

# TIPPING THE SCALES OF JUSTICE: THE ROLE OF THE NONPROFIT SLIDING SCALE LAW FIRM IN THE DELIVERY OF LEGAL SERVICES

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*Most research on providing legal services for low-income clients has focused on (1) government-funded programs, (2) private donor-funded programs, and (3) pro bono programs. Despite the valuable services these programs provide, a well-documented justice gap persists. Other models for the delivery of legal services exist, but are not well known or understood. One such approach has existed for years without scholarly study: the nonprofit organization that only serves low-income clients and receives its funding primarily on the basis of sliding-scale fees paid by clients. Based upon the author's personal experience starting a nonprofit Sliding Scale Law Firm (SSLF), and informed by interviews with attorneys working at SSLFs across the country, Part I of this article describes the structure of these nonprofit SSLFs. Part II addresses the role that the SSLF model fills in the overall system of legal service delivery: SSLFs reduce the justice gap by providing services to clients who cannot obtain free legal services, but cannot afford to hire an attorney at prevailing market rates.*

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## INTRODUCTION

“Last year, I felt my kids were no longer safe because their other parent started abusing drugs,” said Pat,<sup>1</sup> a financially struggling single parent with two elementary-aged children. “I went to Affordable Justice, Inc.<sup>2</sup> They represented me and filed the right court motions just as the kids’ other parent went on a drug binge, went missing for a while, and eventually checked into a treatment center. I never thought I could afford a lawyer because attorneys usually charge hundreds of dollars per hour. My kids would have remained in a dangerous situation without help from Affordable Justice, Inc.”

Pat works full-time, earning \$14.50 per hour, which is well above the federal minimum wage, but still only earns \$29,000 annually. For many people in Pat’s situation, there is little or no money left in their monthly budget after paying for food, clothing, and shelter for themselves and their children. When people like Pat encounter legal issues, they are often too poor to hire an attorney at prevailing market rates, which are frequently more than \$250 per hour.<sup>3</sup> Nevertheless, they are

1. Names and identifying information have been changed or removed to protect confidentiality.

2. Fictitious name of the nonprofit sliding scale law firm. *See supra* note 1.

3. *See* RONALD L. BURDGE, U.S. CONSUMER LAW ATTORNEY FEE SURVEY REPORT 2013–2014, at 12 (2015), <https://www.nclc.org/images/pdf/litigation/fee-survey-report-2013-2014.pdf> (finding an average hourly rate of \$361/hour). *See generally* Lester Brickman, *Effective Hourly Rates of Contingency Fee Lawyers: Competing Data and Non-Competitive Fees*, 81 WASH. U. L.Q. 653 (2003).

considered too wealthy to qualify for federally funded legal assistance.<sup>4</sup>

It is often said that necessity is the mother of invention. Because millions of Americans need legal services but cannot afford or qualify for them,<sup>5</sup> more non-traditional methods for providing legal services are needed.<sup>6</sup> Part I of this paper describes an understudied approach to delivering legal services that was born out of this necessity<sup>7</sup>: the non-profit sliding scale law firm. Part II explains the role nonprofit sliding scale law firms play: providing legal aid to those who cannot afford or access legal services through traditional nonprofit organizations or traditional private law firms, tipping the scales of justice into balance for everyone.

## I.

### THE BASIC STRUCTURE OF NONPROFIT SLIDING SCALE LAW FIRMS (SSLFs)

Sliding scale law firms (SSLFs) charge clients for legal services provided. Now, almost any lawyer in private practice can adjust or “slide” the rate each client is charged based on that client’s income. Charging some clients or customers more than others is called price discrimination, and it is common practice not only in the for-profit airline industry but also in nonprofit sectors such as healthcare and higher education.<sup>8</sup> Price discrimination based upon income allows an

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4. Appendix A, 82 Fed. Reg. 10,442 (codified at 45 C.F.R. 1611), <https://www.federalregister.gov/documents/2017/02/13/2017-02823/income-level-for-individuals-eligible-for-assistance>.

5. In a recent survey, the Legal Services Corporation estimated that over 944,000 people who actively sought legal services were turned away by programs because of a lack of available resources. LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 9, 11 (2009) [hereinafter DOCUMENTING THE JUSTICE GAP]. This number would not include those who did not qualify for services because of income. *Id.* Studies on the lack of lawyers for people of limited means generally underestimate the need. See Deborah L. Rhode, *Access to Justice: An Agenda for Legal Education and Research*, 62 J. LEGAL EDUC. 531, 534 (2013).

6. This paper uses the phrases “providing legal services,” “delivery of legal services,” “direct legal services,” and “legal representation” interchangeably. Regardless of the phrasing, the meaning throughout the paper is legal representation of client(s) by lawyer(s).

7. For a look at low fee or “low bono” work by private, but not necessarily non-profit, firms, see generally Luz E. Herrera, *Encouraging the Development of Low Bono Law Practices*, 14 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 1 (2014). For an explanation of the need for further study of service delivery methods, see Rhode, *supra* note 5, at 534.

8. With in-house scholarships and other financial aid, colleges and universities often charge students vastly different tuition amounts. See, e.g., *Financial Aid In-*

organization to serve people with a broader range of incomes than it could if everyone paid the same price. Higher-income clients pay more, effectively subsidizing lower-income clients who pay less. While any law firm that ever uses any price discrimination might be considered a sliding scale law firm, this paper is focused exclusively on nonprofit SSLFs that are tax-exempt under § 501(c)(3) of the Internal Revenue Code.

While not intended to provide an exhaustive or comprehensive description of every individual SSLF, this paper brings together insights from SSLF practitioners with diverse geographies and legal practice areas. Tax-exempt SSLFs have been serving clients for decades. But, due to their independent nature, the lack of any SSLF-specific association, and a dearth of scholarly study, many incorrectly think that the SSLF is a new development. As recently as 2017, the American Bar Association (ABA) described SSLFs as “fairly new.”<sup>9</sup> However, the idea of charging sliding scale fees has long been suggested as part of an overall system of delivering legal services.

Might legal services be better provided to people of moderate means through some special kind of facility, such as a low-cost legal service bureau or something of the sort? The question is not new. Karl Llewellyn commented in 1938 about the need for a facility to provide legal help to people who can pay something, but not full fees, for the services they require. The same idea was discussed in 1947 by Reginald Heber Smith, who, like Llewellyn, saw a possibility that such agencies might grow out of bar-sponsored lawyer referral services.<sup>10</sup>

Moreover, the SSLF model has been recognized and approved by the IRS since at least the 1960s.<sup>11</sup> While it is unclear exactly when the first SSLF started, the practice of charging sliding scale fees to clients who could not otherwise afford an attorney dates back to at least 1770, when John Adams defended eight British soldiers accused of murder-

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*Depth*, YALE UNIV., <http://admissions.yale.edu/financial-aid-prospective-students> (last visited Aug. 13, 2017) (explaining grants available to students and the varying costs to families based on income).

9. Stephanie F. Ward, *Pro Bono and Low Bono: Can Nonprofit Firms Bridge the Access Gap?*, A.B.A. J. (Jan. 1, 2017), [http://www.abajournal.com/mobile/mag\\_article/low\\_bono\\_access\\_justice](http://www.abajournal.com/mobile/mag_article/low_bono_access_justice).

10. BARLOW F. CHRISTENSEN, *LAWYERS FOR PEOPLE OF MODERATE MEANS: SOME PROBLEMS OF AVAILABILITY OF LEGAL SERVICES* 205 (Am. Bar Found. ed., 1970); see also JEANNE CHARN & RICHARD ZORZA, *CIVIL LEGAL ASSISTANCE FOR ALL AMERICANS: BELLOW-SACKS ACCESS TO CIVIL LEGAL SERVICES PROJECT* 14–17 (2005), <http://www.garybellow.org/Text.pdf>.

11. See Rev. Rul. 69–161, 1969-1 C.B. 149.

ing five Bostonians during what became known as the Boston Massacre.<sup>12</sup>

### A. Methodology

This article is a product of both extensive interviewing as part of a qualitative study on SSLFs and the author's career as a legal service provider. The author cofounded an SSLF in 2004, worked there full-time for five years, and remains on its board of directors. In addition, the author currently serves as a full-time clinical director at the University of Wisconsin Law School. Background data and interview questions about SSLFs were informed by these experiences. Based upon interviews with other founders and attorneys working at SSLFs across the United States, the author describes the general characteristics of SSLFs and explores the challenges and opportunities they navigate. The author identified more than thirty SSLFs. The Institutional Review Board (IRB) research protocol for this study, however, prohibits naming the firms or individuals interviewed for this paper. Lists of many of the SSLFs can be found online.<sup>13</sup>

This article is intended to inform and inspire others to consider the SSLF model as an accessible, complementary, sustainable model that provides access to justice for clients who otherwise could not qualify for or afford an attorney.

### B. The § 501(c)(3) Tax-Exempt Sliding Scale Law Firms

Section 501(c)(3) of the Internal Revenue Code provides that organizations founded and operated exclusively for charitable purposes

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12. AM. BAR ASS'N, DIALOGUE ON JOHN ADAMS AND HIS LEGACY 7 (Howard Kaplan ed., 2011), [www.americanbar.org/content/dam/aba/images/public\\_education/dialogue\\_on\\_john\\_adams\\_and\\_his\\_legacy.pdf](http://www.americanbar.org/content/dam/aba/images/public_education/dialogue_on_john_adams_and_his_legacy.pdf); see also REGINALD HEBER SMITH, JUSTICE AND THE POOR: A STUDY OF THE PRESENT DENIAL OF JUSTICE TO THE POOR AND OF THE AGENCIES MAKING MORE EQUAL THEIR POSITION BEFORE THE LAW WITH PARTICULAR REFERENCE TO LEGAL AID WORK IN THE UNITED STATES 133–36 (1921) (noting that legal aid organizations have been charging clients low fees for services since 1888 or before).

13. For a listing of some nonprofit sliding scale law firms (SSLFs), see *List of Nonprofit and Sliding Scale Law Firms, Similar Organizations, and Other Resources*, OPEN LEGAL SERVS., <http://openlegalservices.org/about/resources/> (last visited Apr. 13, 2017). See also *ABA Affordable Legal Services: Innovative Services to Help People of Modest Means Obtain Legal Help*, AM. BAR ASS'N, [www.americanbar.org/groups/delivery\\_legal\\_services/resources/programs\\_to\\_help\\_those\\_with\\_moderate\\_income.html](http://www.americanbar.org/groups/delivery_legal_services/resources/programs_to_help_those_with_moderate_income.html) (conduct in-page search for “sliding”) (last visited Oct. 3, 2016); *Welcome to the Revolution in Affordable Legal Services*, OPEN LEGAL SERVS., <http://openlegalservices.org/about/revolution/> (last visited Oct. 3, 2016) [hereinafter *Welcome to the Revolution*].

qualify for exemption from federal income tax.<sup>14</sup> A law firm is considered a charitable § 501(c)(3) nonprofit even if it charges clients for services, provided that (1) the fees are based upon clients' ability to pay, and (2) all of the firm's clients are indigent or unable to otherwise afford legal services.<sup>15</sup>

Confusion arises because the label "public interest law firm" is often used colloquially to describe different types of organizations, including nonprofit SSLFs. However, under IRS regulations, a public interest law firm is prohibited from representing individual clients for a fee.<sup>16</sup> Consequently, nonprofit SSLFs are not "public interest law firms." Rather, nonprofit SSLFs are considered "legal aid organizations" by the IRS.<sup>17</sup> Legal aid organizations and public interest law firms are two separate and distinct types of organizations, each of which is recognized as tax-exempt for different reasons.

### 1. *SSLFs Are Not Public Interest Law Firms*

Any litigation by IRS-defined public interest law firms must represent a broad public interest rather than a private, individual interest.<sup>18</sup> Common examples of public interest law firm litigation include cases regarding environmental protections, urban renewal, prison reform, freedom of information, and injunction suits challenging governmental and private action or inaction.<sup>19</sup> To ensure that public interest law firms are only taking cases that could make a broad public impact, such firms are prohibited from seeking or accepting attorney fees from its clients.<sup>20</sup> If attorneys recover fees, the sum of fees collected (awarded by courts and received from clients) cannot exceed fifty percent of the cost of the firm's legal functions.<sup>21</sup>

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14. I.R.C. § 501(c)(3) (2012).

15. Rev. Rul. 78-428, 1978-2 C.B. 177; *see also* IRS, *The Concept of Charity, EXEMPT ORGANIZATIONS CONTINUING PROFESSIONAL EDUCATION (CPE) TECHNICAL INSTRUCTION PROGRAM FOR FISCAL YEAR 1980* (Feb. 1980), <https://www.irs.gov/pub/irs-tege/eotopicb80.pdf>.

16. Rev. Proc. 75-13, 1975-1 C.B. 662, modified, Rev. Proc. 92-59.

17. The IRS has recognized at least four separate types of organizations that engage in litigation as charities. *See, e.g.*, Rev. Rul. 80-278, 1980-2 C.B. 175, 3 (exempting an organization whose principal activity was environmental litigation); *Internal Revenue Manual* 4.76.9.4 (Apr. 1, 2003) (stating test to determine exemption for public interest firms that engage in litigation); IRS, IRS EXEMPT ORG. BUSINESS MASTER FILE EXTRACT 3, 12 (Apr. 2004), [https://www.irs.gov/pub/irs-soi/04\\_01/efo\\_info.pdf](https://www.irs.gov/pub/irs-soi/04_01/efo_info.pdf).

