



WORKSHOP Z.

Moving Towards Civil Gideon

*2014 Legal Assistance
Partnership Conference*

Hosted by:

The New York State Bar Association
and The Committee on Legal Aid



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New York State Bar Association

NEW YORK STATE BAR ASSOCIATION 2014 PARTNERSHIP CONFERENCE

Z. USING BUSINESS LAW AND PARTNERSHIPS WITH PRO BONO ATTORNEYS TO ASSIST SMALL BUSINESSES AND NON-PROFIT ORGANIZATIONS IN ORDER TO IMPROVE THE QUALITY OF LIFE OF INDIVIDUALS IN LOW-INCOME NEIGHBORHOODS

AGENDA

**September 11, 2014
3:00 p.m. – 4:30 p.m.**

1.5 Transitional CLE Credits in Professional Practice.

*Under New York's MCLE rule, this program has been approved for all attorneys,
including newly admitted.*

Panelists:

Rolando Gonzalez, Esq., Senior Staff Attorney, Community Development Project, The Legal Aid
Society

Jessica A. Rose, Esq., Director, Community & Economic Program, Brooklyn Legal Services
Corporation A

- | | |
|--|--------------------------|
| I. Discussion of Community Development Practice | 3:00 pm – 3:10 pm |
| II. Assisting Nonprofit Groups and Issues | 3:10 pm – 3:30 pm |
| III. Assisting Low-Income Businesses and Issues | 3:30 pm – 3:50 pm |
| IV. Starting A Community Development Practice | 3:50 pm – 4:10 pm |
| V. Working with the Private Bar & Other Partnerships | 4:10 pm – 4:20 pm |
| VI. Challenges & Benefits of a Community Development Practice | 4:20 pm – 4:30 pm |

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Substantive Outline

**Z. USING BUSINESS LAW AND PARTNERSHIPS WITH PRO BONO ATTORNEYS TO
ASSIST SMALL BUSINESSES AND NON-PROFIT ORGANIZATIONS IN ORDER TO
IMPROVE THE QUALITY OF LIFE OF INDIVIDUALS IN LOW-INCOME
NEIGHBORHOODS**

OUTLINE

**I. ASSISTING GROUPS SEEKING TO START A NOT-FOR-PROFIT CORPORATION
AND ISSUES AFFECTING NOT-FOR-PROFITS**

Community mobilization can take the form of assisting community-based groups organize to create programs that preserve and increase control of community resources and improve the quality of life within community boundaries.

A. Preliminary Considerations

1. Understand Your Role as Lawyer
 - a. Be client centered and collaborative: Discuss the client's goals; then make independent judgments about the appropriate course(s) of action and advise client accordingly; recognize and respect client's and lawyer's distinct areas of expertise
 - b. Determine who you are representing
2. Determine Your Organization's Criteria for Assistance
 - a. Organizers reside in, or work in, the community, with the target population, a low-income area
 - b. New organization must have mission, board, and capability to follow required corporate formalities attendant to being incorporated
 - c. Impact of project (i.e., number of jobs created, individuals that will receive service)
 - d. Need for service provided in the community
3. Is the Group Ready to Formally Organize and Form a new Organization
 - a. Does the organization/group have a clear, well-defined mission and goal?
 - b. Does the organization/group have a strategic plan to implement its mission?
 - c. Is there a core group that is capable of doing the work required to achieve the mission?
 - d. Will there be members (N-PLC Art. 6) or just a board of directors?
 - e. Does the organization have nonprofit purposes? (*see below*)
 - f. Has the organization identified a population in need of its services?
 - g. Can the organization give you a detailed list of activities?
 - h. Does the organization's plan include a detailed description of activities and a budget?
4. Can the group's goal be accomplished in another matter without forming a new entity?
 - a. Collaboration with or working under a larger organization
 - i. Pilot project—test the environment and work out “kinks” in a program
 - ii. Short term projects or programs—avoid the administrative burden or costs of setting up a new program
 - iii. Joint funding efforts

b. Fiscal sponsorship: Fiscal sponsorship is a formal arrangement in which an entity with federal tax exemption (the fiscal sponsor) enters into an agreement with an organization seeking to raise tax-deductible funds to conduct its charitable purposes prior to or without either incorporating or receiving federal tax-exempt status from IRS.

- i. Provides “back office” services
- ii. Benefit from state and local tax exemptions
- iii. Charitable purposes of the two organizations must be compatible
- iv. Fiscal sponsor accepts contributions on other organization’s behalf and then grants to the organization in response to a specific request.
Sponsored organization must report back to the fiscal sponsor on use of the grant funds.
- v. Good option for groups and organizations that only want to operate a charitable project for a short period of time.

c. **Advantages and Disadvantages of Incorporating**

i. Nonprofit Corporations

a) Advantages:

1) Limited legal liability:

- (a) A corporation exists and acts as an independent legal entity, and is, therefore, afforded the same rights and is subject to the same obligations as a natural legal person.
- (b) Individuals who control the corporation (i.e., Board and Officers) or who are its members are not liable for corporate obligations; only the corporation is liable.

2) Perpetual duration:

- (a) A corporation’s existence is not dependent on the continued participation of individual members or directors.

3) Orderly organizational structure:

- (a) Corporate law sets out rules that govern the activities and structure of corporations. These are laid out in the by-laws that corporations must adopt.
- (b) Many businesses and organizations prefer to deal with corporations rather than unincorporated groups because of their familiarity with these rules, and because corporations are subject to greater state regulation and supervision than unincorporated groups, which makes them seem more legitimate.
- (c) The corporate form can provide greater predictability of the legal consequences of engaging

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in certain organizational changes such as mergers and strategic alliances.

4) Facilitates ownership of real property:

- (a) New York State law grants corporations the right to acquire, hold, and transfer real property.
- (b) Although associations can legally do the same, it is simpler for corporations, and limited liability makes it safer.

5) Provides a recognized structure that may be of assistance in generating revenue

b) Disadvantages:

- 1) Process of formation can be time consuming
- 2) Individual members of a corporation *may be personally liable* for corporate obligations resulting from their negligent, fraudulent or otherwise illegal behavior.
- 3) If a corporation fails to follow proper corporate procedures as per the by-laws, limited liability *will not* protect individual members of the corporation.
- 4) Costs associated with formation.
- 5) Because of perpetual existence, a corporation does not cease to exist until it is formally dissolved, which can be a difficult and time-consuming process.
- 6) Nonprofit corporations seeking donations in New York must register with the New York State Attorney General's Charities Bureau.

ii. Unincorporated Associations

a) Advantages:

1) Flexible and convenient:

- (a) Formation of an unincorporated association does not depend on compliance with any statutory requirements.
- (b) No fees involved in formation.
- (c) No approval or consent by a governmental agency is necessary.
- (d) The association may establish any reasonable rules or regulations for the conduct of its internal affairs, which can, but do not have to be written in the articles of association, by-laws, or another document.
- (e) The rules of the association may be amended or repealed whenever the association deems it

necessary, without the need for any governmental approval.

b) Disadvantages:

- 1) Members can be held personally liable for all acts they ratify, adopt or in which they participate which gives rise to an obligation.
- 2) Since an unincorporated association does not have a legal existence it cannot hold property in the name of the association; property is instead held by the members as joint tenants.
- 3) Banks, vendors and landlords may be less willing to extend credit to or enter a contract with an unincorporated group than with a corporation.
- 4) While unincorporated associations are free to create their own governing rules, this can sometimes lead to confusion in the management of the group.
- 5) Although an unincorporated association may secure recognition of tax-exempt status under Section 501(c)(3), applying for tax exempt status requires that the group adopt articles of association and by-laws. If the group has enough activity to warrant seeking tax exempt status, it probably has enough activity to warrant incorporating and enjoying the benefits of incorporation.

5. Entity must have Non-Profit/Tax-Exempt Purposes

- a. NYS N-PCL Article 2 – corporation must have non-pecuniary purpose
- b. IRS Publication 557
- c. Internal Revenue Code Section 501(c)(3)

Corporations, and any community chest, fund, or foundation, organized and operated *exclusively* for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which *inures to the benefit of any private shareholder or individual*, no substantial part of the activities of which is carrying on propaganda, or otherwise *attempting to influence legislation* (except as otherwise provided in subsection (i)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any *political campaign* on behalf of (or in opposition to) any candidate for public office.

B. Formation of Corporation

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A Corporation is more common and generally preferable because it provides greater protection from personal liability, is more flexible, and can take advantage of clearer laws governing indemnification of officers and directors.

1. Jurisdiction – New York
 - a. Most common for entities operating or based in New York.
 - i. Clear statutory framework under Not-for-Profit Corporation Law (N-PCL), but more requirements for organization (e.g., possible need for waivers or clearances from various state departments). Need at least 3 directors.
 - ii. Given recent increase in scrutiny by Secretary of State and enforcement activity by Attorney General, many new organizations and their advisors may decide to incorporate elsewhere unless the organization has a New York-oriented mission. Note: organizations that incorporate in another state but operate in New York must file an application for authority to conduct business in New York.
2. Basic information needed from client for Incorporation
 - a. Name of entity
 - b. Exempt purpose(s)
 - c. Initial director(s) (N-PCL § 702 requires at least 3)
 - d. Addresses of directors
 - e. Address of principal office of entity
 - f. Filing fee
3. Steps to Incorporate
 - a. Reserve name (optional) – especially if particular name is important and/or not unique.
 - b. Prepare certificate of incorporation
 - c. Certificate must be approved by organizers and signed
 - d. Obtain waivers N-PCL Section 404
 - i. For a partial list of the different agencies that need to approve the Certificate of Incorporation of different types of non-for-profit corporations, go to:
http://www.charitiesnys.com/pdfs/how_to_incorporate.pdf.
 - e. Submit to Secretary of State with filing fee of \$75, and request a certified certificate of incorporation which costs and additional \$10.
 - f. Prepare by-laws, conflict of interest policy, organizational resolutions, including banking resolutions
4. Organizing the New Organization
 - a. Once the organization is formed you will receive a filing receipt and certified certificate of incorporation. All basic corporate documents should be kept in a corporate binder or file.
 - b. Initial Board of Directors (and new board members) will have an organizational meeting.

