

# CREATING A POST-GRADUATE INCUBATOR PROGRAM THROUGH A LAW SCHOOL-BAR ASSOCIATION PARTNERSHIP

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A substantial majority of attorneys practice in solo practices or small law firms.<sup>1</sup> New law graduates are increasingly establishing their own solo practices right out of law school or joining smaller law firms. 4.8 % of the graduates in private practice from the class of 2013 were in solo practice nine months after graduation and 42% were in two to ten person law firms according to NALP.<sup>2</sup> As the availability of law jobs for new graduates decreased during the great recession,<sup>3</sup> one would expect the number of recent graduates in solo and small practice to increase, and it did. The percentage of recent graduates in solo private practice has increased almost 50% since before the great recession when the class of 2008 reported only 3.3% of those in private practice going it alone.<sup>4</sup> The percentage in small firms has likewise increased from the class of 2008, of which only 31.6% in private practice were practicing in firms of 2-10 lawyers.<sup>5</sup> Widener University

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<sup>1</sup> See Clara N. Carson, *THE LAWYER STATISTICAL REPORT: THE U. S. LEGAL PROFESSION IN 2000* 8-9 (2004). (Even before the recession hit, in the year 2008, almost one-half of the attorneys in private practice in the United States were in solo practice and another 15% in small firms of between two and five lawyers); see also OREGON STATE BAR, 2012 ECONOMIC SURVEY 12 (August 2012, rev. July 2013), [https://www.osbar.org/\\_docs/resources/Econsurveys/12EconomicSurvey.pdf](https://www.osbar.org/_docs/resources/Econsurveys/12EconomicSurvey.pdf) (in a 2012 survey by the Oregon Bar Association, 56% of attorneys in Oregon were in offices with one to six attorneys).

<sup>2</sup> NALP, CLASS OF 2013 NATIONAL SUMMARY REPORT (July 2014), <http://www.nalp.org/uploads/NatlSummaryChartClassof2013.pdf>

<sup>3</sup> Michael S. Hooker & Guy P. McConnell, *Too Many Lawyers-Is It Really A Problem?*, FED. LAW, Sept. 2014, at 62, 63-64 (discussing the decrease in employment of law graduates requiring a law degree from 2007 through 2011).

<sup>4</sup> NALP, CLASS OF 2008 NATIONAL SUMMARY REPORT (June 2009), <http://www.nalp.org/uploads/natlsummary2008.pdf>.

<sup>5</sup> *Id.*

School of Law's Harrisburg campus (Widener Law Harrisburg), being situated in a smaller metropolitan area and providing lawyers also for more rural areas of Pennsylvania and surrounding states, has long produced lawyers who practice either alone or in very small firms and that trend continues.<sup>6</sup> Practicing alone or in a very small firm means that a newly minted lawyer is unlikely to have as much guidance or mentoring as one might have in a large firm or a government setting and needs to be "practice-ready."

To educate "practice-ready lawyers," law schools have increased their focus on the actual practice of law in recent years by increasing the number of simulations courses, clinical offerings and externship opportunities they provide.<sup>7</sup> However, these experiences, by definition and requirement, are generally very guided and must be overseen by professors and practicing attorneys. They do not quite prepare young lawyers for unsupervised solo practice or frequently minimally supervised small firm practice. Yet many young attorneys go into exactly those types of practices.

There is also the business side of the practice of law that raises a challenge for young attorneys. How does a new lawyer generate business? Avoid malpractice? Handle client funds? Develop relationships with more senior attorneys? Pay the bills? Beginning a law practice is both costly and risky if not done properly. Courses in Law Office Management can begin to address these issues, but again can only do so in a very controlled environment. And unlike doctors and many other professionals, there is no post-JD residency or supervised practice requirement for lawyers in most jurisdictions. The reality is that young law graduates are going into solo practice or small firms only minimally prepared to face the myriad challenges of these types of practices.

