



## CHALLENGES AND STRATEGIES FOR REMOTE SUPERVISION

By Ann Cofell, Deputy Director, Mid-Minnesota Legal Aid, and Clinton Adams, Legal Services Manager, Legal Aid of West Virginia<sup>1</sup>

Whether because of program mergers, changing technology, or new partnerships, supervisors now regularly oversee the work of staff who are primarily based



in another location. Staff may be working in a hospital across town as part of a Medical/

Legal Partnership or in another office across the state providing traditional poverty law services to a rural geographic area. Recognizing the challenges faced by remote work and developing protocols to enhance remote supervision can improve the quality of legal services provided and promote job satisfaction for staff at all levels.

Many legal services programs have multiple offices across a region or state. Community-based offices help to identify and understand local issues, provide services directly and in-person to clients, and develop partnerships with other local providers to more effectively serve mutual clients. Understanding and utilizing local relationships, cultures and ideas benefits the legal services program. Managing these diverse attitudes can be challenging.

### One Team, Many Offices

Programs may view these remote offices differently. Some programs may see each of the remote offices as distinct entities with their own ideas, protocols and goals. For example, one remote office may be focused exclusively on traditional poverty law, while another remote office within the same program may focus exclusively on foreclosures. When your offices' goals and objectives are not generally the same, it may be best to treat each office distinctly. In the corporate world, this is seen with an organization like General

Motors. General Motors is one large corporation, but they manage several brands including Buick, Cadillac, Chevrolet and GMC. Each of these brands cater to a different client base, have different marketing strategies and are organized as separate entities.

When a program has multiple offices with the same intended goals, you may prefer a "one law firm" approach to providing services.<sup>2</sup> This generally requires a broader approach to client services. When you have one law firm that includes multiple offices, it can be easier to share resources and develop strategic plans to serve the clients within your region. This can allow strategically filling certain needs, while tailoring resources to client needs. For example, your program could create a "floor" of legal services so that all clients in all offices receive certain services. Then it might allow local offices to exceed the minimum requirements in areas of law that are responsive to client needs or where local funders or partnerships support specific programs.

Both approaches have value. Considering each office as a distinct entity can create loyalty to that office and the community it serves, while considering all the offices as one law firm can promote sharing of resources across geographic boundaries. Regardless of your program's strategy, it is important for everyone within the program to feel that they are a member of the same team. You want all staff to believe that they are all working together to serve clients and promote your organization's overall goals. Your organization must ingrain in your attitude, culture and leadership a one

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Continued from page 7

program attitude. Something to consider is your use of pronouns. You must start believing in “Us” and “We” if you want to portray an attitude of one program. If the work of another office is “your work” or “your cases” while the work in the administrative office is described as “our housing unit” or “our work,” a message of exclusion is conveyed. Staff from all offices may be more supportive of sharing program resources or co-counseling across offices to serve “our” clients and meet “our” needs. Although it takes more than words to convey this attitude of teamwork, words can quickly erode the other steps you have taken to be inclusive. Watch your words.

### Leading Remotely

Oftentimes it is difficult to portray leadership when you have limited in-person interactions with your staff. This can be one of the biggest challenges facing supervisors with remote staff. One way you can demonstrate leadership is making yourself accessible. You should make regular contact with staff who are supervised remotely. When in the same physical location, it is easy to look in another’s office to see if they are available for a conversation. When supervising remotely, you have less knowledge of your staff’s availability between court, client meetings and other commitments. By the same token, staff have less knowledge of your availability. Thus, it is important to be as transparent as possible. Even a reply email stating that you are not available, but will address the concern first thing tomorrow, can help staff understand the stressors you are facing and provide them with a reasonable follow-up. When remote staff see that all calls and emails are generally returned quickly, they know that when there is a delay there is a reason.

Technology means that meetings no longer need to be just by phone, but skype and go-to-meeting allow sharing of information and documents in real time while providing additional opportunities to improve communication and strengthen relationships. In today’s world, virtually every attorney carries a smart phone capable of accepting phone calls, emails, and text messages. This makes you more accessible. It also makes your staff more accessible.

