn answer. [**Joy provided a Memo to Board on September 6th (provided as an attachment) about her conversation with Shawn relaying our decision to proceed and that provided answers to the questions she raised with Shawn.**]
 - b) *Determine and approve budget allocation to proceed in any case.* With Bob Lupo leading the discussion and based on prior indication of costs during the consultation with Shawn on August 28th, **we agreed to begin efforts to raise a \$4000 budget specific to this effort to become a qualified charity.** Joy was willing to donate the funds for this budget item, so we do not take it away from our current Guild finances, but others present also agreed to donate so she would not need to handle the full cost. It was **agreed to provide donations to the Hawaii Writers Guild with a note the intent is for funds to be used to become a 501(c)(3) qualified charity** (versus just a general fund donation). As the costs proceed we can solicit donations from the full membership if needed. It was deemed a fundraising effort beyond this was not needed. It was **also discussed that the initial retainer for the attorney should be around \$500**, but

this would require feedback from Shawn. [As noted in Joy's Memo to Board of September 6th after her discussion with Shawn the **initial retainer will be \$600**. This will cover drafting and filing Articles of Incorporation and drafting a revised set of Bylaws. Subsequent work will be billed periodically at the rate of \$275 per hour with payment due within 10 days after billing. Joy will sign the retainer agreement as one of the initial incorporators and a check will be sent to Shawn Nakoa in the amount of \$600]

4. *For our EIN we need to update the address of record (both a mailing address and a physical address that can receive mail are required).*
 - a) *Obtain the Guild's own post office box?* This was **deemed unnecessary** and we can avoid the annual costs (and potential lost keys) this would entail.
 - b) *Whose physical address can be used?* It was decided that based on the small volume of Guild mail to **Eliza's home address** which is our current address used for bank statements and that she believes per discussions with her landlady she'll live there many years, **we can use her home address as the Guild's official physical and mailing address for our EIN** which is currently listed under Ray Pace's address.
 - c) *Diane to update the EIN address of record using form 8822-B when addresses are determined. Yes.* [Diane just completed process of filling in the form and with many e-mail exchanges after it was realized **we also need to change our Responsible Party associated with the EIN** (currently Ray Pace). Then we had to determine who was a Principle Officer as it relates to this form since by reference to another form, the Responsible Party should be a Principle Officer. Any of our elected officers could fill this role per IRS definitions. **The end result is Diane as Secretary is listed as the new Responsible Party. The form will be mailed 9/8/18.**]
5. *Clean up Bylaws based on pending changes and any required for compliance for legal entity such as a reference to Articles of Incorporation (see table of current Bylaws status below).* It was agreed this would better be **handled between now and our next meeting (Sept.11) using e-mails** to vote on-line giving board members time to better understand the issues outside the meeting. So, **before the next meeting let Diane and the others know which pending changes are okay or if comments that would withhold approval** this way **only the items needing discussion will need to be handled at the next meeting**. [Diane will resend the Bylaws status table with the respective word changes included no later than 9/9/18.] When Diane has concurrence on the pending changes she will update the Bylaws with all the changes, Joy can then provide a copy to Shawn, and Duncan can replace the website copy with the new one.

Two other discussions occurred.

One was relative to the Guild sponsoring events where a Board member or regular member were paid by the attendees, but the Guild would not be paying for the event in any way; **would this be allowed?** We had decided in general and with prior discussion with the attorney that it would be inappropriate for Board members to be paid for their services for a Guild event as that defies the idea of the Board members serving at a non-profit and would bring up questions about those being legitimate expenses. But this question centered on attendees paying for the service directly to the person (even if a Board member). This was added to the questions **Joy would ask Shawn.** [In Joy's Memo to Board of September 6th she has the reply, Shawn called this proposal a "work-around" and said it would be prohibited by the federal government. **She said, "board members could go out on their own and give workshops and get paid by people attending, but that the Guild should not sponsor, take part in or lend its name to these workshops."** Also implies any Guild workshops/events should be free of any payments to Board members.]

