INCUBATOR GUIDE

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TABLE OF CONTENTS

Introduction **1**

What is a Law Practice Incubator? 3

Why Support Law Practice Incubators? 3

Types of Law Practice Incubators 4

Law Practice Incubator Participants **5**

COLLABORATION AND PARTNERSHIPS 6

Bar Associations 6

Lawyer Referral Services 6

Legal Services Organizations 7

Law Schools 8

The Courts 9

Law Libraries 9

Law Firms 9

Community Organizations 9

Public Defenders Office 10

Planning Basics **11**

Initial Considerations for Creating a Legal Incubator Program 12

Staffing and Administrative Support 12

Financing 12

Incubator Location 13

Essential Legal Incubator Curriculum 14

Malpractice Insurance 15

Recruiting and Selecting Attorneys for the Incubator 15

Evaluation Planning 16

Conclusion 16

Resources and References **17**

INTRODUCTION

What is a Law Practice Incubator?

Why Support Law Practice Incubators?

Types of Law Practice Incubators

Law practice incubators have emerged in recent years in response to several factors, including a decrease in the number of attorney jobs, an increasing recognition that new lawyers have not been educated in the practical skills required to practice law, and the chronic, pervasive lack of affordable legal services available to low and moderate income people.

Providing adequate legal assistance to those who cannot afford it has long been a challenge for the legal profession. The economic downturn in recent years has brought added urgency to that challenge, and this topic is now at the forefront of discussions on the future of the profession both nationally and here in California. Millions of Americans need but cannot afford lawyers, and there has never been a better time to think creatively about the solutions.

The Modest Means Incubator Project of the California Commission on Access to Justice is part of a national movement intended to connect practical training for newer lawyers with providing excellent and affordable legal assistance to low and moderate income clients on a range of topics including family and housing law, labor code violations, consumer debt, and more.

The Access Commission created this reference guide to assist organizations that are considering creating a legal incubator program, particularly one that serves low and moderate income clients. This guide describes a range of key elements of more than two dozen U.S. legal incubators, and includes links to examples from existing programs. Also included in the guide are recommendations regarding the fundamentals involved in planning an incubator program.

The best programs will be self-sustaining, provide excellent and affordable legal services, and will produce lawyers who are skilled and committed to representing low and moderate income clients, and are able to establish and maintain successful law practices.

The legal incubator concept still is young, and no descriptive survey has been published so far of the many ways that incubator programs currently are constituted, although the ABA has a terrific directory of current and planned incubators, including a profile of each incubator that is listed. What follows is an attempt to describe a variety of incubator programs along with some of their key attributes.

What is a Law Practice Incubator?

An incubator is a post-graduate program to support and assist law school graduates in starting their own solo, small firm, or non-profit practices. Incubator participants receive the infrastructure and basic training needed to get their practices up and running, and serve the local community's legal needs at an affordable cost.

A law practice incubator provides a work environment where incubator attorneys can gain experience in the practice of law and knowledge about how to manage a law practice. In an incubator, newer attorneys provide legal services while being mentored, supervised, and taught by experienced attorneys. Most incubators require pro bono service and emphasize creating a practice around service to low and moderate income people. Ideally, upon completion of the program, incubator graduates will be able to launch a sustainable law practice, providing affordable services in communities where there is a need for their services.

Why Support Law Practice Incubators?

Incubators meet two important goals: they provide a structured education in the practice of law and law practice management, and they provide legal services at affordable rates for underserved communities. Incubators benefit newer attorneys by allowing them to gain experience while practicing law under the supervision and mentorship of senior attorneys. Incubators also benefit clients who obtain legal services in the incubator setting, especially in those situations where the incubator structure is built around providing affordable services to low and moderate income people. Incubators can be good environments to introduce or expand the use of technology, alternative fee arrangements, and newer models of practice that will benefit the efficient delivery of legal service to a larger client base.

Types of Law Practice Incubators

Incubators vary in their structure and affiliations. There are a variety of incubator structures extant (see ABA descriptions of programs), with different permutations of office arrangements, practice areas, referral mechanisms, pro bono components, training, and mentoring. Several incubator programs provide office space and equipment for free, some charge a nominal sum (for example, the Access to Law Initiative at California Western School of Law), and others provide free office space initially, then charge several months into the program (the Chicago Bar Foundation's Justice Entrepreneurs). Almost all of the incubators on the ABA list have a large family law and housing law component, but some include immigration law, employment law, and small business law as practice areas. Still other programs focus on a single area of the law, like Fair Shake Environmental Legal Services, which provides representation for moderate income clients in land use and environmental issues.