While you should use these tools to be accessible to your staff, it is important that you respect staff’s time away from the office. Do not disturb staff on vacation or holidays unless necessary. Our work is stressful

enough while at work, don’t expect staff to take it home with them. Also, set boundaries for yourself. Don’t make a habit of returning emails on weekends or holidays. Most of the time it can wait. You must balance your need to be accessible and get answers quickly with the need to disconnect from office stress. This is an evolving balance.

Respecting staff’s time away from the office will develop respect and credibility with your staff. You will also develop respect and credibility among your staff when you sincerely care about what they care about. One way you can do this is to read the newspaper or keep up on local news for remote offices’ service areas. Not only does this provide a conversation starter, this displays concern for the office staff and make you more aware of client’s needs. Additionally, it can help to identify opportunities and to understand local relationships and politics. Knowing what the city council is working on or which local basketball team is winning, can show staff that the supervisor is paying attention, even when not in their office. In meetings with potential partners, local United Ways and volunteers, this information can be critical for success of partnerships. Conversations with staff about local news will provide opportunities to suggest potential community involvement activities, one of the reasons remote offices are so important.

Again, regular and intentional communication will help create an environment where supervisors are considered part of the local office. Conversations between supervisors and staff can create a deeper understanding of how work might be different in a remote office. Questions can include: What issues are you seeing? Tell me about the places you have hearings. How far do you have to travel? Is the technology working? Are you getting the support that you need? What do you wish I knew about how you do your job? What is it like serving ten counties? Who are our strongest community partners? Who should be our partners? Keep your questions open-ended and allow staff to tell you their concerns while you listen and consider their input. Leading questions such as “You don’t need anything, do you?” or “Things are going well in Anytown, yes?” lead to close ended answers and feelings that you lack concern for the office.

Although technology can help to make you more accessible and available to your staff, nothing can replace the importance of an in-person interaction. You must prioritize some time to meet with your remote staff in-person. When you supervise remote staff, you will have fewer in-person contacts with the staff that you supervise. Thus, it is imperative that you make the

most of these visits. Consider being present for office lunches. Hold staff meetings with staff when you are present. Take some time with all staff in remote offices to talk with them about issues and concerns that they have and solicit new ideas from them. Oftentimes, staff have ideas that will improve your organization, but they are afraid to ask to speak up. Additionally, be sure to consider the impact decisions will have on remote staff. When practical, involve them in decision-making and solicit input from remote offices before implementing substantial changes.

Leading is a systemic process of gaining and spending equity. You gain equity when you show sincere concern for your staff, when you care about what they care about and you show your passion to improve your program and serve our clients. You then use the equity you have earned to enforce unpopular decisions, to implement new ideas and to improve the culture of your organization. This equity applies in managing your staff, as well as managing expectations of your supervisors. When you demonstrate your commitment to your program, staff and client services, the respect that you gain will enable you to improve your organization and ultimately the clients that we serve.

### **Different, but Equally Valuable**

Remote offices in the same program may differ in many ways. One geographic area may see many immigration cases because a migrant labor population settled in the community. Another may have lost a local industry creating issues related to a need for affordable housing or public benefit problems. Relationships with different community organizations may result in more referrals of housing or family law cases, changing the types of cases handled from one office to the next. A smaller staff may result in a general practice, while another office may choose to specialize. Specialists can provide deep knowledge about substantive areas, being able to call on that knowledge to identify highly technical defenses or recognize innovative affirmative claims. Generalists may be able to identify a full range of issues for clients who are rarely faced with a single problem, and provide holistic service which ensures that solving one problem does not adversely affect another legal problem. It is important to recognize the differences, but understand that each office is equally valuable to achieving your program's overall goals.

Supervisors must appreciate the contributions of all team members and ensure that all staff understand their role, and the role of others within the office. Increasing communications and interactions between

remote offices can help foster this spirit of cooperation. One way to do this may be through a weekly (or monthly) newsletter or update. It may be appropriate for remote offices to update the program regularly about the steps that they are taking and share the client successes. Not only does this inform the program of the important work all are doing, but a feel-good client story helps feed the soul for the work that we do. This will help instill passion to all staff.