18. Rev. Rul. 75-74, 1975-1 C.B. 152.

19. *Id.*

20. Rev. Proc. 75-13, 1975-1 C.B. 662; *see also* Rev. Rul. 75-76, 1975-1 C.B. 154.

21. Rev. Proc. 92-59, 1992-2 C.B. 411.

## 2. *SSLFs Are Legal Aid Organizations*

Providing legal service is ordinarily a commercial activity and, absent special circumstances, does not qualify as a charitable activity. However, legal aid organizations have been recognized as charitable, § 501(c)(3) tax-exempt organizations for many years. The classic legal aid society model was created to provide legal services to indigent persons who would otherwise be financially incapable of obtaining them, and that purpose has long been a basis for tax-exempt status under § 501(c)(3).<sup>22</sup> By providing essential legal services to indigent persons, legal aid organizations relieve the poor and distressed; therefore, their litigation activity is charitable. Furthermore, an organization providing legal services to indigent persons can be tax-exempt under § 501(c)(3) despite charging for its services.<sup>23</sup> However, fees must be based on the indigent clients' limited abilities to pay rather than on the type of service rendered.<sup>24</sup>

In contrast to the IRS definition of a public interest law firm, the services provided by legal aid organizations such as nonprofit SSLFs are provided to private individuals, and are not required to further any broader public interest.<sup>25</sup> Typical litigation by a legal aid organization often involves divorce and domestic relations, consumer debt issues, criminal defense, rental housing, and other personal legal problems. The charitable classification of legal aid organizations rests on the basis that they provide essential services to the poor who are otherwise unable to obtain them and they provide such services in a charitable manner.

One key difference between a for-profit law firm that uses price discrimination and a § 501(c)(3) nonprofit SSLF is that all clients of a tax-exempt nonprofit should be indigent or otherwise financially incapable of affording counsel.<sup>26</sup> This important distinction bars granting tax-exempt status to any law firm that occasionally (though commendably) charges some low-income clients a reduced fee while otherwise charging clients prevailing market rates.

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22. R. James Steiner & Carol J. Holahan, *History of Legal Aid in the United States*, 18 UPDATE ON L. RELATED EDUC. 6, 6 (1994); *The History of the Legal Aid Society*, LEGAL AID SOCIETY, <http://www.legal-aid.org/en/las/aboutus/ourhistory.aspx> (last visited Apr. 24, 2017).

23. Rev. Rul. 78-428, 1978-2 C.B. 177.

24. *Id.*

25. IRS, *Exempt Organizations Continuing Professional Education (CPE) Technical Instruction Program for Fiscal Year 1984*, at 1 (Jan. 1984); see also *supra* note 13.

26. IRS, *The Concept of Charity*, *supra* note 15, at 24. But see I.R.C. §§ 509(a)(2), 513 (regarding exceptions and qualified exclusions).

A second key distinction between these entities is that the fee charged by a nonprofit SSLF must be based solely upon a client's ability to pay. At a for-profit law firm, price discrimination may be based upon the level of services rendered or the type of client served. For example, a real estate lawyer might offer a full, "turn-key" package of advice and services for a homebuyer at one price or a simple review of closing documents for a lower price. A lawyer might also charge a well-informed, repeat homebuyer one hourly rate while charging a first-time homebuyer a higher hourly rate. In contrast, every flat fee or hourly rate charged by a nonprofit SSLF must consider only the client's ability to pay.<sup>27</sup> That is, regardless of whether the matter involves drafting a generic will or drafting the detailed wishes of an eccentric client seeking to bequeath various items to dozens of different heirs, the hourly rate can only vary by the client's ability to pay. Similarly, whether representing a client at a bail hearing or in a criminal jury trial, an SSLF attorney must base the clients' fees on their abilities to pay.

Finally, nonprofit SSLFs and for-profit firms may be distinguished by their governance structures. A for-profit firm can have a single lawyer-owner, a number of partners, or many attorney shareholders.<sup>28</sup> The power to make firm governance decisions is linked to the ownership rights of those lawyers, and the firm's owners may direct it to serve any purpose they deem appropriate. The for-profit firm is often driven by the profit motive, i.e. the principle that businesses exist to maximize profits. In contrast, the lawyers in a § 501(c)(3) SSLF generally do not have ownership rights because no stock is issued.<sup>29</sup> Any tax-exempt nonprofit must be organized and operated to further the purpose that justifies tax exemption. Thus, from the moment it is created, any nonprofit SSLF must declare and serve its charitable purpose. Each of the nonprofit SSLFs interviewed for this paper is governed by a volunteer board of directors that sets overarching policy, provides oversight, and helps with marketing and fundraising. Most SSLF boards are comprised primarily of attorneys but often in-

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27. Consistent with for-profit firms and the Model Rules of Professional Conduct, the total fees that a nonprofit SSLF charges may increase if a client requests more services or hours of work. MODEL RULES OF PROF'L CONDUCT r. 1.5(a)(1)–(8) (AM. BAR ASS'N 2015).

28. Shareholders are issued shares in corporate structures such as C corporations. In LLCs, ownership stems from members and their respective units or ownership percentages. *Choose A Business Structure*, U.S. SMALL BUS. ADMIN., <https://www.sba.gov/starting-business/choose-your-business-structure> (last visited Aug. 11, 2017).

29. See, e.g., Garth Seehawer, *The New Nonstock Corporation Law*, 71 WIS. L. 10, 11 (1998); *Kansas Nonprofit Corporations*, LAWFORCHANGE.ORG, [www.lawforchange.org/NewsBot.asp?MODE=VIEW&ID=2346](http://www.lawforchange.org/NewsBot.asp?MODE=VIEW&ID=2346) (last visited Oct. 26, 2015).

clude other business professionals, and may even include former clients and community members.<sup>30</sup>

### C. Fee Structures and Eligibility

In general, all nonprofit SSLFs employ a sliding-scale which looks to potential clients' ability to pay to determine whether they are eligible for services and, if so, the rate at which they will be charged. However, each SSLF sets its own eligibility rules and client rates similar to the way each airline sets its own frequent flyer eligibility requirements and seat prices.<sup>31</sup>

Some SSLFs charge a rate based upon a client's income while others consider income, assets, and expenses. Some look at a client's hourly pay, while others look at monthly, weekly, or annual pay. Some require documentation such as pay stubs or tax returns; others require sworn statements of eligibility. Most of the SSLFs interviewed for this paper require clients to notify the SSLF if their financial situation changes during the course of representation.

Some SSLFs serve clients with incomes up to 400% of the Federal Poverty Level (FPL), while others go up to 250, 300, or 350%. The range varies based in part upon the particular locale's average cost of living. In general, if a person can afford an attorney at average local market rates, he or she is not eligible for services from a nonprofit SSLF. Interviews revealed that the majority of SSLF clients do not earn anywhere near the upper end of their firms' respective eligibility scales.

### D. Cost Savings and Sustainability

All of the SSLFs interviewed are able to remain financially viable while charging low fees by employing a variety of cost-saving measures.<sup>32</sup> First, they save on infrastructure and materials. While

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30. Some states' ethics rules explicitly allow non-lawyer board members, while others require all board members to be lawyers. Compare UTAH R. PROF'L CONDUCT 5.4, with FLA. BAR REG. R. 4-8.6. Lawyers interested in creating a nonprofit SSLF should familiarize themselves with both the IRS regulations as well as their state's requirements. See also Stacy Brustin, *Legal Services Provision Through Non-Profit Multidisciplinary Practice: Encouraging Holistic Advocacy, While Protecting Ethical Interests*, 73 U. COLO. L. REV. 787 (2002).

31. For a discussion of factors that any law firm might consider in setting sliding-scale fees, along with illustrative calculators, see CHI. BAR ASS'N, PRICING TOOLKIT FOR ATTORNEYS SEEKING TO SERVE LOW- AND MODERATE-INCOME CLIENTS (2016), <https://chicagobarfoundation.org/pdf/jep/pricing-toolkit.pdf>; *Sliding-Scale Fee Calculator*, TWO RIVERS LAW, <https://tworiverslaw.net/ssc/index.html> (last visited May 21, 2017).

32. See, e.g., *Welcome to the Revolution*, *supra* note 13.

many for-profit law firms are filled with expensive art, granite counters, marble floors, and leather chairs, nonprofit offices are much more modestly outfitted.<sup>33</sup> Money saved on sales and property taxes also helps keep client fees low.<sup>34</sup> Similarly, many vendors offer discounts for § 501(c)(3) organizations on office materials and software that further reduce expenses.<sup>35</sup> Interviews with SSLF attorneys revealed that it is very hard for solo practitioners to sustain a nonprofit SSLF because solo practitioner firms lack economies of scale.<sup>36</sup> The cost of office space and a subscription to Internet, phone, and legal research services can be either borne by one attorney or divided among several attorneys in a mid-size firm, with the latter arrangement allowing for the lower client fees essential to the nonprofit SSLF model. Furthermore, one cannot underestimate the invaluable, intangible benefits of having colleagues with which to commiserate and consult.

Nonprofit SSLFs also spend less than for-profit firms on personnel costs. Interviewees indicated that their SSLF salaries were less than what they could make in private practice, but were roughly equal to that of an attorney at a traditional nonprofit legal organization.<sup>37</sup> While attorneys could earn more money in for-profit private practice, the attorneys attracted to SSLFs all said they were more interested in expanding access to justice than they were in maximizing their own personal income. Supplementing their altruism, attorneys at nonprofit tax-exempt SSLFs can benefit from income-based loan repayment and loan forgiveness programs.<sup>38</sup>

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33. *Id.*

34. *See, e.g.*, WISC. DEP'T OF REV., SALES TAX EXEMPTIONS FOR NONPROFIT ORGANIZATIONS (2016), <https://www.revenue.wi.gov/DOR%20Publications/pb206.pdf>; *Sales Tax Exemption for Nonprofit Organizations*, MINN. DEP'T OF REV., [http://www.revenue.state.mn.us/businesses/sut/Pages/Nonprofit\\_ES.aspx](http://www.revenue.state.mn.us/businesses/sut/Pages/Nonprofit_ES.aspx) (last visited Aug. 11, 2017); *see also* Gail Sessoms, *How Can a 501(c)(3) Also Be Sales Tax Exempt?*, CHRON, <http://smallbusiness.chron.com/can-501c3-also-sales-tax-exempt-14251.html> (last visited Aug. 11, 2017).

35. *See, e.g.*, Gabrielle Sharaga, *What TechSoup Offers Foundations: Registering Your Foundation with TechSoup*, TECHSOUP (June 6, 2017) <http://www.techsoup.org/support/articles-and-how-tos/what-techsoup-offers-foundations>; ONTIMESUPPLIES.COM, <https://www.ontimesupplies.com/non-profit-office-supplies.html> (last visited Aug. 11, 2017); *How Does the Donation Process Work?*, GREENSTANDARDS, <http://greenstandardsltd.com/for-nonprofits/> (last visited Aug. 11, 2017).

36. *See, e.g., infra* notes 38–39.

37. For data on the median pay for public interest positions, see William Henderson, *The Market for Recent Law Graduates*, in *BEYOND ELITE LAW: ACCESS TO CIVIL JUSTICE FOR AMERICANS OF AVERAGE MEANS* 184, 192 (Samuel Estreicher & Joy Radice eds., 2016) [hereinafter *BEYOND ELITE LAW*].

38. The federal government encourages attorneys to work for tax-exempt nonprofits like SSLFs by allowing them to make lower student loan payments and have their loan balances forgiven after ten years. 34 C.F.R. §§ 685.208, 685.219 (2016); *see also*

It is important to note that SSLFs are not sustained solely by idealism; they are also sustained by client fees and tax-deductible donations from supporters. Half of all businesses fail within the first five years.<sup>39</sup> SSLFs that have sustained, long-term success (defined as operating for more than ten years)<sup>40</sup> generally have one or two major focus areas with consistent client demand. For example, at most of the SSLFs interviewed for this article, a major focus area was family law. In order for idealistic lawyers to sustain any firm (and especially one supported by client fees and donations), they must guard against the temptation to do too many different things. They must also guard against the temptation to chase or become overly dependent on fickle grant funding.<sup>41</sup> For SSLFs, which (by definition) operate on below-market rates, sustainability requires not only legal skills but also business management and fundraising acumen.<sup>42</sup>

### E. Complementary, Not Competitive

Some SSLF attorneys reported that the private bar responded to their emergence with apprehension.<sup>43</sup> Solo practitioners and small firms often voice concerns that SSLFs will reduce their business as clients seek out lower fees. It is true that solo and small firms often perform work similar to that done by nonprofit SSLFs. For-profit firms may even formally or informally slide or reduce their fees for low-income clients. When these lawyers hear about a new firm that plans to charge lower-than-market rates, some incorrectly assume the nonprofit SSLF is simply setting out to undercut their rates by using tax-exempt status. None of the SSLFs interviewed for this paper, however, aim to compete with private, for-profit lawyers.

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Laura A. Calloway & Brad Carr, *Survey of New Admittees Regarding Law Student Debt and Post-Law School Employment*, 72 ALA. LAW. 193, 193 (2011); Jeanine L. Debor, *From the ACBA: Loan Repayment Assistance Programs Ease Debt for Public Interest Attorneys*, 12 LAW. J. 3 (2010); AM. BAR ASS'N COMM'N ON LOAN REPAYMENT & FORGIVENESS, *LIFTING THE BURDEN: LAW STUDENT DEBT AS A BARRIER TO PUBLIC SERVICE* (2003), <http://www.americanbar.org/content/dam/aba/migrated/mar ketresearch/PublicDocuments/lrapfinalreport.authcheckdam.pdf>.

39. See *Business Employment Dynamics*, BUREAU OF LABOR STATS., [https://www.bls.gov/bdm/us\\_age\\_naics\\_00\\_table5.txt](https://www.bls.gov/bdm/us_age_naics_00_table5.txt) (last visited July 4, 2017).

40. *Id.*

41. For a cautionary account of the difficulties of sustaining a nonprofit law firm, see Geoffrey A. Schoos, *Working on the Outskirts of Hope: One Independent Legal Services Organization's Struggle to Survive and Serve Rhode Island's Low Income Communities*, 18 CUNY L. REV. 229 (2016).

42. For a detailed overview of the economic challenges of running a firm based on low fees, see Herrera, *supra* note 7, at 1.