The second discussion was about **maintaining respectful behavior with each other in our meetings.** A possible oath of respect was revisited, but after discussion it was agreed that was not necessary nor necessarily a good solution. **A reminder at the beginning of each meeting to show respect and to avoid personal attacks was suggested.** One such reminder Bruce said he used at meetings he ran was to tell those coming to "leave your guns at the door" to avoid any personal attacks. If the line seemed to be crossed during a meeting repeating the reminder of "leaving guns at the door" or a similar phrase helped to diffuse such a situation.

The next regular Board meeting date was set for Tuesday, September 11th at 1:30pm-3:30pm.

The meeting was adjourned at 2:55 pm.

Respectfully submitted,
Diane Revell, Secretary

Attachments:

1. Table comparing 501(c)(3) Qualified Charity with 501(c)(3) Social Club
2. Memo to Board of September 6, 2018 by Joy Fisher
3. Retainer Letter for work by attorney Shawn Nakoa

Attachment 1 - Table comparing 501(c)(3) Qualified Charity with 501(c)(3) Social Club

	501(c)(3) Qualified Charity	501(c)(7) Social Club
Purpose	Religious, Educational, Charitable, Scientific, Literary,	Pleasure, recreation, social activities
Examples	churches, charities, private schools, homeschool programs with an educational or religious purpose	Fraternities, sororities, country clubs, hobby clubs, homeschool support groups
Requirements	No private inurement allowed. Upon dissolution all assets must be distributed to another 501(c)(3) organization.	Personal contact, fellowship and co-mingling of members. No private inurement allowed.
Activities	Can hold programs, sell services and products as part of their exempt purpose.	Can provide meals or services only to members in connection with club activities
Tax deductible donations allowed	Yes	No
Tax exempt (no taxes on profits)	Exempt from federal income tax unless the organization has unrelated business income	Exempt from federal income tax on income derived from members; other income taxed
Source of Income	Membership fees, fees for services, donations, fund raisers, program fees	Primarily (65% or more) of the income must come from the membership
Membership	Serving the public or the “public good” (i.e. the education of children is a public good)	Limited membership and consistent with the purpose of the club
IRS Application Required?	Yes, if gross revenues over \$5,000/year. File Form 1023 or 1023-EZ	No. The IRS does not require 501(c)(7) organizations to file an application. They can “self-proclaim” tax exempt status.
Annual IRS Reporting	Form 990-N, Form 990-EZ or Form 990	Form 990-N, Form 990-EZ or Form 990
Legislative Lobbying permitted?	Insubstantial lobbying allowed (less than 20% of total expenses). No endorsement of a candidate.	No limit on legislative activity as long as it furthers the exempt purpose

Attachment 2 - Memo to Board of September 6, 2018

Memo to Board
From Joy

September 6, 2018

I have just talked to Shawn Nakoa. I asked her three questions.

1. Could she give us a rough timeline and costs for filing the Articles of Incorporation?

Shawn said she estimates the articles of incorporation will take about one hour to do. She will start them as soon as we provide her with answers to three questions:

- a) Who will act as the registered agent? The registered agent is the person who receives service of process if HWG is sued. She needs the person's full name and a physical address where mail can be delivered to that person.
- b) Where should the mailing address of the "principal address" of HWG be? She indicated it could be the same as the address above.
- c) She wants full names and addresses (both physical and mailing addresses) of three "incorporators" from among the group who met with her in her office. I will give mine; Cece is away, so I wonder if Bruce and Diane will give theirs.

When she has this information, Shawn can complete and file the Articles of Incorporation. If you will send me this information, I will forward it to Shawn.

2. I also asked Shawn about the proposal to have the Guild "sponsor" workshops offered by board members for a fee to be charged directly by the workshop presenter to those attending the workshop so that the Guild would not be in the position of paying board members for services.