As you consider staff development, you need to be cognizant of the different challenges faced by staff. It is important to note that all staff should be treated fairly, but this doesn't necessarily mean equally. For example, staff in a main office may have additional administrative responsibilities, or differences in casework, etc. Also, remote staff may incur substantial travel time to reach remote areas for court hearings or client meetings. These factors must be considered in setting forth employee expectations. Comparing the number of cases handled by staff members in different offices may not be an effective measure of relative workloads. Nonetheless, whether remotely supervised or not, you should always be clear when setting forth staff expectations and hold all staff accountable to meet the expectations clearly communicated. This is best done through an employee-focused goal setting or evaluation.

Office morale throughout a program benefits from a certainty that leadership supports building staff skills and works with staff to accomplish their career development goals. With the multiplicity of technical tools now available, supporting skill development program-wide is possible. Attorneys can co-counsel across offices with case management software keeping files online and accessible regardless of attorney location. Attorneys from all offices can be offered the opportunity to participate in moot arguments, work on briefs, or draft affidavits in a systemic case, thereby developing skills for complex litigation. A small office may not have the number of staff needed to handle an appeal of a local

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Continued from page 9

court decision and still maintain the services required by grants and funders. Rather than transferring the appeal to a larger office, consideration should be given to whether some case handling responsibilities such as advice or brief service cases could temporarily be handled by an attorney in another location. Supporting staff working together helps to foster teamwork and develops more buy-in. Staff who work together more often tend to work together better.

New staff provide an excellent opportunity to develop strong ties within your program, regardless of location. Bringing new staff together from different offices to share information about the program, internal resources, and special projects will help to build an “our program” culture. Cross-office mentors can help develop leadership skills in the mentors, while assisting with training and staff development for the mentee. New staff come without the prejudices of experienced staff. Ingraining a positive attitude in new staff will help foster a spirit of cooperation within your entire program.

### When Things Go Wrong

When a supervisor is not in an office, he or she cannot rely on personal observations as part of the measurement of staff performance. Hopefully, good communication will help to identify small problems before they become major problems. Where there is regular effective communication, staff are more likely to share concerns about an office or co-worker.

A supervisor who is viewed as an outsider is less likely to be told about performance issues—particularly of the person in charge of local office management. Further, even when a local staff will entrust a remote supervisor with this information, it is often in confidence, making acting on the information difficult. While there is no “one size fits all” approach to avoid being seen as an outsider, you want to work to develop equity within the office to be seen as a leader who cares about staff, the program, the local office and the clients that we serve.

As with all offices, a review of time records, case files, documents created, and other data can give a supervisor information about how much work any staff person is doing and when they are doing it. Routine phone calls to community partners is a good practice regardless of whether problems are suspected. But these calls, and the resulting relationships, can also be another source of information about whether

community partners respect the local office, and are comfortable referring clients. Patterns of calls from remote staff can provide important information about whether an attorney or local manager is having performance issues. A secretary might not contact a remote supervisor to specifically report that an attorney is leaving early or isn’t returning calls but might call to ask how to deal with an angry client or how to help someone who came to the office for a scheduled appointment and the attorney is not there. Similarly, grievance calls may provide support for suspected performance problems. A few random calls to clients may help determine whether there is a pattern of poor or good client service. These can be delicate issues, but when a staff member’s performance is called into question, you may need to follow-up to determine if disciplinary or other action is appropriate.

Where things have gone wrong, an open discussion with remote staff will help to identify whether a greater presence, stronger relationships with the community, or other strategies that the office could implement would prevent a similar issue in the future. When you suspect a problem with remote staff, it likely means that the problem has existed for a while. Due to the nature of remote supervision, you may not become aware of problems, generally, until they are exacerbated. The remote supervisor should then increase presence within the office, pay closer attention to client complaints and meet candidly with staff. Additional follow-up and routine check-ins may also be needed.

These problems are likely to lead to one or more difficult conversations. If a difficult conversation must be held, the preferred course would be to set up an in-person meeting. Nonetheless, the critical nature of a specific problem, deadlines or other considerations, may require that tough issues be addressed by telephone. As with any difficult conversation, be direct and clear in your communications. If a staff performance is unacceptable, make your statements clear, concise and specific. Explain specifically the deficiencies, problems and concerns and the course of action required to address the concerns and improve performance. If termination of employment is required, an in-person visit will be required.