43. See, e.g., Schoos, *supra* note 41, at 249.

Nonprofit SSLFs instead complement existing firms and hope to see those firms flourish. There are countless families who get in a bind, cannot afford an attorney, and then lose their car, job, or home. Worse than the loss of property is the associated loss of stability for their children or other dependent family members.<sup>44</sup> Unresolved legal problems and any associated housing or financial instability contribute to generational poverty.<sup>45</sup> For example, a low-income parent who cannot access a consumer or employment attorney may illegally lose their home or job. That loss could disrupt a child's education. Children who fall behind in school or drop out entirely have limited earning potential in adulthood.<sup>46</sup> Thus, both those of modest income and those in generational poverty develop an ever-growing lack of familiarity with, or even a deep distrust of, the legal profession.<sup>47</sup>

Imagine an individual whose only interactions with the legal system included a prosecutor convicting and incarcerating family members or creditors repossessing his or her belongings. Even among much of working-class America, lawyers are viewed as luxuries for the rich. Worse, lawyers are also seen as people to avoid, people who never offer value, or people who do not help with the problems in peoples' lives.<sup>48</sup> What if a lawyer at an SSLF interrupted a family's spiral into generational poverty by successfully defending a family member from a criminal charge, stopping a wrongful eviction, or helping with other legal problems that commonly impact low-income clients? Both the parents and their children would be more likely to have a positive perception of the justice system and the legal profession because those institutions provided helped when it was needed. The

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44. HEATHER SANDSTROM & SANDRA HUERTA, URBAN INST., THE NEGATIVE EFFECTS OF INSTABILITY ON CHILD DEVELOPMENT: A RESEARCH SYNTHESIS 5-7 (Sept. 2013), [www.urban.org/research/publication/negative-effects-instability-child-development-research-synthesis/view/full\\_report](http://www.urban.org/research/publication/negative-effects-instability-child-development-research-synthesis/view/full_report).

45. Generational poverty is defined as a family being in poverty for two or more generations. See *Facts About Poverty*, URBAN VENTURES, <http://www.urbanventures.org/facts-about-poverty/> (last visited October 26, 2015).

46. See MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* 299 (2016).

47. Scott L. Cummings, *What Good Are Lawyers?*, in *THE PARADOX OF PROFESSIONALISM, LAWYERS AND THE POSSIBILITY OF JUSTICE*, (Scott L. Cummings ed., 2011); Ann Juergens, *Toward a More Effective Solo and Small Firm Practice Model*, in *BEYOND ELITE LAW*, *supra* note 37, at 384.

48. Contrary to the notion that Americans are overly litigious, research shows that they typically do not recognize their civil justice issues as legal problems, and only twenty-two percent of them take their problems to someone outside of their immediate social network. REBECCA SANDEFUR, *ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY 5* (2014); see also Rebecca Sandefur, *What We Know and Need to Know About the Legal Needs of the Public*, 67 S.C. L. REV. 443 (2016).

current SSLF clients are then more likely to be future private law firm customers due to their increased trust in the legal system. The parents are more likely to have a greater disposable income as a result of avoiding an illegal judgment debt or foreclosure, and the children are more likely to have a greater earning potential because their home was more stable and their education less disrupted.<sup>49</sup>

The existence of nonprofit SSLFs that only represent those who cannot afford prevailing market rates means fewer for-profit lawyers will have to slide their fees down. Instead, private attorneys can and should refer such clients to the nonprofit SSLFs, thus freeing up more of their time to work for higher paying clients. When private lawyers understand and embrace the nonprofit SSLF model, they can take higher paying clients, earn more money in less time, and enjoy a larger pool of potential clients in the future.

#### F. Staffing

SSLFs utilize a wide range of staffing arrangements. Some SSLFs have only full-time attorneys on staff. Others have full- and part-time attorneys, as well as some non-attorney office staff on the payroll. All SSLFs interviewed keep overhead costs low by engaging volunteers or student interns and law clerks to assist with office duties. These options help students obtain sought-after work experience, making them more attractive candidates to potential employers. The attorneys who create or work for SSLFs have a wide range of experience levels: Some are recent graduates, but many have five to ten years of experience before starting or joining their SSLFs, and others have been practicing attorneys for more than twenty years. Rather than viewing themselves as firms designed only for recent graduates or for experienced attorneys in early retirement, all of the SSLFs interviewed expressed that a staff with a mix of experience levels is an ideal arrangement.

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49. See SANDSTROM & HUERTA, *supra* note 45, at 15–28; see also E. Clinton Bamberger, Jr., *Legal Aid: An Opportunity for the American Bar*, 42 N.D. L. R???. 287 (1966) (“Lawyers must uncover the legal causes of poverty, remodel the systems which generate the cycle of poverty and design new social, legal and political tools and vehicles to move poor people from deprivation, depression, and despair to opportunity, hope and ambition.”).

### G. Client Selection, Services, and Practice Areas

Nonprofit SSLFs offer a range of legal services in both civil and criminal law.<sup>50</sup> Some provide full representation while others provide unbundled or limited-scope representation.<sup>51</sup> Some SSLFs do only trial work; others do trial work, transactional work, and appellate work. Most focus all or a majority of their resources on direct legal services, but some also engage in community legal education efforts. SSLF attorneys provide services in a variety of practice areas including family law, consumer law, housing law, employment law, immigration law, mental health, and any other legal issues experienced by local low-income clients.

Traditional nonprofit law firms are limited by government or private funding, which impose restrictions on client income eligibility standards and on the types of cases they can accept.<sup>52</sup> For example, most of the federal funding for civil legal aid cannot be used to provide desperately needed immigration law services. In contrast, nonprofit SSLFs have greater autonomy over their practice areas and case selection. Some SSLFs provide immigration law services, criminal defense services, or civil legal services. At an SSLF, the clients and attorneys determine the practice area. If an SSLF attorney is interested in a particular area of law, and there are low-income clients who need services in that area, then the SSLF could provide those services.<sup>53</sup>

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50. While the right to a lawyer in criminal cases is technically guaranteed by the Sixth Amendment, U.S. CONST. amend. VI, the reality is that outdated eligibility standards and underfunded public defender offices leave many who are charged with crimes without access to a lawyer. See Samantha Sunne, *Guilty and Charged: Why Your Right to a Public Defender May Come with a Fee*, NPR (May 29, 2014), <http://www.npr.org/2014/05/29/316735545/why-your-right-to-a-public-defender-may-come-with-a-fee>.

51. The American Bar Association defines these terms as follows: “‘Limited Scope Representation’ refers to the concept of a lawyer agreeing with a client to handle only some part(s) of the client’s legal matter. The term ‘unbundling’ is sometimes used to refer to this method of client service.” *Limited Scope Representation*, AM. BAR ASS’N, [https://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defendants/initiatives/resource\\_center\\_for\\_access\\_to\\_justice/limited\\_scope\\_unbundling.html](https://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/limited_scope_unbundling.html) (last visited Aug. 11, 2017). For a description of unbundled services and limited-scope representation, see Russell Engler, *Limited Representation and Ethical Challenges*, in *BEYOND ELITE LAW*, *supra* note 37, at 431.

52. See, e.g., *infra* Sections II.C–D.

53. See generally Rhode, *supra* note 6, at 533–34. Additional questions that merit greater study include whether SSLF attorneys have more control over what services are offered and whether SSLF clients are more engaged and satisfied with their attorneys and case outcomes, as compared to litigants who obtain free legal services.

## II.

## THE ROLE OF SSLFs IN THE DELIVERY OF LEGAL SERVICES

Even with their basic structure and status as a § 501(c)(3) nonprofit explained, SSLFs still attract confusion. In particular, many outsiders question the purpose of or need for such firms. Most of these questions stem from both a lack of familiarity with the traditional methods for delivering legal services and from a failure to consider alternative methods, like SSLFs, that seek to provide access to justice at low cost for millions of people that do not qualify for traditionally-funded legal services.<sup>54</sup> This section seeks to address these questions and clarify the role nonprofit SSLFs play in the overall system of legal services.

A. *Why a Nonprofit?*

“Our mission is to provide legal services to low-income people who desperately need it and can’t get help elsewhere.”<sup>55</sup>

“So, why do you want to be a nonprofit?” our lawyer repeatedly asked my colleagues and me when we created a nonprofit SSLF over a decade ago. This question is important and should be addressed by anyone looking into starting an SSLF. It is also a question posed to the attorneys who participated in interviews for this paper.

Our lawyer expanded on her basic “Why?” question, adding, “Why don’t you create a Limited Liability Company (LLC) and do righteous work for the little guy? Sure, sometimes you take a few cases for those who can pay you what you’re worth, and that will help you do some of the charitable work that you want to do. Why not go that route?”

SSLF attorneys interviewed for this paper reported various reasons for starting their nonprofit firms. Many had friends or colleagues who started their own traditional, for-profit small law firms and were unhappy because the practice areas and clientele that could pay their firms’ bills did not match the attorneys’ interests. Why endure years of law school and accumulate considerable student debt just to work a

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54. “The needs of moderate- and middle-income people have never been a policy focus of the academy or the access to justice community.” Jeanne Charn, *Evolution of Legal Services in the United States*, in *BEYOND ELITE LAW*, *supra* note 37, at 164–65. Most studies only focus on legal services provided to the poor through traditional methods like government-funded programs, and the result is “a bit like assessing . . . the U.S. health care system by asking only how well Medicaid and free clinics work.” Gillian K. Hadfield & Jamie Heine, *Life in the Law-Thick World: The Legal Resource Landscape for Ordinary Americans*, in *BEYOND ELITE LAW*, *supra* note 37, at 22.

55. Telephone interview with SSLF founder (Nov. 6, 2015).

job that is not aligned with one's values and interests? For people who became lawyers to help the underserved get access to justice, how does charging \$300 or more per hour advance that goal?<sup>56</sup>

A nonprofit tax-exempt structure allows these idealistic attorneys to engage in the kind of law practice they seek: providing direct services to low-income people in need. The SSLF structure means that the attorneys do not (and cannot) gravitate toward serving more and more traditional clients (with relatively high incomes), which would limit their time and resources available to serve low-income clients. Founders incorporated their service-oriented goals into the mission of the nonprofit. Moreover, because the nonprofit SSLF structure is funded by client fees, attorneys can consistently provide services, even when private donor or government grant funding is low or nonexistent.

### B. *Why a Nonprofit Sliding Scale Law Firm?*

In addition to being able to practice the type of law they want to practice and serving the low-income clients they want to serve, incorporating as a nonprofit SSLF provides additional advantages to practitioners in comparison to traditional nonprofit legal services organizations. Staying true to the particular legal issues they are passionate about was noted as an important factor of overall job satisfaction by interviewees. SSLF attorneys observed that the instability of funding for traditional nonprofits and government legal work can force attorneys to completely alter their practice based on the funder's political preferences and restrictions.<sup>57</sup> Because SSLFs are funded by paying clients, they are not strictly beholden to political whims or a funder's wishes in contrast to government-funded organizations or traditional grant- or donor-funded nonprofits.

To understand why an attorney would choose to work at or start an SSLF, one must have a basic overview of the legal services landscape in the United States. An idealistic attorney looking to serve low-income clients has several traditional paths for employment. The "Big Three" traditional approaches for providing direct legal representation to those in need are (1) government-funded organizations, i.e. public defenders and the Legal Services Corporation; (2) privately funded organizations; and (3) *pro bono* efforts. A brief overview of these approaches shows they do tremendous good, but the justice gap persists

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56. BURDGE, *supra* note 3, at 12.

57. See, e.g., GERALD P. LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992). The limitations on traditional legal delivery models are discussed in this seminal work.

for those who make too much money to qualify for the government funded organizations but too little to afford the high cost of the private bar.<sup>58</sup>

### C. Government-funded Organizations (GFOs)

GFOs receive the vast majority of their funding from federal, state, or, in some cases, local government. By relying on government funding for their financial viability, these organizations often struggle with budget cuts and limitations on what services they can offer.<sup>59</sup>

#### 1. Public Defenders

Public defenders' offices may be the most well-known type of GFO, but they are often misunderstood by the public.<sup>60</sup> Many attorneys interested in providing criminal law services to low-income clients look for jobs at a public defender office rather than considering the alternative: doing criminal defense work for low-income clients at an SSLF.

It is a common misconception that a public defender's services are completely free. Many public defenders charge an application fee and then an additional fee once representation has begun.<sup>61</sup> Another common misconception is that anyone can obtain a public defender for any court proceeding. Public defenders are generally only available for indigent clients who are involved in criminal proceedings.<sup>62</sup> Moreover, public defender offices around the country find themselves overworked and sometimes unable to provide adequate representation because of their caseloads and private attorney reimbursement rates which remain at, or barely above the standards set in the 1970s and 1980s.<sup>63</sup> For example, the New Orleans public defenders are so over-

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58. *Id.* at 27–28.

59. *See, e.g.,* Schoos, *supra* note 41.

60. *When The Right to a Lawyer Applies Only If You Have Money*, LEGAL SERVS. CORP. (Sept. 2, 2015), <http://www.lsc.gov/media-center/blog/2015/09/02/when-right-lawyer-applies-only-if-you-have-money-pine-tree-legal>.

61. An NPR Survey found that forty-three states charge some sort of public defender fee or court cost to those utilizing the service. *See Guilty and Charged Series: State by State Court Fees*, NPR (May 19, 2014), <http://www.npr.org/2014/05/19/312455680/state-by-state-court-fees>.

62. *See generally Public Defender Frequently Asked Questions*, Cook Cty. Gov't, <https://www.cookcountyl.gov/service/frequently-asked-questions> (last visited Aug. 11, 2017). *See also* Turner v. Rogers, 131 S. Ct. 2507, 2516 (2011).