- c. Obtain federal employer identification number – fastest method is to complete form, call appropriate IRS branch with officer on the line and fax completed form to appropriate number (*see* instructions to Form SS-4 to determine appropriate phone/fax numbers). Many organizations are also eligible to obtain an EIN online through the IRS website. However, you should have a signed Power of Attorney and Declaration of Representative (Form 2848) from your client on hand if you use this option.
- d. Register with state Attorney(s) General
 - i. Registration with N.Y. Attorney General (CHAR 410)
http://www.charitiesnys.com/charindex_new.jsp
 - a) If the corporation intends to hold assets and/or solicit contributions in New York State, it must file the Form CHAR410 with the Charities Bureau of the New York State Attorney General's Office
 - ii. Annual filings with N.Y. Attorney General (CHAR500)
 - iii. If organization will be conducting fundraising activities or maintaining a presence in states other than the state of incorporation, registration may be required by those states.

C. Federal Tax Exemption

1. Most non-profits will want to qualify for federal tax exemption as 501(c)(3) organizations. Complete application on IRS Form 1023. For form and instructions for IRS Form 1023, *see* [http://www.irs.gov/uac/Form-1023,-Application-for-Recognition-of-Exemption-Under-Section-501\(c\)\(3\)-of-the-Internal-Revenue-Code](http://www.irs.gov/uac/Form-1023,-Application-for-Recognition-of-Exemption-Under-Section-501(c)(3)-of-the-Internal-Revenue-Code).
2. Public Charity Status
 - a. Organizations receiving substantial public support: Most common type. Generally, must receive at least 1/3 of their total support from the public. Must satisfy one of two complex tests – consult Publication 557.
 - b. “Supporting organizations”: Organizations (*e.g.* university press) that fail to meet the public support tests, but that are closely connected with one or more public charities.
3. Information Needed for Form 1023
 - a. Names and addresses of directors and officers with a statement of qualifications
 - b. Are the directors independent and if not how are they related?
 - c. Whether the organization expects to hire employees, agents or advisors
 - d. Anticipated sources of support
 - e. Proposed budget for specified amount of years depending on years in existence
 - f. Detailed narrative statement of past, present and future activities
4. If exemption granted the organization will receive a determination letter identifying it as a tax exempt organization
5. Compliance Issues

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- a. Annual U.S. informational income tax returns(Form 990-N, Form 990 or Form 990-EZ)
- b. “Unrelated business taxable income” (UBTI) (Federal: Form 990-T; State: Form CT-13)
- c. Substantiation of charitable gifts: upon receipt of a charitable gift (except from a public charity, the corporation should provide donor with receipt indicating: the property received (if not cash); the date it was received; and whether the donor received any goods or services in return (not including de minimis gifts). If the donor makes a gift of more than \$75 and receives goods or services in return, the corporation must provide the donor with a substantiation letter that also includes the fair market value (not cost) of the goods or services received. See <http://www.irs.gov/Charities-&-Non-Profits/Substantiating-Charitable-Contributions>.

D. State and Local Tax Exemptions

1. Exemption from payment of N.Y. State corporate franchise tax (CT-247)
2. Exemption from payment of N.Y. State and local sales tax (ST-119-2)
3. Exemption from payment of state and local property tax

E. Other Considerations

1. Intellectual Property Issues
 - a. Most organizations will not need to worry about trademark issues because they will be entitled to common law protection based on regional usage. Organizations intending to operate in a broader geographical area, such as national organizations with branches in different cities, should consider trademark registration.
 - b. In general, organizations should have agreements establishing ownership of copyrights for materials (*e.g.*, websites) produced by employees or independent contractors and ownership of creative works suggested or funded by the organization. Arts organizations may have additional copyright issues.
2. Employees/Independent Contractors
 - a. Organization may have federal, state and local withholding and reporting requirements with respect to payments to employees. Those exempt under Section 501(c)(3) are exempt from federal unemployment tax (“FUTA”).
 - b. Determination of employee status is highly factual; can’t avoid requirements by labeling would-be employees “consultants” or “independent contractors.”
 - c. If an organization has relationships with individuals who may be “employees,” it should probably consult an accountant to discuss filing requirements.
 - d. IRS Forms 1099 may need to be filed with respect to payments to independent contractors.
3. Insurance
 - a. Most New York organizations with paid employees are required to have unemployment insurance, which is provided under a system administered by the

New York State Department of Labor. They may also be required to obtain workers' compensation and short-term disability insurance.

b. Consider whether directors and officers ("D&O") insurance is needed. New York law provides significant protection to officers and directors as well as permitting corporations to indemnify their officers and directors who are made parties to lawsuits.

c. Other forms of insurance may be necessary depending on the nature of the organization's activities.

II. ASSISTING LOW-INCOME SMALL BUSINESSES AND ISSUES AFFECTING SMALL BUSINESSES

A. A global legal approach is necessary when counseling low-income microentrepreneurs

1. It is important to identify all of the legal needs of a low-income microentrepreneur. A low-income small business client may seek assistance with only one discrete need for legal representation. However, low-income small businesses often have a myriad of issues that need to be addressed, many of which their owners do not foresee.

2. Representation from a poverty law office is likely the only legal counsel that a low-income entrepreneur will have access to. Thus, a global approach to and addressing the legal needs of low-income entrepreneurs increases their chances of success. To effectively represent a low-income small business client, it is also necessary to spot other legal issues that the small business client might miss. By analyzing all of a low-income client's legal issues and seeking to address them, a public interest legal services provider can hope to maximize a small business's chances of long-term success.

3. To effectively counsel low-income microentrepreneurs they must be guided through multiple issues including:

- a. Choice of Legal Entity
- b. Written Agreements (e.g., Partnership Agreements)
- c. Small Business Tax Compliance Issues
- d. Licenses and Permits
- e. Real Estate Needs
- f. Employment Issues
- g. Intellectual Property Issues
- h. Business Insurance Requirements
- i. Financing
- j. Exit Strategy

B. Assessing whether the entrepreneur is ready to start the business

1. Preliminary steps for the entrepreneur:

a. Written a business plan including a current balance sheet, an income statement, and a cash flow analysis.

b. Know all of their expenses, both one-time start-up expenses and ongoing cash requirements.

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- c. Secure necessary capital, including bank loans, personal savings, family contributions, etc.
- d. If the business will be owned by multiple owners have the entrepreneurs decided how the business will be run, including the rights and responsibilities of each owner.
- e. Establish a business bank account where funds will not be commingled.
- f. Set up an accounting system for payroll.
- g. Assess real estate needs.

C. Choosing a business structure

- 1. Common considerations for low-income microentrepreneurs when choosing a legal entity include: start-up costs; personal liability versus limited liability; ownership control and decision-making; investment in the business; tax considerations; flexibility of the business form and exit strategy.

D. Types of business structures available to low-income small businesses include: Sole Proprietorship; General Partnership; “C” Corporation; “S” Corporation; Limited Liability Company; and Workers’ Cooperatives.

1. Sole Proprietorship

- a. A sole proprietorship is the simplest way to run a business. Owner and business are one and the same.
- b. Advantages:
 - i. Owner has sole control over business.
 - ii. Simple and inexpensive to create and operate.
 - iii. Business losses are tax deductible for owner.
 - iv. No entity level tax.
- c. Disadvantages:
 - i. Owner has personal liability for business debts and lawsuits. Creditors can go after owner’s personal assets.
 - ii. Access to capital and other business resources is limited.
 - iii. Owner must make all business decisions and business does not survive the owner.
- d. Basic Requirements to form a Sole Proprietorship:
 - i. Choose a name.
 - ii. If doing business using a name other than birth name, file a Certificate of Doing Business Under an Assumed Name with the county clerk in each county in which business is conducted. General Business Law (“GBL”) §130. No formation document is required.
 - iii. Form X-201 can be obtained from <http://www.blumberg.com/> or at stationary stores that sell Blumberg business forms.

2. General Partnership

- a. Must have two or more owners who carry on a business for profit. Owners are treated as the business.
 - i. Advantages:

- a) Simple and inexpensive to create and operate.
- b) No filing documents with the secretary of state other than filing a Certificate of Doing Business Under An Assumed Name if doing business under a name other than birth name.
- c) Partners can claim losses and business expenses as personal tax deduction.
- d) No entity-level tax.
- ii. Disadvantages:
 - a) Partners personally liable for business debts and lawsuits, most importantly, including actions of other partners.
 - b) Creditors can go after personal assets of partners.
 - c) Hard to remove partners without dissolving partnership unless otherwise specified in a formal agreement, the entire business dissolves upon separation of a single partner, making it difficult to deal with an uncooperative partner.
- iii. Basic Requirements to form a General Partnership:
 - a) File a Certificate of Doing Business as Partners with the office of each county clerk in which the partnership will conduct business. GBL §130.
 - b) Prepare a Partnership Agreement which summarizes the obligations of the partners and decision making process for operating the business. (Note: A written agreement is not a requirement but is highly recommended.)

3. “C” Corporation

a. The “C” Corporation is the standard type of corporation. A corporation is an entity that is separate and apart from those who own it. Since corporations have a separate legal entity, they are responsible for their own liability and business debts, and therefore shareholders’ liability is normally limited to their investment. A corporation pays its own taxes at the corporate income tax rate and files its own corporate tax forms each year. Thus, a “C” Corporation is subject to “double taxation”. The corporation pays corporate tax on all the corporation’s income and any profits paid out to its shareholders in the form of dividends are taxed again at the individual shareholder’s tax rate. One person can be the sole shareholder, the sole director, and the sole officer.

- i. Advantages
 - a) All shareholders have limited liability and liability is capped at the amount invested by the shareholders.
 - b) As a separate legal entity a corporation is capable of continuing indefinitely.
 - c) Provides for transferability of interests.
 - d) Capital can be raised through sale of stock.
- ii. Disadvantages

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- a) Corporation profits are subject to double taxation.
- b) Corporation must continually observe corporate formalities that can be time consuming.