Shawn called this proposal a "work-around" and said it would be prohibited by the federal government. She said board members could go out on their own and give workshops and get paid by people attending, but that the Guild should not sponsor, take part in or lend its name to these workshops. She said she can address this topic in more depth when she comes to our board meeting after the articles of incorporation are filed.

3. I also raised Diane's question about the "principal officer" for purposes of filing a change of address for the EIN. She indicated that, for that purpose, Diane could be the "principle officer."

Shawn also said that she has reviewed our bylaws and that they could use some work. She said she can prepare bylaws for us to look at, and she estimates that would take approximately two more hours of her time. In this regard, she would like the names and addresses (physical and mailing) for our current board. If you will send those to me, I will forward them to her.

She is preparing a letter of engagement for this initial work (the articles of incorporation and the bylaws) at a cost of \$600 and will send it to me to sign. I have already promised to donate an

Attachment 2 - Memo to Board of September 6, 2018

additional \$500, and expect to have \$100 left over from reimbursements promised from Bruce, Bob and Diane (I have received \$100 from Cece), so we have enough for this initial amount.

RUSHMOORELLP
A Limited Liability Law Partnership

Attorneys at Law

Offices Honolulu and Kona

Kona Office: 75-167 Kalani Street , Ste. 105, Kailua-Kona, Hawaii 96740 / Tel. (808) 324-7575 / Fax (808) 324-7576

SHAWN MAILE NAKOA
Resident Partner

Email: snakoa@rmkona.com

September 7, 2018

Via E-mail: jfisher979@yahoo.ca

Hawaii Writers Guild
c/o Joy Fisher
P. O. Box 1764
Kamuela, Hawaii 96743

Re: Retainer and Fee Agreement

Dear Ms. Fisher:

Thank you for asking us to assist the Hawaii Writers Guild in regard to drafting the Articles of Incorporation, Revision of By-Laws and formation of a 501(c)(3) corporation.

We would be pleased to assist the Hawaii Writers Guild in these matters on the terms outlined in this Agreement.

Professional Fees . You (the "Client") have retained the services of Rush Moore LLP, A Limited Liability Law Partnership (the "Firm")/Shawn Maile Nakoa as Resident Partner, to represent you in this matter. For your information Ms. Nakoa's current hourly billing rate effective January 1, 2018 is \$275.00. Our fee for most cases and projects are based on the time value of the work performed on the assignment. The time value of work performed is the product of the time spent on the matter by the attorney and the hourly rate assigned for work performed. Our billing unit is one-tenth of an hour (i.e., six-minute increments). Hourly rates are reviewed and adjusted from time to time, typically once a year, and accordingly may change during the course of our representation. Any such changes will be applicable in determining the time value of work performed on a matter from the date they become effective.

The Client agrees that there may be occasions when the services of another attorney or legal assistant within the Firm may be of particular benefit to the Client's representation. The Client agrees to pay for such services when provided. The hourly rates for such services shall be comparable to the rates stated above. The Firm shall immediately notify the Client when additional services have been provided.

Attachment 3 – Retainer Letter

State of Hawaii General Excise Tax. A charge of 4.166% on legal fees is added to each of our bills.

Costs and Disbursements. In addition to fees for services, we charge separately for certain costs incurred and for disbursements made in connection with each representation. These include such items as charges for certain internal services performed by the firm, such as for photocopying (at fifteen cents per page), sending facsimiles ("faxes") (at twenty-five cents per page) and staff overtime (when required by the exigencies of the client matter); these also include charges to reimburse our firm for disbursements made to third parties, such as filing fees, long-distance telephone charges (including such charges for faxes, postage, court reporters, travel expenses (including air fare at coach rates unless the client approves first or business class travel), courier charges, and other disbursements made on the client's behalf. Invoices for costs incurred to third parties on a client's behalf may be forwarded to the client for direct payment, rather than being paid by the firm and reimbursed by the client. When substantial expenses are anticipated, the firm may require that monies to cover those expenses be advanced. For certain types of expenses, such as telephone toll charges and shipping/courier/freight expenses, a client may not be billed on a current basis, since there may be a delay by the provider in billing our firm for these expenses.

