

The First Ethical Standards for Gift Planners: A Fledgling National Association Earns its Wings

Founded in 1988, and known since 2009 as the Partnership for Philanthropic Planning, the National Committee on Planned Giving (NCPG) came of age as an effective professional association in 1990-1991, when it took a principled stand against abuses of charitable trusts. Its Model Standards of Practice for the Charitable Gift Planner attracted widespread support at a crucial time, giving NCPG considerable moral and political authority soon after the failed launch of a national training and certification initiative had forced a complete restructuring of the young association's governance.

This is the story behind the Model Standards, which took shape during a time of intense debate over the nature of gift planning and the proper roles for the new national association.

1. Failure to Launch: NCPG's First Attempt at Shaping the Profession of Gift Planning

As the decade of the 1990s began it was not at all clear that the new association could create an effective and widely accepted code of conduct for a broadly diverse field of gift planners, defined in the Model Standards as "all who work in the charitable gift planning process, including charitable institutions and their gift planning officers, independent fund-raising consultants, attorneys, accountants, financial planners and life insurance agents" (see Appendix 1 for the original Model Standards).

An ethics committee formed in the mid-1980s had tried for five years and had failed to articulate the ground rules. NCPG itself, created through spirited discussions from 1984-87, had barely begun convening financial planners, lawyers, real estate professionals, accountants, art auction houses, software developers, bankers, marketers, consultants, and fund raisers representing a rainbow spectrum of charities large and small, such as animal rights groups, religious institutions, hospitals, world-class research universities, local community colleges, soup kitchens, national professional associations, art museums, public broadcasting stations. Many leaders in the field of gift planning met one another at the first NCPG conferences in 1988 and 1989.

Convening successful conferences for advanced training and networking was a signal achievement. NCPG's leaders have always aspired to do more. Could charitable gift planning become a new professional discipline?

Professions like law, medicine, and accounting have a recognized body of knowledge and their own well-established standards for training, certification, and ethics. In its first year of existence, NCPG sought to develop credentials for gift planners. At NCPG's first conference in 1988, Program Chair and President-elect Alice Pinsley led a discussion on the importance of elevating and certifying the quality of professional services provided by gift planners, using the Certified Financial Planner (CFP) program as a model.

People knew, or should have known, that a big proposal was coming. In a memo to Planned Giving Council Presidents dated February 28, 1989, Pinsley reported that the NCPG Steering Committee had approved this resolution:

It is essential for the furtherance of the Planned Giving Profession that the following be accomplished by the National Committee on Planned Giving:

1. Agreement be reached on a body of knowledge essential for planned giving officers;
2. Curriculum materials be prepared to cover these materials;

3. Examinations be prepared to certify that individual planned giving practitioners have required expertise.

The purpose of this NCPG initiative, Pinsley wrote, was “to assure employers hiring Planned Giving officers and donors meeting with Planned Giving officers of a proven level of competence.” And NCPG had moved past discussion of why a training and certification initiative was needed. The task now was to get started: “I have been authorized by the Steering Committee to appoint a committee to discuss implementation of this program, and will provide further details to you as they develop.”

At the second conference, President Pinsley presented an ambitious plan for training and certifying gift planners, focusing on professional competence, a crucial objective of the Model Standards. The night of her presentation, October 23, 1989, is a turning point in NCPG history.

Her detailed proposal was resoundingly, emotionally rejected. Quite a few conference participants were enraged to hear Pinsley describe a long and expensive training and certification process, which would be controlled by NCPG. NCPG President-elect Rick McKelvey wrote that he was “scared to death by the vociferousness” of reactions to the proposal, and that his first act as President was to resign.¹

What went wrong?

This was a classic case of a well-intentioned leader getting too far in front of her constituencies. Pinsley was one of the best-qualified people in America to direct a training and certification program for gift planners. She earned a Ph.D. in educational psychology from the University of Michigan, she was a Certified Financial Planner (CFP), and she had served for many years as national Director of Gift Planning at The Nature Conservancy as well as a highly-regarded gift planning consultant. She was elected president of the Planned Giving Group of New England, the largest council affiliated with NCPG, the year before becoming president of NCPG.

¹ Rick McKelvey of Emory University, “Report from the President” in the NCPG Newsletter of December, 1989.

I interviewed Pinsley in March 2003 as part of an oral history project for NCPG/PPP. She stressed how much time and effort she and her committee spent talking with other national associations, interviewing testing services, and identifying the subjects needed to prepare gift planners to be responsible and effective. She emphasized the NCPG board's endorsement of her initiative in January 1989, and that in October the board had enthusiastically approved her proposal ("So the plan passed! That's something most people don't know. The plan was approved formally by the [NCPG board]—unanimously.")

Pinsley attributed the emotional response at the conference to political unrest:

What happened is there was just a huge amount of discontent surfacing at that meeting. The beginning of NCPG was three years of just discussion after discussion: why do we need a National Committee on Planned Giving? Do we really need a National Committee on Planned Giving? Well, all of this was surfacing again at this meeting. First of all, there was discontent because the second conference was sold out again, which we thought was terrific. But there were a lot of angry people, because a lot of angry people couldn't get in.

I don't know exactly what was brewing all this discontent, but part of it was the question of whether the National Committee on Planned Giving was really necessary. Councils were concerned. They were paying dues and what were they getting from it? There was a concern "was it really democratic?"

All of which is true, as described below; and yet it is also the case that NCPG board members serving with Pinsley in 1988-89 were not prepared to justify her aggressive training and certification plan when it was challenged by other gift planners. Most of her board had not seen the details of the plan before that morning, and did not have time at their brief closed session to build consensus on the plan's assumptions and agree on a public relations strategy. Their unanimous approval was hollow. NCPG's embattled volunteer leadership was left

unarmed, without a coherent and persuasive rationale to defend the terms of its own major policy initiative.

The full board was generally aware of the goals for her ambitious project, but Pinsley developed the details over the summer of 1989 with help from a small Curriculum/Certification Planning Committee (members included David Clough, Douglas Freeman, and Gordon Chavers). On July 29 she submitted a planning grant request to Charles Johnson of the Lilly Endowment, who arranged a grant of \$7,500 to NCPG. Working independently from her committee, Pinsley refined and expanded the training/certification plan. On October 11, Pinsley mailed the committee a draft of the new proposal she would present at the NCPG board meeting on October 22, noting in a cover memo that “the project will cost approximately \$600,000, rather than the \$400,000 we first anticipated” in order to pay for professional testing services and offset NCPG’s administrative expenses.

In her capacity as President as well as Curriculum/Certification Planning Committee chair, Pinsley presented her 12-page, single-spaced plan at a special closed board meeting at 7:30 a.m. on October 22, just before an open board meeting at 9:00-11:30 a.m. The conference began at noon that day with a general session.

The curriculum/certification plan was in fact quite specific and extremely ambitious.² It called for NCPG, with its part-time staff and volunteer board, to approve hiring a professional Project Director (80% time, with a salary ranging between \$76,500 and \$108,675); creating a 20-member volunteer Advisory Committee; recruiting “two Editorial Advisors for each topic and necessary subtopic (approximately 15) of the Curriculum” who “would be paid a stipend for their efforts”; selecting a professional testing service to design and administer three examinations; “and various committees appointed by the Advisory Committee for development of the examinations.” NCPG would apply to the Lilly Endowment for a grant of \$600,000 to cover the costs over the first 2½ years of the project.

² “Recommendations from the Education Planning Committee on Implementation of NCPG’s Curriculum/Certification Program”

There would be ongoing costs to NCPG for staffing, marketing, administration, and updating the training and certification project. These costs would be more than offset by quite optimistic projected revenues. The proposal assumed that each participant would pay \$2,000 for a training course to prepare for three examinations, and that 20% to 50% of local planned giving council members would participate. There were 2,900 members known to NCPG in October 1989, so the proposal did the math:

Percent of Members:	20%	30%	40%	50%
Total Revenue:	\$1,160,000	\$1,740,000	\$2,320,000	\$2,900,000

To put this projected revenue stream and the curriculum/certification budget in perspective: according to its 1987 operating grant from the Lilly Endowment, NCPG’s total non-conference expenses for 1989 were budgeted at \$105,500. That modest budget proved overly optimistic, since staffing and other costs rose rapidly, but the fact remains that Pinsley proposed tripling NCPG’s annual expenses.

The board had no specific plan for replacing its three-year operating grant of \$185,000 from the Lilly Endowment when it expired at the end of 1990. Not only did NCPG suffer a loss of political authority as a result of the 1989 conference. President McKelvey told the board in February 1990 that the failed launch of the training and certification project left NCPG in a “financially precarious” position.³

3. NCPG Governance Evolves to Serve a Booming Field

As Pinsley noted in her interview, a major reason cited for rejecting NCPG’s training and certification proposal was that very few gift planners were involved in thinking through and building consensus for its purposes and contents. One could ask – and many did – Who the hell is “NCPG” and what makes them think they can control my professional career?

³ In the years following the failure of the 1989 curriculum/certification proposal, NCPG examined and discarded several alternatives for a formal national training program. NCPG published the first Syllabus for Gift Planners (Indianapolis: NCPG, 1992) ”as a study guide for people involved in charitable gift planning.”

Eye-opening growth in the number of people who considered themselves gift planners overwhelmed the organizational plan for NCPG. Dr. Bruce Bigelow of Hood College, the first NCPG Research Chair, delivered a presentation on March 7, 1991 entitled “The Professionalization of Planned Giving” which began with a self-evident observation that “Planned giving is the fastest growing area of development.” Bigelow recited these facts about gift planners:

Growth of National Committee on Planned Giving

	1987	1988	1989	1990	1991
Councils [affiliated with NCPG]	14	27	36	45	47
Members [of Councils]	1100	2380	3350	3900	4100
[NCPG] Conference Attendance		250	250	500	?

The number of councils affiliated with NCPG went from 14 in 1987 (when the NCPG bylaws were written and its founding board selected) to 36 at the time of the 1989 conference. Many of the gift planners attending the 1989 conference were elected to represent the interests of their local councils. How would the attorneys, CPAs, CLUs, CFPs, and experienced nonprofit fund raisers back home react to this professional certification proposal?

Unfortunately, a large majority of the gift planners back home had no voice at the first two NCPG conferences. Because of capacity limitations at the IUPUI Conference Center in Indianapolis, attendance was capped at 250 in 1988 and 1989. 250 conference participants was a reasonable target in 1987, when NCPG knew of 1,100 gift planners, and totally inadequate by 1989, when there were at least 3,350. Some council leaders who wanted to attend were unable to do so. It was clearly a serious political error for a federation of local planned giving councils not to have a session for leaders of councils who were present at the NCPG conferences in 1988 and 1989.

Furious at not having a voice in NCPG's decision-making on professional certification and other topics, a significant number of gift planners demanded a restructuring of the new association's governance. Could NCPG's leadership become much more inclusive very quickly, while at the same time developing a consensus among skeptical gift planners on new national standards for their professional conduct?

Its founders envisioned a "loosely constructed federation" of planned giving councils⁴, a National Committee, not a strong national governing organization. Like the Committee on Gift Annuities, founded in 1927 and operating with no professional staff for all of its existence, NCPG began life as a volunteer "non-bureaucracy" with two part-time staff members (Jane L. "Jhani" Laupus and Barbara Owens) in January 1988.