4. “S” Corporation

a. Similar to a “C” Corporation. However, also provides the “pass-through” tax treatment of a partnership or a sole-proprietorship.

i. Advantages:

- a) Limited owner (i.e., the shareholder) liability for business debts or lawsuits – owner is only liable in certain situations where owner’s activities are egregious. Shareholders generally have no liability beyond their investment.
- b) Capital can be raised through sale of stock.
- c) Provides for continuity of existence.
- d) Provides for transferability of interests.
- e) Only one level of taxation (no entity/corporate tax level only taxed at shareholder level).

ii. Disadvantages:

- a) Must file S-Corporation election documents with IRS and with the state of New York.
- b) New York City does not recognize S-Corporation status for New York City tax purposes; thus an “S” Corporation must pay entity-level New York City tax if the business is located in New York City (if the business is located in another municipality check the laws of that municipality).
- c) May only have up to 100 shareholders and the shareholders cannot be non-resident aliens.
- d) Failure to make proper elections will cause corporation to lose its status and preferable tax treatment.
- e) Administrative duties are burdensome.
- f) Must follow corporate formalities to maintain limitation of liability.

iii. Basic Requirements to form an “S” Corporation:

- a) The formation of a business corporation is governed by the statutory framework of the Business Corporation Law (“BCL”).
- b) Corporation name must include either “corporation”, “incorporation” or “limited” (or any abbreviation thereof). NY BCL §301(a).
- c) One or more persons, called “incorporators”, may form a corporation. The incorporator(s) sign the Certificate of Incorporation. The completed Certificate of Incorporation is filed with the Department of State. NY BCL § 402.

- d) Section 402 of the BCL provides the contents required in a certificate of incorporation.
- e) After the Certificate of Corporation has been filed with the Department of State, pursuant to Section 404 of the Business Corporation Law, an organization meeting of the incorporator(s) must be held for the purpose of adopting by-laws, electing directors and transacting any other business.
- f) Incorporators create by-laws which document the governance of the corporation and establish the role of the Board of Directors. NY BCL § 601.
- g) An initial organizational meeting should be held where shareholders (owners) elect the Board of Directors. NY BCL § 404.
- h) There must be at least one director of a corporation (who must be at least 18 years of age). NY BCL §§ 701, 702.
- i) The top-ten shareholders (of non-public) stock are personally liable for unpaid wages to employees (not contractors), provided those employees give proper and timely notice. NY BCL §630.
- j) Shareholders must file Form 2553 with the IRS to elect treatment as a Federal “S” Corporation.
- k) After the election is approved by the IRS, shareholders file Form CT-6 in New York to elect treatment as a New York “S” Corporation.

iv. Basic corporate governance issues:

- a) Section 624 of the BCL requires a corporation to keep correct and complete books and records of account and must keep minutes of the proceedings of its shareholders and board of directors.
- b) A meeting of shareholders must be held annually for the election of directors and the transaction of other business on a date fixed by or under the by-laws. NY BCL § 602.
- c) A majority of the shareholders present at a meeting must approve an action or resolution. A plurality of shareholders present may elect a director. NY BCL § 614.
- d) Must file status report with NY Secretary of State every two years. NY BCL § 408.

5. Limited Liability Company

- a. A limited liability company (“LLC”) is a relatively new form of business organization introduced in New York in 1994. The Limited Liability Law governs the formation and operation of an LLC. An LLC may organize for any lawful business purpose or purposes. The LLC is a hybrid form that combines corporation style limited liability with partnership-style flexibility and taxation.

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An LLC is a separate legal entity from owners and can have one or more owners referred to as members.

- i. Advantages:
 - a) Liability can be limited to extent of owner's investment.
 - b) Profits and losses allocated differently than ownership interests.
 - c) Owners can choose to be treated as a partnership (with single-level taxation) or a corporation (with double-level taxation) for tax purposes.
 - d) Capital can be raised through the sale of company interests.
 - e) Allows for flexible management and structure.
 - f) Non-resident aliens can be members.
- ii. Disadvantages:
 - a) Expensive formation costs (especially if required to publish in Manhattan).
 - b) LLC publication requirement.
- iii. Basic Requirements to organize a Limited Liability Company:
 - a) Name must include either "limited liability company" or the abbreviations "L.L.C." or "LLC". New York Limited Liability Company Law ("LLCL") §204.
 - b) One or more members can act as an "organizer" to form the LLC. NY LLCL §203.
 - c) Organizers form an LLC by filing the Articles of Organization, pursuant to Section 203 of the LLCL, with the Department of State.
 - d) Organizers prepare, sign and file the Articles of Organization that creates the LLC. NY LLCL §203.
 - e) Pursuant to Section 417 of the LLCL, the members of an LLC are required to adopt a written operating agreement no later than 90 days after the filing of the Articles of Organization (the operating agreement is the primary document that establishes the rights, duties, liabilities and obligations of the members between themselves and with respect to the LLC).
 - f) The law is silent on the consequences of not adopting an operating agreement.
 - g) Section 206 of the LLCL requires a notice related to the formation of a LLC to be published in two newspapers within 120 days after filing of Articles of Organization. The newspapers must be designated by the county clerk of the county in which the office of the LLC is located. An affidavit of publication from each newspaper must be filed with the Department of State. A Certificate of Publication with the affidavits of publication of the

newspapers must be submitted to the Department of State with a \$50 filing fee. NY LLCL §206

iv. Basic corporate governance issues:

- a) Annual meetings are required but can be conducted remotely (telephone, videoconference, etc.). NY LLCL §403.
- b) Management structure is flexible and depends upon requirements set forth in the LLC's operating agreement. NY LLCL §401 et seq.
- c) Must maintain the following information: list of all managers; list of all members; articles or organization; operating agreement and tax returns for the past three years. NY LLCL §1102.
- d) Quorum and voting requirements are determined in operating agreement. NY LLCL § 404.
- e) Limited liability for all members absent express waiver. NY LLCL § 609.

6. Workers Cooperatives

- a. A form of cooperative corporation that may be organized under a cooperative corporations law or as an LLC.
- b. Cooperatives are member-based organizations, and members typically contribute the same amount of capital and each has one vote.
- c. Dividends are not allocated based on capital invested. Instead, members receive dividends (patronage refunds) based upon the number of hours worked.

E. Issues For Businesses Owned By Multiple Owners

- 1. A written agreement (e.g. Partnership Agreement, Operating Agreement or Bylaws) should set the rules for how the owners will run the business and define their rights and responsibilities.
- 2. Low-income owned businesses are usually formed by family members or close friends.
 - a. By getting issues out into the open early, small business owners can hopefully prevent future problems.
 - b. Often they feel that it is unnecessary to enter into a written agreement with people they know quite well.
 - c. Low-income small business owners often do not think of potential problems when they are caught up in the excitement of starting a new business.
 - d. The business may change and fundamental issues will come up.
 - e. By working out the details of operating the business in a written agreement, business owners will be required to focus on issues they might not have thought of – issues which the business owners may have different opinions.
- 3. Low-income small business owners should address in a written agreement the following issues:
 - a. How owners will share profits?
 - b. How to dissolve the business?

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- c. What will each owner contribute to the business (cash contribution vs. contribution of services vs. contribution of property)?
- d. How will partners be compensated (profits, losses, draws, and salaries)?
- e. How will the business be operated? Will everyone be involved in the management and supervision?
- f. How will major decisions be made – unanimous decision, majority decision, by an individual?
- g. What are considered major decisions (purchases or undertaking of obligations often based on a dollar amount)?
- h. How will minor decisions be made?
- i. Will there be unequal management powers (i.e., based on percentage of interest in the business)?
- j. Will partners contribute different skills?
- k. How many signatures are required on business checks and to withdraw money from the business bank account?
- l. Can business owners engage in other outside businesses that may be competitive?
- m. Upon the departure of an owner (voluntarily leaves, becomes disabled, or dies) what happens to that person's business interest (do the remaining business owners have a right to buy it)?
- n. How is the purchase price determined when a shareholder or member sells their interests?
- o. Will remaining business owners have a "right of first refusal" before interests are transferred to outsiders?
- p. What events trigger the dissolution of the business?
- q. Can a departing business owner compete against the business? If not, how long is he restricted?
- r. How are amendments made to the written agreement?
- s. How will the business owners resolve disputes (especially if only two owners)?
- t. What if you cannot resolve a dispute by personal discussions and negotiations?

*Note: Resolving a dispute by litigation in court can be costly and time-consuming. Business owners can provide for resolution of their dispute by mediation or arbitration or both.

F. Considerations prior to signing a commercial lease

- 1. Negotiating a commercial lease is a critical matter for low-income small business clients.
 - a. A poorly drafted lease may doom a low-income small business.
 - b. Commercial tenants' rights are governed by the lease contract.

- c. Generally, there is no legislation that imposes an obligation upon a commercial landlord beyond the obligations imposed by the lease. For this reason it is critical that a low-income small business owner have counsel review and negotiate a commercial lease before signing.
- 2. Important issues low-income small business owners should know before signing a lease include:
 - a. The costs of rental and build-out of a commercial space in advance, including security deposit, architects' and contractors' fees, and equipment cost (the build-out of a commercial space, which includes obtaining permits and approvals, may be time-consuming and expensive, and must be analyzed in advance of signing the lease).
 - b. If the client is purchasing an existing business, is the lease assignable?
 - c. What is the remaining lease term?
 - d. Is the lease renewable?
 - e. Are existing equipment leases assignable?
 - f. Do local laws and zoning laws provide for use of the premises for commercial purposes?
 - g. Are all agreed upon terms written in the final lease?
- 3. Certain critical provisions in a commercial lease include:
 - a. Rent and additional rent provisions, including real estate taxes, maintenance costs, municipal charges, etc., must be understood by the low-income small business owner.
 - b. Permitted use of the premises should be broadly stated to give the low-income small business owner flexibility (e.g., "for all legal purposes"; instead of "as a book store").
 - c. Upon expiration of the lease, the low-income microentrepreneur should the option to renew the lease at a reasonable rent.
 - d. The lease should include a provision for a right to sublet or assign the premises.
 - e. The lease should include a provision for a right to make alterations to the premises.
 - f. A "Good Guy" clause, to permit a tenant to surrender the premises prior to the end of the lease, or to reduce the amount of the security deposit, provided that the tenant remains in good standing.
 - g. The landlord's obligations regarding repairs and maintenance of the commercial space should be clearly indicated in the lease.
 - h. The lease should include provisions that describe all the services that landlord is required to provide and the days/hours when such services will be provided.