Some incubator programs provide a modest salary or fellowship monies to participants while they are part of the program. For example the Associates Fellowship Program at Rutgers provides a $30,000 stipend to each participant, and the Low Bono and Solo Initiative at Seattle University School of Law provides $3,000 to program participants. At the other end of the spectrum, there are incubator programs in which each participant is an independent law firm, and each pays for office space. Other programs fall somewhere in between, providing some base pay for participants from funds raised by incubator staff, free or discounted office space, support staff, or free legal research resources.

Several incubator programs are sponsored by multiple entities: there are incubators that are collaborations between legal services and law schools, bar associations and law schools, and legal services and bar associations. Collaborating entities may contribute funding, training, space, referrals, or other resources to support the incubator participants. Legal services offices, law schools, and bar associations may benefit from the incubator programs through increased pro bono legal assistance, enhanced employment prospects for their graduates, and an increase in lawyers to whom they can refer low and moderate income clients.

LAW PRACTICE INCUBATOR PARTICIPANTS

COLLABORATION AND PARTNERSHIPS

Bar Associations

Lawyer Referral Services

Legal Services Organizations

Law Schools

The Courts

Law Libraries

Law Firms

Community Organizations

Public Defenders Office

COLLABORATION AND PARTNERSHIPS

Incubators can be most effective when they are sponsored by partnerships, because few organizations on their own can provide the space, training, mentoring, resources, and client referrals that are optimal for a successful incubator. Partner sponsors should have strong institutional support, with organizational leadership fully behind the incubator program, in order for the program to thrive.

Bar Associations

State and local bar associations can be effective incubator collaborators, because their members can provide mentoring, networks, client referrals, and other support. Bar associations can provide funding and staff support to incubator programs. For example, the Westchester County Bar pays a staff person to support the Pace Law School incubator program, Pace Community Law Practice, and the Vermont Bar Association provides administrative staff to help run the Vermont Lawyer Incubator Pilot Project. Bar associations also can provide mentors to incubator participants, because they have attorney members with varied backgrounds and practices, in addition to sections specializing in particular areas of law: the attorney members of the Columbus Bar inc Professional Development Center sponsor the program financially and mentor incubator participants as well. The Columbus Bar also provides client referrals to incubator participants through its lawyer referral service. Several California bar associations also maintain lawyer referral services.

Lawyer Referral Services

A lawyer referral service (LRS) can be a critical partner for an incubator program, because the LRS can refer potential clients to incubator attorneys, once the attorneys have met the LRS education and experience requirements. The Legal Aid Society of Orange County (LASOC) has an LRS, and graduates of the Lawyer Entrepreneur Assistance Program (LEAP), LASOC's incubator program, receive client referrals after they have acquired enough experience to practice independently. Some LRSs have moderate means programs, like the Contra

Costa County Bar LRS, and the LRS provides the requisite training to panel members before they refer cases to them. Incubator participants can benefit greatly from affiliation with a lawyer referral service, because client referrals are essential to an economically viable law practice. Lawyer referral services usually require demonstrated experience, continuing legal education, and malpractice insurance, standards which are beneficial for new solos.

Legal Services Organizations

Legal services organizations are good partners for sponsoring incubator programs. Not-for-profit legal services organizations provide free or low cost legal services to low and moderate income populations. They typically deal with legal issues involving family law, child custody, landlord/tenant issues, and government benefits, among other areas of law. Legal services organizations often must turn away potential clients because of resource limitations, so they might welcome pro bono assistance from trained incubator participants in order to serve more people. Legal services organizations can provide training and mentoring through pro bono programs and their staff attorneys often have deep experience in several areas of law, so their training and mentoring is particularly valuable. Some legal services organizations also offer free or reduced office space to incubator program participants.

LASOC has been able to substantially increase the number of clients served through working with incubator attorneys. Providing supervised pro bono assistance is a good way for incubator participants to learn substantive law, obtain courtroom training, and learn to work with clients. LASOC requires pro bono time of its incubator participants, in exchange for the training that they receive. Similarly, the National Family Justice Center Alliance requires a set number of pro bono hours per year from members of the Center for Solo Practitioners, in exchange for which the Justice Center provides inexpensive office space.

Since legal services organizations cannot assist low or moderate income clients who are not income-qualified or who are conflicted out of their practice, they can be a source of clients for incubator attorneys. Legal Innovators For Tomorrow (LIFT), a fellowship incubator program of the Louisiana Civil Justice

Center (LCJC), a legal aid organization, in partnership with the Louisiana State Bar requires that participants take LCJC referrals at reduced or flat fees, up to 25 hours per week. LASOC pays incubator participants to take some income-qualified clients with funding from the Private Attorney Involvement of the Legal Services Corporation, and refers private paying clients to LEAP participants through their LRS, when attorneys have the appropriate experience.