63. *See* Sunne, *supra* note 50; *see also* Geoff Burkhart, *Public Defense: The New York Story*, 30 CRIM. JUST. 3, 13–14 (2015); Joe Forward, *Country's Lowest Pay Rate for SPD Appointments Equals Constitutional Crisis*, STATE BAR OF WISC.: INSIDE-TRACK (May 2017), <http://www.wisbar.org/NewsPublications/InsideTrack/Pages/Arti>

whelmed by the need for criminal legal counsel that the office has to turn away cases in order to provide their current clients with adequate representation.<sup>64</sup>

While income eligibility for a public defender varies by state, many deny public defenders to anyone whose income is more than 125% of the poverty level, i.e. \$15,000 per year.<sup>65</sup> The outdated eligibility standards and limited funding for public defenders are upsetting, but not surprising. Because public defender offices are funded by the government, the office is continuously subject to political whims and budget cuts. Criminal defendants are rarely looked favorably upon and funding their defense is rarely a high priority.<sup>66</sup> In fact, for about as long as there have been politicians, there have been debates about who will be more “tough on crime.”<sup>67</sup> Similarly, for about as long as there have been taxes to support government expenditures, there have been political promises to lower those taxes and reduce such spending.<sup>68</sup> Given this backdrop, it remains unlikely that government will ever fully provide funding for the representation of everyone accused of a crime who cannot afford counsel.<sup>69</sup> Thus, examining the available criminal defense services brings into focus a service gap that SSLFs can fill: providing an attorney for people who do not qualify for a public defender and cannot afford counsel at prevailing market rates.<sup>70</sup>

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cle.aspx?Volume=9&Issue=9&ArticleID=25577 Caroline Hecker, *Missouri Auditor Finds Public Defender System Outdated*, KBIA (Oct. 11, 2012), <http://kbia.org/post/mo-auditor-finds-public-defender-system-outdated#stream/0>.

64. *Id.*

65. GIDEON at 50: A Three-Part Examination of Indigent Defense in America, Nat'l Ass'n of Crim. Defense Lawyers 13–14 (2014) [hereinafter *Gideon* at 50].

66. See generally JAMES S. KUNEN, HOW CAN YOU DEFEND THOSE PEOPLE?: THE MAKING OF A CRIMINAL LAWYER (1983); Abbe Smith, *Defending Those People*, 10 OHIO ST. J. CRIM. L. 277, 287 (2012).

67. See Peter Garnsey, Note, *Why Penalties Become Harsher: The Roman Case, Late Republic to Fourth Century Empire*, 143 NAT. L.F. 141, 152, 158 (1968).

68. See DONALD M. NICOL, THE LAST CENTURIES OF BYZANTIUM, 1261–1453, at 160 (2d ed. 1993).

69. See, e.g., JEANNE CHARN, LEGAL SERVICES FOR ALL: IS THE PROFESSION READY, 42 Loy. L.A. L. Rev. 1026–1028 (2009); see also THOMAS GIOVANNI & ROOPAL PATEL, BRENNAN CTR. FOR JUSTICE, *Gideon* at 50: Three Reforms to Revive the Right to Counsel I (2013).

70. Anyone making eight dollars per hour often is “too rich” to qualify for a public defender. GIDEON at 50, *supra* note 65. In addition, some SSLFs reported that they take appointments from the local public defender’s office, thereby serving not only those who do not qualify for a public defender, but also those who *do* qualify but cannot get one because of conflicts of interest or other reasons, including overwhelming public defender caseloads.

## 2. *The Legal Services Corporation (LSC)*

Just as there are many misconceptions about public defenders, there are also many misconceptions surrounding civil legal aid.<sup>71</sup> For example, many people mistakenly believe the government provides free attorneys to low-income civil litigants.<sup>72</sup> It does not, but the federal government does provide some support for civil legal aid through the Legal Services Corporation (LSC).<sup>73</sup>

Over fifty years ago, the federal government began funding civil legal services, first through the Office of Economic Opportunity and then by creating the LSC.<sup>74</sup> Congress allocates funding to the LSC, which in turn distributes it to about 135 grant recipients across the country.<sup>75</sup> Most grantees are independent law offices that employ salaried staff attorneys who provide free services. A smaller number of grantees (often in rural areas) utilize a “judicare” model, in which private lawyers are compensated for their representation of eligible clients.<sup>76</sup>

Although the LSC was founded on the ideal that everyone should have access to justice regardless of economic status,<sup>77</sup> it has never fully achieved that ideal due to a lack of funding and numerous restrictions on services such as prohibitions on immigration and criminal cases.<sup>78</sup> For decades, funding for LSCs has decreased.<sup>79</sup> After accounting for inflation, federal funding for civil legal services is now fifty percent less than it was in 1980.<sup>80</sup> Meanwhile, the cost of a legal

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71. See *Civil Legal Aid in Maryland—The Facts*, BALTIMORE TIMES, (July 1, 2015), <http://baltimoretimes-online.com/news/2015/jul/01/civil-legal-aid-maryland-facts/>.

72. *Id.*

73. ALAN W. HOUSEMAN & LINDA E. PERLE, CTR. FOR L. & SOCIAL POL’Y, SECURING JUSTICE FOR ALL: A BRIEF HISTORY OF CIVIL LEGAL ASSISTANCE IN THE UNITED STATES 1, 19 (2007).

74. *Id.*

75. *Id.* at 41.

76. *Id.* Through the judicare model of payments to private attorneys, the LSC is also collaborating with and supporting the development of private law firms with the goal of having them provide reduced-fee or low-bono work. HOUSEMAN & PERLE, *supra* note 74, at 24–25. In this way, the LSC supports the creation of SSLFs. See generally Luz Herrera, *Starting a “Low Bono” Law Practice*, in BEYOND ELITE LAW, *supra* note 37.

77. STRATEGIC PLAN 2012–2016, LEGAL SERVS. CORP. 2 (2012) [hereinafter STRATEGIC PLAN], [www.lsc.gov/sites/default/files/LSC/lscgov4/LSC\\_Strategic\\_Plan\\_2012-2016—Adopted\\_Oct\\_2012.pdf](http://www.lsc.gov/sites/default/files/LSC/lscgov4/LSC_Strategic_Plan_2012-2016—Adopted_Oct_2012.pdf).

78. See *id.* at 1–2; see also Scott L. Cummings & Deborah L. Rhode, *Public Interest Litigation: Insights from Theory and Practice*, 36 FORDHAM URB. L.J. 603, 620 (2009).

79. STRATEGIC PLAN, *supra* note 77, at 1–2.

80. ALAN E. HOUSEMAN, CTR. FOR L. & SOC. POL’Y, CIVIL LEGAL AID IN THE UNITED STATES: AN UPDATE FOR 2013, at 11 (2013), [www.clasp.org/resources-and-](http://www.clasp.org/resources-and-)

education has increased greatly, outpacing inflation and forcing graduates to seek high-paying jobs to pay off their debt instead of lower-paying public interest positions.<sup>81</sup> The combined effect of lower funding, relatively low salaries, and higher student debt loads contributes to the serious shortage of lawyers available to low and moderate income people. Moreover, a growing national population<sup>82</sup> and greater income inequality<sup>83</sup> have made the impact of this drop in funding even more severe. More and more people need help from legal services agencies whose budgets have grown smaller and smaller.

In addition to underfunding, the LSC faces a second major limitation preventing access to justice: restrictions on funding. The government giveth: the annual allocation by Congress to the Legal Services Corporation *is* the largest single source of funding for legal services.<sup>84</sup> But the government also taketh away: restrictions and limitations abound for the kinds of cases that can be handled and for service eligibility.

Congress has repeatedly placed restrictions on the kinds of cases that LSC grantees can accept.<sup>85</sup> Prohibitions have limited or barred lobbying, immigration work, class action cases, criminal law practice, and more.<sup>86</sup> Further, Congress has generally restricted LSC funds to people whose income is less than 125% of the poverty level,<sup>87</sup> depriving the working poor of access to LSC services. Depending on the state, 125% of the federal poverty guideline in 2016 was about \$14,850 for an individual, \$20,025 for a couple, and \$30,375 for a

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publications/publication-1/CIVIL-LEGAL-AID-IN-THE-UNITED-STATES-3.pdf (“LSC funding today purchases less than half of what it did in 1980, the time when LSC funding provided what was called ‘minimum access’ or an amount that could support two lawyers for each 10,000 poor people in a geographic area.”).

81. See John R. Kramer, *Will Legal Education Remain Affordable, By Whom, and How?*, 1987 DUKE L.J. 240, 240–41 (1987).

82. In 1980, the United States had 226.5 million people; in 2010, the national population grew to 308.7 million people. BUREAU OF THE CENSUS, U.S. DEP’T OF COMM., 1980 CENSUS OF POPULATION 1-19 (1980), [http://www2.census.gov/prod2/deccennial/documents/1980/1980censusofpopu8011u\\_bw.pdf](http://www2.census.gov/prod2/deccennial/documents/1980/1980censusofpopu8011u_bw.pdf); PAUL MACKUN & STEVEN WILSON, U.S. CENSUS BUREAU, POPULATION DISTRIBUTION AND CHANGE: 2000 TO 2010 (2011), <https://www.census.gov/prod/cen2010/briefs/c2010br-01.pdf>.

83. Emmanuel Saez, *Striking It Richer: The Evolution of Top Incomes in the United States*, PATHWAYS MAG., Winter 2008, at 6–7.

84. *Congressional Oversight*, LSC, <http://www.lsc.gov/about-lsc/who-we-are/congressional-oversight> (last visited Feb. 17, 2016).

85. Cummings & Rhode, *supra* note 78, at 620.

86. *Id.* See generally David S. Udell, *The Legal Services Restrictions: Lawyers in Florida, New York, Virginia, Oregon Describe the Costs*, 17 YALE L. & POL’Y REV. 337 (1998).

87. 45 C.F.R. § 1611 et seq. (2015).

family of four.<sup>88</sup> This means that an individual who is working a full-time minimum wage job, which pays \$7.25 per hour, would not qualify for services. A person making \$41 a day (\$287 a week) is “too wealthy” for LSC services. That person is supposed to obtain “equal access to justice” using their weekly \$287 to hire a lawyer on the private market, many of whom charge more than \$287 per hour.

Even though LSC grantees are restricted by the types of cases they may take and the clients they may serve, insufficient funding forces LSC firms to turn away fifty percent of the *eligible* clients that seek help.<sup>89</sup> Thus, the majority of people in the United States who qualify for legal services (i.e., those who earn less than \$287 per week) still cannot obtain legal assistance because the federally funded agencies simply do not have the resources to take on their cases. Underfunding and practice area restrictions combine to create the following reality: more than eighty percent of legal problems experienced by low-income people are addressed without the assistance of counsel.<sup>90</sup>

The need for alternative legal service providers is clear. As noted above, SSLFs provide criminal defense services to people who cannot obtain a public defender and to those who cannot afford counsel at prevailing market rates. Similarly, SSLFs also provide civil legal aid to people who make too much to qualify for LSC services but not enough money to hire a traditional for-profit attorney.

Although government funding has established public defenders and the LSC, the government has still failed to provide attorneys for millions of people in need. Often, when the government fails to provide a needed service, the private market fills the void. The next two sections briefly explain how private donors and private individuals have traditionally tried to provide legal services to those in need.

#### D. *The Private Market and Privately Funded Organizations*

Recall that a person making more than 125% of the Federal poverty guideline often does not qualify for legal assistance from LSC-funded organizations.<sup>91</sup>

While some markets have seen businesses thrive by selling “good enough” goods and services to low-income consumers (think McDon-

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88. See *supra* note 3; see also, e.g., Mass. Law Reform Inst., *2016 Federal Poverty Level Guidelines*, MASSLEGAL SERVS.ORG (Jan. 2016), [https://www.masslegalservices.org/system/files/library/2016%20Federal%20Poverty%20Level%20Guidelines\\_0.pdf](https://www.masslegalservices.org/system/files/library/2016%20Federal%20Poverty%20Level%20Guidelines_0.pdf) [hereinafter MLRI].

89. DOCUMENTING THE JUSTICE GAP, *supra* note 5, at 6, 12.

90. *Id.* at 9, 16.

91. MLRI, *supra* note 88.

aid's, Target, and Wal-Mart), there is no analogue in the legal market. The myriad reasons for this are a topic for another paper. In short, the private market has produced Wal-Marts in every state selling low-cost goods, but there is no for-profit law firm equivalent. Despite well-documented demand and need, the private sector has failed to create "Law-Marts" in every state to provide low-cost legal services.<sup>92</sup>

The private sector, however, has created a second traditional method or category for delivering legal services: privately funded organizations (PFOs). In contrast to GFOs, PFOs receive most of their funding from private donations, grants, and membership dues. One of the first privately funded organizations was the Legal Aid Society of New York, founded in 1876.<sup>93</sup> Similar, independent Legal Aid Societies have been established in several cities throughout the country. Other PFOs that provide legal services include the Sierra Club, the NAACP, the ACLU, and the Southern Poverty Law Center. Unlike GFOs, PFOs do not necessarily have to deal with government funding and other government imposed restrictions on the kinds of work they can do.<sup>94</sup> However, private foundation grants and individual donors often explicitly restrict or require that PFOs use their grants and donations for particular kinds of services.<sup>95</sup> Many PFOs are organized as public interest law firms as opposed to legal aid *organizations* and therefore must comply with the IRS limitations previously discussed, including limits on client fees and impact litigation fees.<sup>96</sup> Even absent explicit restrictions, many PFOs are implicitly limited in what they may do with their funding by their designated geographic area or prac-

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92. See *Needs Assessments and Impact Studies*, AM. BAR. ASS'N, [http://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defendants/initiatives/resource\\_center\\_for\\_access\\_to\\_justice/atj\\_commission\\_self-assessment\\_materials1/studies.html](http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/atj_commission_self-assessment_materials1/studies.html) (last visited May 25, 2017) (compiling studies).