G. Tax issues

- 1. Small business owners are responsible for a constellation of tax payments such as:
 - a. Sales tax
 - b. Personal income tax

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- c. Business income tax (or informational tax returns)
 - d. Employment taxes (federal, state and local income tax; Social Security and Medicare (also known as “FICA”) and Federal Unemployment Taxes
 - e. Helpful Resource: Publication 20 – “New York State Guide For New Businesses” can be found at www.tax.ny.gov/pdf/publications/multi/pub20.pdf
2. Small business owners should consider the following important points:
- a. There are three taxing authorities – federal, state and local. Tax returns for all must be filed.
 - b. Payroll and sales taxes are not just another expense – small business owners are subject to serious legal consequences if they do not pay these taxes.
 - c. The importance of a good bookkeeper and accountant.
3. Employer Identification Number (“EIN”)
- a. An EIN is required for most businesses; only sole proprietors with no employees are not required to have an EIN.
 - b. Sole proprietors can use a Social Security Number as an EIN.
 - c. To obtain an EIN, one must complete an Application for Employer Identification Number (IRS Form SS-4) and file it with IRS.
4. Sales Tax Identification Number (Certificate of Authority)
- a. A Sales Tax Number is required for all businesses that will be making sales in New York State that are subject to sales tax. Most tangible personal property is subject to sales tax, and most services are not. A small business client must obtain a Sales Tax Identification Number and Certificate of Authority prior to operating the business.
 - b. To obtain a Certificate of Authority, one must file an “Application for Registration as a Sales Tax Vendor” (Form DTF-17) for the business with the New York State Department of Taxation and Finance at least 20 days (but no more than 90 days) prior to operating the business (a small business owner cannot make taxable sales until the owner has received a Certificate of Authority).

Helpful Resource: Publication 750 – “A Guide to Sales Tax in New York State” can be found at www.nystax.gov.

H. Employment issues

1. Small Business Employment Compliance Issues:
- a. Verifying employment eligibility using the Form I-9.
 - b. Keeping records regarding employees and posting notices required by law.
 - c. Obtaining Workers Compensation and Disability Insurance.
 - d. Complying with wage and hour laws, and with federal, state and local civil rights laws.
 - e. Withholding employment taxes.
2. Correctly classifying employees and independent contractors.
3. Creation of best practices for hiring and terminating workers.
4. Creating employment manuals.

I. Intellectual Property issues

1. Ensuring the business is protecting the investment it makes in choosing a name, developing content and creating business innovations.
2. Ensuring the business is not infringing upon the intellectual property rights of others.
3. When determining if the low-income microentrepreneur has intellectual property considerations that require protection ask the following:
 - a. What names, logos, slogans, symbols or designs does the business use to sell goods and services? Do you wish to protect these potential trademarks?
 - b. Has your business created any written materials that it considers important to the business (e.g., handbooks, instruction manuals, training materials, guides, promotional materials, software or other written or visual products related to your business?) Do you wish to copyright these materials?
 - c. Does your business have a novel business idea, way of doing business, product, software or machine that was developed by your employees that is important to your business? Do you wish to patent these processes?
 - d. Does your business have any information that you consider to be proprietary and whose use by others you wish to restrict (e.g. customer lists, training methods, business strategies, formulas/recipes)?
 - e. If your business has a website does the website have a privacy policy? Does the website have a 'Terms of Use' section? Do you collect information visitors to your website? Does the website link to any other sites? Does the business engage in internet sales?
4. Helpful Resources: United States Copyright Office (www.copyright.com) and United States Patent and Trademark Office (www.uspto.gov/)

J. Legal insurance requirements and needs

1. Most business owners think of insurance as an expense to be kept at a minimum. However, insurance is essential to all businesses. Insurance can protect against the consequences of fires, accidents, thefts or other unforeseen events beyond the low-income micro-entrepreneur's control.
2. Insurance requirements for New York State small businesses consist of all businesses with employees to carry workers' compensation and disability benefits insurance.
3. Possible additional insurance needs for low-income small businesses are numerous. Small business owners should consider the following:
 - a. Consult an insurance agent or broker who will analyze the business's insurance needs and obtain insurance prior to starting the business.
 - b. Identify any insurance obligations arising under a commercial lease.
 - c. A lender might require a business owner to maintain life, business interruption, fire or other types of insurance to protect their investments.

K. License and permit requirements

1. There are numerous licensing and permit requirements at all levels of government-federal, state, county, and city which require a small business to obtain permits or

OUTLINE:

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licenses prior to starting a small business. This is especially likely if the business serves or sells food or liquor.

2. Many small businesses are required to obtain licenses and permits including:
 - a. Restaurants, bakeries, caterers and grocery stores
 - b. Beauty salons and barber shops
 - c. Street vendors
 - d. After-school and child care programs
3. To determine what licenses and permits are necessary, and where to obtain them use the New York State Online Permit Assistance and Licensing website (OPAL):
<http://www.nys-permits.org>.
4. Contact the county clerk and the clerk of the city, town or village in which the business will operate for information on local license and permit requirements.
5. Helpful Resource for New York City Small Businesses - To determine what licenses and permits is necessary, use the New York City Business Express Wizard:
<http://www.nyc.gov/portal/site/businessexpress>.
6. If a low-income entrepreneur is renting a commercial space ensure that the premises are in compliance with all applicable zoning and occupancy requirements.
7. Failure to obtain the necessary licenses and permits could result in a small business being prevented from operating their planned businesses at a particular location while still obligated to pay rent.

III. STARTING A COMMUNITY DEVELOPMENT PRACTICE

A. Who Provides the Representation (Five Models)

1. Direct Representation by Legal Services Attorneys
 - a. Staff attorneys provide all legal assistance
2. Co-counsel with a Law Firm
 - a. Legal services organization is involved but the law firm plays primary role.
3. Referral of the Matter to a Law Firm
 - a. Law firm solely handles the matter without additional assistance from the legal services program
4. Transactional Law Clinic
 - a. Law school clinic handles matter with student attorneys supervised by a faculty member.
5. Direct Representation by Pro Bono staff supervised by a Legal Services Attorney
 - a. Retired transactional attorneys, fellows, law externs provide legal assistance under the supervision of a staff attorney
6. Other Factors to Consider With Regard to Staffing
 - a. Lawyer vs. Legal Assistant - Whether it is necessary to have lawyers staff the community development project depends on who will provide the representation (i.e., if referred to law firm or law school clinic to fully handle then a legal assistant may be sufficient for initial screening, referral, and follow-up)

- b. Full-Time v. Part-Time Lawyer - Whether full-time lawyers are needed to staff the project depends on the scope of representation and who will provide the representation (i.e., if outside law firm is serving as lead pro bono co-counsel, a part-time attorney may be sufficient to adequately perform scope of representation by the legal services provider)

B. Determining Eligibility Guidelines & Selection Criteria

1. Examining mission and charitable purposes of legal service provider
2. Determining what client eligibility guidelines will be for practice
 - a. Income guidelines (i.e., client serves or is comprised of low-income persons)
 - i. Must be consistent with the IRS requirement that a 501(c)(3) legal services organization is operated exclusively for a charitable purpose
 - ii. Some programs choose to define "low-income" as households with an income in the range of two to three times the Federal Poverty Guidelines
 - iii. Legal services programs that receive LSC funding are subject to the income and asset eligibility regulations set forth at 45 CFR Part 1611
 - iv. Income eligibility criteria may be different for nonprofit organizations and community groups than low-income small businesses
 - v. A decision should be made whether an individual's assets will be considered as income for representation purposes.
 - b. Geographic restrictions
 - c. Programmatic priorities
 - i. Does the project provide a "community benefit"?
 - ii. Does the project meet the mission and priorities of the legal service provider organization?
 - d. Funder enforced restrictions
 - e. Client capacity
 - i. Does the business owner have a realistic business plan?
 - ii. Does the non-profit have board of directors and an ability to meet the minimum statutory requirements of a not-for-profit corporation?

C. Determining Scope of Representation

1. Transactional Legal Services/Litigation
 - a. Due to limited resources, a project may decide to provide only transactional legal services
 - b. Legal Assistance on Single Matter vs. Full Range of Legal Services
 - i. A small legal services community development program may determine that it needs to limit the scope of representation to a client in order to provide services to more clients

IV. WORKING WITH THE PRIVATE BAR & OTHER PARTNERSHIPS

A. Using Volunteers

1. Pro Bono Attorneys

OUTLINE:

Using Business Law And Partnerships With Pro Bono Attorneys

- a. Lawyers in the private bar welcome the opportunity to do transactional-based pro bono work
- b. Pro bono attorneys can serve as mentors and advisors in specialized practice areas to staff
- c. Support and commitment from both individual attorneys and the institutional support provided by law firms can enable a project to reach a larger number of entrepreneurs and nonprofit organizations.
- d. By leveraging the resources and expertise of the private bar, a project can effectively provide high-quality legal services to a large number of individuals.
- e. Differences in pro bono practice between large and small cities
- f. Retired or semi-retired senior attorneys may have specialized corporate skills and wish to give something back to the community

B. Law Schools

- 1. Law schools can be utilized by a legal services program for developing and administering special initiatives

C. Microenterprise Partnerships

- 1. Economic Development Organizations
 - a. Small business technical assistance providers and business counselors assist entrepreneurs with developing necessary business skills and business issues
- 2. Microfinance Organizations
 - a. Low-income small business owners, especially start-ups, often are not able to obtain loans from traditional lenders due to business type, short length of time in business, or insufficient credit history
 - b. Microfinance organizations and credit unions provide opportunities to low-income entrepreneurs who cannot access bank loans
 - c. These organizations will generally provide special considerations for low-income and start-up small businesses seeking loans

V. CHALLENGES & BENEFITS OF A COMMUNITY DEVELOPMENT PRACTICE

A. Developing a Client Base

- 1. Community Outreach
 - a. Cultivate and maintain a close relationship with community organizations
 - b. Educate nonprofit organizations, elected officials, business counselors and other organizations or individuals on making appropriate client referrals
 - c. Conduct legal trainings to educate business counselors on legal issues confronting their business clients
- 2. Community Education Workshops
 - a. Legal workshops can reach and provide valuable information to a large number of entrepreneurs and community groups
- 3. Community Legal Clinics
 - a. Legal clinics provide entrepreneurs with guidance on particular legal issues. Clinic participants may become clients