We may engage the services of outside consultants (such as expert witnesses, translators, appraisers and engineering firms) to facilitate our representation of a client's interests, and may advance their fees and disbursements or have them billed directly to the client. Regardless of how the billing arrangements are established, the client remains ultimately responsible for the payment of the fees and disbursements of such outside consultants.

Computerized Research. Computerized research is usually more thorough and efficient, and involves less total cost to the client, than if we performed equivalent research without the benefit of computer assistance. For research that involves searches of database outside our firm, we are charged for that research by the third parties (Lexis or Westlaw) providing these databases. In addition to our fees for the time spent by the attorney conducting such research, we pass on to the client the charges to our firm made by these third parties for the searches.

Retainer or Deposit. It is our standard practice to require a retainer for all new matters. The Firm will apply the retainer to your monthly billing. In this matter, as discussed with you, we would require a retainer in the amount of **\$600.00**. **As discussed, this \$600.00 figure is estimated to cover attorney's fees for drafting the Articles of Incorporation and substantially revising the By-Laws. Further work regarding the application for formation of 501(c)(3) will require substantially higher retainer. In the event that services have been rendered, the charge for which exceeds the amount of the retainer. In any hand, the Client agrees that within ten days of the date of billing Client will pay any**

Attachment 3 – Retainer Letter

outstanding balance. If the full retainer amount has been drawn upon for the Firm's fees and costs the client may be required to deposit an additional retainer in an amount that is estimated to be necessary to pay for future fees and costs.

Billing and Interest on Unpaid Billings. The Client will be billed on a monthly basis. The billing will inform the Client of the amount of the retainer drawn upon for fees and costs, the remaining balance of the retainer, or any outstanding balance owed to the Firm. The Client shall pay any outstanding balance due within ten (10) days of the date of the bill. If the client fails to pay any bill when due, a late charge equal to 1% per month on the unpaid principal balance will be charged from the date of billing.

Billing Inquiries. Our objective is to provide high quality legal services for a fee that is reasonable taking into account all of the circumstances of the representation. Clients should contact us immediately if they have questions concerning our bills, billing policies, special bills or the services we are providing.

No Guaranty of Outcome. Client acknowledges the Firm /Shawn M. Nakoa has not represented any guarantee to the Client of the outcome of any legal matter.

Termination of Contract and Services. Client agrees that in the event any of the following occurs, the Firm may immediately cease all work and may withdraw from further representation of the Client in this matter:

- (a) The Client fails to pay an outstanding bill within thirty (30) days of the date of the bill, or
- (b) fails to maintain the retainer balance at the original amount set forth above, or
- (c) fails to pay any additional retainer in anticipation for hearing or trial as set forth above, or
- (d) disagrees with the firm /attorney as to the manner or advice in which the matter is to be handled such that the firm /attorney cannot effectively represent the Client.

Multiple Clients. In the event there is more than one client, each of the undersigned Clients agrees to be jointly and severally responsible for payment to the firm for any and all professional fees and costs.

If you wish to have us represent you on the terms stated in this letter, please sign the enclosed copy of this letter in the space provided below and return it to us along with a check in the amount of your retainer, in the enclosed envelope. This engagement

Attachment 3 – Retainer Letter

letter would then constitute the agreement pursuant to which we provide services to you not only in this matter but also in future matters that you may decide to refer to us.

We appreciate this opportunity to be of service to you and look forward to working with you. Please do not hesitate to contact us at any time if you have questions or concerns.

Sincerely,

RUSH MOORE LLP
A Limited Liability Law Partnership

By 
SHAWN MAILE NAKOA

I accept and agree to this engagement on the basis set forth in this Agreement and hereby authorize the Firm to take such steps as it deems necessary or desirable to carry out this representation.

Date

HAWAII WRITERS GUILD

By: _____
It's Incorporator