### Conclusion

Many of the most important skills for supervising remotely are the same as supervising locally: be fair, be direct, be clear. Supervising remotely does include challenges that are not present when all staff are under

*Continued on page 55*

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*Continued from page 10*

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the same roof. These challenges must be managed deliberately and intentionally. There are steps that you can take in any situation to earn respect within your program regardless of office location. Be sincere and fair with all staff, always. Be true to who you are, but let your passion show for the work that we do. Share your passion with the staff that you work with. These steps will help you display your leadership within your program. Then use this leadership to go forth and do good. Remember, you are not remembered for what you did, but for what you inspire others to do.

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- 2 Marks, Ed, Ten Offices, One Law Firm: One Statewide Program's Strategies for Making Sure That Even the Smallest Offices Can Deliver the Biggest Service by Ed Marks. *MIE Journal*, Summer 2013 pp.17–20.



## Shelter from the Storm

*By Victor Geminiani, Co-executive Director<sup>1</sup>  
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I began my first experience in legal services with the Atlanta Legal Aid Society in 1969 shortly after graduating from law school with the as yet untested



right to be a legal advocate for my clients. It was a heady time with the Earl Warren's Supreme Court having recently begun the expansion of poor people's rights by repurposing the basic concept of due process. Along with these new rights, we had a clear mandate from Lyndon Johnson and his

War on Poverty to represent our clients diligently with all our ability we could muster.

Like me, most of the staff were recent graduates without much of a clue about what we should do with our newfound power. We spent a lot of our time trying to cobble together a primitive intake system and case acceptance process. One thing in our discussions was always clear. For those clients whom we accepted, we would do everything we could for them to make their lives better. We learned early that if we committed to make that happen, our adversaries would usually settle on terms favorable to both sides. Whether this fact was driven by the quality of our arguments or the economics of representation, our clients almost always ended in a lot better position than when they first sought our help. My practice included cases on consumer debt, housing and administrative benefit cases, along with a few class actions challenging the constitutionality of state laws that violated the newly established due process rights.

That mix changed dramatically when I moved to New York a few years later and began working with the Bedford-Stuyvesant Community Legal Services. The overwhelming demand for our services came from tenants. Each day we would interview up to twenty new clients requesting help. We would prepare appropriate pleadings and have the tenant file them in court. On the

day for the hearing, the attorney of the day would bring those twenty files to Brooklyn Housing Court, locate each client in the mayhem, review the facts of the case, negotiate settlement if appropriate and possible with our adversary, and appear before the judge. This was all done although the lawyer for the day was seldom the person who conducted the interview with the tenant days before.

The success of the system was built on a few basic foundations. The cases were routine and suitable for volume pleading preparation. The defenses to evictions were clear, supported by case law, frequently used and powerful. As with the advocacy philosophy in my previous program, we were committed to creative, vigilant and aggressive advocacy when required to fully represent our client's goals. That normally was to remain in their homes or have sufficient time to move without the consequences of a money damages award for rent owed. Again, often the successful result was driven by both the quality of our advocacy as well as the economics of continued litigation for our adverse party. The fact that we could request jury trials often helped support our arguments for equitable settlements especially since the wait for trial was often over eight months.

Both of these experiences taught me the value of having an informed, skilled and aggressive advocate present in the majority of cases with clients who seek our help. This is particularly required in court and administrative agency hearings. I believe the idea that we can "prepare" most of our clients to be able to adequately represent themselves is questionable at best. Pro se might work better in uncontested actions but in those situations where our clients find themselves face with opposing counsel, a competent advocate is a requirement for any hope of having fair justice. This is especially true for those summary proceedings like evictions that progress with speed and few institutional protections for unrepresented defendants.

© SHELTER FROM THE STORM  
Continued from page 43

Thankfully, eviction defense has begun to emerge as an important issue for legal services programs as they seek ways to help clients establish a solid base for achievement and satisfaction in their lives. Almost everywhere during the past twenty years the rising cost of housing has far outpaced the meager increase in income. Availability of affordable housing is at a crisis stage throughout the country. That real fact is evident every day in the streets of my home in paradise as we struggle with the highest level of homelessness in the nation.

At the same time, studies have continued to indicate the central important role that stability in housing plays in providing good health, meaningful education for our children and stable employment as the pathway to a safe and secure future. And yet today throughout the country, the overwhelming numbers of tenants with solid defenses face eviction every day without any form of representation.