According to the Board minutes of October 17, 1990 the NCPG staff included:

Jhani Laupus, Executive Director (75% of full-time equivalent). Tanya Howe Johnson became NCPG's first full-time Executive Director in 1991.

Barbara Owens, responsible for membership, reports, and collections (70%)

Cheryl McConnell, clerical/receptionist (100%)

In its formative years of 1987-1989, NCPG communications with individual members of local planned giving councils were extremely limited. This was before email and Internet websites were in common use. NCPG was totally dependent on local councils providing it with accurate and comprehensive mailing addresses for their members. Sally Walker from the United Way of Santa Barbara served as volunteer Director of the Editorial Bureau and produced a newsletter three times a year until Barbara Yeager was hired as Communications Director in 1991.

In 1988-89 the volunteer leadership structure for NCPG was inadequate for the task of designing, building consensus for, and managing a nation-wide policy

⁴ Memo from David G. Clough, incoming president of NCPG, to Officers of Planned Giving Groups/Councils, dated October 1987.

initiative such as a centralized professional training and certification plan for an extremely diverse field of gift planners. The small governing board included 12 regular members. Only six of the board seats were allocated to representatives of local councils; six were at-large members. The bylaws set a one-year term for regular board members. This unusual term limit was apparently intended to maximize participation by inducting a new board every year, but in practice the one-year limit led to sharp discontinuities in leadership.

Five ex officio “Class I” board members represented major national fund raising associations:

American Association of Fund Raising Counsel (AAFRC, now The Giving Institute)

Committee on Gift Annuities (CGA, now the American Council on Gift Annuities, or ACGA)

Council for Advancement and Support for Education (CASE)

National Association for Hospital Development (NAHD, now the Association for Healthcare Philanthropy, or AHP)

National Society of Fund Raising Executives (NSFRE, now the Association of Fundraising Professionals, or AFP)

Organizers like Michael Boland recognized that their participation on the NCPG board “will continue to be extremely important, not only for the contributions these associations can offer”, but also to ensure that NCPG would not compete directly with these existing associations.⁵ CASE, CGA, and NSFRE offered robust training programs of their own, and NSFRE provided a Certified Fund Raising Executive (CFRE) designation.

The governance crisis brought home by the failed training and certification proposal led to the first Assembly of Delegates meeting in 1990: every local

⁵ “Report on the Proceedings of the Second Annual Conference, National Committee on Planned Giving” (1987) by Lori Goldstein, assistant to Michael Boland at the Harvard University Office of Planned Giving. Boland was Chair of the NCPG Steering Committee.

council was invited to send a representative. In April 1991 the second Assembly considered proposals to strengthen NCPG's governance, and the board adopted fundamental changes, including:

- Instead of turning over virtually the entire board every year, a three-year term was introduced; current board members filled staggered terms of one to three years.
- The Assembly of Delegates became the Annual Meeting of NCPG.
- The Assembly of Delegates became responsible for electing board members; ex officio national association representatives were eliminated; and the size of the board increased to a maximum of 24 members.⁶

NCPG was beginning to develop a governance structure adequate for serving its various constituencies.

3. Tax Reform Acts Close Door on Some Abuses, Create Openings for Others

The road to the 1991 Model Standards of Practice for the Charitable Gift Planner began with the massive Tax Reform Act of 1969. Among many substantial changes, TRA '69 clarified the rules for charitable remainder trusts, stimulated explosive growth in the number and value of life-income gifts to charity, and led gift planners working for charities and for-profit firms to form local, regional, and national planned giving councils for technical training, networking, and sharing of best practices. Congress intended TRA '69 to reform specific abuses of charitable trusts, such as designing a trust to ensure high payouts to non-charitable beneficiaries at the expense of the charities. TRA '69 did not open the gates for trust abuses and finder's fees.

⁶ The national affiliated associations received an expression of gratitude from the NCPG Board and the "Class I" membership category was disestablished at its meeting on October 13-14, 1992.

That distinction belongs to the Tax Reform Act of 1986, a signature event in the Reagan Revolution. TRA '86 enacted fundamental changes that were intended for other purposes, but as is often the case, had an immediate indirect impact on charitable giving.⁷ The most important provisions included:

1. Capital gains tax rates were increased to the same rates as income taxes. This was a reform-minded provision that was perceived as closing a loophole, since after TRA '86, wealthy taxpayers found no benefit in re-characterizing their income as capital gains.
2. Many popular tax shelters were eliminated, particularly the passive loss rules. After TRA '86, passive losses (such as from rental real estate) could be used only against passive gains. "Tax shelters, of the pre-1987 variety, are animals of the past."⁸
3. Certain estate-freezing techniques were eliminated.
4. TRA '86 reduced the top income tax rate from 50% to 28% (plus a 5% surcharge) in exchange for elimination of loopholes, but tax rate reductions proved temporary as Congress soon increased the top income tax rate to 40%.

TRA '86 left charitable remainder trusts as one of the few remaining opportunities for investors to avoid paying higher capital gains taxes on the sale of appreciated stock. Financial planners seized the moment to encourage philanthropically-inclined clients to do well by doing good. The newsletter Charitable Giving and Solicitation took note of a story in Financial Services Week (June 19, 1989) entitled "Charitable Giving Hits the Big Time": "This article

⁷This summary depends largely upon two sources: "The Major Provisions of the Tax Reform Act of 1986" by Lawrence A. Jegen, III, Professor of Law at Indiana University, which was presented at the September 1987 NCPG conference; and Richard A. Westin, "Tax Reform Act of 1986" in Major Acts of Congress, Study Guide and Homework (<http://www.enotes.com/tax-reform-act-1986-101461-reference/tax-reform-act-1986>).

⁸Jegen, page 44.

describes the activities of eight for-profit companies that are actively entering the charitable gift planning market because “it is a lucrative business.”

Unfortunately, more than a few misguided planners lost sight of charitable intent by promoting charitable remainder unitrusts as “the last great tax shelter”, as they were labeled in a widely-read article in Forbes magazine (November 26, 1990) entitled “Tax Dodges Begin At Home”:

Here’s an attractive proposition: You give a piece of appreciated real estate or shares of stock to charity and end up better off financially than if you’d sold your property and kept the proceeds. As a bonus you get a warm glow from giving to charity instead of to the IRS. The loophole involves a charitable remainder trust. It’s an old device that was discovered by tax-shelter salesmen after the 1986 tax reform wiped out most other gimmicks. And some of the ways they are using the trust have little to do with charity.

The article concludes: “given the abuses already giving charitable remainder trusts a bad name, it’s only a matter of time before Congress gets wise to this loophole.”

Robert F. Sharpe, Jr. wrote an editorial for The Chronicle of Philanthropy in September, 1989 noting the corrosive consequences of the Tax Reform Act of 1986, through which “Congress made gifts of appreciated property an increasingly attractive financial-planning option”:

I suspected at the time that a veritable horde of former tax-shelter promoters would descend on the field of charitable giving, but never in my wildest imagination could I have foreseen the speed or vigor with which our field has been overrun by people whose overriding interest is their own personal gain.

Some financial planning firms began to exploit charitable remainder trusts by convincing clients that if artfully arranged, charitable gifts could actually be a moneymaker for the donor. Frank Logan, director of gift planning at Dartmouth and president of the CANARAS Planned Giving Council in 1989, described the situation as follows:

Emphasizing the unitrust's tax-exempt status and the avoidance of capital-gains-tax liability on gifts of long-term appreciated property, these hucksters quickly devised an array of slick promotional strategies and techniques that were often characterized by (1) the near absence of donative intent, (2) unreasonable and unwarranted fees and charges, (3) minimum disclosure, and (4) a disregard for realistic investment returns.⁹

A few firms claimed to be able to deliver gifts to charities willing to pay a finder's fee for directing the gift to the charity. An article entitled "Charities Balk at Financial Planners' Demands for Finder's Fees Linked to Clients' Gifts," by Vince Stehle, *Chronicle of Philanthropy* (April 4, 1989) cited an example:

Mark S. Pash, whose Premiere Estate Consultants company in Woodland Hills, Cal., charges charities a finder's fee for putting them in touch with people who want to make donations, says financial planners could bring lots of new donors to charities if the charities were willing to pay the fees.

"The charitable industry has been getting in the way of the gifts," he says. Mr. Pash says that his company has seen "astronomical growth" in recent years because clients are eager to use the tax incentives and some charities—he calls them "the smart ones"—are happy to pay his fees. "We tell the donors that the charities pick up all the planning fees and they say "That's fine."

"There are charities who do not pay the fees," Mr. Pash says, "and they don't get the gifts."

David Hanaman, vice president of Palm Spring Desert Hospital Foundation, did not want his charitable organization to be left behind: "We want to play in the pond, too" with larger charities able to hire planned-giving specialists. The *Chronicle* quoted Hanaman as saying a finder's fee of less than 15% of a trust's net

⁹ Frank Logan, "Planned Giving" in *The Ethics of Asking: Dilemmas in Higher Education Fundraising* (Baltimore: JHU Press, 1995), p. 114.

present value is “acceptable, no questions asked” while fees up to 25% are sometimes okay.

The NCPG Newsletter dated May, 1989 described program sessions on finder’s fees at two California gift planning councils (Los Angeles and Santa Barbara), entitled “Finders Fees: When Are They Appropriate?” In the absence of clear ethical guidelines, the fledgling NCPG simply reported practical considerations: “The general consensus was distaste for exorbitant finders fees, with agreement that this is a business decision for non-profits, guided by economics and degree of the fee.”

Readers of the newsletter *Planned Giving Today* expressed mixed feelings towards paying a finder’s fee to a non-related professional for delivering a gift. A survey conducted by publisher Roger Schoenhals in 1990 found that of 194 respondents, 106 strongly disagreed and 50 disagreed with the idea. 38 survey respondents thought paying finder’s fees was just fine.

The newsletter *Charitable Giving and Solicitation* summarized the issues involved in a major article entitled “Selling Deferred Giving as a Tax Shelter: the Explosive Issue of Finder’s Fees” (October 10, 1989), noting:

There is a hot debate being carried on in the press and in private meetings of planned-giving officers and financial planners concerning the ethics, legality, and advisability of a recent phenomenon: the aggressive selling of charitable gift arrangements as tax shelters by some financial planning advisors and the alleged demands for large finder’s fees to be paid by charities who become the recipients of these charitable gifts . . .

The ethical debate. People who favor charging finder’s fees for arranging contributions to charities present a variety of reasons:

- * Real estate agents, insurance agents, lawyers, financial planners, and others who counsel their clients on the benefits of charitable giving should be fairly compensated. Percentage compensation based on the size of the gift is a good incentive to reward performance.

- * Use of finder's fees or percentage commissions means that no one needs to pay unless the charitable gift occurs. Thus, these arrangements help smaller charities unable to afford the staff necessary to attract such donations.
- * The practice creates more charitable gifts by putting donors in touch with charities.
- * Charitable gifts are good financial planning tools that deserve to be explained to clients. The use of finder's fees to pay for these services is the most efficient and effective way for charities to get gifts.

People opposed to the practice of finder's fees in charitable gifts argue: . . .

- * For-profit promotion of charitable giving may endanger the tax exemption of the charity, the future of the charitable tax deduction, and the future of philanthropy.