The Fair Shake Environmental Legal Services was created around an incubator program, and it provides legal services to low and moderate income individuals and nonprofits on environmental and land use matters. In California, there are legal services organizations in every county. Many receive IOLTA funding and are listed on the State Bar website.

Law Schools

Law schools can provide important support to incubators. Clinical faculty are experienced in teaching practical lawyering, as well as legal subject matter. Alumni can act as mentors, and alumni and law school development staff can assist in fundraising and finding resources for incubator participants. Law schools are recognizing that incubators help their graduates to be employed as lawyers, and that incubator programs can attract applicants to the law school. A growing number of law schools currently sponsor or are planning to sponsor incubators, either by themselves or in partnership with other entities. Although the ABA list is not exhaustive, 22 of the 27 incubators listed on it are affiliated with law schools. Community Legal Resource Center, sponsored by CUNY Law School, was created in 2007, and is the original incubator. Most of the others on the ABA list began operating during the last two years, so some of the details of their practices will likely change.

Some law schools have formed interesting partnerships to make their programs more robust. The University of Missouri at Kansas City Law School Solo and Small Firm Incubator has assistance from the Missouri Bar Association and the Kansas City Metropolitan Bar Associations Solo Practitioner/Small Firms committee, so that participants enjoy affordable office space, an office assistant, experienced mentor attorneys on site, and guidance in managing a legal practice.

The Courts

Courts are potentially good incubator partners, because they can provide opportunities for incubator participants to gain experience while assisting the public, in court-based programs such as self-help centers. California Court Self-Help staff report that one of their greatest needs is attorneys for their clients of moderate means for tasks that require an attorney, and they report that it is difficult to find affordable attorneys for their clients. Retired court commissioners do weekly case reviews with the LEAP participants, providing experienced, meaningful critiques and advice.

Law Libraries

Law libraries provide an important source of legal research resources for solo attorneys and the public. Law libraries are heavily used by the public, but have limited staff and resources to provide the help that public patrons need, so they sometimes partner with others to provide assistance to clients. This could make them ideal partners for an incubator program, and provide the opportunity for participating attorneys to interact with library clients. This experience would allow participating attorneys to familiarize themselves with the legal needs of low and moderate income people. Some county law libraries also have space that they might be able to share with new solos.

Law Firms

Law firms can provide space and training, as collaborating partners. The Richmond Legal Development Center was launched by private attorneys, and they house and help launch new solo practitioners. Several mentors from outside of the firm are available to assist the incubator participants with cases. The Solo and Small Firm Practice Incubator at ITT Chicago-Kent College of Law places participants in mentoring law firms several hours per week.

Community Organizations

Community centers or social services organizations are good potential incubator partners, because they might be able to provide space or other resources for participating attorneys in exchange for assisting their clients with legal problems.

Public Defender Offices

Public Defender offices that provide no cost representation to individuals in criminal matters may be strong potential incubator collaborators. Frequently, their clients and/or the family members of clients are in need of free or low-cost civil legal assistance in addition to the criminal representation. As such, it may be possible to structure an incubator that provides "wraparound" services that include civil legal assistance for indigent criminal defendants.

PLANNING BASICS

Initial Considerations for Creating a Legal Incubator Program
Staffing and Administrative Support
Financing
Incubator Location
Essential Legal Incubator Curriculum
Malpractice Insurance
Recruiting and Selecting Attorneys for the Incubator
Evaluation Planning
Conclusion

Initial Considerations for Creating a Legal Incubator Program

- Clientele to be served, including income level eligibility to receive services.
- Area of law to be practiced; single focus, determined by program, up to participants?
- Collaborating partners: bar associations, legal services, law schools, law firms, others?
- Funding mechanism for the program: client fees, grants, donations?
- Training curriculum, method of instruction, length of training time.

Staffing and Administrative Support

There are many variations in staff support for incubator programs. All of the law school affiliated programs have at least some support from faculty or the law school administration, especially with regards to training, and most of the law schools have an incubator program administrator, as well.

Touro, for example, has hired Fred Rooney, with one of the incubator participants working part-time as a paid incubator administrator. The UMKC Solo and Small Firm Incubator has an office assistant who also provides clerical assistance, in addition to mentor attorneys and nearby law school support. Pace Community Law Practice has a staff person paid for by the Westchester County Bar. LEAP is managed by a legal services lawyer who has become a trainer, recruiter, and supervisor for the incubator program. The Vermont Bar Association provides administrative staff to the Vermont Lawyer Incubator Pilot Project.

