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University of Idaho's Entrepreneurship Law Clinic: Providing Free Legal Services for Idaho Ventures

Timothy E. Murphy

Many of you have likely been approached by cash-strapped Idaho entrepreneurs who can't afford to pay for legal services. Rather than merely turning these entrepreneurs away, you can now provide them with this article, which explains why legal advice is so important at the start-up phase and introduces the Entrepreneurship Law Clinic (the "Clinic") at the University of Idaho College of Law. In addition to discussing the many free services that the Clinic provides, this article provides a bit of the history of the Clinic and introduces the Clinic students.

Starting off on the right foot

One of the primary services the Clinic provides is help with business formation. Most entrepreneurs are probably capable of handling the administrative end of business formation in Idaho thanks to the substantial help available on the Secretary of State website and the relative ease of the process.¹ However, the ease with which a business can be registered in Idaho belies the significant additional steps that should be taken to properly establish a new entrepreneurial venture.

One of the primary reasons that entrepreneurs look to register their businesses is limited liability.² Most folks considering starting a business understand that there are limited liability rules that could protect their personal finances from business losses, particularly if they've utilized the resources available from the Small Business Administration.³ However, as business people, not lawyers, entrepreneurs generally do not appreciate all of the nuance at work

The Clinic provides both business counseling and business formation services for clients. Clinic students spend significant time working with clients to make sure clients understand the options available under the Idaho statutes and how different choices might impact the operational and financial future of their venture.

here that may ultimately determine whether they actually achieve the desired liability limitation. In addition to addressing this issue, having the right business formation documents in place (e.g., a shareholder agreement or an operating agreement) at the beginning can also be key to a venture's long-term success for a number of other reasons.

Appropriate formation documents can be important for obtaining financing, working with suppliers and customers, negotiating commercial leases and other startup issues. Additionally, having an operating or shareholder agreement in place can be crucial for a multi-venturer entity when challenges arise as the venture matures.

The Clinic is routinely approached by prospective clients for whom no formation documents were put in place, and now one of the members or shareholders has a disagreement with their business partner(s).⁴ Most often these prospective clients are trying to get advice to dissolve the venture because they don't see any other option for resolving the dispute. Because the relations of the co-venturers are not spelled out in an agreement, the aggrieved member often chooses to

step back from the day-to-day activities of the business, which can exacerbate the problem by causing the other members to perceive that the aggrieved member is no longer sufficiently contributing to the venture. Having an agreement in place doesn't prevent all difficult issues from arising in a venture, but it can prevent minor or routine issues from becoming existential challenges for the venture.

Another benefit to having the proper agreements in place at the formation stage is that it can force the co-venturers to think long-term about how the business will be managed, financed, taxed, and possibly, exited. Having these difficult conversations at the formation stage can avoid numerous problems down the road and possibly even help the co-venturers realize that their individual views of the future of the venture are not aligned. This can be a critical conversation before significant time and money is contributed to a venture in which not all participants have the same goals or outcomes in mind.

The Clinic provides both business counseling and business formation services for clients. Clinic students spend significant time work-

ing with clients to make sure clients understand the options available under the Idaho statutes and how different choices might impact the operational and financial future of their venture. Moreover, once the client has selected the entity type that is most consistent with their goals, Clinic students do the legal work necessary to register the business and put in place all of the appropriate agreements. Because the clients are not charged hourly for the services they receive, they don't feel the financial pressure to 'just get something on paper as cheaply as possible,' and they can work closely with the students to make sure the agreements are custom-tailored to their unique situation. This also provides the Clinic students with an opportunity to work closely with an emerging business to understand the issues unique to new ventures.

Commercial contracts support

Whether a venture is an old-school, brick-and-mortar operation or an app-based startup, entrepreneurs quickly realize that contracts impact every aspect of their venture. Many of these contracts will be presented as "form" agreements and the venturers will simply sign on to get the associated goods or services. Assuming the venturers are dealing with reputable vendors, most of these contracts will probably not present significant risk for the venture.⁵ However, there will likely be other agreements, the terms of which can be crucial to the business' success and/or risk profile of the venture. Of course, these are just the contracts that the venturers know about. There may be many other agreements that the venturers don't even recognize they need in the early stages of their venture.