- b. In certain communities, clinics might be the most effective way to reach entrepreneurs, whereas other communities may respond better to workshops.
 - 4. Community Events
 - a. Establish contacts with individuals and businesses in the community and get involved in business related community events
 - 5. Referrals from Local Elected Officials, Community Boards and Governmental Offices
- B. Importance of Early Intervention**
 - 1. Identify legal issues that nonprofits or small businesses may not be aware that need to be addressed
 - 2. Ensure that nonprofits or small businesses are properly formed and maintain good standing
 - 3. Educate nonprofits and small businesses on governance issues and to identify legal issues requiring legal counsel in order to avoid future potential legal problems
- C. Building In-House Expertise**
 - 1. Co-counsel cases with the private and non-profit bar
 - 2. Use externs from the private bar
 - 3. Seek mentors from the private and non-profit bar
 - 4. Attend relevant CLEs and trainings
 - 5. Read materials on applicable practice areas
- D. Adapting Case Management Systems**
 - 1. Individual v. Group Representation
 - 2. Outcomes
 - 3. Number of People Served
- E. High Impact of Community Development Practice**
 - 1. Impact of individual project
 - 2. Ripple effect in community knowledge and empowerment
 - 3. Services provided by nonprofit clients
 - 4. Economic growth and employment

VI. RESOURCES FOR NONPROFITS AND MICROENTREPRENEURS

- A. Corporate Governance Issues**
 - 1. LawHelp.Org – model documents and trainings -- <http://www.lawhelp.org>
 - 2. Probono.net -- The Community Development/Nonprofit area of Probono.net is another excellent source of documents and training materials for the nonprofit law practice. <http://www.probono.net/ny/nonprofit/library>
 - 3. The Pro Bono Partnership: <http://www.probonopartner.org/Pages/publications/all-publicationsfaqs-x>
 - 4. Lawyers Alliance for New York: <http://www.lany.org/publications.php>
 - 5. The Nonprofit Compliance Checklist is a web-based tool that provides nonprofits with information, and links to websites, to help them to comply with their legal obligations. The Checklist is available online at <http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=28203>

OUTLINE:

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6. National Center for Nonprofit Boards www.boardsource.org
7. Nonprofit Coordinating Committee of New York www.npccny.org
8. NYS Office of Attorney General <http://www.oag.state.ny.us/charities/charities.html>
9. NYS Department of State www.dos.state.ny.us
10. IRS: www.irs.gov/charities

B. Fundraising

1. The Foundation Center, 79 Fifth Avenue, New York, NY 10003, (212) 620-4230, <http://foundationcenter.org/>
2. Community Resources Exchange, 39 Broadway, 10th Floor. New York, NY 10006, (212) 894-3394, www.crenyc.org
3. Support Center for Nonprofit Management, 305 Seventh Ave., 11th Floor, New York, NY 10001-6008, (212) 924-6744, <http://supportcenteronline.org/>
4. Nonprofit Coordinating Committee of New York, 1350 Broadway, Suite 1801, New York, NY 10018, (212) 502-4191, www.npccny.org
5. Unified Registration Statement Multi-State Registration as a Not-For-Profit, <http://www.multistatefiling.org/>

C. General

1. Small Business Development Centers <http://www.nyssbdc.org/>

Small Business Checklist¹

The Community Development Project
of the Legal Aid Society
Prepared By: Rolando Gonzalez, Esq.

Pre-Formation Matters

- Do you have a business plan that includes:
 - a description of your business;
 - how you carry out your sales of goods and services;
 - who carries out the business activities and the qualifications of those persons;
 - financial projections and a budget .
- Are you familiar with small business bookkeeping or do you have a bookkeeper or accountant to assist you?
- Have you obtained an Employer Identification Number (EIN).
- Do you need financing? If so, have you investigated traditional (banks) and non-traditional (micro-finance organizations) sources to finance your business?
- If you have a history of bad credit, are you taking steps to rehabilitate it?
- Are you familiar with the income, corporate and employment taxes that you will have to pay?
- Have you obtained a Sales Tax Identification Number and become a New York State and New York City sales tax vendor (NYS Form DT-17), which is required *prior to* starting your business?
- Where will you operate your business—from your home or from another location?
- If you plan to rent space, what are the costs, including rent, additional rent, security deposit, insurance and the costs associated with building out the space, including the architect (if necessary) and contractor?
- Have you determined whether any licenses or permits will be needed to operate your business?
- Go to www.nys-permits.org: the New York State, Online, Permit Assistance and Licensing Center or to the NYC Business Express (www.nyc.gov/bizexpress) to determine what licenses and permits are necessary.

Legal Form

- Does your business have a name?
- If you are a sole proprietorship operating under any name other than your own, have you filed an Assumed Name Certificate (also known as a “DBA”, or “Doing Business As”) with the County Clerk in the borough where the business is located?
- Is your business incorporated or otherwise organized in New York or any other state?
- Have you considered the appropriate form for your business? Typical small business forms are: sole proprietorship; partnership; LLC; and corporation.

¹ This checklist is not intended to be a comprehensive list of issues confronted by start-up and existing small businesses. It is intended to identify some of the most common legal issues that arise for these businesses .

OUTLINE:

Using Business Law And Partnerships With Pro Bono Attorneys

- Have you considered the following issues related to legal form: cost of formation; tax consequences; personal and limited liability?
- If your business is already organized, do you hold meetings and do you maintain copies of your corporate records: charter, bylaws, shares, operating agreements, etc.?

Sales Tax

- Sales of most tangible property and some services are taxed by New York State and New York City. Will your business be required to collect sales tax?
- Have you obtained a Sales Tax Identification Number and become a sales tax vendor, authorized to collect sales tax on behalf of the State and City?
- Do you file periodic sales tax returns?

Business Income Tax

- If you are a partner in a partnership, or owner of an LLC or S corporation, do you file an income tax return based on your share of the income, deductions and losses of the business?
- Do you also file informational tax returns with the IRS and the State?
- If your business is a corporation, has it made the “S election” to have profits and losses flow through directly to the shareholders?
- Do you make estimated tax payments each quarter during the tax year?
- If your business is a sole proprietorship, partnership, S Corporation or LLC, does it pay the New York City unincorporated business tax and the tax payable to New York State?

Employment Tax•

- Do you use a payroll service, an accountant or bookkeeper?
- Do you withhold federal, state and local income taxes from your employees’ paychecks?
- Do you withhold Social Security and Medicare (FICA) from your employees’ paychecks?
- Do you pay Federal Unemployment Taxes (FUTA) on your employees’ salaries?
- If you are self-employed, do you withhold and remit Self Employment Tax?
- Do you use the IRS Form 1099 to report payments of \$600 and over made to independent contractors?

Licenses and Permits

- Many businesses require licenses and permits. Just a few examples:
- Food businesses such as restaurants, bakeries, caterers and markets
- Bars and cabarets
- Beauty salons and barber shops
- Street vendors
- After-school and child care programs

Commercial Leasing

- Do you have a lease or license agreement to occupy the place where you do business?
- Has the lease been reviewed by an attorney?
- What is the amount of rent reserved in the lease and are there additional rent provisions (taxes, maintenance, municipal charges, etc.) if any?
- What is the term of the lease and does the lease contain a renewal provision?

- Does the lease permit you to sublet or assign the premises?
- Does the lease permit you to make alterations to the premises?
- Will the alterations have to be done by an architect and licensed contractor and approved by the NYC Department of Buildings?
- Are you in compliance with the provisions in your lease that require you to obtain insurance?
- Do you have a policy or certificates that evidence the coverage?
- If you run your business out of your home, does your residential lease contain a provision that prohibits use of the premises for commercial purposes?
- Is the location where you conduct business properly zoned for the type of business that is being carried out?
- Does the certificate of occupancy for the building where you conduct business provide for use of the premises for commercial purposes?
- If you are purchasing an existing business did you examine carefully all space and equipment leases? How long does the lease have to run? Is it renewable? Is the lease clearly assignable? If not, did you check with the landlord about taking over the lease?

Employment

- Does your business have any employees?
- If so, have you registered with the New York State Department of Labor and do you keep records for each employee showing: name and social security number; dates of employment; and earnings?
- Have you registered with the New York State Department of Labor Unemployment Insurance Division and do you make payments for New York State Unemployment Insurance?
- Do you maintain Disability Insurance for your employees?
- Do you maintain Workers Compensation Insurance for your employers?
- Do you collect employment applications and conduct interviews prior to hiring?
- Do you check references? Run a background check?
- Do you collect the federal Form I-9 (the Employment Eligibility Verification Form) to ensure that your employees are authorized to work in the United States?
- Is a record kept of information obtained during the hiring process?
- Do you periodically review the performance of your employees and maintain a written record of the review?
- How do you distinguish between employees and independent contractors?
- Do you require your independent contractors to sign an independent contractor agreement?

Intellectual Property

- Do you have any trademarks, copyrights or patents related to your business?
- What names and symbols do you use to identify your business?
- Do you wish to protect these potential trademarks?
- Have you created any handbooks, instruction manuals, guides, software or other written materials related to your business?
- If so, do you wish to copyright these materials?

OUTLINE:

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- Have you developed any processes, methods, ideas or machines in connection with carrying out your business?
- If so, do you wish to patent these processes or protect them as trade secrets?
- Does your business have a website?
- Does the website have a privacy policy?
- Do you collect information regarding visitors to your website?
- If so, what types of information do you collect from the visitors to the site?
- If you did not create the website yourself, do you have any written agreements with the creators of the website?

Insurance

- Do you have an insurance agent or broker who has analyzed your business's insurance needs?
- Have you identified any insurance obligations arising under your lease?
- Have you examined your business's need for liability, fire and business interruption insurance?