To help visualize the size of this problem in Hawaii, our program decided to conduct a study of the eviction process in the Oahu island courts, which includes the city of Honolulu. We patterned our study on those that had been done previously in Chicago and Maricopa County. Using law students, we observed 230 case hearings and examined the court files to determine outcomes. The results were startling but predictable. *In the hearings, 70% of landlords were represented by counsel as opposed to only 4% of tenants. The average length of a hearing was 75 seconds. About half of the cases resulted in a default when the tenant did not appear. Not surprisingly, landlords gained possession in 97% of all or the proceedings.*

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The findings were summarized in a report that underlined the costs of each eviction to our community both in terms of direct financial consequences for the landlord as well as the tenant; impact on homelessness, the health of vulnerable groups, child development, domestic violence, addictions and government budgets to provide increased services; and perhaps most importantly, procedural justice and the perceptions of tenants being evicted that the system of justice is blatantly unfair. The report made a variety of recommendations to improve the process as well as provide more direct representation for tenants with valid defenses.

Recommendations to increased availability of meaningful assistance included authorizing trained paralegals to provide full representation and creating a program modeled after the New York City Navigator program that operates in eviction courts in that city. With the support of our state's Access to Justice Commission, the Hawaii Supreme Court has authorized legal services programs, with the agreement of the District Court, to have paralegals prepare pleadings, negotiate with adverse parties, agree on settlements and represent their clients before the courts in eviction cases. The Court also approved the creation of a navigator program to test the capacity of court based volunteers to interview the landlord and tenants and objectively present the facts to the judges for their consideration.

The report also contained a number of recommendations directed at improving the information tenants receive with the summons and complaint including a description of the defenses available, model pleadings for filing an answer, available resources for assistance and a clear description of the summary process used in evictions, as well as cautionary explanation about the possible impact of a default. Additional recommendations included advocating in the legislature for model laws that will more completely represent the needs of tenants.

Here are a few considerations for programs thinking about increasing their activity in defending against evictions:

- Find ways to reduce the costs of representation by using trained and court-approved paralegals, including law students and dependable volunteers, to provide full representation to tenants with valid defenses.
- Never underestimate the value you bring to a client by representing them before the trier of fact. Resist the temptation of bringing order to your work at the expense of our client's needs. Quick

but competent representation is always better than some advice, helpful materials and our good wishes.

- Fully explore the many defenses to evictions available in your jurisdiction but are seldom used. These could include strict timeframes on notices to the tenants, appropriate services of process to gain court jurisdiction, warranty of habitability claims supported by building code citations, illegal lock-outs, repair and deduct, in kind payments, retaliatory eviction, rent withholding, enforcing proper grace periods, etc.
- Use increased eviction defense as a way to expand funding from government or foundations to reduce disastrous results in affected families and government budgets for services to evicted tenants.
- Explore ways to advocate for improvements in the court processes to expand equities and result in more acceptable procedural due process.
- Watch your relationship with the courts. Courts are often interested in maintaining their system of decision-making to bring order to their calendars. This emphasis on orderly and efficient processes will often conflict with an advocates need to assert all legitimate defenses with diligence, commitment and dedication as is required by Rule 1.3 of the Model Rules.
- Eviction defense is a great training ground for new advocates. It provides an opportunity for creativity, confidence building court time, legislative and administrative advocacy and an unbeatable reinforcement of a sense of meaning in our job. Seldom can we make such a meaningful difference in their lives. That experience will often improve our clients' belief in themselves and the system of justice.
- Most importantly, eviction defense is central to the lives of so many of our clients who face constant challenges in stabilizing and improving their lives. Thanks to your advocate's efforts, they will have stable shelter from the storm.

Program priorities are always changing with our struggle to remain relevant to the core needs of our clients and their communities. With the dramatic increase in the scarcity of affordable housing and the consequences of the potential for homelessness in their lives, it is time for us all to take a fresh look at the importance of properly creating and staffing tenant representation efforts that will really make a difference.

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## LAW FIRM INCUBATORS PROGRAMS

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Law firm incubator programs that focus on expanding access to law have grown in the last twenty



years since the first one was founded in 1997. Today, the American Bar Association's Standing Committee for the Delivery of Legal Services (ABA DLS Committee) lists approximately sixty programs around the country that self-identify as

law firm incubator programs. This article provides background and greater context about law firm incubator programs to help answer some of the questions that legal aid lawyers ask.