Financing

Nationally, incubators are financed in a variety of ways. The Access to Law Initiative (ALI) had no outside financing for its first two years. ALI was overseen by a volunteer professor, who recruited and advised new attorneys and negotiated for inexpensive office space, that the new attorneys pay for. In contrast, the Chicago Bar Foundation did extensive fundraising before opening the Justice Entrepreneurs Project, as did the ASU Law School community, in order to house and staff the ASU Alumni Law Group.

Some qualifying programs have received Legal Services Corporation grants to support aspects of their incubators, as well as other foundation money. Several incubator programs have participating attorneys contribute to the support of the incubator program by paying a monthly fee, or for the full rental of the office space. Collaborating partners fund staff, space and other resources, too.

The Community Legal Resource Center at CUNY Law School pioneered a program that other incubators have implemented, where incubator participants offer legal services at constituent meetings for elected officials, in exchange for monetary donations to the incubator program. Incubator participants are then paid an hourly rate, but constituents receive their services for free. Participants report that they receive referrals later from the friends and families of those who they helped without charge, so the program also builds the practices of the new attorneys.

The Associates Fellows Program at Rutgers School of Law has determined that the program can break even charging clients $50 per hour, billing 20 hours per week, and paying the fellows $30,000 per year.

Incubator Location

Incubator programs are housed in several ways, with offices in areas of high need, offices near courthouses, offices in law schools, and programs based within an organization's office, but without separate desk space for participants. Ideally, participants should be able to have meeting space near the clientele that will be served, but some are located closer to the courthouse (see Access to Law Initiative), which is convenient for participants, or a law school (see Solo and Small Practice Incubator) which provides easy access to clinical faculty who support the program. LEAP, based in a legal services office, provides meeting space for participants, but does not yet have room for office space. Touro and CUNY facilitate low cost space near the law schools, but not on campus.

There are benefits to each of the office arrangements above. Affordability for the participants or for the host program is the main consideration in most cases. Programs affiliated with legal services or those housed within law schools reportedly benefit from some community trust. Participants who pay for their space have an immediate experience of the challenges of solo practice, but at a

lower cost. The Justice Entrepreneurs Project provides office space that is free for the first six months, low cost for the next six months, and somewhat higher for the last six months of the program.

Essential Legal Incubator Curricula

Incubator program participants must learn substantive law, courtroom procedure, law practice management, ethics, professional responsibility, and business development. Incubator programs have approached the need for this in a variety of ways, and some have created trainings that they can share with other incubators. Programs combine traditional instruction with on the job training, case meetings, and interactive supervision by trainers. While many concentrate training at the beginning of the program, other programs continue for six months to two years, focusing on mentoring and supervision.

LawBridge at Florida International University, and LEAP at the Legal Aid Society of Orange County have taped many of their trainings, to save the time of supervisory staff and to ensure that training is consistent. LEAP requires that participants view prescribed trainings prior to being given certain assignments or appearing in court, enabling them to avail themselves of the appropriate subject matter instruction. LEAP also maintains a wiki, so that participants and supervisory staff can share forms and instruction online. The Center for Solo Practitioners provides classroom style instruction to all new participants for the first few days of the program, focused on building a law practice. The Law Associates Fellows Program at Rutgers requires residents to spend one third of their time on training during the one year program, with the training including professional ethics, substantive law, and law practice management. Arizona State University's Alumni Law Group has a ten month curriculum. The Solo and Small Firm Practice Incubator at ITT Chicago-Kent College of Law places participants in mentor law firms several hours each week, so that participants can learn from their hosts.

Incubator program participants should complete a program with substantive knowledge of the area of law they will be practicing as well as the "hands-on" procedural experience of how matters are actually handled. The goal of the curriculum should be to graduate attorneys who are well equipped to represent clients and successfully manage a modest means practice.

Malpractice Insurance

New practitioners must be covered by malpractice insurance, so that they and their clients are properly protected. Pro bono participants often are covered through the policies of their sponsoring legal services organizations, and some residency programs have group plans, but new solos must have their own malpractice coverage. To receive referrals, California Lawyer Referral Services require that members have coverage. There are discounted programs available for new lawyers. For example, a California insurer offers coverage to new attorneys at $50 per month, with robust CLE requirements to assure attorney competence.