PowerPoint Presentation

USING BUSINESS LAW AND PARTNERSHIPS WITH PRO BONO ATTORNEYS TO ASSIST SMALL BUSINESSES AND NON-PROFIT ORGANIZATIONS IN ORDER TO IMPROVE THE QUALITY OF LIFE OF INDIVIDUALS IN LOW-INCOME NEIGHBORHOODS

Rolando Gonzalez, Esq.

The Legal Aid Society

Jessica Rose, Esq.

Brooklyn Legal Services Corporation A

September 11, 2014

NY State Bar Association 2014 Legal Assistance Partnership Conference

The Legal Aid Society Community Development Project (the CDP): What We Do

- We provide business legal services to:
 - Low-income small businesses
 - non-profit organizations
 - Tenants who seek to create and/or preserve affordable housing
- We provide community education workshops on business and non-profit law topics.
- We offer CLE trainings for members of the private bar interested in handling pro bono matters.

Brooklyn Legal Services Corporation A Community and Economic Development Program: What We do

- We provide transactional legal services to non-profit organizations which serve low-income individuals and communities.
- We assist nascent community groups incorporate and apply for federal, state and local tax exemptions.
- The groups that we represent, amongst a variety of community services, seek to: create, develop, and operate new and rehabilitated affordable housing, provide high quality health care services, develop community-wide sustainable development strategies, provide support and educational services to youth from infancy through college (or GED), and generally work for social and economic justice in local low-income communities.

3

Reasons To Start a Community Development Project

- To strengthen and help sustain non-profits that make positive impacts on the communities they serve and provide services that improve the quality of life in low-income communities.
- To support economic development and job creation in low-income communities.
- To foster businesses that produce income and economic stability for low-income people.
- To assist businesses that provide goods and services that may be unavailable or in short supply in low-income communities.
- To promote entrepreneurial education and economic justice.

4

Reasons To Start a Community Development Project, cont'd

- The need for legal assistance is just as great for non-profits and low-income entrepreneurs as it is for any business.
- The cost of private legal representation can be prohibitive and have a negative impact on an organization's operating budget.
- With an attorney, problems can be identified before becoming major and costly.
- Non-profit legal organizations can leverage the impact of their services by providing services to non-profits and low-income businesses.

5

Scenario 1, Reasons To Start a Community Development Project

A small non-profit organization that provides mentorship and training to formerly incarcerated men failed to seek counsel to determine whether the organization could legitimately treat individuals it hired as independent contractors rather than employees. The organization was audited by the IRS, which determined that the individuals were employees. As a result, the organization was assessed fines, forcing it to close.

6

Scenario 2, Reasons To Start a Community Development Project

An operator of a day care center entered into a commercial lease agreement without understanding the economic implications of certain terms. The operator was forced to shut down for failure to meet the financial obligations under the lease.

7

Agenda

1. Discussion of Community Development Practice
2. Assisting Non-Profit Groups and Issues
3. Assisting Low-Income Small Businesses and Issues
4. Starting A Community Development Practice
5. Working With the Private Bar & Other Partnerships
6. Challenges & Benefits of a Community Development Practice

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Part Two

ASSISTING NON-PROFIT GROUPS AND ISSUES

9

Scenario 1, Assisting Non-Profit Groups

- Two teachers at a public school in your service area have been organizing and running a mentorship and tutoring project on their free time with at-risk youth in the neighborhood. As part of the program they run a basketball tournament. The local YMCA let them use their space at no charge for the first year but now wants to enter into more formal agreement moving forward. The YMCA would like the group to be a non-profit corporation. A local elected official would like to provide them with start-up funding but can only do so if the group has federal tax exempt status. The teachers are also want to learn about liability and insurance issues related to their activities.

10

Organizational Considerations

- What are the various aspects of legal work attendant to this matter?
- Does your organization have the capacity to take on this new project?
- Will your office and colleagues support the project by giving intake relief to the case handler?
- Is there support from the private bar? Mentorship? Co-counsel?
- Will the project enhance your organization's work?

11

Preliminary Considerations in Deciding to Represent a Group

- A clear and well defined mission
- The mission (what the group wants to achieve) serves a charitable purpose
- Clearly identified a population in need of the services
- Services will result in and affirmatively impact on your client population
- Does the organization have a strategic plan?

12

Preliminary Considerations (cont'd)

- Is there a core group that is capable of doing the work required to achieve their mission?
- Does the organization's plan include a detailed description of activities and a budget?

13

Preliminary Considerations (cont'd)

- Groups should have start-up funds for costs of incorporation and tax-exemption
- 2-3 year budget with tentative funding sources
- Can the goals of the group be accomplished without forming a new entity?

14

When not to Incorporate

- Short-term or limited projects or programs
 - Small, infrequent activities
 - Time limited or one-time events
 - Trial programs
- Pilot projects
 - Allows group to test the environment
 - Obtain statistics and program results
 - Obtain support from funders

15

Alternatives to Incorporation

- Collaboration with or working under an established 501(c)(3) organization
 - Pilot project or short term event
 - Allows for joint funding
 - Avoids administrative burden and costs of establishing a new entity

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Alternatives to Incorporation, cont'd

- Fiscal sponsorship – may receive tax-deductible contributions through existing 501(c)(3) organization
 - Provides “back office” services
 - Benefits from federal, state and local tax exemptions
 - Charitable purposes of two organizations must be compatible
 - Fiscal sponsor accepts contributions on other organization's behalf and then grants it back to other organization in response to specific request. Sponsored organization reports back on use of grant funds.

17

Forming a Not-for-Profit Corporation

Advantages

- Limited Liability
- Perpetual Duration
- Formal Organizational Structure (N-PCL)
- Independent Entity
 - property ownership
 - enter contracts
- Creates recognized business structure
 - Easier to attract funding and obtain federal and state tax exempt status

Disadvantages

- Potential personal liability for corporate obligations
- Corporate Formalities must be adhered to
- Formation & Formal Dissolution costly & time consuming
- Regulatory Compliance
 - Attorney General
 - IRS

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Basic information needed from Client

- Name of entity
- Exempt purpose(s)
- Initial director(s)
 - (N-PCL§702 requires at least 3)
- Addresses of directors
- Address of principal office of entity
- Filing fees: \$75, \$10 certified copy, \$25 expedited processing

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Purposes Clause

- The purpose of the organization should be clearly stated and thoughtfully drafted
 - Purpose of the corporation is any purpose for which corporations may be organized under the N-PCL, either as a Charitable or as a Non-charitable Corporation (N-PCL§402)
- Should be broad enough to cover organizational goal & objectives that may evolve over time
- Regulatory agencies may have specific purposes clause requirements
- Must fit within the charitable purposes of the IRS guidelines, See, IRS Publication 557

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Organizing the New Not-for-Profit

- Submit completed Certificate of Incorporation to Dept. of State
- Prepare Corporate Governance Documents
 - By-Laws
 - Conflict of Interest Policy
 - Organizational Resolutions
- Organizational Meeting
- Obtain Federal Employer Identification Number
- Register with NYS Attorney General (CHAR 410)
- Apply for federal tax exemption (IRS Form 1023)

21

Internal Revenue Code Section 501(c)(3)

- Corporations, and any community chest, fund, or foundation, organized and operated ***exclusively*** for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, ***no part of the net earnings of which inures to the benefit of any private shareholder or individual***, no substantial part of the activities of which is carrying on propaganda, or otherwise *attempting to influence legislation* (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any *political campaign* on behalf of (or in opposition to) any candidate for public office.

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Limits on 501(c)(3) Tax Exempt Organizations

- The organization must be organized and operated exclusively for one of the following purposes:
 - Religious
 - Charitable
 - Scientific
 - Literary
 - Educational
 - Testing for public safety
 - For prevention of cruelty to children or animals
 - To foster national or international sports competition

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Limits on 501(c)(3) Tax Exempt Organizations (cont'd)

- Must serve a charitable class
- No private inurement
- No part of the non-profit's assets or income may benefit the non-profit's board, directors, officers or members except for the payment of reasonable compensation for services rendered to the organization
- Absolute prohibition on political campaigning
- Limited ability to influence legislation

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Federal Tax Exemption

- IRS Form 1023
- IRS Publication 557 – Detailed Instructions
- Public Charity Status
 - Substantial public support
 - Supporting Organizations
- Detailed narrative statement of past, present and future activities; names of who will conduct activity, how often, target population, percentage of time organization spends or will spend on activity.

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Federal Tax Exemption, cont'd

- IRS Form 1023-EZ
- IRS Revenue Procedure 2014-40 sets forth the procedures for using the new form and IRS's processing of the same.
 - Eligibility to use the form: organizations whose annual gross receipts have not exceeded \$50,000 during any of the past three years and whose projected gross receipts for the current year and next two years are below that threshold. In addition, eligible organizations may not have total assets exceeding \$250,000.
 - Applicant ineligible to use the new form: foreign organizations, successors to for-profit entities, churches, schools, colleges, universities, hospitals, supporting organizations described in IRC Section 509(a)(3), HMOs, ACOs, and entities maintaining donor-advised funds.

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Federal Tax Exemption

- Names and addresses of directors and officers with a statement of qualifications
- Are the directors independent and if not how are they related?
- Whether the organization expects to hire employees, agents or advisors
- Anticipated sources of support
- Proposed budget for first 3 years

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Activities

- Provide a detailed description of past, present and future activities
- Who staffs or conducts the activities
 - Qualification of staff or director
 - Where, when or how often activity is conducted
 - Percentage of organization's time allocated to activity
 - Whether organization expects to hire employees, agents or advisors

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Budgets & Fundraising

- Statement of Revenues and Expenses
 - Existed more than 1 year, less than 4 years: actual income and expenses for each completed year in existence and reasonable estimate for current year (at least 3 years of financial information)
 - Existed less than a year: projections for current year and next two years (three years total)
- Balance Sheet
- Line Itemization of Expenses
- Realistic fundraising objectives
- Board policy regarding giving

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Compliance Issues

- Annual IRS informational income tax returns (Form 990-N, Form 990 or Form 990-EZ)
- “Unrelated business taxable income” (UBTI) (Federal: Form 990-T; State: Form CT-13)
- Substantiation of charitable gifts
 - Upon receipt of a charitable gift (except from a public charity), the corporation should provide donor with receipt indicating: the property received (if not cash); the date it was received; and whether the donor received any goods or services in return (not including de minimis gifts). If the donor makes a gift of more than \$75 and

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Compliance Issues Cont'd

- Substantiation of charitable gifts cont'd
 - ...receives goods or services in return, the corporation must provide the donor with a substantiation letter that also includes the fair market value (not cost) of the goods or services received. See <http://www.irs.gov/Charities-&-Non-Profits/Substantiating-Charitable-Contributions>.
- NYS Annual Filing for Charitable Organizations (CHAR500)
- If organization will be fundraising or maintaining a presence in states other than the state of incorporation, registration may be required by those states.