### What Are Law Firm Incubators?

Law firm incubator programs are designed to serve lawyers and legal services consumers that cannot access free legal services. A 2016 survey of forty-six of these programs by the ABA DLS Committee, revealed that 69% of them required the lawyer participants to provide pro bono hours during their months of incubation. The same survey found that 53% of the programs also required incubator participants to provide legal services to moderate-income clients.

Law firm incubator programs help address the latent market for legal services by making legal services more accessible to those legal services consumers who are not already hiring lawyers but who need one to address a legal need. Lawyers who participate in law firm incubator programs are exposed to concepts such as unbundling legal services, virtual law firms, online legal service delivery, and various flexible fee structures, to help lawyers think of non-traditional ways to provide legal services to legal services consumers who have financial constraints.

Each law firm incubator program is organized differently to reflect their local resources and needs. The majority operate as post-graduate programs that lawyers participate in to learn how to establish and run a community-based law practice. There are some that are structured as apprenticeships and post-graduate residencies. Regardless of their structure, these incubator programs organize programming and facilitate mentorship relationships to help the lawyers develop their skills while addressing the legal needs of low- and modest-income individuals. The majority of the law

Law firm incubator programs are designed to serve lawyers and legal services consumers that cannot access free legal services.

firm incubator programs are established to help attorneys establish themselves as solo practitioners, but there are also nonprofits, partnerships, and other ventures that emerge from these programs. The largest percentage of law firm incubator programs typically involve law schools as leaders or collaborators along with bar associations,

nonprofit organizations, law libraries, and legal aid programs. A handful of bar foundations, private law firms, and legal aid organizations have also taken the lead in developing these programs. These types of organizations usually have more resources to establish such programs since law schools are not generally focused on post-graduate education.

Many of the lawyers in these programs are new lawyers who have five or less years of experience and are either unemployed or underemployed in law. Most of the incubator participants are working in or have worked with other small firms or done contract work for other solos. They decide to open their own law firms for a variety of reasons. Some realize that they can earn higher wages by working for themselves. Others need or want more flexibility to accommodate their particular family time constraints. There are also those who are naturally entrepreneurial and have a difficult time working for others. In addition, there are new graduates

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Continued from page 11

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who join these programs because they cannot find public interest jobs since there are so few available. Regardless of what leads them to incubators, the majority of these programs are designed for individuals who are committed to establishing their own law practice and providing more accessible services to underserved populations. When selecting their participants, the 2016 survey results indicated that incubator program leaders care more about each applicants' commitment to increasing access to justice than they do their legal or business experience.

The lawyers that participate in these incubator programs are involved in these programs from approximately twelve to twenty-four months. During this term, an incubator program director coaches them as they develop their client base, establish their law practice management procedures, and revise their business plans. These business plans include a variety of novel approaches that include alternative fee arrangements such as payment plans and low bono fee structures. Most of the incubator programs require that participants work with community partners, such as legal aid organizations, to provide free legal services in exchange for training in an area of law. Common relationships include helping to staff free legal services workshops organized by legal aid organizations after undergoing training by the same organization. In addition to the pro bono work, participants in law firm incubator programs learn about the business of law.

Law firm incubators borrow the idea of entrepreneurial development from the business community. Business incubators provide support and resources to micro-entrepreneurs to develop an income-generating idea into a viable business by offering education and mentoring in areas such as business planning, pricing, marketing, and accounting. Similarly, law firm

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incubators help lawyers understand the business of law by connecting them with mentors who can help these lawyers to develop sustainable law practices. In addition to the business training, these law firm incubator programs also offer education in substantive and procedural areas of law such as ethics, law practice management, and a host of other topics of relevance to the incubated law firms.

### How Have Law Firm Incubators Developed?

Law firm incubators have developed primarily through law schools and efforts by the organized bar. The majority of these programs are postgraduate training centers for lawyers who want to contribute to increasing access to legal services but who are not subsidized by government, foundations, or a corporate entity to offer their services pro bono.