Charitable Giving and Solicitation went on to note that an important professional business association had gone on record against certain abuses of commission-based finder's fees:

At its June 1989 meeting, the Ethics Committee of the International Association of Financial Planning [IAFP] considered the subject of finder's fees. It concluded that the concept of finder's fees for charitable donations was fraught with possibilities for abuse.

The IAFP publication *Financial Planning News* published an article by Hewitt Covington, its General Counsel, in September 1989 entitled "Finder's Fees Present Temptation for Ethical Lapses," noting that "no member [of IAFP] should seek or accept compensation that is not for and commensurate with professional services actually rendered." Citing the IAFP ethics code and Rules of Professional Conduct, Covington wrote that "This rule and these guidelines instruct the member that he or she must not permit the pursuit of gain from a finder's fee to interfere with professional judgment," including "the ethical requirement that the finder's fee is not camouflaged or hidden and is not unconscionable in amount or terms."

The combination of intense interest in skirting or evading the laws of charity by promoting charitable trusts as tax-sheltered investments, and a commission-based compensation scheme in the form of finder's fees, created a poisonous environment fraught with legal and ethical pitfalls. In a 1992 survey, the newsletter *Planned Giving Today* reported that 34% of 214 respondents said they had “been asked to do something that violated your moral or ethical standards by a donor or prospective donor.” A financial planner I spoke with at the time unabashedly proposed “taking a charitable trust portfolio offshore” to hide one of my donor's capital gains.

Was philanthropic planning to become a modern Gold Rush of money-making opportunities? Or would a new Sheriff appear to restore the rule of law?

4. What Business Are We In? A Modern Code of Ethics for Charitable Gift Planners

In the 1980s, when gift planners met to discuss their common interests, they often talked of the need for a code of professional conduct. What did they mean by a “code of conduct”?

According to the Ethics Resource Center, a code of conduct is intended to provide “a central guide and reference for users in support of day-to-day decision making,” an “open disclosure of the way an organization operates.” An ethical code encourages discussions of ethical behavior, and provides an opportunity to develop a positive public identity and “a more supportive political and regulatory environment.” (<http://www.ethics.org/resource/why-have-code-conduct>)

While philanthropic planning has been around for a very long time, the excitement generated by the Tax Reform Act of 1969 attracted many fund raising professionals into a new field of specialization. Known primarily as “deferred giving” in the 1960s and as “planned giving” in the 1970s-1990s (hence the name National Committee on Planned Giving), the term “gift planning” gained ground in the 1990s (hence the Standards were written for Gift Planners). The re-branding of the Partnership for Philanthropic Planning in 2009 reflects a shift in emphasis from

specialized techniques of giving (trusts, annuities, bequests) to a more inclusive model intended to support a wider range of fund raising staff and professional advisors.¹⁰ PPP's new mission is focused on values-based relationships between donors and their gift planners, rather than on gift transactions.

In the 1980s, planned giving councils and individual planned giving officers generally had a more focused perception of their business: they were the specialists responsible for understanding, marketing, and administering complex charitable remainder trusts, pooled income funds, lead trusts, and gift annuities. Planners joined together regionally and then nationally for advanced training, networking, and determining best practices. With new combinations of attorneys, financial planners, bankers, insurance and real estate agents, and charitable fund raisers, the rules for working together were far from clear.

One of the seminal gatherings of gift planners, the Round Table for Planned/Deferred Gift Development held in Chicago on March 6-7, 1984, addressed five major topics, including "Ethical and Professional Standards of Performance for Planned Giving Personnel." Participants examined the proper roles and competencies of gift planners, emphasized donors' "authentic charitable motivation," and explored working relationships among planned gift officers, attorneys and tax planners.

Conclusions drawn from this conference are particularly important, since its 31 participants included some of NCPG's early leaders: Michael Boland, Leonard Clough (whose son David became the first President of NCPG), Harvey DeVries (from Carleton College, who organized the conference and wrote its final report), Andre Donikian, Winton Smith, Andrew Wilcox, and Charles Johnson (who arranged for Lilly Endowment to co-sponsor the conference with the Northwest Area Foundation).

Here are some excerpts from the Round Table conference report:

How should we view ourselves and our role relative to other estate planning professionals? What can we do to establish professional legitimacy and

¹⁰ See "A New Brand for NCPG" by Tanya Howe Johnson in *Planned Giving Today* (December 2008).

stature to our role and function? . . . What professional standards should we impose upon ourselves? . . . What are the prevailing ethical considerations?

Formal professional status pertains to practice of a specialized function with integrity. Ethical standards and a level of competence are more important to professionalism than certification of exclusive rights and jurisdiction.

Planned gift officers do their job best when they create and facilitate authentic charitable motivation. Securing gifts from people who really would rather not give is a form of extortion. Securing gifts from people on the basis of representations which are not true is a form of fraud. Securing gifts from people who simply do not understand what we and our organizations are doing is a form of ‘con.’ Securing gifts on the basis of income, tax and personal benefits which accrue to the donor is a form of investment business. Our role is to create and facilitate authentic charitable motivation. However, that varies in kind and degree with each prospect, so that we may rarely deal exclusively with pure and unmixed motives. It is essential to establish some degree of ‘donative intent’ in every gift plan . . .

We can deal with mixed motives as long as charitable motivation is part of the mix. We can be creative in the design of a gift arrangement without ‘buying’ the gift. Abuses will lead to [a] regulation, litigation, and licensure requirements.

On October 29-30, 1985 in Chicago there was a meeting “to study the needs and possibilities of a national organization for planned giving” organized by DeVries, hosted by Andrew Wilcox of Continental Bank, supported by Charles Johnson of the Lilly Endowment, and facilitated by Michael Boland of Harvard University. Representatives of planned giving councils from around the country attended, along with representatives from AAFRC, CASE, NAHD and NSFRE.

As a result of the 1985 Chicago meeting, on January 22-23, 1986 a Steering Committee for what was to become NCPG met in Crystal City, Virginia and prepared “A Recommendation to Form a National Planned Giving Committee.” Among the goals for this national committee: “To study the means for elevating professional standards through: ethics.”

At the annual meeting of the Planned Giving Group of New England (May 14, 1986), Charles Johnson of the Lilly Endowment, which had become a major funder of planned giving expansion nationwide, outlined his vision for increasing philanthropy, including a new national organization for planned giving. Among the points he made were: “Should there be a national agenda and/or organization for planned giving? . . . [The national organization] should address ethical issues.” Mr. Johnson's typewritten notes reflect a similar presentation, including his emphasis on ethics, which he delivered at the Greater New York Planned Giving Group on December 17, 1986.

In October 1986 there was an organizational conference for the proposed new national association.¹¹ In preparation for the conference, the NCPG Steering Committee prepared a summary of a workshop entitled “Ethical questions in planned giving:”

Led by Winton Smith, director of planned giving at Southwestern at Memphis, Tennessee, this group will discuss how the NCPG can serve as a forum for considerations of this type. Perhaps the long range goal of this group will be to develop a statement of ethics for professionals in the planned giving field.

Charles Johnson addressed this first NCPG governance meeting under the heading “What Are the Primary Issues if Planned Giving is to Become a More Effective Part of Institutional Development?” Johnson listed five issues, including “Ethical considerations relating to planned giving.” He proposed that a national organization could hold an “annual conference to deal with major issues” and “set standards and guidelines” for gift planners across the country.

The Steering Committee of NCPG met on April 2, 1987 to review progress reports from its committees. The first report was from DeVries entitled “Ethics and Professional Practices.” A memo dated April 1987 from David Clough, President of the Planned Giving Group of Greater New York (PGGGNY), reported

¹¹ NCPG leaders organized small private conferences with participation by invitation in 1986 and 1987. The National Committee on Planned Giving officially began in January 1988 under the umbrella of the Center on Philanthropy at Indiana University-Purdue University at Indianapolis. The public conference in 1988 was officially announced as the first NCPG Conference.

that he attended this NCPG Steering Committee meeting and that a national conference would be held in Indianapolis on September 10-11, 1987 with workshops in “three areas of interest.” The first of these was to be on “Ethics and professional practices in Planned Giving.”

In his memo, Clough summarized the Ethics Committee report as follows:

Harvey DeVries of the Twin Cities PG Group, and Coordinator of the Ethics and Professional Standards task force, reported that they have identified a number of fascinating issues which need to be discussed. Without going into them here, I will report that the response of the [NCPG] steering committee was so enthusiastic about this subject that we decided the discussion of these issues should be a major topic at the September conference.

The NCPG Conference in September, 1987 did include a major workshop entitled “Ethics and Professional Practices in Planned Giving,” facilitated by DeVries. David Donaldson, an attorney with the Boston firm of Ropes and Gray, who played an essential role in developing ethical codes for gift planners, made a presentation at the workshop entitled “Reflections on the Purpose of the Charitable Income Tax Deduction.”

On January 11, 1988 the NCPG Steering Committee heard a report from Alice Pinsley, NCPG Program Chair, who distributed a handout with ideas for the conference to be held that fall, including a major session on ethics:

There is a general consensus that ethical guidelines need to be developed for Planned Giving. Perhaps we could have somebody review how this has been done by other professions, and have a suggested code of ethics to propose by the time of the national conference (with prior review by the executive committee).

DeVries was "requested to prepare and circulate a proposal for a code of ethics prior to the conference in order to hold a discussion of it in the Steering Committee meeting before the conference opens."

Pinsley went on to report that members of her conference committee felt

We might also want to have a workshop dealing with specific ethical issues on the horizon. For example, Dave Clough suggested a discussion on ‘finders fees’ associated with planned gifts. Jon[athan] Tidd was concerned about the ethics of various compensation arrangements. And, Doug Freeman has recently developed (for the Planned Giving Roundtable of Santa Barbara and NSFRE) a case analysis of ethical issues, comprised of six interesting cases to be discussed by a panel of four individuals.

The first NCPG newsletter, published in August 1988, notes Michael Boland’s long emphasis on improving the technical skills of planned giving professionals, but says his main concern is “the overriding importance of solid ethical practices.” “Even as we build on the skill level of planned giving specialists, if we don’t develop a strong code of ethical behavior, we are overlooking the most essential need.’ He feels participation and working toward a consensus on this and related issues must be a high priority of the NCPG.”

The NCPG Conference on October 31, 1988 featured a panel entitled “Ethics: A Discussion of Difficult Issues” with attorney Doug Freeman as moderator. Panelists included Paul M. Brooks (head of Renaissance, Inc., a for-profit network of financial and philanthropic planners), Nancy Perazelli (from Drake University), and Andrew (Sandy) Wilcox (Stanford University), “Followed by a brief presentation of a proposed ethics code by Harvey DeVries.” This code “called for a commitment to competence, to keeping a donor’s personal financial data confidential, and, in general, to accepting ethics and practices that ‘appropriately reflect the high and noble purposes of philanthropy.’”

The 1988 year-end NCPG grant report to the Lilly Endowment outlined grand plans for a national training program:

Harvey DeVries, former NCPG board member and consultant to the [NCPG] Committee on Ethics, presented the outline of a plan to develop an ethics project to be implemented by the NCPG for planned giving officers. The project would include development of a Code of Professional Ethics, Code of Ethical Practices and Code of Institutional Ethics. It would entail the preparation of a program or training session on ethics to be used by local

councils which would include case studies, follow up surveys, and other components as determined appropriate by a panel of nationally reputed ethics experts.