93. Former Wisconsin Governor Edward Salmon created the German Legal Aid Society in 1876; it was later renamed the Legal Aid Society in 1896. See THE LEGAL AID SOCIETY, MILESTONES IN THE HISTORY OF THE LEGAL AID SOCIETY I (2012), [http://www.legal-aid.org/media/165961/las\\_milestones\\_2012.pdf](http://www.legal-aid.org/media/165961/las_milestones_2012.pdf).

94. Many PFOs receive government grants, some of which carry restrictions similar to those faced by the GFOs. See, e.g., *Legal Services Trust Fund Program Grant Recipients*, STATE BAR OF CAL., <http://www.calbar.ca.gov/Access-to-Justice/Legal-Aid-Grants/Grant-Recipients> (last visited March 31, 2016) (restricting grant funds to only nonprofit organizations that provide free civil legal services to low-income Californians); *Who is Eligible?*, GRANTS.GOV, [www.grants.gov/web/grants/learn-grants/grant-eligibility.html](http://www.grants.gov/web/grants/learn-grants/grant-eligibility.html) (last visited Oct. 31, 2015) (describing federal grant eligibility for for-profit organizations and small businesses).

95. See, e.g., *General Information on Grants and Funding*, APPALACHIAN REG'L COMM'N, [www.arc.gov/funding/GeneralInformationAboutGrantsandFunding.asp](http://www.arc.gov/funding/GeneralInformationAboutGrantsandFunding.asp) (last visited Oct. 19, 2015) (noting that "[m]ost grants come with strings attached" and providing examples of grants for specific purposes).

96. See *supra* Section I.B.

tice niche. For example, the Legal Aid Society of New York is unlikely to use its donors' funds to provide services in Omaha, Nebraska. Similarly, the Natural Resources Defense Council may litigate environmental issues across the country but is unlikely to use its funding to help protect the rights of domestic abuse victims.

Group legal services are another type of PFO. Many are structured as prepaid legal insurance programs where members pay dues or an insurance premium in exchange for some level of legal services.<sup>97</sup> Similar to organizations like the Sierra Club and NAACP, a prepaid program's legal services are funded primarily through membership dues or donations, not by clients for hours of work performed. Having to pay a premium each month for an unused or underused service means that many low-income clients will not be able to easily join such programs. In addition, similar to the Sierra Club or the NAACP, the services provided by these PFOs tend to focus on issues of interest to donors and/or members rather than what a low-income client might need.

While the types of PFOs providing legal services vary, they are usually limited to a narrow field of cases or a narrow geographic service area by their collective funding sources. In part because of these limitations, lawyers have developed a method for providing legal services that is not limited by membership fees, grant restrictions, or politically imposed restrictions on cases and client eligibility: *pro bono* work.

### E. *Pro Bono Efforts*

A third traditional method for delivering legal services is volunteer legal work, often referred to as *pro bono* work. Notably, there is disagreement about what counts as *pro bono* work.<sup>98</sup> An American Bar Association survey of the legal profession found that some lawyers define *pro bono* as only free legal services.<sup>99</sup> For others, it includes serving as a mediator, lobbying on behalf of *pro bono*

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97. See, e.g., *Standing Committee on Group and Prepaid Legal Services*, AM. BAR ASS'N, [https://www.americanbar.org/groups/group\\_prepaid\\_legal\\_services.html](https://www.americanbar.org/groups/group_prepaid_legal_services.html) (last visited Aug. 11, 2017).

98. AM. BAR ASS'N STANDING COMM. ON PRO BONO & PUB. SERV., SUPPORTING JUSTICE III: A REPORT ON THE PRO BONO WORK OF AMERICA'S LAWYERS vi (2013) [hereinafter SUPPORTING JUSTICE III], [www.americanbar.org/content/dam/aba/administrative/probono\\_public\\_service/ls\\_pb\\_Supporting\\_Justice\\_III\\_final.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_Supporting_Justice_III_final.authcheckdam.pdf); see also Scott L. Cummings & Rebecca L. Sandefur, *Beyond the Numbers: What We Know—and Should Know—About American Pro Bono*, 7 HARV. L. & POL'Y REV. 83, 99 (2013).

99. SUPPORTING JUSTICE III, *supra* note 98, at 3.

organizations, and providing legal services at a reduced rate.<sup>100</sup> Still others consider *pro bono* to include non-legal community service work such as volunteer-coaching Little League games.<sup>101</sup> Other lawyers consider free legal work provided to former clients to be *pro bono*.<sup>102</sup> Finally, some lawyers consider writing off or writing down the fees they charged but did not collect as a sort of retroactive *pro bono* work.<sup>103</sup>

In contrast to GFOs and PFOs, no outside funding dictates the income level, geographic area, or type of legal issues that lawyers can address by providing *pro bono* services. While *pro bono* work is not funded in a traditional sense, it is often supported by for-profit firms that allow attorneys to count some of their hours spent on *pro bono* service toward their annual billable hour requirements, and those firms might impose any number of limitations.<sup>104</sup> The major limitation on *pro bono* work—whether imposed directly by a lawyer’s firm or by the lawyer’s own finances—is that *pro bono* work can only be a small fraction of any attorney’s total hours. A full-time attorney may work 2,000 hours per year, and the ABA Model Rules of Professional Conduct state that “a lawyer should aspire to render at least [fifty] hours of *pro bono* public legal services per year.”<sup>105</sup>

In reality, most lawyers do not meet the ABA’s aspirational *pro bono* goal.<sup>106</sup> Only nine states require lawyers to report *pro bono* service.<sup>107</sup> Twenty percent of lawyers provide no *pro bono* service, and forty-four percent admit to providing less than the suggested fifty hours per year.<sup>108</sup> While there are many laudable efforts by attorneys and bar associations to encourage or increase *pro bono* service, *pro*

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100. *Id.* at 4.

101. See Deborah L. Rhode, *Pro Bono in Principle and in Practice*, 53 J. LEGAL EDUC. 413, 425 (2003).

102. SUPPORTING JUSTICE III, *supra* note 98, at vii.

103. See, e.g., Dianne Molvig, *2005 Bench and Bar Survey: Lawyers and Judges Assess Key Issues Affecting the Legal System*, WIS. LAW. (2006), <http://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=79&Issue=4&ArticleID=1003> (“Several respondents noted that a sizable portion of their regular legal work is, in effect, *pro bono*, whether that be low-paying public defender or legal services cases or regular clients who can’t afford to pay.”).

104. See generally STATE BAR OF WISC., BRIDGING THE JUSTICE GAP: WISCONSIN’S UNMET LEGAL NEEDS 16 (2007), <https://www.wisbar.org/aboutus/reports/Documents/bridgingthegap.pdf> (describing the general structure and variability of law firm *pro bono* programs).

105. MODEL RULES OF PROF’L CONDUCT r. 6.1 (AM. BAR ASS’N 2014).

106. *Pro Bono Reporting*, AM. BAR ASS’N, [https://www.americanbar.org/groups/pro\\_bono\\_public\\_service/ts/pbreporting.html](https://www.americanbar.org/groups/pro_bono_public_service/ts/pbreporting.html) (last visited October 25, 2015).

107. *Id.*

108. See SUPPORTING JUSTICE III, *supra* note 98, at vi.

*bono* efforts alone cannot bridge the justice gap. The ABA recently concluded that in order to provide some measure of assistance to all households with legal needs, every attorney in the United States would have to provide “over nine hundred hours” of *pro bono* work.<sup>109</sup>

The following chart summarizes some key limitations on traditional methods for delivering legal services:

	Government Funded Organizations		Privately Funded Organizations	Pro Bono
	Public Defender	Legal Services Corporation	Private firms funded by Grants and Donors	Individual Attorney(s)
Largest funding source	Government	Government	Private donors	Volunteers
Limitations on practice areas	Yes <sup>1</sup>	Yes	Often limited by donors or grants to niche practice area(s)	No
Income eligibility limits	Yes—“too poor to hire a lawyer” <sup>2</sup>	Yes—125% of the FPG <sup>3</sup>	Grants may limit services to ~200% of the FPG	No

<sup>1</sup>Limited to criminal law and a small set of other circumstances. *See supra* note 63.

<sup>2</sup>*Gideon v. Wainwright*, 372 U.S. 335, 344 (1963). The Supreme Court has struggled to define who qualifies as “too poor,” but the majority of states has adopted some multiple of the federal poverty guidelines to establish who is eligible for services. John P. Gross, *Part 2—Redefining Indigence: Financial Eligibility Guidelines for Assigned Counsel*, in *GIDEON* AT 50, *supra* note 66, at 1, 9–12 (2014).

<sup>3</sup>*See* 45 C.F.R. § 1611.3(b) (1977) (“Unless specifically authorized by the Corporation, a recipient shall not establish a maximum annual income level that exceeds one hundred and twenty-five percent (125%) of the official poverty threshold as defined by the Office of Management and Budget.”); *see also id.* § 1611.5(a)(3)–(4) (identifying exemptions for which the income ceiling may be raised to 200% of the federal poverty line).

109. AM. BAR ASS’N COMM’N ON THE FUTURE OF LEGAL SERVS., REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES 14 (2016) (quoting Gillian K. Hadfield, *Innovating to Improve Access: Changing the Way Courts Regulate Legal Markets*, *DAEDALUS*, Summer 2014, at 83), <http://abafuturesreport.com/#download-full-report>; *see also* Gillian K. Hadfield & Deborah L. Rhode, *How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering*, 67 *HASTINGS L.J.* 1191 (2016).

*F. Nonprofit Sliding Scale Law Firms: Part of the Legal Services Delivery Puzzle*

Despite all the government-funded organizations, all the privately funded organizations, and all the *pro bono* work, a wide and well-documented justice gap persists.<sup>110</sup> Millions of people in need of legal representation go without counsel because they cannot afford it.<sup>111</sup> Millions of people do not even attempt to use the legal system to enforce their rights.<sup>112</sup> The limitations of the three most common traditional methods have long led to calls for different methods for delivering direct legal services.<sup>113</sup>

	<b>Nonprofit Tax-Exempt Sliding-Scale Law Firms (SSLF)</b>
<b>Largest funding source</b>	Income-based fees from low and moderate income clients
<b>Limitations on practice areas</b>	Determined by attorney client practice area preferences and client needs
<b>Income eligibility limits</b>	Unable to afford prevailing market rates. (often 300-400% FPG, variations reflecting regional cost-of-living differences)

The response given by most interviewees to the question “Why would you want to create or work at a sliding scale nonprofit law firm?” had a simple, consistent answer: Using only the traditional models for the delivery of legal services, lawyers are unable to provide legal services for all who need them. Every day, thousands of people in United States need legal help but are unable to afford or access assistance through these traditional methods.

The ABA Model Rules declare: “Every lawyer has a professional responsibility to provide legal services to those unable to pay.”<sup>114</sup> The rules further state that lawyers should provide “delivery of legal services at a substantially reduced fee to persons of limited means.”<sup>115</sup> Combine this professional responsibility with the employment data

110. While more funding for traditional legal services delivery methods is certainly warranted, the legal need will not be resolved with increased funding and increased *pro bono* alone. Funding just one hour of legal aid services per household with legal needs would cost 64 billion dollars each year. Hadfield & Heine, *supra* note 55, at 50.

111. *See supra* Section II.C.

112. *Id.*

113. *See, e.g.,* LOPEZ, *supra* note 58 (calling for “rebellious lawyering”).

114. MODEL RULES OF PROF’L CONDUCT r. 6.1 (AM. BAR ASS’N 2014).

115. *Id.* r. 6.1(b)(2).

that shows “legal education is producing too many graduates for the traditional legal economy to absorb.”<sup>116</sup> The heretofore overlooked and understudied SSLF model could help address not just the needs of clients but also the needs of the legal profession. The role of the SSLF is not to replace any of the existing traditional legal service delivery methods, but to supplement their efforts. SSLFs are a piece of the legal services delivery puzzle. The limitations on traditional legal service providers have created a system with crucial justice gaps that the SSLF model can help to bridge.

#### CONCLUSION

Sliding scale law firms are misunderstood and understudied models for delivering legal services. This paper introduces the SSLF, describes its basic structure, and highlights the important role these firms play. While SSLFs differ from traditional methods for legal service delivery to indigent clients, they are neither replacements for traditional nonprofits nor competitors of for-profit attorneys. Rather, SSLFs are tipping the scales of justice back into balance by providing needed assistance for some of the millions who cannot obtain services from traditional legal delivery models and cannot afford to hire an attorney at prevailing market rates. Dozens of SSLFs across the country have been quietly filling this role for years, and are serving thousands of clients every year who otherwise would have gone unrepresented.

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116. Henderson, *supra* note 37, at 184.





## ***Have You Considered Going Solo?***

The Access to Law Incubator (ALI) is a program created exclusively for graduates of California Western School of Law who intend to pursue solo practice.

ALI attorneys work together in two different downtown office locations. Each attorney owns and operates an independent law practice. Currently, there are 19 active ALI members and more than 35 ALI alumni. The program is 18-months in duration with 12-months spent in-residence at its downtown office location and 6-months of maintenance support.

ALI offers assistance in the form of practical training on subjects vital to a successful business like marketing, advertising, networking, practice management, business planning, finances, and technology. Other benefits of ALI include affordable office space, a community of other solo attorneys, and vendor resources like research and case management software.

In exchange for membership in ALI, member attorneys agree to provide 100 hours of *pro bono* legal services (of which 80 may be “low bono”) each year by volunteering with legal service organizations, community clinics, and other nonprofits.

To be considered for the program, you must:

- Demonstrate a strong interest in solo practice and commitment to public service and access to law
- Possess an entrepreneurial spirit and be flexible and adaptable to change
- Work well in intimate settings with a diverse group of individuals
- Be a member of The State Bar of California in good standing at the start of the program (those who have taken the CA bar exam and are awaiting exam results may apply; acceptance into the program will be conditioned on passing the bar exam and being admitted to practice)
- Have graduated from California Western School of Law in 2013 or later (the program is intended for new attorneys; however, exceptions will be considered on a case by case basis)
- Be willing to commit 18-months to membership in ALI

If you are interested in applying or learning more about the Access to Law Incubator, please contact

Matthew A. Lab, Director of ALI at [mlab@cwsl.edu](mailto:mlab@cwsl.edu) or (619)-515-1511.

