

PRO BONO LEGAL SERVICES AND THE ENTREPRENEURIAL CLIENT



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Many lawyers provide pro bono services. They may be required or encouraged to do so by state professional responsibility rules. But a large number will do so anyway because one of the reasons they entered the profession is to help those less fortunate than themselves.

Among the lawyers who can make a positive impact by donating their time and expertise are those who are assisting in the formation of small businesses, nonprofits, and mission-driven for-profit business entities for clients who could not otherwise afford legal advice.

This article takes a look at some of the services lawyers may perform for entrepreneurs who qualify for pro bono service.

WHAT IS PRO BONO LEGAL SERVICE?

The term “pro bono” comes from the Latin phrase “pro bono publico” which means “for the public good”. Pro bono service is the rendering of a professional service without charging a fee or expecting compensation.

ABA Model Rule 6.1 provides that every lawyer has a professional responsibility to provide legal services to those unable to pay. The ABA rule recommends lawyers aspire to 50 hours each year of pro bono legal service.

Each state has its own ethical rule requiring or encouraging lawyers to render pro bono services to certain kinds of clients. Although lawyers may want to check with their state committees to be sure, these clients can include individuals looking to start a small business or form a nonprofit or for-profit business entity with a charitable or socially beneficial mission.

PRO BONO CLIENTS STARTING A SMALL BUSINESS

Despite the government telling us the economy is doing well and the job market is strong, the reality for many people is quite different. Many individuals are struggling to find a job. This includes people who lack a degree or marketable skills, returning veterans, recent parolees, women, seniors and minorities.

For many of these people, starting their own business is their best chance of improving their lives and that of their families.

However, starting a business without legal advice can greatly diminish the business’ chance of succeeding.

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That's where lawyers providing their services pro bono to these budding entrepreneurs who could not afford their advice otherwise can make such a difference.

Legal pro bono services for starting a business could include the following:

- ▶ Advising as to the best business structure or business entity (e.g., sole proprietorship, partnership, LLC, corporation)
- ▶ Advising as to tax status (disregarded entity/pass-through entity or separate taxable entity)
- ▶ Helping to choose and protect the business' name
- ▶ Explaining the role of the Registered Agent and recommending whether to use a professional Registered Agent
- ▶ Filing formation documents
- ▶ Drafting governing documents (e.g., operating agreements, bylaws, shareholder agreements, partnership agreements)
- ▶ Helping to obtain business licenses, permits and registrations
- ▶ Qualifying the business entity in any foreign state where it will be transacting business

PRO BONO AND THE CLIENT STARTING A NONPROFIT ORGANIZATION

Poverty, homelessness, hunger, climate change, gun violence, human trafficking. These are just a few of the many crises facing our local and global communities.

That's the bad news. The good news is that there are many people who want to help. And some want to help by forming a nonprofit organization to provide vital services and assistance to those in need.

Unfortunately, many cannot afford the legal advice they need to get started. That's where the lawyer donating his or her services can do so much good—helping not only the client by forming the nonprofit organization but also helping everyone that the nonprofit can help.

The pro bono legal services that can be provided to clients starting a non-profit organization could include the following:

- ▶ Advising as to the best type of entity (e.g. nonprofit corporation, nonprofit LLC, regular LLC with a charitable purpose, unincorporated nonprofit association)

- ▶ Drafting the language for the formation and governing documents so that the nonprofit will qualify for tax-exempt status
- ▶ Helping to choose and protect the nonprofit's name
- ▶ Explaining the role of the Registered Agent and recommending whether to use a professional Registered Agent
- ▶ Filing formation documents
- ▶ Drafting governing documents
- ▶ Helping to obtain necessary permits and registrations
- ▶ Qualifying the nonprofit entity in any foreign states where it will be transacting business



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PRO BONO AND THE SOCIAL ENTREPRENEUR CLIENT

Not every client looking for legal advice related to entity formation is interested in just (a) earning a profit or (b) accomplishing a charitable or social mission. Some clients want both.

In the past such “social entrepreneurs” didn't have many options. Today they do. There are several business entities authorized by state law specifically intended to allow their owners to earn a profit while the business seeks to provide a benefit to society. These include the benefit corporation (the most widely authorized), the similar (but not the same) public benefit corporation, social purpose corporation, benefit LLC and low-profit LLC (L3C).

The pro bono legal services that can be provided to social entrepreneur clients could include the following:

- ▶ Educating the client about the available social enterprise entities (most are new and the client is unlikely to be familiar with some or all of the options)
- ▶ Advising on the best type of entity to form
- ▶ Helping choose the state of formation (none of these entities are available in every state, meaning the state

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where the client is located may not be an available choice)

- ▶ Drafting any required language for the formation documents (e.g., the specific benefit clause for a public benefit corporation or the IRS language required to qualify for a Program Related Investment for an L3C)
- ▶ Helping to choose and protect the entity's name
- ▶ Explaining the role of the Registered Agent and recommending whether to use a professional Registered Agent
- ▶ Filing formation documents
- ▶ Drafting governing documents
- ▶ Helping to obtain business licenses, permits, and registrations
- ▶ Qualifying the entity in foreign states where it will be transacting business. (This will generally be necessary for entities such as public benefit LLCs or L3Cs which can be formed in only a few states.)

LOOK FOR A PRO BONO PARTNER TO EASE THE FINANCIAL BURDEN

Although many lawyers and law firms willingly provide their services for free, it can put a financial burden on them. One way to reduce that burden is to partner with vendors that will provide their services at a discounted rate to lawyers helping pro bono clients.

Among those vendors are corporate service companies, such as CT Corporation, that share the pro bono lawyers' commitment to making a positive social impact and will provide certain services, such as those related to entity formation, qualification and Registered Agents at a discounted rate for pro bono clients.