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Other Considerations

Intellectual Property Issues

- Most organizations will not need to worry about trademark issues because they will be entitled to common law protection based on regional usage. Organizations intending to operate in a broader geographical area, such as national organizations with branches in different cities, should consider trademark registration.
- In general, organizations should have agreements establishing ownership of copyrights for materials (e.g., websites) produced by employees or independent contractors and ownership of creative works suggested or funded by the organization. Arts organizations may have additional copyright issues.

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Other Considerations, cont'd

Employees/Independent Contractors

- Organization may have federal, state and local withholding and reporting requirements with respect to payments to employees. Those exempt under Section 501(c)(3) are exempt from federal unemployment tax ("FUTA").
- Determination of employee status is highly factual; cannot avoid requirements by labeling would-be employees "consultants" or "independent contractors."
- If an organization has relationships with individuals who may be "employees," it should probably consult an accountant to discuss filing requirements.
- IRS Forms 1099 may need to be filed with respect to payments to independent contractors.

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Other Considerations, cont'd

Insurance

- Most New York organizations with paid employees are required to have unemployment insurance, which is provided under a system administered by the New York State Department of Labor. They may also be required to obtain workers' compensation and short-term disability insurance.
- Consider whether directors and officers ("D&O") insurance is needed. New York law provides significant protection to officers and directors as well as permitting corporations to indemnify their officers and directors who are made parties to lawsuits.
- Other forms of insurance may be necessary depending on the nature of the organization's activities.

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Part Three

ASSISTING LOW-INCOME SMALL BUSINESSES AND ISSUES

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Scenario 1, Assisting Low-Income Small Businesses

- A low-income immigrant entrepreneur (John) is seeking assistance with opening a new restaurant. He mentions to you that he only needs assistance with amending an LLC to add two new members. Although John is investing his life savings into the business, he doesn't have all of the necessary start-up

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Scenario 1, cont'd

capital to open a restaurant. He will need financing but doesn't have good credit. However, John mentions that he has two friends interested in investing in the business.

John also mentions that he has found the perfect location for the business. He was provided with a commercial lease for the space yesterday and he wants to sign the lease tomorrow. The landlord has three other individuals interested in the commercial

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Scenario 1, cont'd

space and has informed John that if he doesn't sign the lease by tomorrow he will rent the space to someone else. The commercial space needs some work but John has family members who can help with the build-out of the space. John is hoping to open the restaurant in 60 days. He is also seeking to sell a secret family sauce that has been handed down from generation to generation. John will ask a friend to create a website and plans to sell the secret

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Scenario 1, cont'd

sauce on the website. In order to market the restaurant John plans on downloading music onto a CD and putting the restaurant's menu on the CD cover and distributing the CD to people in the neighborhood. John also mentions that his grandfather's name was Raymond. John would like to call the restaurant Ray's. Or maybe "Original Ray's". John and his two friends want to schedule a meeting to discuss this new business.

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Representing Low-Income Entrepreneurs: Small Business Legal Checklist

- A small business client comes to you with one or more discrete needs for legal representation.
- To effectively represent a low-income entrepreneur, it is necessary to spot other legal issues that the small business client might miss.
- Assume that your clients may not know what kinds of legal assistance they need.
- To increase likelihood of success for the entrepreneur, the program should consider:
 - A holistic approach. (An opportunity for the attorney to think like a general counsel, to identify issues that the client has missed, because it is generally the case that the client has failed to identify critical issues.)

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Small Business Legal Checklist, cont'd

Some initial questions to determine the need for assistance with some of those issues:

- Does the entrepreneur have a business plan?
- Does the entrepreneur need financing?
- Where will the entrepreneur operate the business?
- Has the entrepreneur researched whether any licenses or permits will be needed to operate the business?
- Will the business be owned by more than one person?

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Small Business Checklist, cont'd

- Will the business have employees?
- Will the business hire an accountant or bookkeeper?
- Will the business have a website?
- Will the business have any intellectual property to protect?
- Has the client thought about exit strategies?

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Issues Addressed in the Checklist

- The business plan
- Choice of legal entity
- Business finance
- Taxes: business, sales, employment
- Licenses and permits
- Commercial leasing
- Employment
- Intellectual property
- Insurance

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Small Business Issues: Why Form a Legal Entity?

- Introduce to the entrepreneur the various legal forms typically taken by a low-income small business and the consequences of choosing one over another:
 - Sole Proprietorship
 - General Partnership
 - Corporation (typically, an S Corp.)
 - Limited Liability Company
 - Worker Cooperative

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Choice of Legal Entity Analysis

- Review with the entrepreneur issues related to the choice of business form:
 - Start-up costs
 - Personal versus limited liability
 - Partnership and decision-making
 - Investment in the business (Where is the start-up capital coming from?)
 - Tax considerations
 - Continuation of business
 - Flexibility of the business form
 - Exit strategy

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Commercial Leasing Issues

- Negotiating and living with a commercial lease is a critical matter for low-income clients.
- A poorly drafted lease may doom a low-income small business.
- Generally there are very few protections for the commercial tenant other than the rights and obligations in the lease.

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Commercial Leasing Issues, cont'd

- Clients must determine the costs of rental and build-out in advance, including security deposit, architects' and contractors' fees, and equipment costs.
- Build-out which includes obtaining permits and approvals, may be time-consuming and expensive, and must be analyzed in advance of signing a lease.
- The certificate of occupancy must provide for use of the premises for commercial purposes.
- The location must be zoned for the type of business that will be carried out.

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Commercial Lease Issues, cont'd

- Important provisions in a commercial lease:
 - Rent and additional rent provisions, including real estate taxes, maintenance costs, etc.
 - Permitted use of the premises should be broadly stated, to give the client flexibility.
 - The client should have the option to renew the lease at a reasonable rent.
 - The client should obtain the right to make alterations in the commercial space.

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Commercial Lease Issues, cont'd

- Consider lease terms that will limit personal liability if the lease needs to be terminated, including: a right to sublet or assign the premises.
- A "Good Guy" clause, to permit a tenant to surrender the premises prior to the end of the lease.
- The client should assess the need for services and repairs. All services that a client needs a landlord to provide should be included in the lease.
- Commercial tenants generally do not have the right to withhold rent. The lease should contain a clause with the tenant's remedy if landlord fails to provide services or repair.

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Employment Issues

- Classifying employees and independent contractors.
- Verifying employment eligibility using the Form I-9.
- Hiring and termination.
- Keeping records regarding employees and posting notices required by law.
- Obtaining Workers Compensation and Disability Insurance.
- Complying with wage and hour laws, and with federal, state and local civil rights laws.

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Small Business Tax Compliance Issues

- Small business owners are responsible for a constellation of tax payments:
 - Sales tax
 - Personal income tax
 - Business income tax (or informational tax returns)
 - Employment taxes (federal, state and local income tax; FICA and Federal Unemployment Tax)
 - Payroll and sales tax are not just another expense, serious consequences if collected and not paid.

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Small Business Tax Compliance Issues, cont'd

- A small business client must obtain a Sales Tax Identification Number and Certificate of Authority *prior* to opening up the business.
- The form for a Sales Tax Identification Number must be submitted at least 20 days before operating the business.

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Intellectual Property Issues

- Find out whether the clients have intellectual property that requires protection or are they infringing on someone else's intellectual property rights.
- What names and symbols do they use to identify their business and do they wish to protect these potential trademarks?
- Have they created any handbooks, instruction manuals, guides, software or other written or visual products related to their business and do they wish to copyright these materials?

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Intellectual Property Issues, cont'd

- If the business has a website does the website have a privacy policy?
- Does the website have a term of use?
- Does the website link to any other website?
- Does the business collect information regarding visitors to the website?
- Does the website contain content (music or pictures) that are not owned by the business owner?
- Is there a Web Development Agreement?
- Does the owner collect payment for goods or services on the website? (i.e. credit card sales)

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Licenses and Permits Issues

- There are licensing requirements at all levels of government, however, it is not always easy to discover what licenses and permits a business will need.
- Many small businesses are required to obtain licenses and permits. To cite just a few:
 - Restaurants, bakeries, and caterers
 - Beauty salons and barber shops
 - After-school and child care programs

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Contracts

- Oral contracts are hard (if not impossible) to prove... so get it in writing.
- Many types of businesses should have a form of contract for its sale of goods or provision of services.
- Advise clients that they should read all contracts carefully before signing and make sure they understand it.
- A written contract that clearly sets out the terms of the agreement is the best protection for a small business owner.

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Issues for businesses owned by multiple owners

- A written agreement (e.g., Partnership Agreement, Operating Agreement or Bylaws) should set the rules for how the owners will run the business and define their rights and responsibilities.
- Issues small business owners should address in a written agreement include the following:
 - How will the business be operated?

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Issues for Businesses Owned by Multiple Owners, cont'd

- Will all owners be involved in the management and supervision?
- How will decisions be made?
- What will each owner contribute to the business?
- What will be done with the profits?
- Upon the departure of an owner what happens to that person's business interests (do the remaining business owners have a right to buy it)?

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Issues for Business Owned by Multiple Owners, cont'd

- How will the business owners resolve disputes (especially if only two owners)?
- What if a dispute can't be solved by personal discussions or negotiations?
- Litigation is usually not an option for low-income small business owners.

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PART FOUR

STARTING A COMMUNITY DEVELOPMENT PRACTICE

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Who Provides the Representation to the Non-Profit Group or Small Business?

- Direct representation by legal services attorneys.
- Referral to a law firm, which plays the primary role, and acts as co-counsel.
- Referral of the matter to a law firm, which will handle it without additional assistance from the legal services program.
- Law school clinic handles matter with law students supervised by a faculty member.
- Representation by pro bono staff working in a non-profit law firm supervised by full time staff attorneys and/or managers.