DeVries reported his thoughts on an ambitious, large-scale “Ethics Project” to the NCPG Steering Committee in January, 1989, as recorded in the minutes:

He noted the need to determine for whom an ethics statement is produced. He noted that a statement prepared for planned giving officers may not be the same as one provided for other allied professionals. He noted that one conflict is in the area of compensation since the approach of the non-profit planned giving officer from a compensation standpoint is much different from the private professional practitioner.

DeVries, Pinsley, Freeman, and the NCPG Board were all struggling to determine the right balance: to what extent should the new national association represent charitable organizations and the spirit of philanthropy vs. the business practices of for-profit professionals in financial services? All of these leaders recognized the importance of financial services in supporting gift planning, while concluding that philanthropic motivations must be at the heart of the process.

DeVries proposed an ambitious program with four separate codes of ethics to address multiple levels of ethical issues for individuals and organizations:

He recommended a need for: 1) a code of ethical character which presents the characteristics of a successful planned giving officer, 2) a code of ethical institutional policy which would provide guidance for the non-profit organization, 3) a code of ethical practices to guide the individual planned giving officer in the actual practice, and 4) a code of ethical decision making to guide and establish a standard for reaching conclusions.

The NCPG Board “unanimously authorized Harvey DeVries to move forward with the establishment of such a project.” In February, 1989 President Alice Pinsley reported to planned giving council leaders that:

Another project underway is a study project on ethics. This project will result in a code of ethical institutional policy on Planned Giving, codes of

ethical character and ethical practice for the Planned Giving officer, and a code of an ethical decision making process.

In her “Report from the President” in the NCPG Newsletter of May, 1989 Alice Pinsley wrote about the DeVries project, “a serious study of ethical considerations in Planned Giving for the nonprofit organization and for the planned giving officer,” assuring council leadership that “You will be hearing a great deal more about this effort in the near future.”

The NCPG report to the Lilly Endowment for the period January 1-June 30, 1989 said that

In follow up to board action calling for the implementation of an ethics project as proposed by Harvey de Vries in the Winter Board Meeting, a discussion draft was prepared. It calls for preparation of an ethics program and training sessions to be used at the council level. Review and further elucidation of the draft is in process.

Reporting on the 1989 NCPG Conference, The Chronicle of Philanthropy focused almost entirely on ethics in an article entitled “Planned Giving’ Specialists Are Seeking Code of Ethics for Their Field” (November 8, 1989). The Chronicle printed verbatim a preamble and 11 numbered paragraphs of a “Proposed Code” written by DeVries. Some passages in the proposal contained high-minded rhetoric that offered little specific guidance for gift planners struggling with issues raised by finder’s fees:

Philanthropy represents human service and motivation of high and noble kind . . . Planned Gift Development Professionals have a special responsibility to perform their services in ways which express both the lofty goals of their causes and also the noble character of their clients.

The final paragraph calls on gift planners to “Promote human and professional growth within the profession through cooperation, shared experience and promotion of the common good of all qualified charitable institutions, philanthropy and public service.”

In writing the Model Standards, NCPG took a different direction from the cumbersome, lofty DeVries project in ethics education. The board put aside his drafts, together with the poorly-received training and certification proposal presented by Pinsley at the NCPG Conference in October 1989. NCPG's exertion of top-down national leadership had stalled. A working model of a national code of conduct sprang to life from a member council, just at the time when NCPG leadership was made acutely aware that its survival depended on becoming much more attentive to grass-roots empowerment.

It is always helpful to have a clear villain as the spur to action. When debate over finder's fees and the abuse of charitable remainder trusts as tax-sheltered investments began to boil over, one planned giving council leaped into prominence with a clear and powerful call of alarm: the 1989 CANARAS Convention.

5. National Associations Back Away from Prohibiting Commission-Based Fund Raising

Before turning to the development and reception of the CANARAS Convention and CANARAS Code, it is important to look further at the public policy context of NCPG's adoption of the Model Standards in 1991. NCPG fought against considerable headwinds, and through the struggle, defined itself as a unique and powerful voice for charitable gift planning.

Two prominent national charitable associations balked at issuing clear prohibitions against the practice of finder's fees, based on advice from the highly-regarded attorney Bruce R. Hopkins, author of *The Tax Law of Charitable Giving* (John Wiley & Sons, 2010; now in its 4th edition). Hopkins provided legal advice in setting up NCPG and served as its first public policy chair in 1989, so his opinions carried much weight.

Fear of lawsuits over restraint of trade prevented NAHD and NSFRE from taking action against those who were earning their pay via finder's fees. Reluctance by these long-established national associations to enforce ethical prohibitions against finder's fees complicated the NCPG Board's action on a code

of ethics for gift planners. Serving on the NCPG board in 1989 were Richard Edwards of CASE, Joanne Hayes of AAFRC, and William McGinly of NAHD. The late J. Richard Wilson, who died in 1988, was President of NSFRE, the largest association of fund raisers. Wilson had been particularly close to NCPG: he was one of three leading volunteers (with Michael Boland of Harvard Business School and Charles Johnson of Lilly Endowment) most responsible for the founding of NCPG.

In 1989, NSFRE took the position that its own professional standards prohibiting commission-based fundraising put the organization at risk of being sued for restraint of trade, so it removed the prohibition, causing considerable dissension among its members. A front-page headline in *The Chronicle of Philanthropy* (April 18, 1989) reported “Fund Raisers Drop Ban on Commissions From Ethics Code”, a decision made by the NSFRE Board at a “closed-door meeting” with no warning to NSFRE members.

The head of the NSFRE ethics committee is quoted saying “We are dropping the clause because we simply don’t feel it is enforceable.” The article cites unnamed members who “speculated” that NSFRE was following the footsteps of AAFRC, which changed its membership code two years earlier because its “lawyers were concerned that the organization could be held liable under federal anti-trust laws if it specified how fees should be set.” NSFRE officials “flatly refused to comment.”

In the next issue of the *Chronicle* (May 2, 1989), a long front page story reported that NSFRE’s dropping its ban on commissions “has drawn criticism from many quarters.” The article described an antitrust investigation by the Federal Trade Commission into the ethics code of the American Institute of Certified Public Accountants in which the FTC alleged that the ethics code of AICPA prohibiting commissions had “restricted competition and constituted price-fixing.” However the *Chronicle* wrote that NSFRE’s lawyer Bruce Hopkins “refused to comment on why the clause was dropped.”

After much heated debate, and following NCPG's adoption of the Model Standards in 1991, a prohibition against commissions was added back into the NSFRE "Code of Ethical Principles" in November 1992.

The National Association for Hospital Development refused to endorse the Model Standards. A letter dated June 10, 1991 from Frank Minton, President of NCPG, to William McGinly, President of NAHD (who had also been very involved in creating NCPG), addressed the healthcare professionals' concerns:

I appreciate your concern that Article 2 may violate U.S. Antitrust Laws, and I am aware that Bruce Hopkins believes this to be the case. Several attorneys were involved in drafting the statement [i.e. the Model Standards] and their opinion is that it does not restrict free trade . . . The remote possibility that the Federal Trade Commission may still find our statement unacceptable is, in our opinion, outweighed by the following considerations:

1. The I.R.S. has indicated that if we don't follow the Canaras Code (which essentially agrees with our statement on fees), corrective action will be taken.
2. The payment of commissions on gifts may cause the Securities and Exchange Commission to regulate them as securities.
3. Commissions and fees as a condition for delivery of a gift lead to abuses which, in turn, result in adverse publicity.

I understand your desire to support standards of practice developed for all associations. A generalized code, however, would not specifically address the issues related to planned giving as this one does. That is why we believe it is appropriate to have an ethics statement directed to gift planners as well as a broader code for advancement professionals.

A number of national charities interpreted the legal risks differently than did NSFRE and NAHD at the time. For example, the American Red Cross took a strong stand against finder's fees and commissions in a June 13, 1989 memorandum from Mr. Gil Tills, Senior Vice President, entitled "Red Cross Policy Related to Finder's Fees and Commission Based Fundraising:"

The National Society of Fund Raising Executives recently deleted from the standards of the organization a prohibition against commission-based fundraising. Attorneys for the NSFRE counseled that the prohibition could expose their Society to litigation by financial planners and other professionals seeking treble damages for action “in restraint of trade.” Numerous members went on record as seeing the resulting deletion as a step backward in the NSFRE’s traditionally high standards of ethical conduct.

The General Counsel of the American Red Cross is of the opinion that the restraint of trade issues considered by the NSFRE are not relevant to our policies on finder’s fees and commissions.

Receipt of a commission based fee or finder’s fee is in violation of longstanding Red Cross policy [here Tills cites an internal Red Cross memo of May 16, 1981]. On May 20, 1989 the Public Support Committee of the Board of Governors recognized this policy once again.

The minutes of this Committee state: “The Planned Giving Committee reaffirmed the long-standing policy of the organization not to engage in commission-based fundraising by which a percentage of the funds raised or obtained by the American Red Cross would be paid to a particular individual involved in the fundraising effort.”

6. The CANARAS Group Develops Ethical Codes for the Profession

A gift planning council affiliated with NCPG took the initiative in articulating and distributing two codes of professional ethics in response to finder’s fees and similar practices.

The CANARAS Group was founded in 1974 and was originally limited to 12 members, all directors of gift planning at universities and colleges in the northeastern section of the U.S. In 1988, when the group affiliated with NCPG, the membership grew to 15 members to comply with NCPG membership rules for member councils. A visiting consultant is selected every two years. The group meets annually for a three-day conference at a center run by St. Lawrence

University on the shores of Saranac Lake in upstate New York (CANARAS is Saranac spelled backwards).

In June, 1989, members of the CANARAS Group spent much of their agenda discussing the abuses described above, the ethical challenges these caused for charities, and possible reactions by Congress and the IRS. Frank Logan recalls that the late David Donaldson was the visiting consultant with the group, “which started to talk about what Dave called the CANARAS Convention, namely a statement or even a manifesto that was intended to assure people that the process of planned giving is conducted in a professional and ethical manner” and “to alert charities to the ethical problems of finder’s fees.” (See Appendix 2)

In an interview with me, Logan commented at length on the CANARAS ethical codes:

The CANARAS Convention was pretty much in the wake of the Tax Reform Act of 1986. You may remember that that particular act removed a lot of the artificial tax shelters from the code, and that meant that a lot of entrepreneurs and financial advisors had to move pretty quickly to find a substitute for their tax shelters. A lot of them found the charitable remainder unitrust and promoted it rather aggressively as the last remaining tax shelter.

You may also remember some of the concerns we all expressed, because these guys had some very slick promotional strategies, and, as I recall, they didn’t worry much about donative intent, and they had some pretty stiff fees and charges and minimum disclosure and that sort of thing. So when the CANARAS Group met in 1989 we were concerned, because Congress was beginning to pick up its ears and the IRS. There were some magazine articles that didn’t help the cause at all.

So in ‘89 at our meeting, the attorney who was with us then was the late Dave Donaldson the Boston attorney. We got to talking about what could be done. And I guess after a few beers and our lobster dinner and so forth, we started to talk about what Dave called the CANARAS Convention, namely a statement or even a manifesto that was intended to assure people that the process of planned giving is conducted in a professional and ethical manner.