This is where the Clinic can play a critical role. During intake and throughout the representation, Clin-

ic students counsel clients on what contracts the Clinic can help them with, as well as what additional contracts the venture should consider putting in place. This latter group may include things like non-disclosure agreements, website terms of service, privacy policies, terms of sale, etc. In most cases, Clinic students will build these agreements from the ground up, so clients can be confident that they're getting an agreement tailored to their specific

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needs, rather than a form agreement that has been tweaked (or that the client found online and tweaked themselves). Clinic students are also available to negotiate commercial agreements with third parties on behalf of the clients, when requested. Drafting and/or negotiating commercial contracts can be a time-consuming—and cost-prohibitive—endeavor for small/new businesses. By filling this need, the Clinic can be a valuable resource for emerging businesses that might otherwise forego these legal services altogether.

Trademark prosecution and intellectual property counseling

The Clinic also provides intellectual property ("IP") counseling. The Clinic does not currently provide patent prosecution services but does provide counseling on innovation management and refers clients to the Idaho Patent Pro Bono Program (discussed in the next section), when appropriate. Most of the copyright issues that come into the Clinic relate to managing the client's online business presence, but Clinic students also provide counseling on general copyright issues, when warranted.

The Clinic is a certified trademark clinic under the USPTO's Law School Clinic Certification Program.⁶ This means that students are issued individual registration numbers that they can use to make trademark filings in their own name. Students perform and report registrability searches, prepare and file applications, review and respond to office actions, and conduct interviews with examining attorneys. The Clinic clients receive trademark prosecution services for just the cost of filing fees, which can be a significant savings, even in run-of-the-mill cases.⁷

Patent pro bono

Prior to 2010, there was much discussion nationally about the need for free or low-cost services for small inventors, but various ethical and practical concerns stymied efforts to establish a national program.⁸ In 2010, however, the America Invents Act included a provision requiring the USPTO to support and establish pro bono programs for innovators.⁹ Recent studies by the USPTO and others have shown that a primary indicator of success for a new venture is its patent portfolio.¹⁰ But patent prosecution services can be very expensive.¹¹ The majority of these

costs come from attorney fees, due to the significant attorney time it takes to bring an invention from inventor interview to filed patent application.

This is another area where the Clinic provides help to entrepreneurs. The College of Law is the operator of the Idaho Patent Pro Bono Program (the “PPBP”), and that program is currently run within the Clinic.¹² Idaho is one of the few states that has its own patent pro bono program.¹³ There is a significant amount of administrative work that goes into managing the PPBP and this is handled by the Clinic and other resources at the University of Idaho.

Through the PPBP, clients can obtain free prosecution services from local volunteer attorneys. The Clinic operates an intake process to verify that applicants have met the program requirements and that their needs are appropriate for the PPBP.¹⁴ If the applicant passes the intake process, they will be matched with a volunteer attorney who will work with the client for the remainder of the prosecution. Having this program managed within the Clinic provides the opportunity for holistic IP counseling, even if the prosecution work is ultimately done outside the Clinic.

Community support

The last area where the Clinic supports the local entrepreneurial community is through various community partnerships and one-time events. Students give presentations to local community groups on legal issues of interest to entrepreneurs. Topics include business formation considerations, general intellectual property issues, and other legal issues facing small businesses. In addition to supporting community groups and local venturers, these activities provide students with an opportunity to speak directly to the public



Photo by Timothy E. Murphy.

Students staffing the University of Idaho’s Entrepreneurship Law Clinic provide an invaluable service to local business owners in our community.

about the things they’ve learned in the Clinic and law school generally.

The students

The students staffing the Clinic are 3L students at the College of Law who have passed Business Administrations and a practical skills course. The students have limited licenses to practice in Idaho, which are issued by the Idaho Supreme Court.¹⁵ The limited licenses allow them to practice law under the supervision of a licensed attorney and, as mentioned above, they have limited registration numbers from the USPTO that allow them to prosecute trademark applications.