The lawyers in these programs represent many of the clients that legal aid and other nonprofit organizations turn away as a result of their eligibility guidelines. Relationships with legal aid organizations, law libraries, and other nonprofits that provide legal services or education, are developed by incubator program directors that are typically the only incubator employee. Incubator program directors are tasked with helping the lawyers in the program find appropriate mentors, training opportunities, and facilitating office or meeting space. Most directors work in these roles part-time but the better resourced incubators enjoy full-time directors. Incubator programs offer participant lawyers a base to develop their business skills, a community where they can find mentors to support their professional development, and a peer network of attorneys who can assist each other through the myriad of new technologies that today's lawyers must learn to navigate to effectively practice law.

The origins of incubators can be easily traced to addressing the justice gap, however, law schools' interest in them as training centers for unemployed and underemployed lawyers grew as a result of the Great Recession. Law firm incubator programs are relatively new and largely underfunded. As a result, there is little data published on the impact of these lawyers in addressing the justice gap. Testimonials of participants in these programs reveal that the lawyers who launch their practices through these incubators are often first generation lawyers that represent communities that were not adequately served by existing lawyers. So even if these programs are regarded as training centers for lawyers and not vehicles for greater access to justice, it is important to recognize them as important

components of community development for communities that are not properly served by other sectors of the legal profession.

### **How Do Law Firm Incubators Benefit Clients, Practicing Attorneys, and Legal Aid Organizations?**

Law firm incubators that promote greater access to law through lawyers are critical to clients, legal aid organizations, and other attorneys because they offer another lawyer alternative to individuals who would not have access to lawyers. These programs help address the needs of modest means individuals that do not qualify for free legal services due to income guidelines.

Law firm incubators help to supplement legal services when legal aid cannot meet the need. There are a handful of legal aid organizations that have welcomed the opportunity to work with incubator programs. These organizations have collaborated with law schools to train new graduates in areas of law that their organization could use more attorneys in their pro bono programs. Legal aid organizations that include law firm incubator attorneys in their pro bono programs report having positive experiences with these lawyers. Many of these incubated lawyers develop relationships with legal aid organizations and continue on as volunteers after their term in the incubator program ends. A few of legal aid programs have also begun to experience former incubator attorneys donating to their programs through direct monetary donations and opportunities to access grants as a result of their relationships with incubator programs.

Law firm incubator programs are important for the practicing bar because attorneys in these programs are encouraged to develop their practices by taking on cases that more experienced attorneys are not interested in. Attorneys who have developed successful law practices are often too overwhelmed to take on new cases, particularly those of clients who have fewer resources. Bar associations have supported the development of incubator programs because they understand the importance of having greater structured training experiences for the solo and small firm bar than just the continuing legal education courses the bar offers.

Attorneys in solo practice comprise the largest segment of the bar. Still, the legal profession has developed few models to address the capacity-building needs of this subset of lawyers. Law school clinical and pro bono programs help student develop a subject-specific skillset but because the work is subsidized by tuition

dollars, law school clinical programs are not focused on teaching students the business of law. Similarly, lawyers who work for nonprofits and government agencies that provide free legal services train their attorneys to practice law, not to develop sustainable practices. When law students graduate from law school and cannot find public interest jobs or when public interest attorneys are laid off, they lack the required knowledge to provide legal services and make a living while still serving a low- and modest-income population.

In addition to having another training structure for lawyers, incubator programs benefit the legal profession by providing some services that are able to compete with online self-help services, automated document preparation technology, and limited licensed legal practitioners. These providers of legal services who are not lawyers are critical in helping address access to legal services. The focus on developing these models have prompted questions about whether we are heading into a two-tier system where the vast majority in our country who do not have the resources to hire lawyers at market rates will have an actual lawyer option. Lawyers in incubator programs cannot provide reduced rates to everyone who needs it and for their entire careers as lawyers. Every one to two years, these programs produce a cadre of lawyers who are required to provide a subsidized lawyer product that would not otherwise be available. Law firm incubator programs therefore affirm the importance of having lawyers available to all, not just the wealthy and those qualify for pro bono.

### **What Are the Special Challenges of Law Firm Incubators?**

The primary challenges that these law firm incubator programs face are the lack of understanding by law faculty and legal aid attorneys about the role of the private bar in addressing personal legal needs and the high cost of a legal education. Law school faculty and legal aid lawyers often do not understand the daily experiences of solo practitioners. Studies of the legal profession demonstrate that the bulk of the personal civil legal services that is provided in our country is in fact provided by a large sector of the solo and small firm bar.