Members of CANARAS worked independently from DeVries and the NCPG Ethics Committee. CANARAS member Marvin Kelley recalls that the CANARAS Convention “developed by the group sitting around one night for several hours, talking about ethics, with Dave Donaldson saying a few things here and there, interjecting some thoughts, but literally sitting there with his laptop, typing as we spoke. He then created a couple of drafts that we all reviewed and ultimately accepted.” Mr. Donaldson called himself “the self-appointed scrivener for the group,” and sent a draft to each CANARAS member for their comments on June 27, 1989.

Logan wrote that “The group drafted a statement (purposefully polemic in nature) that was designed to draw attention to the abusers, to reaffirm the primacy of the charitable contribution with respect to life income plans, and to denounce the use of the finder’s fee and other unreasonable fees and commissions.”

Addressed to “the charitable community” and “the charitable organizations which we represent”, written by and for “fund raising professionals” with the help of David Donaldson, principal author of *The Harvard Manual: Tax Aspects of Charitable Giving*¹², the CANARAS Convention voiced elements that would be picked up in the Model Standards two years later. On the positive side, the Convention strongly affirmed the primacy of charitable motivation and encouraged direct communication between a donor and a charity. On the other hand, the Convention harshly vilified “for-profit promoters who seek to subvert the charitable tax deduction as a tax shelter” and who view the charitable deduction “primarily as a means to make money or avoid taxes.” “Appalled” by the conduct of these profit-making villains, the signers encouraged their own charitable organizations, fellow “fund raising professionals”, and “others who are concerned about these issues” to subscribe to the Convention.

The CANARAS Convention was published in *The Chronicle of Philanthropy*, *The Chronicle of Higher Education*, and the newsletter *Give and Take* by Robert F. Sharpe and Company, among other national publications, and widely distributed to practitioners by mail and at planned giving council meetings,

¹² David M. Donaldson and Carolyn M. Osteen, *The Harvard Manual: Tax Aspects of Charitable Giving* (Cambridge: Office of Planned Giving, Harvard University, 1986), Sixth edition.

with an appeal for other groups and individuals to subscribe to its principles. Bruce Bigelow recalls that in the summer and fall of 1989 “the CANARAS Convention was circulated around a number of planned giving councils and to a number of specific charities, many of whom signed on and said, ‘Yes, we believe in these principles.’” By September 15, 1989 there were 40 additional signers representing charities and planned giving consultants from across the country. By February 1990 there were 103 signers.

Concern over ethical issues was near the top of all gift planners’ agendas. Copies of the CANARAS Convention were not included in the official conference materials, but were circulated informally at the Second National NCPG Conference in October 1989. Logan, serving as President of the CANARAS Group, spoke at the business meeting of the conference on October 22, noting that he had already received many letters, phone calls, and FAX messages supporting the Convention, “many of them citing specific instances of what they considered to be questionable practices by the for-profit sector and expressing deep concern over the increasing frequency of such practices.” Logan encouraged conference participants to discuss the Convention at their local councils and endorse it or similar statements of principles.

At the plenary dinner on the first night of the Conference (October 22, 1989), Professor Michael Josephson of the Joseph and Edna Josephson Institute for the Advancement of Ethics, gave a presentation entitled “Ethical Problems, Opportunities and Strategies for Planned Giving Professionals: A presentation exploring ethical issues in planned giving and providing skills necessary for ethical decision making and commitment.”

Working sessions at the first few NCPG conferences began with breakfast roundtables at 7:30 and ran well into the night. Following Josephson’s dinner presentation, from 8:00-10:00 p.m. there was a “Workshop on Ethics: An interactive working session with Professor Josephson on formulation of the NCPG Code of Ethics,” described in the conference brochure as “Ethics in planned giving, including further study on a model code of ethics.”

From my interview with Frank Minton:

We were grateful that CANARAS had taken the initiative in addressing this subject head on. I would say there was general support for [the CANARAS Convention] among people who were planned giving officers of charities, but people from the financial services industries were not at all united in support for it.

At the Conference in 1989, Michael Josephson did a major plenary session on ethics and Frank Logan, who had been a driving force of CANARAS to get the CANARAS Convention, was up there as part of a panel. I recall Michael Josephson really grilling the panel members, including Frank Logan. I think he was trying to take the place of people coming at it from a different position and forcing Frank to defend what he was saying about opposing finder's fees and commissions. But, in doing that, Josephson was certainly representing the viewpoint of a number of people in the financial services profession, and, when we then eventually met to adopt it, it was not a unanimous thing. It was a heated discussion for a while.

In a memorandum dated November 9, 1989 addressed to "Signatories of the CANARAS Convention," Logan wrote that the Convention "received considerable attention at the NCPG Conference in Indianapolis in late October, as those of you who were there can well attest." He mentioned his presentation at the Annual Business Meeting, and that the Convention "was a major topic at the Ethics Workshop and was included at an Outreach Roundtable. More importantly, [the Convention] was discussed informally in the hallways, etc."

Logan attested that NCPG was taking the Convention very seriously:

At the closing banquet, President-Elect Rick McElvey stated that the initiative of the CANARAS Convention would be carried forward by NCPG on two levels. First, he would distribute it to the chairs of all 33 local councils, asking that consideration be given to the adoption of the statement, or a similar statement, and requesting that they share with the NCPG Board any feedback emanating from those discussions. And second, as part of its charge to the new Task Force on Ethics [the DeVries project discussed

above], the NCPG Board will recommend that both the spirit and letter of the statement be included in its deliberations.

The IRS commended this attempt by gift planners to regulate the ethical practices of their own profession. Assistant IRS Commissioner Robert I. Brauer, who was a presenter at the NCPG Conference in 1989, wrote a letter dated May 15, 1990 addressed to the original signers of the CANARAS Convention:

I recently received a copy of The CANARAS Convention, the manifesto that you and your fellow fund raisers have developed as a response to promotions “selling” federal tax deductibility. As you know, my office has been involved in a campaign aimed at curtailing abuses of the charitable contribution deduction and I am greatly heartened that you have developed this statement of principles. I firmly believe the success of our campaign depends, for the most part, upon the willingness of the charitable community to police its own ranks.

Participants at the 1989 Conference gave the NCPG Board a clear mandate to proceed with development of a code of ethics. Mindful of the acrimonious debate over certification, and of the fact that the CANARAS Code was developed by a small group of 15 people representing private colleges and universities in the Northeast, the Board took special care to inform and involve all members of NCPG in the process for adopting such an important national standard. In the NCPG Newsletter dated December 1989, a summary of the October conference noted that:

The session that attendees found most exciting was the general forum and workshop on ethics given by nationally-recognized ethicist, Professor Michael Josephson. Panelists prominent in the field, such as: Terry Simmons of the Baptist Medical Foundation in Texas, Frank Logan of Dartmouth College, Robert Hobson, a west coast financial manager and consultant, Cary Tamura of the University of Southern California Health Sciences Department, and Harvey DeVries, NCPG Ethics Chair and partner in Curry, Ferner and DeVries, lent powerful insight to ethical issues as Josephson led the group through actual dilemmas planned giving

practitioners face. In the ethics roundtable session which followed, NCPG Ethics Project Chair, Harvey DeVries, discussed development of an NCPG ethics code and program. He agreed to pursue establishment of an ethics committee to review problems, award sanctions, and delineate a Donor Bill of Rights for use by planned giving practitioners.

Notwithstanding NCPG's expression of support for his work to date, DeVries admitted that his draft of a code of conduct was "flawed." The article about the 1989 Conference in *The Chronicle of Philanthropy* mentioned above ("Planned-Giving Officials Vote to Revise Draft of Ethics Code", October 31, 1989) featured several quotes by DeVries on how his proposal "failed to address specific abuses":

"It appears inadequate and appears more cosmetic than helpful," said Mr. DeVries . . . "If we don't do something soon, we could soon be confronting a major Congressional and public-relations backlash that would seriously endanger philanthropy," Mr. DeVries warned.

The *Chronicle* reported that "Much of the discussion at this year's conference centered on the 'Canaras Convention,' a statement drafted by planned-giving officers who said they were opposed to efforts to promote charitable gifts primarily as tax shelters rather than for philanthropic purposes," and that "The Canaras statement is expected to be used as a starting point" for a revised ethics code.

The 1989 year-end NCPG report to the Lilly Endowment included a section on ethics, noting Michael Josephson's presentation "in conjunction with a proposal from the CANARAS council . . . called the CANARAS Convention, fueled a dynamic discussion of the ethics issues at the conference. The complexity of establishing a code of ethics and an ethics program became obvious."

7. NCPG adopts Models Standards of Practice for the Charitable Gift Planner

At the Board meeting of February 5, 1990, NCPG Conference Chair Frank Minton reported that DeVries would be asked to make a presentation at the 1990 Conference at a plenary luncheon, and that ethics would be the topic of a workshop led by Fred Hartwick of Stanford University. Neither of these session leaders made the final conference agenda.

In September 1990 the newsletter *Planned Giving Today*, edited by Roger Schoenhals, began publication. An article by NCPG President-elect Minton in the premier issue entitled “The National Committee on Planned Giving” noted that “NCPG is involved in a number of projects embracing ethics, education, research, governmental affairs and outreach . . . Ethics continues to have high priority, and it is expected that NCPG will develop a statement of principles guided by the discussions of the councils.”

It was not an NCPG ethics committee, but the CANARAS Group, that would take charge of drafting a code of professional ethics. From my Frank Logan interview:

The Convention was approved by the CANARAS Group, and that fall [1989] it was widely circulated to other planned giving officers around the country. We had the second conference of the NCPG that fall, and there was considerable discussion at that time. Then at the next meeting—the summer of 1990 it would’ve been—we decided that it was time for what we eventually called the CANARAS Code, namely, a draft of a document to provide a needed professional guide of practices and principles for all gift planners, including those in the for-profit allied professions. And here I can read a little bit: “The code was intended to assure that this process is conducted in a professional, ethical manner that achieves a fair and proper balance between the personal interest of the donor and the purposes of the charitable institution.”

We had a laundry list of do’s and do not’s and so forth. And we were helped with that by the attorney Jonathan Tidd, and also the attorney Pat Martin [from the Rochester, NY firm of Nixon, Hargrave; now Nixon Peabody] was very helpful with the preparation of the CANARAS Code.

The Convention was really kind of a polemic to alert people to the problem out there, and then, the following year, we devised the specifics of the Code to help people conduct their practices.

From my interview with CANARAS member Bruce Bigelow:

The CANARAS Convention was not a format which allowed one easily to translate those principles into behavior standards. The CANARAS Code was our attempt to take what had happened the year before, when a number of charities had already signed onto and turned those into standards of behavior, partly because we wanted to take a practical perspective on this in saying, “Well, what does this all mean on a day-to-day basis for professionals in this field?” and then to be able to provide that to NCPG, **knowing that NCPG was also considering the same issue, and feeling that that would be a more practical contribution to the discussion than a set of more abstract philosophical principles** [i.e., the DeVries draft; my emphasis].