# The Costs and Benefits of Participating in ALI

The Access to Law Incubator (ALI) is operated by California Western School of Law exclusively for alumni of the law school. Your estimated cost of participating in ALI is several thousand dollars for the year. But this “cost” is a savings of tens of thousands of dollars compared to what you would spend opening a solo practice on your own—not to mention the numerous intangible benefits you will get for free.

Cost Component	Cost Through ALI*	Cost Outside of ALI**	Savings to You
Downtown Office Rent	Free (included)	\$800/mo. = \$9,600/yr.	\$9,600
Office Furniture	Free (included)	\$2,000	\$2,000
Utilities	Free (included)	\$150/mo. = \$1,800/yr.	\$1,800
Internet Access	Free (included)	\$50/mo. = \$600/yr.	\$600
Printer/Copier/Fax	Free (included)	\$50/mo. = \$600/yr.	\$600
Print/Copy/Mail Services	At cost (est. \$240/yr.)	\$240/yr.	--
Malpractice Insurance	\$500/yr. through Lawyers Mutual	\$500/yr.	--
Legal Research Software (CEB, PLI, & LexisNexis)	Free (One year)	\$250/mo. = \$3,000/yr.	\$3,000
Case Management Software (CLIO, CosmoLex, & GoodCase)	Free	\$50/mo. = \$900/yr.	\$900
Business/ Case Coaching	Free	\$500/mo. = \$6,000/yr.	\$6,000
<b>FIRST YEAR TOTAL</b>	<b>\$740</b>	<b>\$25,240</b>	<b>\$24,500</b>

\* All costs are estimates. Neither ALI nor California Western School of Law guarantees prices or services, which are subject to change. The \$50/mo. fee paid for desk at CWSL is not rent, but to cover pro-rata share of general liability insurance policy.

\*\* Estimated costs based on research conducted in May 2016 regarding local market as applicable.

Other benefits of participating in ALI include:

- Tailored Boot Camp to help you kick start your practice
- Free substantive, procedural, and ethics trainings (some with MCLE credit)
- Periodic Business Booster workshops
- One-on-one and group mentoring and business coaching
- Mentorship from experienced practitioners in your chosen substantive area(s)
- A cohesive community of active ALI member attorneys & ALI Alumni
- Networking opportunities

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# LAW PRACTICE MANAGEMENT PROGRAM (INCUBATOR/RESIDENCY PROJECT PROPOSAL)

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APRIL 2, 2018

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## PROJECT BACKGROUND AND DESCRIPTION

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ABA demographics released for 2016 include data from 2005 as the most recent overall numbers. The data shows that 75% of all lawyers serve in private practice, and of that 75%, 49% are operating under a solo practice model. This means that 36.75% of the national legal workforce is operating under a solo model. The ACME law school graduate employment statistics are taken from 10-months post-graduation employment surveys and are reported to the ABA annually. The three most recent years of statistical data at Law show a slight decline in solo practitioners, but a significant increase in small firm practitioners (offices size 2-10 attorneys). Simply put, this trend shows that more of our graduates are getting jobs working in small practice offices than in prior years, and in 2016 accounted for nearly 25% of our employed graduates. The preliminary numbers for ACME Law Class of 2017 graduate employment outcomes indicate that of those 2017 graduates employed in law firms, roughly 50% were employed in solo and small firm practices.

ACME Law has programming designed to target law students in criminal and court-based careers (prosecution, defense, internships and externships with DA offices, public defenders, and courts), annual on-campus interview programs targeted at individuals interested in large firm practice, and externships/internships in public interest work for those interested in public service. Where ACME Law is falling behind, is in providing resources for and effectively training graduates in the basic skills necessary for practice management in both solo and small firm practices, as well as in those transferrable skills that would enable graduates to move laterally as competitive candidates that are practice-ready.

The ABA has also implemented standards around experiential learning and a practice management program, coupled with existing clinical opportunities would provide the necessary foundation for innovative programming that brings the ACME School of Law to the forefront of discussions that are happening on a national level, while carving out an expertise as the first law school in our state to implement a comprehensive practice management program. With this proposal, we can effectively build an innovative program that serves the needs of law students and graduates, and contemplates building to expand the project on a set timeline. We also allow the ACME to remain at the forefront of innovation where the institutional legal market is developing to include future incubator programs as a matter of course.

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## PROJECT SCOPE

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This proposal is based on three primary components of 1) Solo/Small Firm Primer, 2) Law Practice Management Course, and 3) Post-graduate Programming, that create a pipeline to success beginning during law school and reaching underrepresented demographics both as clients, and practitioners (*Sample course syllabus materials, readings, incubator program materials, as well as programmatic suggestions available upon request*).

1. The primer program (lunchtime or J-term session) includes focus on the fundamentals of solo and small firm practice, designed to give students the information necessary to begin thinking about whether they would be good candidates for and interested in building or developing a solo or small firm practice. This program was presented to the 1L class in 2017 as a single class session, and further incorporated in the following year's 1L course through a guest presentation by the Student Bar PLF in the 2018 session.

2. The Law Practice Management course component would provide students with the tools they would need to begin the process of understanding the business of legal practice so that upon successful completion of the bar exam and licensing, they would be on the way to practice ready. ACME Law offered this course in the curriculum three years ago, which makes the curriculum process easier to navigate in redesign as there is an existing paradigm for the course.

3. The third component of a successful practice management program would include both a short-term boot camp on solo practice (for grads that may have not taken the Practice Management course, but who have since determined to develop the skills) and a full incubator/residency program that would provide the support necessary for participants to build a successful practice during those initial 6-18 months that are the most challenging to success of a practice.

A. By condensing the materials for the Law Practice Management Course, produce an accelerated boot camp with reasonable foreseeability as a weekend or few-day program for graduates that may have missed the course during law school, but still need a primer before determining whether to enter an incubator/residency program. If we work with the Student Bar CLE accreditation department (the Student Bar offers a Solo Practice by Choice CLE program similar), we could begin marketing for a full incubator/residency program based on the feedback from possible CLE Accreditation for this course and participant experience/engagement.

B. In developing a formal incubator/residency program, institutions nationwide typically structure incubators to have participants meet once a week for the first six months, then on a bi-weekly or bi-monthly basis after the initial six months. By using existing models, as well as ABA resources and tools available nationally, much of the programmatic development simplifies. Additionally, by maintaining a residency program as a supplemental tool for effective practice management, the law school does not need to contemplate additional funds to pay the program participants, and does not need to convince local practitioners to hire graduates when they otherwise would not have funds to apply toward expansion. The law school builds reputational buy-in as the program progresses, beginning with 3+ participants and expanding as interest grows and the program develops (Chicago Kent Law incubator began with 3 participants and is now a robust program actively supporting 11+ participants). By requiring a certain number of hours of pro bono service for each participant, the law school builds credibility with broader demographics, as do the participants, who also learn nuances of client engagement.

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### **EXPLAIN THE EXTENT TO WHICH PROPOSAL LEVERAGES EXISTING EXPERTISE AND RESOURCES; BUILDS ON PARTNERSHIPS IN PLACE; LEVERAGE UNIQUE GEOGRAPHIC AND COMPETITIVE PROFILE**

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By working with available resources provided by the ABA, other incubator programs nationally, the Business School Incubator program as cross-campus collaboration effort, and by engaging clinical faculty and administrators with practice knowledge, the law school is sufficiently situated to build and manage an incubator/residency program. ACNE University is in a unique position in that we are the only public law school in our state and are therefore better suited for marketing campaigns for donor support of such innovation, especially with the ability to collaborate and support existing campus-wide initiatives. By situating this program under the umbrella of externships and clinical programs, the program can build on existing structures for practical skills training and experiential learning initiatives, and provide a further mechanism for transition to practice to apply clinical skills gained through the ACME Law Clinics.

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### **SCOPE OF FINANCIAL INVESTMENT NEEDED TO MAKE THE PROPOSAL SUCCESSFUL; POTENTIAL FOR OUTSIDE FUNDERS/INVESTORS/DONORS**

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Investment:

- o FTE Transition to allow for the management of the program- Director and possible administrative support staff (alternatively, as program under Clinics/Externships umbrella in first year with program manager, possible administrative support staff in subsequent years as program develops).
- o Office Space (Many schools re-purpose 4th floor library study rooms and vacant faculty office space to allow for secure file storage and limited office space, as well as using existing conference rooms for course component and client meeting spaces in off-hours); dedicated printer or access to printer system.
- o Operating Budget (minimal) for alumni and networking events to build buy-in and referrals from community professionals.

Offsets:

- o Local Bar Association: Many school-sponsored incubator programs on a national level collaborate with local bar associations for surplus funding and support. Possible opportunity to collaborate with the Local County Bar Association for supplemental funding for graduates interested in remaining in Local County (plus expansion to other counties for similar buy-in?)
- o Alumni Donations: Based on discussions with incubator program directors nationwide, graduates from law schools are frequently not willing/able to give a substantial amount of money, but have indicated they would be willing to contribute to a project that directly impacts grads in this manner. This would be a great opportunity to build a marketing/gift campaign push around this program.
- o Student Bar Support: Student Bar Association Innovations Committee discussed the possibility of collaborating with law school programming on incubator program. Justice Walters has indicated interest and willingness to make request on behalf of an incubator program, to the PLF for reduced insurance premiums, or to SBA for reduced bar dues for incubator participants.

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### **IMPACT**

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This Practice Management Program will contribute to existing initiatives in the following ways:

Initiative	Impact	Department/ Committee/Org
Contribute to Admissions Success	Provide additional portfolio of services provided to graduates on completion of degree demonstrates ongoing support and commitment to the success of our graduates following graduation. As the first law school in our state to build such a program, this provides a competitive advantage against our regional competitors.	Admissions
Help Students Pass the Bar Exam and Obtain Employment After Graduation	Grads that enter solo and small firm practice will be more practice-ready. This has direct impact on employment numbers as graduates in Incubator programs (that are building a practice through the incubator program) qualify as full-time, long-term employed in a bar pass required position. These skills are also directly transferrable/marketable to lateral transitions if a participant of the program later decides they do not want to remain in solo or small firm practice.	Career Center
Foster a more Diverse and Inclusive Community	By including a pro bono component to the program, graduates will be directly engaged in meeting legal service needs in underrepresented and underserved communities and engage with diverse and inclusion-based organizations as they build practice management skills.	Community & Inclusion Committee
Advance our Relationship with Strategic University Partners and align with Programmatic University Goals	The ACME College of Business presently has a functioning business incubator program. By leveraging existing relationships, a Law Incubator program could facilitate ongoing collaboration and engagement for the benefit of the institution broadly.	ACME College of Business
Advance our Relationship with Strategic University Partners and align with Programmatic University Goals	The ACME MBA Campus will engage necessarily in entrepreneurial activities as ideas are developed and research is completed. By partnering through an incubator program on the ground level, we have the opportunity to leverage this great resource as an opportunity for significant skills development in business, patent, and copyright legal matters. By collaborating with the Main campus on the entry level, we have the opportunity to seed the growth of a larger program down the line.	MBA Campus for Accelerating Scientific Impact
Enhance and Promote our National/Global Reputation	Incubator programs are becoming the new standard of practice for law schools nationwide and internationally. The ABA list at last count had 68 incubator programs established internationally at schools and community groups including others in our region such as ____.	Development/Marketing
Enhance Experiential Learning and Clinical Education	As an experiential learning opportunity with a course component (Law Practice Management) and a transition to incubator/residency program following law school, this program increases the skills currently fostered through Clinics and Externships programs and builds practice management skills, enabling broader marketability upon graduation with skills in management, client engagement, and the business of legal practice.	Clinics/Externships
Enhance Profile of ACME Law Regional Program (ACME Law and Central Campus)	As there are presently no other legal incubator programs that are managed by law schools in our state, the ACME School of Law has a unique opportunity to be on the forefront of innovation and collaboration. In building the program, looking to existing resources in our region will engage broader demographics and provide multiple paths to success within the same program.	ACME Law Regional Program/ ACME Central Campus
Leverage Relationship with the Our State Bar	Our State Bar Innovations Committee has included the idea of a legal incubator in last year's committee assignments and has referred the issue for further exploration. The primary question during those committee meetings was whether any of the law schools intended to implement an incubator program and how the bar could support such programs. This is a strong relationship with room for development on matters of practice management skills.	Our State Bar

## List of Incubators and their Operating Entities by Launch Date

<b>Incubators – United States</b>	<b>Month</b>	<b>Year</b>	<b>Closed</b>
Incubator for Justice: The City University of New York School of Law (CUNY)	September	2007	
Tulsa Immigrant Resource Network; University of Tulsa College of Law's Boesche Legal Clinic		2008	
UMKC Solo and Small Firm Incubator; University of Missouri-Kansas City School of Law	January	2011	
Columbus Bar, INC	April	2011	
LawBridge Legal Residency Program at Florida International University College of Law	Fall	2011	
University Law Group; S. J. Quinney College of Law, University of Utah	February	2012	
Access to Law Initiative (ALI); California Western School of Law	June	2012	
Pace Community Law Practice; Pace University School of Law	September	2012	
Small Practice Center; Charlotte School of Law	October	2012	X
Center for Solo Practitioners; Thomas Jefferson School of Law	November	2012	
Solo & Small Practice Incubator; IIT Chicago-Kent College of Law	November	2012	
Lawyer Entrepreneur Assistance Program (LEAP): Legal Aid Society of Orange County, University of California Irvine School of Law, Whittier Law School, Western State College of Law, and the Dale E. Fowler School of Law at Chapman University	January	2013	
Justice Entrepreneurs Project; Chicago Bar Foundation	June	2013	
Sustainable Economies Law Center Fellowship Program	August	2013	
Richmond Legal Development Center	September	2013	
Resident Associate Mentoring Program (RAMP); Benjamin N. Cardozo School of Law	October	2013	
Community Justice Center of Long Island (CJCLI); Touro College Jacob D. Fuchsberg Law Center	November	2013	
Open Legal Services	November	2013	
Cleveland-Marshall Solo Practice Incubator; Cleveland-Marshall College of Law, Cleveland State University	January	2014	
Low Bono Incubator Program; Seattle University School of Law	January	2014	
Legal Innovators for Tomorrow (LIFT) Fellowship Program; Louisiana State Bar Association	February	2014	
Associates Fellowship Program; Rutgers School of Law - Newark	February	2014	
Access to Justice Incubator; Maurice A. Deane School of Law at Hofstra University	February	2014	
ASU Alumni Law Group	March	2014	
Midwest Center for Law and Justice	April	2014	X
Fair Shake Environmental Legal Services	April	2014	
Family Law Fellowship; Eastside Legal Assistance Program (ELAP)	April	2014	
Vermont Lawyer Incubator Project; The Vermont Bar Association and Vermont Law School	May	2014	