Law firm incubator programs greatly benefit from collaborations with legal aid organizations primarily through training for pro bono cases and referrals of clients that legal aid organizations cannot help. Legal aid organizations can also support incubator programs by using some of their funds to pay incubator attorneys to take on cases that legal aid does not have the

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Continued from page 13

capacity to take on. Regulation 1614 requires that LSC-funded organizations devote 12.5% of their grant allocations to incorporate private attorneys into their programs. Most legal aid organizations have opted to use those funds to fund full-time pro bono coordinators and provide trainings. Some legal aid programs use those funds to directly pay private attorneys such as those that participate in incubators. These relationships work particularly well for legal aid organizations that serve rural communities or who have geographic areas that are more difficult to reach with existing staff and law firm pro bono resources.

The history of judicare in the U.S. causes many long-term legal aid lawyers to be suspect of private attorneys who charge for providing personal legal services to modest means clients. Incubator programs provide a similar large firm infrastructure for their solo practitioners. The benefit to including these solo and small firms in legal aid pro bono and judicare-type programs is that these lawyers will usually have practices in many of the same areas of law that legal aid offers such as family law, landlord tenant, and consumer law. Unlike large law firm lawyers, many of the solo and small firms that are part of the incubator programs are also embedded in the same communities that legal aid organizations serve.

Faculty members and administrators influence students' perceptions of what type of opportunities they can seek after graduation. Starting a law firm is not something that students are often advised to do. Many law students, even those who attend law schools that primarily produce solo and small firm lawyers, graduate without understanding the skills they need to be successful in establishing their own law practices. Most law students enter law school with the mindset that they will get a job when they graduate law school. The last report of law graduate employment released by the National Association of Law Placement showed the employment rate of the Class of 2015 to be 86.7%. It is unclear how many of those jobs are post-graduate fellowships that last one to two years.

Another obstacle for law firm incubator programs is the educational debt of the attorneys who participate. According to *U.S. News & World Report*, the average amount of law school debt for the class of 2016 was \$112,776. Most incubator participants have educational debt obligations that limit their ability to provide reduced rate legal services. A number of the attorneys

in the program are on income-contingent loan forgiveness plans, which means their lower-income level triggers a lower monthly student loan payment. Many participants usually have other sources of income or support that subsidizes their living. Some attorneys have spouses, partners, or family members that help provide for their daily living expenses. Others do contract work for other attorneys or make additional money by working in non-legal jobs. Social media and national news coverage have exposed these realities for many recent law graduates. Empirical research demonstrates that these arrangements have never been uncommon for solo and small firm lawyers, particularly those who are the first in their families to become lawyers.

Like other programs that seek to expand access to legal services, most law firm incubator programs are not well-funded. Most programs were designed to operate with minimal infrastructure and to build on existing lawyer networks. The biggest expense in a law firm incubator program is the salary or stipend for an experienced attorney to coordinate the training, mentoring, and other administrative tasks associated with the program. Some programs have directors who have taken on the directorship of the incubator as an additional responsibility to existing full-time responsibilities. Incubator program directors are generally well-regarded in the local legal community as a result of their significant service contributions to the local legal community.

### Why Should Legal Aid Lawyers Support the Development of Law Firm Incubators in their Service Area?

It is important for legal aid lawyers to support the development of local incubator programs because law firm incubator programs:

1. engage in pro bono work with legal aid lawyers;
2. have greater freedom to represent clients that are not eligible for legal aid due to funder restrictions;
3. prepare more competent lawyers that benefit the client community;
4. identify a cadre of lawyers that do not have conflicts that hinder lawyers from larger law firms from engaging in community impact litigation;
5. help lawyers develop long-term relationships with legal aid organizations that result in repeat volunteers or otherwise untapped donors; and
6. help increase access to law.

Continued on page 55

## Conclusion

Law firm incubator programs may not exist in every community today but the need for more affordable legal services provided by lawyers who understand their communities does. If there is a law firm incubator program near you, contact its director to see how you can better collaborate. If you do not have one, talk with your local bar association or law school to see how you can work together to develop one. Access to law does not always bring justice, however, law firm incubator programs can be effective allies in helping communities affirm their rights and address legal grievances.

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