Peter Ticconi, Jr., a founding member of the CANARAS Group, recorded that attorney Patrick Martin (from the Rochester firm Nixon, Hargrave, Devans & Doyle) was the visiting consultant during the drafting of the Code at the 1990 meeting, though David Donaldson was responsible “for coordinating our collective thoughts.” According to a letter from Donaldson to Ticconi dated August 10, 1990, Donaldson produced the final draft, with assistance from Tidd: “Here, at last, is the final version of the Canaras Code which reflects some very valuable input from Jon[athan] Tidd, your own good suggestions and some further thinking on my part.” (See Appendix 3)

The subtitle of the CANARAS Code announced its broader scope: “A Code for Gift Planners (For all individuals and organizations engaged in soliciting, planning, rendering advice with respect to, accepting and administering charitable gifts)”. Much more diplomatic in tone than the CANARAS Convention, the Code acknowledged a broad range of donor concerns intermixed with pure philanthropy. Where the Convention had asserted that “the **only** [my emphasis] legitimate basis for making a charitable gift is a genuine desire to support the work” of a chosen

charity, the opening sentence of the Code would be incorporated verbatim in the Model Standards : “The solicitation, planning and administration of a charitable gift is a complex process involving philanthropic, personal, tax and financial considerations.”

Rather than vilifying for-profit advisors, the Code encourages a partnership among donors, charitable institutions, and professional advisors:

A Gift Planner acting on behalf of the charity shall encourage the donor to discuss the proposed gift with a competent lawyer or accountant of the donor’s choice; a Gift Planner acting on behalf of the donor shall, where appropriate, encourage the donor to discuss the proposed gift with the charity to whom the gift is to be made.

The ideal gift planning process, according to the Code, is one in which the “philanthropic nature of a gift” is given “primary emphasis”, as in the Convention, but the Code adds a new dimension of technical professional competence: full disclosure of tax consequences and financial implications of a gift, valuation issues and procedures, and awareness of gift implications for a donor’s family. The Code ends with a clear prohibition against finder’s fees:

Fees charged by Gift Planners shall be reasonable in relation to the services provided and shall be charged to the person to whom, or on behalf of whom, the services are provided. A Gift Planner shall not solicit, and a charity shall not pay, any fee, directly or indirectly, for the right to receive a gift.

Logan mailed the new CANARAS Code with a memorandum sent to “All NCPG Local Council Presidents” on August 23, 1990. He characterized the new document as

A broad code of standards and principles for all “gift planners,” to be distributed in advance of the October [NCPG] Conference and, with the approval of Conference Chair Frank Minton, to be included on the conference agenda . . . **This initiative was taken, in part, to fill a need necessitated by the absence of a viable NCPG Task Force on Ethics this past year.** [My emphasis]

It is our hope that the introduction of The CANARAS Code will help to continue and sharpen discussion within the gift planning community on important ethical issues. It is our further hope that the new code, perhaps in amended form, will eventually serve as a standing guide for all gift planners through its adoption by local councils and its endorsement by NCPG and other national organizations.

At the NCPG Conference on October 14-16, 1990 in Indianapolis, all conference attendees received a copy of the CANARAS Code with their conference materials. At the opening session of the conference, Logan presented a “Report on CANARAS Ethics Statement.” The next morning Bigelow, a fellow member of CANARAS, led a Breakfast Roundtable discussion on ethics.

In December 1990, NCPG President Minton wrote an “NCPG Conference Report” for *Planned Giving Today* that described actions at the 1990 conference in Indianapolis:

During the conference, Frank Logan of Dartmouth College presented a Code of Ethics drafted by the CANARAS Planned Giving Council. Then all registrants were asked to indicate on a questionnaire whether they think NCPG should develop a statement or code of ethics and, if so, whether it should be based on the CANARAS Code. Of those who responded, 93 percent said that NCPG should develop such a code or statement. They suggested certain amendments and pointed to substantive ethical issues not fully covered in the CANARAS Code. The Ethics Committee [chaired by Tal Roberts, CEO of the Baptist Foundation of Texas, and President of the Committee on Gift Annuities] is preparing a draft to be presented to local council delegates at the April Assembly.

In January 1991 *Planned Giving Today* surveyed 440 people identified as “planned giving practitioners,” asking them to rank 12 issues in order of importance. 45 of 196 respondents identified “a planned giving code of ethics” as their #1 issue, followed by 33 who ranked “professionalism of PG practitioners” as #1. One respondent commented that “There’s a new awareness of the importance of planned giving. Regrettably, however, many brokers and commission-able

agents see it as only a new way to sell a product. There's a need for emphasis on ethics, morality, justice and honesty.”

The same issue of *Planned Giving Today* included thumbnail sketches of eight “true-to-life ethical dilemmas” and comments on ethics and planned giving by six PGT Editorial Board members. Lindsay Lapole of the Salvation Army and a board member of the Committee on Gift Annuities wrote that “the planned giving community should develop and police a standard of ethics . . . Charities and the professional fund-raising community must distance themselves from . . . those who see fund raising and charitable causes as a way to ‘make a quick buck.’”

Working from the fall of 1990 through March 1991, the NCPG Ethics Committee used the CANARAS Code as the basis for drafting the "Model Standards of Practice for the Charitable Gift Planner," though Minton points out that the committee also reviewed similar codes from NSFRE, AHP, AAFRC and other organizations. Gift planners had discussed their aspirations for a national professional code of conduct for nearly a decade. Here was an opportunity to address topics not specifically mentioned by the CANARAS Code.

Ethics Committee Chair Tal Roberts, chair of the Committee on Gift Annuities and a member of the NCPG Board, reported to the Board on February 5, 1991 that members of his committee

are authoring a statement which will affirm the prominent role that a philanthropic interest must play in gift planning. The statement will discuss the compensation issues for planned giving officers, and will attempt to discuss the responsibility of the planned giving officer to his or her institution, donors, colleagues, and other fellow professionals.

Members of the Ethics Committee led by Tal Roberts included:

Sarah Arciszewski, WNET New York
Bruce Bigelow, Hood College and CANARAS
Paul Comstock, financial planner, Houston
Fred Hartwick, Stanford University
Clint Schroeder, Minneapolis attorney & Committee on Gift Annuities
Zoe Hicks, Atlanta attorney

Frank Minton, ex officio

Terry Simmons, who served as Counsel for the Baptist Foundation of Texas, was instrumental to the committee and the NCPG Board as Tal's assistant. Simmons succeeded Minton as President of NCPG.

In his interview with me, Frank Minton touched on the context for the Model Standards; the process of organizing an ethics committee; his reasons for selecting Tal Roberts as chair; and how the new Standards differed from the CANARAS Code:

I was named as Conference Chair at the Conference in the fall of 1989, to be in charge of the 1990 Conference, and that was the first Conference where we moved out of the IUPUI [Indiana University/Purdue University at Indianapolis] Conference Center into the Westin. At that time, we were very concerned about the prevalence of finder's fees particularly, and the reaction this might provoke in Congress that might stimulate legislation that would be detrimental to planned gifts. So that was a great deal of concern.

We need to remember that the Tax Reform Act of 1986 had shut down a number of the traditional tax shelters and by the late 80's–1990, the charitable remainder trust had been discovered as sort of a replacement for the tax shelters. And I can remember the Forbes article referring to the CRT as the loophole Congress forgot to close. And I can remember newspaper advertisements referring to the CRT as the last tax shelter.

Now, people in the financial services field who wanted to be involved in promoting CRTs—and many of them genuinely wanted to promote philanthropy, but they had to earn a living, so the question was: if you're going to promote CRTs, how do you earn a living if you don't get any kind of commission or finder's fee? So I think they were really defending their very financial standing.

One of the reasons we opposed commissions and finder's fees was that the fees were often out of all proportion to the time invested. Also, the charity was paying an up-front fee for an indeterminate remainder and sometimes the future value of that up-front fee might exceed the remainder they

eventually realized. So the charity was at risk, the fees could be too large, it encouraged aggressive salesmanship. And, if the fee were taken from the trust, you could jeopardize the deduction. So those were all the reasons why we had a problem with it.

I had two main reasons for appointing Tal to chair this task force. Number one was Tal's particular skills as a moderator and a consensus builder. Tal is a wonderful listener and is able to mediate differences. So that was one reason. The second reason was I thought it very important that we have this code adopted by both organizations that were concerned with planned giving. I thought it would have more force. And inasmuch as ACGA had had a certain suspicion of NCPG, I thought having one of their own as chair would rally them more behind it. So that's why I appointed Tal, who was Chair of the ACGA at that time.

We tried to have on the task force representatives of both organizations. And then we began with the CANARAS Code, recognizing that a lot of good work had been done there. But we also looked at the NSFRE Code and the AHP Donor Bill of Rights and such other professional ethics codes as we had access to. And so we were informed by all of them. I would say the CANARAS Code was the most influential.

Then we worked to do a draft. Terry Simmons was certainly a major contributor. I worked with Tal, and we drafted it. And I think we prepared a draft; I believe it was Tal, Terry, and I who prepared a draft and then circulated it among other members of the committee, all of whom had helpful suggestions and helped us refine it and get it into a shape to take to the first Assembly of Delegates.

We felt it important to state up front the principal reason for making a charitable gift so that donative intent was center stage, and so that taxes and those considerations played a supporting role. We wanted to be on record that we're not primarily talking about investments. We're talking about means of making a gift.

And then if I recall, the CANARAS Code was reacting to the finder's fees and commissions and to a large extent focused on that issue. We wanted Model Standards that were broader, that would deal with all of the issues: full disclosure and conflict of interest, making sure that people had access to counsel, recognizing limitations. We wanted a more comprehensive code, so I think that was probably the primary thing that distinguished us from CANARAS, the attempt to be more comprehensive.

Brown: I noticed that Paul Comstock, a financial planner who later became President of NCPG, participated on the Ethics Committee. Was there input as you went along from people representing for-profit advisors?

Minton: Yes. Now Paul—as I recall, Paul was mostly a fee-based planner and not commission-based. So Paul was supportive of this from the beginning. But I would say that as we were drafting this, that we mostly did not have much input from financial services professionals who were primarily commission-based, although in the circulation of it to all of the councils, they became aware of it, and there were a few who came to the Assembly of Delegates prepared to challenge it.

Roberts and his committee provided a draft of Model Standards of Practice for the Charitable Gift Planner to the NCPG Board, which agreed to send the draft to the second annual NCPG Assembly of Delegates meeting in Seattle on April 28-29, 1991. A memo dated March 21, 1991 from Roberts to each planned giving council included a draft of the Model Standards with this comment:

This draft is being furnished to you in time for your council to consider it in advance of the NCPG Assembly of Delegates in Seattle, April 29, 1991. At that time the Assembly will have opportunity to discuss the document with an eye toward final approval of a statement having the endorsement of NCPG and its local councils. That statement will then be presented, later that same week, to the Committee on Gift Annuities, meeting in Dallas. It is our goal to have both of these national organizations subscribe to the following statement, which can then be presented to the entire charitable community.

Planned giving councils did go through the proposed draft carefully. For example, the newsletter of the Planned Giving Group of Greater New York (PGGGNY) announced an open meeting on April 11 to discuss the draft. David Clough, past president of PGGGNY and of NCPG, gave me a copy of the extensive handwritten comments he submitted to Sarah Arciszewski, a member of the draft-writing committee.