At the same time that more and more law graduates are struggling to find work or simply opening their own firms, there is a significant portion of Americans who have limited access to lawyers primarily due to cost.<sup>8</sup> This "paradox" of "too many lawyers" and

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<sup>6</sup> For the class of 2013, 80% of Widener Law Harrisburg graduates who were in private practice were in firms of 10 attorneys or fewer. For the class of 2011, the percentage was 68% AM. BAR ASS'N, SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, WIDENER UNIVERSITY—HARRISBURG EMPLOYMENT SUMMARY REPORT, available at <http://employmentsummary.abaquestionnaire.org/> (select school "Widener University-Harrisburg" and Select Class "2013" and "2011" from the "Individual School Summary Reports" section).

<sup>7</sup> AM. BAR ASS'N, SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, A SURVEY OF LAW SCHOOL CURRICULA: 2002-2010, at 15-16 (Catherine L. Carpenter ed., 2012).

<sup>8</sup> LEGAL SERV. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET LEGAL NEEDS OF LOW INCOME AMERICANS (2009), <http://www.lsc.gov/sites/>

“too many unserved clients” is one of the drivers of incubator programs, programs that can serve the dual needs for more career opportunities for recent law graduates during a recessionary economic period and increased legal services for the underserved citizenry.<sup>9</sup> If the expenses of setting up a law practice could be minimized for recent graduates, they would be in a position to charge less for their services and therefore be able to reach clients who could not afford to pay the higher rates charged by more established lawyers. Additionally, they could be encouraged or required to provide pro bono services in exchange for their participation in the program. Thus the creation of an incubator program affords a law school with an opportunity to address access to justice problems while guiding and supporting recent graduates in the development of their own law practices.

### GENESIS OF THE PROGRAM

At Widener Law Harrisburg, even with a legal aid style clinic, a plethora of externship opportunities and a healthy selection of simulation courses, we recognized that our graduates who opened their own firms, either alone or with one or two other recent graduates, soon after their admission to the bar were unlikely to be fully prepared for the challenges of law practice. We also were well aware of the excess demand for legal services by low and modest income individuals in our region. An incubator program seemed like a good fit to begin to address these problems in central Pennsylvania. Furthermore, civic engagement is a core value of Widener University and the School of Law and a program designed to meet the legal needs of the residents of the region was consistent with the central mission of the school.

However, the law school faced its own challenges. It did not have extra space on campus<sup>10</sup> or within the law school clinic (housed a few blocks down the street) to provide space for the incubator program. The program needed not just space but office space, so the new lawyers in the program could meet with clients, do research, prepare doc-

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default/files/LSC/pdfs/documenting\_the\_justice\_gap\_in\_america\_2009.pdf (noting that the subsidized legal services are insufficient to meet the needs of even income qualified individuals); Luz, E. Herrera, *Rethinking Private Attorney Involvement Through a “Low Bono” Lens*, 43 *LOY. L.A. L. REV.* 1 (2009) (discussing access to justice difficulties of those who do not qualify for legal aid services but cannot afford private attorneys).

<sup>9</sup> James R. Silkenat, *Trouble in Paradox: Our Nation’s Unmet Legal Needs and Unemployed Young Lawyers*, 85 *N.Y. ST. B.J.* 55 (Sept. 2013).

<sup>10</sup> Widener Law Harrisburg is on a small campus used primarily for the law school and is not located on its university’s main campus. In fact, the main university campus is located 105 miles away in Chester, Pennsylvania.

uments and the other tasks that lawyers do on a daily basis. There was no suitable space at Widener Law's Harrisburg campus.

Additionally, the law school faced staffing challenges. As a small school, its faculty and staff assume significant teaching and service obligations. To prepare the incubator program lawyers for the practice of law, the program would need to provide education and training in managing and financing a law practice, safeguarding client funds, marketing and networking, areas that are generally not a concern for law professors, even clinicians. The new attorneys would likely need mentoring in various areas of substantive law, since their practices would not be limited to traditional legal aid civil work. To do it right, there would need to be participation from local attorneys to provide much of the guidance and training for the program participants.