Recruiting and Selecting Attorneys for the Incubator

The best candidates for incubator programs will be both entrepreneurial and interested in representing low income clients and/or people of modest means for reasonable fees. Programs that are aimed at specific subject matter areas or specific communities might also have requirements in subject matter expertise, proficiency in other languages, or specific work experience. Programs that plan to offer a breadth of services might recruit for attorneys who plan to practice in different areas. For example, the current Touro incubator office has an employment lawyer, a family law lawyer, an immigration lawyer, and two small business lawyers. By contrast, Fair Shake's attorneys are all environmental and land use lawyers. Incubators affiliated with law schools generally accept applications only from their own graduates, while incubators based in bar associations and legal services organizations usually choose from a larger pool of potential participants.

Outreach might be required where people are unfamiliar with the concept of incubators. The Legal Aid Society of Orange County has recruited by handing out flyers at the ceremonies where new attorneys are sworn in at law schools in their counties.

Evaluation Planning

It is important for incubator programs to have an evaluation plan in place to measure progress toward the goals of the program. Regular evaluation will help programs identify best practices and practices that should be changed. Number of clients served, outcomes for clients, number of incubator participants launched into self-supporting law practices, quality of services provided, and sustainability of both the incubator program and its graduates should be measured, at a minimum.

Conclusion

Legal incubators that train the next generation of lawyers while providing excellent and affordable services to low and moderate income communities offer great promise. The Access Commission is pleased to support the development of this movement and looks forward to the creation of many more new and innovative incubator programs.

RESOURCES AND REFERENCES

ABA Resources

- *Be the Change* video
  http://www.americanbar.org/groups/leadership/office_of_the_president/legal_access_jobs_corps/video2.html
- ABA Incubator/Residency Programs – A directory of current and planned incubators and residencies, with profiles of the programs and information about the latest developments
  http://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/program_main.html
- Marketing, Technology, Practice Management, CLE & Substantive Law Resources for Solo Lawyers and Small Firms
  American Bar Association Solo and Small Firm Resource Center
- Legal Access Jobs Corps – ABA initiative advancing innovations that marshal the resources of lawyers to expand access to legal services
  http://www.americanbar.org/groups/delivery_legal_services/resources/newlab.html
- ABA *Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means*
  http://www.americanbar.org/groups/probono_public_service/policy/standards.html
- *Reinventing the Practice of Law: Emerging Models to Enhance Affordable Legal Services*; edited by Luz Herrera
  http://shop.americanbar.org/eBus/Default.aspx?TabID=251&productId=213250

State Bar Resources for Components of Incubator Programs

- California Guide to Opening and Managing a Law Office
  http://sections.calbar.ca.gov/Sections.aspx
- California Guide to Growing and Managing a Law Office
  http://sections.calbar.ca.gov/Sections.aspx
- Lawyer Referral Service Programs – Includes moderate means panels
  http://www.calbar.ca.gov/Public/LawyerReferralServicesLRS.aspx
- Pro Bono Practice Program – For retired or inactive lawyers working with legal services
  http://www.calbar.ca.gov/AboutUs/CenteronAccesstoJustice/ProBonoPracticeProgram.aspx
- Upcoming free trainings – Check for updates
  http://www.calbar.ca.gov/AboutUs/CenteronAccesstoJustice.aspx
- *Successful Business Planning: Representing the Moderate Income Client*
  http://www.cobar.org/index.cfm/ID/22688/DPWAJ/Representing-the-Moderate-Income-Client/

Other Incubator Resources

- *Bar Association of San Francisco Solo and Small Firm Toolkit: A guide to hanging your own shingle, written by San Francisco attorneys*
  http://www.sfbar.org/resources/toolkit.aspx

Articles on Incubator Programs

- Alfisi, Kathryn "Low Bono Widens Path to Access to Justice"
  http://www.dcbar.org/bar-resources/publications/washington-lawyer/articles/september-2013-lowbono.cfm
- Glover, Sam "How to Build a Law Practice Incubator"
  http://lawyerist.com/71495/build-law-practice-incubator/?utm_content=bufferf93b9&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer
- Rooney, Fred & Justin Steele "Exporting the Legal Incubator"
  http://scholarship.law.umassd.edu/umlr/vol9/iss1/5/

Unbundling and Limited Scope Representation Resources

- American Bar Association Unbundling Resource Center
- California Judicial Council Equal Access Project Limited Scope Representation/Unbundling Resources
- Self-Represented Litigation Network Self Help Resource Library

Training Resources

- Pro Bono Net training listings
  http://www.californiaprobono.org
- PLI Skills Programs
  http://www.pli.edu
- Contra Costa County Bar Association training
  http://www.cccba.org/attorney/lawyer-referral-network/training.php