According to a roster entitled Assembly Delegates To Date (March 27, 1991), these were the participants and the planned giving councils they represented:

Planned Giving Roundtable of Southern Arizona: Peter E. Brown

Planned Giving Council of Northern California: Phillip W. Hoffmire

Planned Giving Roundtable of Southern California: Joseph C. Schrieber, II

Chesapeake Planned Giving Council: Emanuel J. Kallina, II

Chicago Planned Giving Roundtable: Nancy Gilson

Greater Cincinnati Planned Giving Council: Marsha Goldsmith

Dade County Planned Giving Council: Charles Muller

Delaware Valley Planned Giving Council: John S. Foster

Denver Planned Giving Roundtable: Scott Lumpkin

Planned Giving Council of Central Florida: D. Robert McGinnis

Georgia Planned Giving Council: Stewart Crook

Planned Giving Council of Houston: Robert Coffey

Planned Giving Group of Indiana: Pamela J. Davidson

Council of Jewish Federation Endowment Professionals: Dan Asher

Western Michigan Planned Giving Group: John C. Heerspink

Mid-America Planned Giving Council: Richard V. Porto
Minnesota Planned Giving Council: James B. Field
Mississippi Committee on Planned Giving: Thomas P. Bonner
Planned Giving Group of New England: Ilisa Hurowitz
Association of Development Officers of Central New York: David Fanning
Planned Giving Council of Upstate New York: James L. Tennant
Planned Giving Group of Greater New York: Wayne Mones
North Carolina Planned Giving Council: Joseph O. Bull
Northwest Planned Giving Roundtable: Jerry Tucker
Orange County Planned Giving Roundtable: James G. Normandin
Pittsburgh Planned Giving Council: Bohdan Durkacz
San Diego Planned Giving Roundtable: Richard Heinrich
Planned Giving Roundtable of Santa Barbara: Kenneth Siegele
United Way Planned Giving Council: Kay Van Liew
Utah Planned Giving Roundtable: Alden B. Tueller
Planned Giving Council of Washington: Marilyn Montgomery

In his interview, Minton described the Assembly process:

Our meeting was at the Hilton in Seattle. I presided, but I had Tal present the recommendation on behalf of this joint committee. And then we had a spirited discussion. Most of the discussion was on Article IV, having to do with compensation. There was some language that was a little less firm, but in the course of the discussion, I believe we had an amendment that actually stated more forthrightly a clear opposition to finder's fees and commissions. We voted on that amendment, and it was adopted. And then we voted on the

amended Model Standards. They were adopted not unanimously, but overwhelmingly.

Bigelow recalls that “it was Frank’s initiative and his direction that really enabled us to move. It was Frank’s leadership and the CANARAS Code—at least as a starter that we could put on the table—that moved that discussion through.”

The Model Standards contained many elements from the CANARAS Code and Convention, and introduced several new ones. The aim of the Standards was broadly inclusive of “all who work in the charitable gift planning process.” Gone was the adversarial tone of the Convention. The Standards embraced charities and for-profit advisors alike, adding a representative (but not exhaustive) list of planners:

. . . including charitable institutions and their gift planning officers, independent fund-raising consultants, attorneys, accountants, financial planners and life insurance agents, collectively referred to hereafter as “Gift Planners.”

As in the Code, the Standards acknowledged a wide range of planning concerns while stressing that “The principal basis for making a charitable gift should be a desire on the part of the donor to support the work of charitable institutions.” Tax implications must be explained “fully and accurately” to the donor. Professional relationships must be fully disclosed.

Regarding compensation, the most controversial topic, the Standards strengthened and expanded the range of ethical prohibitions. Compensation must be “reasonable and proportionate” to professional services provided. Like the CANARAS statements, the Standards are absolutely clear about finder’s fees:

Payment of finders fees, commissions or other fees by a donee organization to an independent Gift Planner as a condition for the delivery of a gift are never appropriate.

The Standards added a new concern about unsuitable “commission-based compensation for Gift Planners who are employed by a charitable institution”, though the specific reasons behind this provision were not fully articulated. The

Standards simply stated that payment of finder’s fees “may violate certain state and federal regulations.”

The unstated concern was that payment of finder’s fees might subject charitable life income gifts to regulation as securities. This concern had been the subject of an article entitled “Charities Paying ‘Finder’s Fees’ Seen Subject to Securities Rules” (The Chronicle of Philanthropy, March 6, 1990). Citing a series of SEC guidelines issued from 1972 through 1986, the article reported that the SEC would not require a charity to register its pooled income funds and charitable remainder trusts as securities so long as these are promoted as charitable gifts and do not involve inappropriate compensation.

The Chronicle article quotes an SEC ruling issued in 1980 approving a pooled income fund but requiring that

Each person soliciting gifts by means of the fund is either a volunteer, or a person who is employed in the public charity’s overall fund raising activities who receives no commissions or other special compensation based on the amount of gifts transferred to the pooled income fund.

An article by Barlow Mann, Robert Sharpe, Jr., and Jonathan Tidd in August 1990 entitled “Is There ‘Security’ In Planned Giving?” covered many significant policy issues relating to marketing and administering CRTs and pooled income funds. Regarding commissions, the authors ask “whether a serious conflict of interest is involved if the person selling the plan to the donor . . . has a financial stake of some sort in the management of the unitrust.”¹³

Following this line of argument, the Model Standards introduce the new prohibition applicable to professional staff working for charities: “Likewise, commission-based compensation for Gift Planners who are employed by a charitable institution is never appropriate.”

¹³ Subtitled “In light of increased federal, state, IRS and S.E.C. scrutiny, now is certainly not the time to attempt to expand beyond safe harbors,” the article appeared in *Trusts & Estates*, August 1990.

Reflecting the intentions behind NCPG's training and certification proposal, the Model Standards add a new section entitled Competence and Professionalism:

The Gift Planner should strive to achieve and maintain a high degree of competence in his or her chosen area, and shall advise donors only in areas in which he or she is professionally qualified. It is a hallmark of professionalism for Gift Planners that they realize when they have reached the limits of their knowledge and expertise, and as a result, should include other professionals in the process.

After many years of discussion and debate, NCPG's Standards on the profession of gift planning arrived at a mature recognition of the value of each party in the process: "Such relationships should be characterized by courtesy, tact and mutual respect."

The closing paragraph of the Model Standards on Public Trust rises to the general ethical principles advocated by Harvey DeVries:

Gift Planners shall, in all dealings with donors, institutions and other professionals, act with fairness, honesty, integrity and openness. Except for compensation received for services, the terms of which have been disclosed to the donor, they shall have no vested interest that could result in personal gain.

The NCPG Board met on April 30, 1991 to receive the Assembly report. There were no representatives from AAFRC, CASE, NAHD or NSFRE at the meeting to question the commission-based fund raising provision. After making some minor changes in wording and the order of paragraphs, the NCPG Board unanimously adopted the Model Standards of Practice for the Charitable Gift Planner. The Board of the Committee on Gift Annuities unanimously adopted the Standards two days later.

Within weeks of the April 30, 1991 Board approval, NCPG President Minton sent a copy of the Standards to each gift planning council president and to individual members of local councils with a cover letter asking "that they invite members to discuss and ratify" the Standards at their next council meeting and

“send us [NCPG] the names of all persons from their councils willing to be listed as endorsers.” In his letter, Minton emphasized the participatory process of arriving at the Standards:

Participants at the 1990 Annual Conference were polled and overwhelmingly endorsed NCPG's developing a statement of ethics. The majority said the statement should be modeled after the Canaras Code, which was a revision of the Canaras Convention first released in 1989. I appointed Tal Roberts as chairman of the ethics committee, and he in turn appointed a committee that was representative both geographically and by profession . . . The ethics committee sought input from many sources and produced a draft in March [1991], which was then sent to the council presidents for discussion . . . The delegates discussed the statement at length, suggested some amendments, and then recommended that it be adopted.

7. Model Standards received with enthusiasm by most – but not all gift planners

By October 16, 1991, 13 planned giving councils had reported to NCPG they had ratified the Model Standards of Practice. By April 1992, 451 sponsoring organizations affiliated with ACGA had endorsed the Standards.¹⁴

The suggestion that planned giving councils consider adopting the Standards soon became a requirement, a decision made by the Assembly of Delegates in 1992. On June 9, 1992 the NCPG Board notified the Inland Empire Chapter of NCPG that councils must ratify the Model Standards; the Chapter refused to do so. On October 13, 1992, Joseph Schreiber, the recently-appointed NCPG Ethics Committee Chair, reported to the NCPG Board that the Chapter had been disaffiliated.

¹⁴ Frank Minton, “Report on Model Standards of Practice,” Twenty-First Conference on Gift Annuities, April 28-30, 1992, page 41.

Minton's letter called the Standards "one of the most important initiatives we will take this year, and we would like to have your full support," noting that "The reports we have received from councils so far have been very positive, and it appears they will give the statement an enthusiastic endorsement. That will add to the weight of the statement as evidence of our commitment to assure ethical practice in our profession. We invite you to stand with us in endorsing and living by these Model Standards of Practice."

In a similar letter to members of the Committee on Gift Annuities, Chairman Tal Roberts adds that a press release "has been distributed to the news media and various charitable giving publications around the country." Mr. Roberts asked members to distribute the press release to local news organizations and to publish both the Standards and the press release in their own newsletters.

Frank Minton reported a major breakthrough in acceptance of the Standards by one of the largest for-profit investment advisor companies:

In the early 1990s Renaissance, headed by Paul Brooks, was a rapidly growing company. They acted as administrator of CRTs, which were initiated by their member financial advisors. In most cases, the donor was trustee of these trusts, and the financial advisor handled the investments for the donor. Some of the advisors had not been supportive of the Model Standards' position against finders' fees and commission-based fundraising.

Paul invited me to speak to their annual conference of advisors. I made a case for the Model Standards, and Renaissance subsequently adopted them and stipulated that their financial advisors were not to charge finders' fees. Henceforth, advisors were compensated in two ways: investment fees on trust assets, and commissions on life insurance purchase to replace for heirs what had been donated . . . Renaissance and its financial advisors agreed to follow the Model Standards, and that fact was important in gaining more widespread acceptance of them.¹⁵

¹⁵ Electronic message from Frank Minton to Ronald Brown, July 8, 2013.

In August 1991, Planned Giving Today published an article entitled “What One Ethicist Thinks of the Model Standards” featuring Michael Josephson in a question-and-answer interview conducted by Joseph Bull of Ohio State University. Josephson congratulated NCPG on adopting “a direct position on finder’s fees and commissions and on following both the letter and spirit of the law. I hope people in the planned giving field will feel bound by this code.”

Josephson felt the Standards were ambiguous about donor motivations: “the opening statements about the primacy of philanthropic motivations do not deal with those donations that are not motivated in that way. What should a gift planner do when the gift is purely tax-centered?”

He also questioned the practical wisdom of the Model Standards’ broad commitment to the “spirit” of tax laws: “to follow the spirit of many tax laws is not to act the way many tax professionals act.”

Overall, Josephson felt that NCPG and CGA “have shown courage in dealing with some very important issues.” He encouraged the widest possible distribution of the Standards, frequent public discussion and commentary, and positive recognition for those individuals and organizations that commit to following the Standards.

Discussion and debate over ethical issues continued in the years immediately following the Model Standards. The 1991 NCPG Conference on Monday, October 14 included a breakout discussion led by Ellen Estes on ethics entitled “How Close is Too Close: Dealing with the Deal Breakers.” Her presentation included 19 cases collected from gift planning practitioners dealing with questions of legal capacity, undue influence, conflicts of interest, and full disclosure, among other topics. NCPG Conference Chair Terry Simmons sent a memo to member councils requesting that cases be sent to Ellen, who also called for examples. She reported that: “The response was incredible. I had more than 50 phone calls, some lasting an hour or more, and many letters. The sheer magnitude of the response told me there are lots of development officers out there struggling with ethical issues.”