In addition to practical skills in the areas of business formation, intellectual property prosecution, and other transactional issues, the Clinic provides students with real-world opportunities to wrestle with heady ethical issues that come with representing pre- and post-formation business clients. Over the course of an academic year, clinic students

will typically form one new business, perform a portion of the prosecution process for two or more trademarks, draw up a commercial contract or two, and provide over 200 hours of client service.

Looking back

For over 13 years, the Clinic has been helping Idaho entrepreneurs with their business needs and training young Idaho lawyers for careers in business and/or intellectual property law. Up until this year, the Clinic was operated by Lee Dillion, with local attorney Stephen Nipper supporting the trademark portion of the Clinic.¹⁶ The Clinic was Lee’s brainchild and his passion. Many



Lee Dillion



Stephen Nipper

Idaho businesses, and attorneys, have benefited from Lee's expertise and guidance. With Lee's retirement this past December, the Clinic lost not only its founder, but also its biggest advocate. Fortunately, Lee's organizational prowess and professionalism are embedded in every aspect of the Clinic, from its curriculum to its client base. Though the Clinic will lose Lee's day-to-day guidance, his imprint will continue to impact students and clients for years to come.

Conclusion

As one of a very small number of free legal service providers in Idaho for entrepreneurs, the Entrepreneurship Law Clinic at the University of Idaho College of Law is a key contributor to Idaho's startup and small business communities. Students get an opportunity to work on real-life issues in a variety of business law areas and clients receive free legal services that can mean the difference between smooth sailing and perpetual challenge as their ventures take flight.

Endnotes

1. See, for example, <https://sos.idaho.gov/business-services/>.
2. As an example, see <https://www.entrepreneur.com/article/38822>, discussing considerations in forming a business venture.
3. <https://www.sba.gov/business-guide>.
4. These prospective clients are generally referred to other attorneys because the Clinic does not provide business dispute resolution or dissolution services.
5. Many of the contracts entered into by a new venture will be software license agreements or online agreements governing the venture's online presence. Unless these types of products/services are uniquely central to the business, the form contracts, even though generally one-sided, will probably not lead to significant liability for the venture.
6. See <https://www.uspto.gov/learning-and-resources/ip-policy/public-information-about-practitioners/law-school-clinic-1> for more information.

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7. Most applications are filed using the TEAS-RF format, for which the filing fee is only \$275 per class.

8. See this article for a brief history of patent pro bono efforts culminating in the current Patent Pro Bono program: Anne Shea Gaza, *The U.S.P.T.O. Patent Pro Bono Program: Creating New Opportunities for Helping Local Communities*, Fed. Law., June 2015.

9. See *id.*

10. See *Intellectual Property and the U.S. Economy: 2016 Update*, available at <https://www.uspto.gov/sites/default/files/documents/IPandtheUSEconomySept2016.pdf>, citing multiple studies and reports, including Farre-Mensa, Joan, D. Hegde, and A. Ljungqvist, 2015. *The Bright Side of Patents*. USPTO Economic Working Paper No. 2015-5, concluding that "patents do in fact help startups create jobs, grow their sales, innovate, and eventually succeed and that a delay in a patent grant can retard the benefit of each of these."

11. The American Intellectual Property Law Association publishes a biennial report on the costs of prosecuting patent

applications (and many other IP-related costs) that is available to members.

12. See the PPBP website at: <https://www.uidaho.edu/law/outreach/patent-pro-bono-program>.

13. See information available from the USPTO at: <https://www.uspto.gov/patents-getting-started/using-legal-services/pro-bono/patent-pro-bono-program>, listing just 21 programs serving the 50 states. As shown, many states are covered by regional programs, rather than their own in-state program.

14. Part of this process is a rough check of whether there are any red flags suggesting the prospective client's invention is not patentable or that the client is otherwise not eligible for a patent for the invention.

15. See Rule 226 of the Idaho Bar Commission Rules.

16. Stephen Nipper is currently a Founder and Partner at Colby Nipper PLLC in Eagle, Idaho.

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