Symbiosis Law School, Symbiosis International University, Pune, India	May	2014	
Modest Means Incubator Program; California Lawyers for the Arts	August	2014	
Justice Bridge – Legal Residency and Incubator Program; University of Massachusetts School of Law	August	2014	
The New Solo Practitioner Incubator; Monterey College of Law	September	2014	
Solo & Small Firm Incubator Program; University of Detroit Mercy School of Law	October	2014	
James E. Rogers Community Law Group; University of Arizona, James E. Rogers College of Law	November	2014	
Public Interest Advocacy Clinic	January	2015	
Whittier Legal Access Program; Whittier Law School	January	2015	
Incubator Program; Loyola University New Orleans College of Law	January	2015	
Widener University/Dauphin County Bar Association Incubator Program	January	2015	
Los Angeles Incubator Consortium; Southwestern, Pepperdine University and UCLA law schools; Los Angeles County Law Library; and five legal aid organizations: Bet Tzedek, Legal Aid Foundation of Los Angeles, Community Legal Services, Neighborhood Legal Services of Los Angeles and Public Counsel	March	2015	
Rhode Island Center for Justice; Roger Williams University School of Law Fellowship	March	2015	
Northern California Lawyer Access, Inc. (NCLA)	July	2015	N/A
RoyseLaw Community Legal Services; Royse Law Firm, PC	Fall	2015	
Maine Community Law Center	September	2015	
Akron Bar Association Incubator Program	September	2015	
Elon Law Legal Incubator; Elon Law School	October	2015	
Hawaii Emerging Legal Practitioners (HELP) Access to Justice Project; William S. Richardson School of Law, University of Hawaii / Legal Aid Society of Hawaii / Volunteer Legal Services Hawaii	October	2015	
BALI - Bay Area Legal Incubator; Volunteer Legal Services Corporation; the Alameda County Bar Association; University of California Hastings College of the Law; University of California, Berkeley School of Law; Golden Gate University School of Law; University of San Francisco School of Law; Santa Clara University School of Law; the Alameda County Law Library; and legal services providers	January	2016	
Lawyers for Family Justice; Family Justice Center	January	2016	
Law Entrepreneurs for Access Program (LEAP); Civil Justice, Inc., the University of Baltimore School of Law, and the University of Maryland Francis King Carey School of Law	January	2016	X
Lawyers for Affordable Justice; Boston College Law School, Boston University School of Law, and Northeastern University School of Law	January	2016	
Pitt Legal Services Incubator; The University of Pittsburgh School of Law	January	2016	
Court Square Law Project; New York City Bar Association and the City University of New York School of Law	February	2016	
Insaf Centre for Legal Excellence, Islamabad, Pakistan	February	2016	

Nova Southeastern University   Shepard Broad College of Law Legal Incubator	March	2016	
Lawyers for Equal Justice, Inc.; State Bar of Georgia, Supreme Court of Georgia, Atlanta Legal Aid Society, Georgia Legal Services Program, Atlanta Volunteer Lawyers Foundation, Georgia State University College of Law, Emory University School of Law, John Marshall Law School, University of Georgia School of Law, Mercer University Law School	March	2016	
ACTL/YLD/SCLS Incubator Pilot Program; South Carolina Access to Justice Commission	March	2016	X
Texas Apprenticeship Program; Texas A&M School of Law	September	2016	
Community Law Practice Incubator (CLPI); Bar Association of San Francisco & The Justice and Diversity Center	September	2016	
TU Law Co Op; University of Tulsa College of Law	October	2016	
Entrepreneurs in Community Lawyering; New Mexico State Bar Foundation	October	2016	
Collaborative Legal Incubator Program (CLIP); East River Legal Services	October	2016	
Collaborative Community Law Initiative (CCLI)	November	2016	
Justice Legal Center at the Center for Family Justice	January	2017	
Incubator Residency Program; Mississippi College School of Law	Fall	2017	
Connecticut Community Law Center; University of Connecticut School of Law and Hartford County Bar Association	March	2017	
Texas Opportunity and Justice Incubator; State Bar of Texas	April	2017	
FIU Law Practice; Florida International University College of Law	August	2017	
Concord Law School at Kaplan University (Whittier Legal Access Program)	October	2017	
The Legal LABB; Ocoee, Florida	February	2018	
Tennessee Law Lab, Inc.;	July	2018	
Rural Incubator Project for Lawyers; Montana Legal Services Association	August	2018	
Rural Practice Incubator; University of Arkansas at Little Rock	September	2018	
The Legal Empowerment Accelerator Program; Clackamas Women's Services		2019	
Legal Entrepreneurs for Justice ( Denver Colorado)	May	2019	

<b>Incubators – Canada</b>	<b>Month</b>	<b>Year</b>	<b>Closed</b>
Fleet Street Law, Toronto, Ontario	September	2013	
Aspire Legal Access Initiative; University of Calgary Faculty of Law	October	2016	

<b>Incubators – Dominican Republic</b>	<b>Month</b>	<b>Year</b>	<b>Closed</b>
Centro Comunitario de Servicios Legales (Community Legal Services Center) CECSEL, Dominican Republic	April	2014	

<b>Incubators – India</b>	<b>Month</b>	<b>Year</b>	<b>Closed</b>
Symbiosis Law School, Symbiosis International University, Pune, India	May	2014	

<b>Incubators – Pakistan</b>	<b>Month</b>	<b>Year</b>	<b>Closed</b>
Insaf Centre for Legal Excellence, Islamabad, Pakistan	February	2016	

<b>Incubators – Spain</b>	<b>Month</b>	<b>Year</b>	<b>Closed</b>
National Federation of Association of Roma Women Incubator	February	2016	

For current directory of incubators see:

[www.americanbar.org/groups/delivery\\_legal\\_services/initiatives\\_awards/program\\_main/program\\_directory/](http://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/program_main/program_directory/)

# [COURSE NUMBER: LAW PRACTICE MANAGEMENT]

[Spring 2018]

Class Meetings: [DAYS AND TIMES]  
Location: [ROOM]  
Instructor: [NAME]  
Office Hours: [DAYS/TIMES OR BY APPOINTMENT]  
Phone: [PHONE]  
E-mail: [EMAIL]  
Course website: [URL]

## **COURSE DESCRIPTION**

The ABA 2016 Demographics show that roughly 75% of all practicing lawyers serve in private practice, and of that, 49% are operating as sole practitioners. This means that nearly 36% of the attorney workforce is operating under a solo practice model. This course is designed to provide the foundation and groundwork for students interested in entering solo and small firm practice following graduation. This is a skills course that will focus on the nuances of private practice and the challenges of launching in to solo and small firm practice.

## **LEARNING OBJECTIVES**

As a result of taking this course, students will be able to:

- By the end of the course, students will understand the issues they might face in solo and small firm practice, as well as the steps they would need to take to address those issues and establish a solo practice or transition effectively to small firm practice;*
- Understand the components and roles of a business plan in establishing solo or small firm legal practice;*
- Understand the intercultural and interpersonal skills, as well as workplace strategies for satisfactory performance and advancement of a legal practice in a culturally cognizant manner;*
- Be better prepared to assess whether private legal practice is a suitable individual career choice, and which practice areas might be a good fit; and*
- Understand the operation of a law firm, business structure, and measures of law firm and attorney profitability including hourly production, fee setting and billing, and alternative structures and technologies.*

## **COURSE TEXTS**

### **Required**

- Author: Carolyn Elefant; Title: SOLO BY CHOICE (2011-2012 edition)*
- Author: Renee Caggiano Berman; Title: The Ultimate Guide to SOLO and SMALL FIRM SUCCESS (CD Included)*

- [http://www.americanbar.org/publications/probate\\_property\\_magazine\\_2012/2016/march\\_april\\_2016/2016\\_aba\\_rpte\\_pp\\_v30\\_2\\_article\\_madaan\\_cultural\\_competency\\_and\\_the\\_practice\\_of\\_law\\_in\\_the\\_21st\\_century.html](http://www.americanbar.org/publications/probate_property_magazine_2012/2016/march_april_2016/2016_aba_rpte_pp_v30_2_article_madaan_cultural_competency_and_the_practice_of_law_in_the_21st_century.html)
- <https://listenlikealawyer.com/2016/02/05/habits-of-cross-cultural-lawyering/>

The required books are available for purchase at **[LOCATION]**.

### **Recommended**

- [http://www.americanbar.org/portals/solo\\_lawyers/going\\_solo.html](http://www.americanbar.org/portals/solo_lawyers/going_solo.html)
- <https://chicagobarfoundation.org/pdf/jep/pricing-toolkit.pdf>
- <http://incubator.legal-aid.com/trainingresources/incubator-in-a-box-project/>

### **COURSE POLICIES**

**Accessible Education for All Students:** The ACME University works to ensure inclusive learning environments for all students. We recognize that students bring a variety of learning styles to the course, and that some learning styles may require adjustment to course structure. We are happy to talk with you about such adjustments. Please be in touch with the professors if there are aspects of the instruction or design of this course that result in barriers to your participation as a result of learning style or diagnosed disability. For more information, you are also encouraged to contact the Accessible Education Center (formerly Disability Services) [contact information].

**Inclusion and Collegiality:** Our community values inclusion. We are committed to equal opportunities for all faculty, staff, and students to develop individually, professionally, and academically regardless of ethnicity, heritage, gender, sexual orientation, ability, socio-economic standing, cultural beliefs and traditions. We are dedicated to an environment that is inclusive and fosters awareness, understanding, and respect for diversity. If you feel excluded or threatened, please contact Associate Dean of Students [contact information].

**Pronouns:** Self-expression and self-identification are among our professional and personal values. One way to practice these values is to share gender pronouns. Sharing pronouns also enables each of us to avoid making assumptions about each other, and in this way, we are able to communicate in a more authentic manner. We have listed our pronouns above, and welcome community members to share their pronouns. Note that most of the materials we will read, as well as much of our discussion in class, will use the pronouns “he/him/his” or “she/her/hers.” Gender is not binary, and some people prefer to use “they/them/their” or “ze/zir” for individuals. We try to limit the use of pronouns in written material and class discussion, but when pronouns are necessary, having a singular pronoun match a singular noun may be important for clarity. For more information on gender identity, please visit the LGBTQA3 office, [contact information].

**Sexual Harassment:** Any student who has experienced sexual assault, relationship violence, stalking, and/or sexual harassment may seek information and help at <https://safe.uoregon.edu/>. A student can also call [contact information], ACME’s 24 hour hotline to be connected to a counselor.

**Academic Integrity:** Students are expected to demonstrate high levels of academic integrity and professionalism, and are prohibited from committing or attempting to commit any act that constitutes academic misconduct. Plagiarism and other forms of academic dishonesty will be grounds for automatic failure in the course. If you have questions about conduct, please ask your instructors or review the

## University Student Conduct Code.

**Attendance:** The School of Law believes that dependability and punctuality are essential characteristics of a good lawyer and that the development of good professional habits is essential for legal education. Students are expected to attend all classes and arrive punctually. JD students must attend a minimum of 80% of scheduled class meetings. While additional absences may be excused by the instructor, they must be supported by a written, reasonable and (where appropriate) properly documented justification in advance of the missed class. Attendance below 80%, results in a “no-pass” for the course. Attendance percentages are calculated cumulatively for the entire year for the 1L Professional Planning course. Penalties for failing to comply with governing attendance requirements include, but are not limited to, denial of course credit. Students are responsible for monitoring their own attendance, and no advance notice is required for the imposition of a penalty.

**Participation:** Many of the classes will be highly interactive as we build answers to questions we ask together. You will be expected to engage actively in these opportunities for joint inquiry and exploration. Your participation will contribute to the learning of your fellow classmates. The course’s value to your professional development is directly related to your personal participation level.

**Late Assignments:** You are of course expected to turn in your assignments on time. As in legal practice, emergencies do arise. Extensions may be available in exigent circumstances, with prior approval of Instructors. All assignments, regardless of deadline extensions, must be turned in by the last day of classes for Spring Semester at 5 p.m. for credit.

**Computer Use:** Computers are permitted in class for note taking only. If the class session does not require note taking, e.g. interactive, participatory session, you will be expected to not use your computer. Do not use your computer or smartphone for email or internet use. This policy is for your benefit and for the benefit of your fellow learners. Computer use other than taking notes detracts from the learning experience for you and your fellow students.

**Building Safety:** Emergencies are rare, but if they happen, we must know how to respond effectively and efficiently. The University's Emergency Management and Continuity group provides extensive resources for emergencies (see <http://>\_\_\_\_\_). Please review these materials when you can, with special emphasis on the following:

- Identify all the exits in each of your classrooms;
- Practice being aware of your surroundings at all times; and
- Familiarize yourself with the basic procedures around **earthquakes** ("duck, cover, hold" at \_\_\_\_\_) and **active shooter situations** ("run, hide, fight" at \_\_\_\_\_).