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Staffing for a Legal Services Community Development Project

- Whether it is necessary to have lawyers or legal assistants staff the community development project depends on who will provide the representation.
- If resources are limited, will the office and colleagues support the staff person doing the project by giving intake relief or other types of assistance?
- If lawyers will staff the community development project, the amount of time they allocate to the project depends on the scope of the representation and whether they have co-counsel.

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Using Volunteers in a Community Development Project

- By working with pro bono attorneys a community development project can leverage its resources to provide representation to a greater number of clients.
- Possible pro bono resources include:
 - law firms
 - law schools
 - retired lawyers
 - in-house counsel
 - fellows, externs, law interns

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Eligibility Criteria for the Community Development Project

- The community development project must have its own income eligibility that are consistent with its organization's guidelines.
- These criteria must also be consistent with the IRS requirement that the 501(c)(3) legal services organization is operated exclusively for charitable purposes.

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Income Eligibility for Small Businesses

- Defining “low-income” and “community benefit” if these concepts are part of eligibility criteria.
- Develop a screening process.
 - Determine income limits.
 - Determine whether to consider assets limit.
- The Community Development Project of the Legal Aid Society (“CDP”) assists small business clients whose incomes do not exceed 350% of the Federal Poverty Guidelines.
- For small businesses, in determining eligibility criteria must balance your organization’s mission with the need of the client to have sufficient savings to start a business.

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Eligibility Criteria for Small Businesses: Factors to Consider Other Than Income

- Does the owner have a realistic business plan?
- Is sufficient start-up capital available?
- Does the owner reside in, or will the business be started in, a low-income area?
- Will the business employ low-income people?
- Will the business provide goods and/or services that the community needs?
- Will the business either incubate, or be a model for, other small businesses?
- What are the owner’s assets?

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Eligibility Criteria for Non-Profit Organizations

- A community development project may use different income eligibility standards for non-profit groups.
- Consider whether you will have guidelines regarding a maximum organizational budget size for non-profit clients.
- Consider whether you will require that the non-profit itself have income guidelines for its services.

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Eligibility Criteria for Non-Profit Organizations: Factors to Consider Other Than Income

- Staff or board of directors live or work in the community; work with your organization's target population or in a low-income area.
- There is a demand or need for the proposed service or activity.
- Activity creates jobs, opportunity, or provides value to the community.
- The project is realistic and feasible.
- The board of directors has an ability to meet the minimum statutory requirements of a non-profit corporation.

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Income Eligibility for LSC-Funded Organizations

- Legal services programs that receive LSC funding are subject to the income and asset eligibility regulations set forth at 45 CFR Part 1611.
- The basic rule is that representation is limited to persons whose income does not exceed 125% of the Federal Poverty Guidelines.
 - This level is permitted to rise to 200% of the Guidelines in certain instances. Section 1611.5

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Income Eligibility for LSC-Funded Organizations, cont'd

- LSC regulations provide that legal services may be provided without regard to income or assets if the assistance is funded entirely from sources other than the LSC, and is otherwise permissible under relevant law and regulation. 45 CFR 1611.4
- Consult with program counsel prior to creating income guidelines for a community development project in an LSC-funded legal services office.

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Scope of Representation

- The scope of representation should be clearly stated in the retainer agreement.
- If the legal services organization has limited resources, it must decide if it will offer transactional and litigation services or exclusively transactional legal services.

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Scope of Representation, cont'd

- A small legal services program may find that it needs to limit the scope of representation in order to provide services to more clients, or because its areas of expertise are limited.
- Thus, a small business or non-profit may receive assistance on only a single matter, such as the negotiation of a commercial lease or incorporation.

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Part Five

Working with the Private Bar & Other Partnerships

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Community Development Project Partnerships

- These partnerships leverage the available limited resources of a legal services program.
- The partners for small business and non-profit matters typically include:
 - Pro bono counsel from the private bar
 - Law School clinics
 - Colleagues in community development projects in other legal services organizations
 - For small businesses, economic development organizations (including SBA funded Small Business Development Centers) and microfinance organizations

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Community Development Project Partnerships: Law Firm Pro Bono Assistance

- Small business and non-profit legal practice can address issues that are not commonly confronted in a more traditional legal services law practice.
- Law firms can provide mentors and resources in a wide range of business law practice areas, helping the legal services staff to develop business law skills that may be lacking when the community development project is launched.

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Community Development Project Partnerships: Law Firm Pro Bono Assistance, cont'd

- Pro bono legal partners provide low-income small business and non-profit clients with comprehensive legal counsel, in areas that include:
 - Corporate
 - Tax
 - Finance
 - Employment
 - Real estate and commercial leasing
 - Intellectual property

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Community Development Project Partnerships: The Culture of Pro Bono

- Establish a relationship with the pro bono coordinator (where available) or cultivate attorney point-persons at the firm who are interested in the practice area.
- Act as a liaison between our clients and the private bar.
 - Translate legal jargon into plain English.
 - Explain our clients' special needs to pro bono counsel.

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Community Development Project Partnerships: Technical Assistance Providers

- Small business technical assistance agencies assist existing and aspiring business owners to do many things, including:
 - Writing the business plan
 - Preparing financial statements and projections
 - Helping to obtain financing
 - Performing market research
 - Obtaining licenses and permits
 - Learning business software like Quikbooks

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Community Development Project Partnerships: Technical Assistance Providers, cont'd

- Economic development organizations and small business technical assistance centers of various kinds exist throughout New York State.
- To access local resources, visit the SBA website, and local agencies.

<http://www.sba.gov/tools/local-assistance/districtoffices>

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Community Development Project Partnerships: Microfinance Organizations

- Most low-income small businesses do not qualify for loans from traditional lenders
- The businesses are not well-capitalized, they are often recently established, and the business owners may have either no credit history or a poor credit history.
- Microfinance organizations, including credit unions and community lending programs, assist these non-traditional borrowers.

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The Power of Partnerships: A Case Study of a Brooklyn Grocery Store

- Five immigrant entrepreneurs who had saved for years asked the CDP to help start their business.
- We created a partnership among our office, the private bar, a non-profit economic development organization, and a microfinance lender.
- Leveraged pro bono and non-profit resources to address the client's wide-ranging needs.
- The grocery created nine jobs for immigrant workers in Williamsburg, Brooklyn and the owners recently opened a second grocery store.

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Part Six

Challenges & Benefits of a Community Development Practice

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Developing a Client Base

- In order to address critical needs of entrepreneurs and non-profit groups it is important to be proactive in establishing and maintaining extensive ties in the communities served.
- A client base can develop through the following:
 - Community outreach
 - Community education workshops
 - Community legal clinics
 - Community events
 - Referrals from elected officials, community boards and governmental offices
 - Referrals from well established local non-profits

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Importance of Early Intervention

- Both small businesses and non-profits can exercise the optimal amount of negotiating power when they are knowledgeable about their rights and the ramifications of legal agreements from the outset.
 - Community development projects are able to identify legal issues of which clients may not be aware or appreciate the potential impact of same.
 - Ensure that clients are properly formed and able to maintain good standing.
 - Educate non-profits and small businesses on best practices and how to issue spot so that they can seek counsel proactively.

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Building In-House Expertise

- A community development project should have at least one staff attorney knowledgeable of the practice area in order to undertake effective intake, case evaluation, referrals, pro bono co-counsel, and/or independent representation.
 - Seek mentors from the private bar and public interest law community
 - Co-counsel matters with pro bono counsel experienced in practice area
 - Develop externship programs with law firms to augment your community development project staff
 - Attend relevant CLEs and trainings
 - Read materials on applicable practice areas and community development generally

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Adapting Case Management Systems to Integrate Organizational Clients

- Case management systems may need to be updated to reflect organizational clients
 - Examples:
 - social security number = EIN
 - Birth date = date of formation or incorporation
 - Client name = last name is client's corporate name and first name is description of project (example of approach)
 - Gender, marital status, and race = add "organization" as option

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Adapting Case Management Systems, cont'd

- Examples cont'd:
 - Problem codes = add applicable codes (i.e., “non-profit matter” and “small business matter”)
 - Determine internal mechanisms to track impact of work
 - Consider adding questions to intake such as “Is client located in a low-income community? Y/N”; “Does client serve low-income communities? Y/N”; “Number of jobs created by project (if known)?”

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The End!

- Thank you for attending this presentation and for considering adding a community development component to your public interest law program.

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Biographies

Peter Dellinger is an attorney with the Empire Justice Center, a nonprofit law firm, in Rochester, New York, where he represents low-income clients in consumer, civil rights and employment matters. He received his B.A. degree from University of Toronto, and has an M.A. degree in American Government from American University. Before attending law school he was a Robert F. Kennedy Fellow, and after receiving his J.D. from the Antioch School of Law in 1981, he clerked for Judge John T. Curtin of the United States District Court for the Western District of New York.

Mr. Dellinger began his legal services career in the Midwest, where he directed a state-wide legal services program representing migrant farmworkers in minimum wage, employment, and immigration matters. During this time, he completed language course work at the Academia Hispano Americana in San Miguel de Allende, Mexico. He is admitted to practice in the District of Columbia, Ohio, and New York, and before the United States Tax Court and the United States Court of Appeals for the Second Circuit.

Jonathan Feldman is an attorney with the Empire Justice Center, a nonprofit law firm, in Rochester, New York, where he represents low-income clients in civil rights, education, and disability rights matters. He received his B.A. degree from Oberlin College. Upon graduating from New York University School of Law in 1988, he clerked for Judge James T. Giles of the United States District Court for the Eastern District of Pennsylvania.

Prior to joining Empire Justice, Mr. Feldman worked for the Education Law Center in Newark, NJ, and the Community Service Society in New York City. He has taught and published in the fields of civil rights law and education law. He has twice served as a visiting clinical professor of law; first at Syracuse University College of Law, where in 2007 he directed the Disability Rights Clinic, and most recently at Cornell University Law School, where in 2013 he directed the Legal Aid Clinic. He is the co-author of an education law textbook (Education Law, Fifth Edition [Routledge, 2014]).