At the same time that we at Widener Law Harrisburg were investigating the creation of an incubator program, through the National Association of Bar Executives, the executive director of the Dauphin County Bar Association<sup>11</sup> (DCBA) (author Simcox) was also learning more about such programs as a way to increase access to justice for the region's residents. The DCBA is committed to helping to meet the legal needs of residents of central Pennsylvania. The association has an active pro bono program and a full-time pro bono/public services coordinator. It also sponsors a program to provide legal assistance to veterans appealing disability benefits denials as well as other volunteer legal service initiatives. The DCBA building houses an office of Mid-Penn Legal Services, the regional legal aid agency. The association actively supports new lawyers and their professional development and encourages their interaction with other members of the local bar. The DCBA seemed a natural fit for an incubator program that would benefit both new lawyers and local residents in need of legal services, but what it did not have was a direct contact with recent graduates who may be interested in the program or the personnel to organize the additional academic style training that the participants might need.

Because the DCBA and Widener Law Harrisburg have a close working relationship, cooperation on an incubator came naturally, almost organically. In the initial conversation, it was clear that both entities were interested and excited about providing this opportunity for recent graduates. Through a series of discussions, the program needs were identified and it was determine how the needs would be met by marshalling the resources and expertise of the two entities

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<sup>11</sup> More information is available on the website of the Dauphin County Bar Association at [www.dcba-pa.org](http://www.dcba-pa.org).

involved. The administration at Widener Law Harrisburg and the DCBA Board of Directors enthusiastically endorsed the creation of the program.

The first challenge was locating or creating a suitable physical space to house the attorneys. The DCBA had two offices in its building in downtown Harrisburg that were not being used. The offices needed a bit of sprucing up and the DCBA agreed to take care of that expense. The association's building also had a space suitable for client meetings. The offices had most of the necessary furnishings and there was some computer equipment available in the offices through the DCBA. The DCBA could provide internet access in the offices. The offices did not have access to a printer/copier/scanner. There was also a need for some additional office furniture and computer equipment. Widener Law Harrisburg was able to provide the additional furnishings, computer and printer/copier/scanner, either through existing resources or reasonably priced acquisitions, to fully outfit the offices.

While this solved the space, furnishings and equipment problems, mentoring and training were still required. Widener Law Harrisburg's Director of Clinical Programs (author Lockard) agreed to organize the program, including sessions on handling client funds, developing a business plan, networking, marketing, relating to clients, and managing and financing a law office. The bar association would help identify local attorneys to be involved in the training sessions and who would be willing to provide guidance to the attorneys in the program. Widener alumni could also provide assistance with training and mentoring the incubator attorneys.

The bar association could also provide a setting for developing relationships between the new attorneys and attorneys experienced in the types of cases the program attorneys might take. The incubator program office space in the DCBA building is adjacent to the offices of Mid-Penn Legal Services. This close proximity would give the incubator attorneys the opportunity to develop relationships with the Mid-Penn lawyers and to observe the working of a law office outside of the educational setting of a law school clinic.

The bar association provided the incubator attorneys free membership in the association, which comes with membership in the state-wide bar association, for the year of the program. Through this membership the attorneys could and would be strongly encouraged to attend attorney networking events. They could also attend the regular "lunch and learn" continuing legal education events presented by the bar association free of charge. The structure of these events provided opportunities for networking as well as continuing education. Mem-

bership in the Pennsylvania Bar Association would provide access to Casemaker Free Legal Research.<sup>12</sup> Program attorneys would be eligible to participate in the Dauphin County Bar Association Lawyer Referral Service through which paying clients could be referred to them. The fee for registration with this service would be waived if the incubator attorneys signed up for the “Modest Means” panel of the DCBA. The “Modest Means” panel is a program for clients of modest means who, in exchange for paying \$500 initially, are charged only \$50 per hour for the legal work. While the incubator attorneys were not required to participate in this program, they would be strongly encouraged to do so.