We are all responsible for the safety and well-being of our community. For more on emergency procedures and building safety, please talk with us about the situation in our classroom, with Dean of Students.

### **What You Can Expect from Your Instructor:**

You can expect me to:

- plan and facilitate learning opportunities that will help you meet the course goals and objectives
- provide constructive feedback on your performance
- be open to constructive feedback on my performance
- bring my teaching expertise and experience into the classroom

- be open-minded in responding to your ideas and suggestions
- allow you to wrestle with ideas to shape your own conclusions

## **GRADING**

Attendance & Participation 10%; Business Plan 20%; Entity Formation Documents & Operating Agreement 20%; Draft Portfolio & Writing Project 10%; Final Project 40%

## **COURSE ASSIGNMENTS**

### **Business Plan**

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### **Entity Formation Documents & Operating Agreement**

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**Initial Draft Portfolio: Client Engagement Letter, Conflict Disclosure & Consent Form, Timesheet (with Final Revised Business Plan, Formation Docs, Operating Agreement)**

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**Final Project Due: Completed Business Practice Model Packet (Business Plan, Entity Formation, Revised Operating Agreement, Revised Engagement Letter, Revised Conflict Disclosure & Consent, Timesheet, Dis-engagement Letter, Practice Management Checklist); Exit Essay**

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**Outside Projects: Log 38 hours, Practical skills component, building network & exploring industry specific best practices by attending specific CLE and networking programs designed for Solo and Small Firm practitioners). Submit lessons learned (Writing project)**

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## COURSE SCHEDULE

### [DATE] – Class 1: Solo and Small Firm Practice Overview

#### **Goals:**

At the end of this session, students will:

- Be introduced to both the process and the content of the course
- Start an ongoing conversation around and investigation into understanding Solo and Small Firm practice models

#### **Required Reading:**

Course Syllabus

### [DATE] – Class 2: Why Solo/Small Firm & Who makes a good Sole Practice Attorney?

#### **Goals:**

At the end of this session, students will:

- Understand the benefits and drawbacks of solo practice
- Begin asking questions to match their own experience with solo practice models

#### **Required Reading:**

*Elefant Ch.1-3*

*Berman Ch. 1*

#### **Due:**

- Worksheet: Pro/Cons of Private Practice

### [DATE] – Class 3: First Steps to Going Solo/Small Firm: Business Plan & Entity Selection

#### **Goals:**

At the end of this session, students will:

- Have foundational understanding of the necessity and practicality of business plan models
- Begin anticipating choices of entity and business formation for private practice models

#### **Required Reading:**

*Elefant Ch. 4-6*

*Berman Ch. 2*

#### **Due:**

Begin Creating Model Business Plan

### [DATE] – Class 4: Identifying Practice Areas

#### **Goals:**

At the end of this session, students will:

- Use self-evaluative tools to determine viability of practice areas based on practice models and interests discussed

**Required Reading:**

*Elefant Ch. 7-8*

**Due:**

Continue work on Business Plan

**[DATE] – Class 5: Financing your Enterprise**

**Goals:**

At the end of this session, students will:

- Have foundational understanding of mechanisms for financing private practice models
- Gain familiarity with various private practice models and their application to the student's interest areas

**Required Reading:**

- Elefant Ch. 9*
- Berman Ch. 3*

**Due:**

Business Plan Due

**[DATE] – Class 6: Logistics and office overhead/office assistants**

**Goals:**

At the end of this session, students will:

- Understand nuances of office support staff management
- Evaluate and understand typical overhead costs in the context of previous session on financing and business management

**Required Reading:**

- Elefant Ch. 12*
- Berman Ch. 4, 10*

**Due:**

Class Discussion: Employees and Office Policies

**[DATE] – Class 7: Marketing 101: How to build a client base**

**Goals:**

At the end of this session, students will:

- Begin to strategize around ways to build a client base, evaluate target

demographics, and discover new demographics to target

**Required Reading:**

- Elefant Ch. 14-17*
- Berman Ch. 5*

**Due:**

Class Discussion: Marketing Strategies

**[DATE] – Class 8: Networking Basics**

**Goals:**

At the end of this session, students will:

- Understand how to build, maintain, and leverage connections as resources in building and maintaining a practice

**Required Reading:**

- Elefant Ch. 13*
- Berman Ch. 6*

**Due:**

Class Discussion: Networking and referral strategies

**[DATE] – Class 9: Entity Formation & Operating Agreement Basics**

**Goals:**

At the end of this session, students will:

- Focus on logistical matters necessary to operation of a business
- Understand the importance of foundational agreements in business formation as preventative measures and exit strategies

**Required Reading:**

- Review OR Secretary of State forms
- Review Sample Operating Agreement

**Due:**

Begin working on entity formation docs and operating agreement

**[DATE] – Class 10: Invoicing & Fees**

**Goals:**

At the end of this session, students will:

- Understand traditional billing models for private practice
- Learn about nontraditional billing models such as flat fees, unbundling services, and limited scope representation

**Required Reading:**

- Elefant Ch. 11*
- Berman Ch. 8*
- Review Chicago Bar Foundation Pricing Toolkit*

**Due:**

Entity Formation Docs. & Operating Agreement Due

**[DATE] – Class 11: Client Management**

**Goals:**

At the end of this session, students will:

- Have understanding of the nuance of client engagement and how to deal with challenging clients
- Be exposed to potential conflicts in practice and discuss waivers and consent forms surrounding potential conflicts

**Required Reading:**

- Elefant Ch. 10*
- Berman Ch. 7*

**Due:**

Engagement Letter; Conflict Disclosure & Consent Form preview

**[DATE] – Class 12: Dis-engagement & Time Management**

**Goals:**

At the end of this session, students will:

- Gain familiarity with standard time management software, alternative options
- Understand the importance and practical strategies around dis-engaging with clients and client non-engagement notices

**Required Reading:**

- Berman Ch. 9*

**Due:**

Time management toolkits preview

**[DATE] – Class 13: Work-Life Balance**

**Goals:**

At the end of this session, students will:

- Have strategies for developing successful practice tools and models while also paying attention to self-care and personal reflection in balancing work obligations

with personal lives

**Required Reading:**

- Berman Ch. 11*

**Due:**

Initial Draft Portfolio Due

**[DATE] – Class 14: Cultural Competency in Private Practice**

**Goals:**

At the end of this session, students will:

- Understand fundamentals of practice with clients from varying backgrounds
- Learn tools for reflective listening and discussion with clients in the context of their own experience

**Required Reading:**

- Berman Ch. 13*
- ABA Article: Cultural Competency and the practice of law in the 21<sup>st</sup> Century; Habits of Cross-cultural Lawyering*

**Due:**

Class Discussion/Exercise: Working with clients from a culturally competent perspective

**[DATE] – Class 15: Tips, Traps, & Unique Circumstances**

**Goals:**

At the end of this session, students will:

- Learn some final tips for successful practice management, understand standard pitfalls in practice management and apply those hypotheticals to their own goals in practice

**Required Reading:**

- Elefant Ch. 18*
- Berman Ch. 12*

**Due:**

Final Project Due: Portfolio, Business Packet, Review Checklist: Berman

## APPENDIX 1 – ACME LAW GRADING RUBRICS

[PROVIDE DETAIL ABOUT GRADING RUBRICS HERE, IF APPLICABLE.  
EXAMPLES APPEAR BELOW]

### For Attendance and Participation (10 points max):

	Far Below Standards	Satisfactory	Good	Excellent
<b>Points Available</b>	0--6	7	8	9--10
<b>Peer Interaction</b>	Virtually no interaction with peers	Limited interaction with peers	Makes a sincere effort to interact with peers (ongoing)	Actively Supports, engages and listens to peers throughout term
<b>Participation</b>	Comments vague if given at all; frequently demonstrates a lack of interest	Sometimes participates constructively in group work and class discussions, sometimes goes on auto-pilot	Participates constructively in group work and class discussion throughout the term	Plays an active, dynamic role in discussions and group work throughout the term
<b>Contributions to Class</b>	Demonstrates a noticeable lack of interest on occasion	Comments are sometimes irrelevant and do not advance level and depth of class dialogue	Comments in class discussions are relevant and based on assigned material, and generally help the dialogue along	Comments consistently advance level and depth of dialogue in class discussions
<b>Group Dynamics</b>	Group dynamic and level of discussion are often notably disrupted by student's presence	Group dynamic and level of discussion are sometimes disrupted by student's presence	Group dynamic and level of discussion are often enhanced, but never made less effective because of student's presence and contributions	Group dynamic and productivity are always enhanced by student's presence and contributions

### Business Plan (20 points max):

*Excellent (19--20)*  
Written work is presented at a mature level, organized well and carefully edited, with correct grammar, good vocabulary, and high quality of careful and informed thinking. Meets all course expectations timely and completely. Shows thorough and active grasp of concepts and demonstrates exceptional ability to synthesize course lectures and materials.

<p><i>Good (16-18)</i></p> <p>Written work is presented at a professional level, with good grammar, vocabulary, and thought, with good command of content and organization and only a few minor flaws. Meets course expectations timely and completely. Shows good grasp of concepts and ability to synthesize course lectures and materials, but does not rise to the level of being exceptional.</p>
<p><i>Satisfactory (14---15)</i></p> <p>Written work is presented at a professional level with adequate grammar, vocabulary, and thought, but with frequent flaws, problems with organization, weak or minimal grasp of concepts, and limited ability to synthesize the course lectures and materials.</p>
<p><i>Minimal Credit (12---13)</i></p> <p>Written work is marred by serious problems of grammar, vocabulary, disorganization or unclear expression. Fails to meet basic minimum course expectations in a timely way. Grasp of concepts is incomplete or uncertain, and student does not adequately synthesize lecture and course materials.</p>
<p><i>Far Below Standard Expectations (11 and lower)</i></p> <p>Written work does not achieve professional level grammar, vocabulary, organization, and thought. Does not master concepts and lacks the ability to synthesize the lecture and course materials.</p>

**Entity Formation Documents & Operating Agreement (20 points max):**

<p><i>Excellent (19--20)</i></p> <p>Written work is presented at a mature level, organized well and carefully edited, with correct grammar, good vocabulary, and high quality of careful and informed thinking. Meets all course expectations timely and completely. Shows thorough and active grasp of concepts and demonstrates exceptional ability to synthesize course lectures and materials.</p>
<p><i>Good (16-18)</i></p> <p>Written work is presented at a professional level, with good grammar, vocabulary, and thought, with good command of content and organization and only a few minor flaws. Meets course expectations timely and completely. Shows good grasp of concepts and ability to synthesize course lectures and materials, but does not rise to the level of being exceptional.</p>
<p><i>Satisfactory (14---15)</i></p>

Written work is presented at a professional level with adequate grammar, vocabulary, and thought, but with frequent flaws, problems with organization, weak or minimal grasp of concepts, and limited ability to synthesize the course lectures and materials.

*Minimal Credit (12---13)*

Written work is marred by serious problems of grammar, vocabulary, disorganization or unclear expression. Fails to meet basic minimum course expectations in a timely way. Grasp of concepts is incomplete or uncertain, and student does not adequately synthesize lecture and course materials.

*Far Below Standard Expectations (11 and lower)*

Written work does not achieve professional level grammar, vocabulary, organization, and thought. Does not master concepts and lacks the ability to synthesize the lecture and course materials.

**Draft Portfolio (10 points max):**

*Excellent (9--10)*

Written work is presented at a mature level, organized well and carefully edited, with correct grammar, good vocabulary, and high quality of careful and informed thinking. Meets all course expectations timely and completely. Shows thorough and active grasp of concepts and demonstrates exceptional ability to synthesize course lectures and materials.

*Good (8)*

Written work is presented at a professional level, with good grammar, vocabulary, and thought, with good command of content and organization and only a few minor flaws. Meets course expectations timely and completely. Shows good grasp of concepts and ability to synthesize course lectures and materials, but does not rise to the level of being exceptional.

*Satisfactory (7)*

Written work is presented at a professional level with adequate grammar, vocabulary, and thought, but with frequent flaws, problems with organization, weak or minimal grasp of concepts, and limited ability to synthesize the course lectures and materials.

*Minimal Credit (6)*

Written work is marred by serious problems of grammar, vocabulary, disorganization or unclear expression. Fails to meet basic minimum course expectations in a timely way. Grasp of concepts is incomplete or uncertain, and student does not adequately synthesize lecture and course materials.

*Far Below Standard Expectations (5 and lower)*

Written work does not achieve professional level grammar, vocabulary, organization, and thought. Does not master concepts and lacks the ability to synthesize the lecture and course materials.

**Final Project/Portfolio (40 points max):**

*Excellent (36--40)*

Written work is presented at a mature level, organized well and carefully edited, with correct grammar, good vocabulary, and high quality of careful and informed thinking. Meets all course expectations timely and completely. Shows thorough and active grasp of concepts and demonstrates exceptional ability to synthesize course lectures and materials.

*Good (32-35)*

Written work is presented at a professional level, with good grammar, vocabulary, and thought, with good command of content and organization and only a few minor flaws. Meets course expectations timely and completely. Shows good grasp of concepts and ability to synthesize course lectures and materials, but does not rise to the level of being exceptional.

*Satisfactory (28---31)*

Written work is presented at a professional level with adequate grammar, vocabulary, and thought, but with frequent flaws, problems with organization, weak or minimal grasp of concepts, and limited ability to synthesize the course lectures and materials.

*Minimal Credit (24---27)*

Written work is marred by serious problems of grammar, vocabulary, disorganization or unclear expression. Fails to meet basic minimum course expectations in a timely way. Grasp of concepts is incomplete or uncertain, and student does not adequately synthesize lecture and course materials.

*Far Below Standard Expectations (23 and lower)*

Written work does not achieve professional level grammar, vocabulary, organization, and thought. Does not master concepts and lacks the ability to synthesize the lecture and course materials.