In his 2004 interview with me, Frank Minton was justifiably proud of the Model Standards:

I do think while we didn't eradicate finder's fees and commissions, we greatly diminished it and sort of stopped that trend and redirected financial services professionals to look to other ways of being involved in planned giving and being compensated. I think the Model Standards have served the profession exceedingly well. I think that they have set a standard of practice and kept us on a more ethical course than we might have been otherwise. And when issues come up, we've been able to respond to those issues by reference to the Model Standards, like one can respond to discrimination issues or whatever by reference to the Constitution.

On the 10th Anniversary of NCPG, Dallas attorney Terry Simmons, a past president and public policy chair of NCPG, founder of Charitable Accord, and a trusted advisor for charities nationwide, published an article in *Trusts & Estates* magazine highlighting major successes over NCPG's first decade. Simmons wrote that convening people from diverse occupations "bound together solely by a common interest in charitable gift planning . . . first created a consciousness of gift planning as a profession." And tops among NCPG's accomplishments, according to Simmons, was "the establishment of ethical standards for the profession in the form of the Model Standards of Practice For The Charitable Gift Planner."¹⁶

Taking a principled stand against abuses of charitable trusts and finder's fees through the Model Standards in 1991 enabled NCPG to restore its positive public identity and enhance its credibility on matters of national public policy. The first successful policy initiative of NCPG, the Standards continue to provide all gift planners with clear guidelines for ethical behavior.

Acknowledgments:

I am grateful to the Partnership for Philanthropic Planning for allowing me to make use of the oral history interviews I conducted with Bruce Bigelow, Michael Boland, Marvin Kelly, Frank Logan, and Frank Minton. PPP also loaned me many of their early archival files. David Clough, Lori Goldstein, Charles Johnson,

¹⁶ Terry Simmons, "NCPG: Strong and Stable Growth Spells Continued Success," *Trusts & Estates*, September 1997, page 87.

and Peter Ticconi all shared copies of materials from their personal files. Four contemporary publications were particularly helpful: Charitable Giving and Solicitation, The Chronicle of Philanthropy, Give and Take, and Planned Giving Today. Scott Lumpkin, Frank Minton, and Peter Ticconi provided extremely helpful feedback on earlier versions of the essay, for which I am most grateful.

Appendix 1

MODEL STANDARDS OF PRACTICE FOR THE CHARITABLE GIFT PLANNER

PREAMBLE

The purpose of this statement is to encourage responsible charitable gift planning by urging the adoption of the following Standards of Practice by all who work in the charitable gift planning process, including charitable institutions and their gift planning officers, independent fund-raising consultants, attorneys, accountants, financial planners and life insurance agents, collectively referred to hereafter as "Gift Planners."

This statement recognizes that the solicitation, planning and administration of a charitable gift is a complex process involving philanthropic, personal, financial, and tax considerations, and as such often involves professionals from various disciplines whose goals should include working together to structure a gift that achieves a fair and proper balance between the interests of the donor and the purposes of the charitable institution.

PRIMACY OF PHILANTHROPIC MOTIVATION

The principal basis for making a charitable gift should be a desire on the part of the donor to support the work of charitable institutions.

EXPLANATION OF TAX IMPLICATIONS

Congress has provided tax incentives for charitable giving, and the emphasis in this statement on philanthropic motivation in no way minimizes the necessity and appropriateness of a full and accurate explanation by the Gift Planner of those incentives and their implications.

FULL DISCLOSURE

It is essential to the gift planning process that the role and relationships of all parties involved, including how and by whom each is compensated, be fully

disclosed to the donor. A Gift Planner shall not act or purport to act as a representative of any charity without the express knowledge and approval of the charity, and shall not, while employed by the charity, act or purport to act as a representative of the donor, without the express consent of both the charity and the donor.

COMPENSATION

Compensation paid to Gift Planners shall be reasonable and proportionate to the services provided. Payment of finders fees, commissions or other fees by a donee organization to an independent Gift Planner as a condition for the delivery of a gift are never appropriate. Such payments lead to abusive practices and may violate certain state and federal regulations. Likewise, commission-based compensation for Gift Planners who are employed by a charitable institution is never appropriate.

COMPETENCE AND PROFESSIONALISM

The Gift Planner should strive to achieve and maintain a high degree of competence in his or her chosen area, and shall advise donors only in areas in which he or she is professionally qualified. It is a hallmark of professionalism for Gift Planners that they realize when they have reached the limits of their knowledge and expertise, and as a result, should include other professionals in the process. Such relationships should be characterized by courtesy, tact and mutual respect.

CONSULTATION WITH INDEPENDENT ADVISORS

A Gift Planner acting on behalf of a charity shall in all cases strongly encourage the donor to discuss the proposed gift with competent independent legal and tax advisers of the donor's choice.

CONSULTATION WITH CHARITIES

Although Gift Planners frequently and properly counsel donors concerning specific charitable gifts without the prior knowledge or approval of the donee organization, the Gift Planners, in order to insure that the gift will accomplish the donor's objectives, should encourage the donor, early in the gift planning

process, to discuss the proposed gift with the charity to whom the gift is to be made. In cases where the donor desires anonymity, the Gift Planners shall endeavor, on behalf of the undisclosed donor, to obtain the charity's input in the gift planning process.

EXPLANATION OF GIFT

The Gift Planner shall make every effort, insofar as possible, to assure that the donor receives a full and accurate explanation of all aspects of the proposed charitable gift.

FULL COMPLIANCE

A Gift Planner shall fully comply with and shall encourage other parties in the gift planning process to fully comply with both the letter and spirit of all applicable federal and state laws and regulations.

PUBLIC TRUST

Gift Planners shall, in all dealings with donors, institutions and other professionals, act with fairness, honesty, integrity and openness. Except for compensation received for services, the terms of which have been disclosed to the donor, they shall have no vested interest that could result in personal gain.

Adopted and subscribed to by the NATIONAL COMMITTEE ON PLANNED GIVING, representing fifty planned giving councils comprised of 4,000 individuals involved in planned giving throughout the country, and the COMMITTEE ON GIFT ANNUITIES, representing over 1,200 public charities across America.

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April 30, 1991

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Jane Stuber, Smith College
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Eugene L. Wilson, American Leprosy Missions, Inc.

Appendix 2

The CANARAS Convention

June 23, 1989

As planned giving professionals, we appreciate that a thorough understanding of the tax aspects of a charitable contribution can be crucial to the proper structuring of a charitable gift, but we believe that the only legitimate basis for making a charitable gift is a genuine desire to support the work of the donee organization.

We affirm that the principal rationale underlying the Federal tax deduction for charitable contributions is that they assist charitable organizations to work for the public good and thereby meet public needs which would otherwise have to be met with direct governmental expenditures. We are deeply concerned about what we perceive as growing abuse of the charitable contribution deduction by persons or organizations who view that deduction primarily as a means to make money or avoid taxes.

We are appalled by recent promotions which appear to be “selling” charitable gift arrangements as tax shelters or commercial transactions (with significant profit for the promoter) without any appreciation of the true nature of a charitable contribution. Such an approach is, in our judgment, totally inconsistent with the basis of philanthropy.

In order to reinforce our concept of charitable giving, we have, acting as individual professionals rather than the representative of any particular institution, agreed on the following statement of position:

1. We express strong disapproval of, and disassociate ourselves from, any effort to represent charitable gifts as tax shelters rather than as thoughtful contributions to the work of charity.
2. While we recognize and appreciate that there are many organizations and individuals who provide valuable services at legitimate charges to both donors and charitable organizations, we express strong disapproval of, and disassociate ourselves from, promoters of charitable gifts who charge unreasonable fees or commissions for arranging or managing charitable gifts, or who, without our knowledge or approval, undertake to negotiate gifts on behalf of our charitable institutions.
3. We will not cooperate with any person or organization which charges a “finder’s fee” for arranging a charitable gift; and we will recommend that the charitable organizations which we represent decline to accept any gift which, in our judgment, involves an unreasonable fee or commission for establishing or managing the charitable gift.
4. We urge that, whenever possible, the donee institution be directly involved with any potential donor in helping to plan any gift to that institution in order to ensure that the gift is in keeping with genuine philanthropy and is truly sensitive to the needs and interests of the institution.

We urge all of our fellow fund-raising professionals, and others who are concerned about these issues, to subscribe to the foregoing statements of position. Unless these issues are addressed by the charitable community in a prompt and constructive fashion, the misguided efforts of those for-profit promoters who seek to subvert the charitable tax deduction as a tax shelter could cause a congressional and public opinion backlash which will seriously undermine the future of philanthropy.

Deborah H. Blackmore (University of Pennsylvania)

Donald L. Blunk (Skidmore College)

Gary Dicovitsky (University of Virginia)

Paul Harkess (Union College)

Richard W. Johnson III (Clarkson University)

Marvin L. Kelley (Wesleyan University)
Jack Kreckel (University of Rochester)
John G. Lewis, Jr. (Brown University)
Frank A. Logan (Dartmouth College)
Benjamin P. Madonia III (Hamilton College)
Donald Martin (Colgate University)
W. Richard Park (Amherst College)
Ronald E. Sapp (The Johns Hopkins Institute)
Peter J. Ticconi, Jr. (Williams College)
Alex Velto (St. Lawrence University)

(with appreciation to David M. Donaldson, Esquire of Ropes and Gray, Boston, Massachusetts)

Appendix 3

THE CANARAS CODE

A Code for Gift Planners

(For all individuals and organizations engaged in soliciting, planning, rendering advice with respect to, accepting and administering charitable gifts)

The solicitation, planning and administration of a charitable gift is a complex process involving philanthropic, personal, tax and financial considerations.

The Code is intended to assure that the process is conducted in a professional and ethical manner that achieves a fair and proper balance between the personal interests of the donor and the purposes of the charitable institution. We recommend its adoption and observance by all Gift Planners.

1. In any solicitation or planning of a charitable gift, the Gift Planner shall give primary emphasis to the philanthropic nature of the gift; tax considerations should not be the primary focus of the gift. Any investment considerations should reflect the fact that the gift is being invested, at least in part, for and on behalf of the charity.
2. The Gift Planner shall explain all aspects of a proposed gift fully, fairly and accurately to the donor during the gift planning process. This explanation should include:
 - * the charity's proposed use of the gift;
 - * all fees and costs of planning and management;
 - * valuation issues and procedures;
 - * tax consequences and reporting arrangements;
 - * alternative arrangements for making the gift;
 - * financial and family implications; and
 - * any other information which is relevant to the donor's decision to make the gift.
3. A Gift Planner shall not act or purport to act as a representative of any charity without the express knowledge and approval of the charity and shall not, while in the employ of a charity, act or purport to act as a representative of the donor.
4. A Gift Planner acting on behalf of the charity shall encourage the donor to discuss the proposed gift with a competent lawyer or accountant of the donor's choice; a Gift Planner acting on behalf of the donor shall, where appropriate, encourage the donor to discuss the proposed gift with the charity to whom the gift is to be made.
5. Fees charged by Gift Planners shall be reasonable in relation to the services provided and shall be charged to the person to whom, or on behalf of whom, the services are provided. A Gift Planner shall not

solicit, and a charity shall not pay, any fee, directly or indirectly, for the right to receive a gift.

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