Case management software would also be required and this type of software can be quite expensive for a new attorney. While the need was recognized, neither party had ready access to appropriate and economical software. The program director reached out to the chair of the Solo & Small Firm Practice Section of the Pennsylvania Bar Association (a Widener Law Harrisburg alumna) for suggestions. Not only did the chair suggest very modestly priced software that would fit the needs of the incubator attorneys, the section also agreed to permit the program attorneys to attend its annual solo and small firm conference free of charge. This conference can provide additional networking opportunities as well as education in areas that are particularly important for attorneys in small practices. Because the cost of the software was reasonable, Widener Law Harrisburg agreed to provide it free of charge to the participating attorneys. This rounded out the initially identified structural needs to begin the program.

The last piece of the puzzle was how graduates would be selected for the program. The application process would be handled by the Director of Clinical Programs at Widener Law Harrisburg. The goal would be to identify recent graduates who were interested in practicing law alone or in a very small firm. Additionally, applicants would need to demonstrate the maturity, responsibility and tenacity that solo practice requires. Due to space limitations and the fact that this was the first year of the program, no more than three graduates would be admitted into it and the applicant pool would be limited to graduates from the class of 2014. The application would be made available in late summer but selection would not be made until Penn-

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<sup>12</sup> After the program was developed, LexisNexis agreed to provide free access to its legal research services to participants in the program. LexisNexis Legal & Professional and the International Justice Center for Postgraduate Development at Touro Law Center have subsequently announced an alliance to provide this legal research support for incubator programs across the country. See <http://www.prweb.com/releases/2015/02/prweb12547308.htm> (last visited Aug. 15, 2015).

sylvania bar results were available to insure the participants would be eligible to practice law. As part of the process, applicants were required to identify their career goals and explain how participation in the program would help them achieve that goal. Widener Law Harrisburg's clinic director assumed responsibility for selecting the initial participants.

#### PROGRAM DETAILS

The Widener University School of Law-Dauphin County Bar Association Incubator Program welcomed its first group of three attorneys in January of 2015. Graduates of Widener Law Harrisburg from the class of 2014 applied for the program during the fall of 2014. After the results of the Pennsylvania bar were released in mid-October, the director selected three graduates/ newly admitted attorneys to participate in the program. The first training session was held in December and focused on professional issues for the new lawyer, including fee agreements, escrow accounts, client fund security and malpractice insurance.

Program attorneys receive the use of the furnished office space, the county and state bar association memberships and the concomitant free access to legal research tools, case management software, training in law office operation and practice development, networking opportunities and support from experienced attorneys. In exchange, for this support the attorneys agree to provide at least 100 hours of pro bono service to low-income residents of Dauphin County during the year of the program. The attorneys are encouraged, but not required, to provide low bono legal services to clients of modest means.

The program includes monthly training seminars that are initially on the basics of operating a law practice and in later months include topics on developing their legal practice including the development of a business plan, marketing, billing and successful networking. The attorneys in Widener Law Harrisburg's civil clinic are available for consultation and support on the incubator attorney's cases. Attorneys from Mid-Penn Legal Services who share space in the DCBA building with the program are also available for guidance in appropriate cases. Contacts with attorneys in areas of law that may be outside the practices of the law school clinic and legal aid office are facilitated by both the law school and the bar association.

One key component of the program is that the attorneys are solo practitioners and responsible for the development of their own business. They are not employees or contractors of either Widener Uni-

versity School of Law or the Dauphin County Bar Association. While these entities have provided economic support by providing furnished office space, training, case management software and networking opportunities, neither assumes any responsibility for the representation of clients or the management of the expenses or the funds of the attorneys. The attorneys in the program must purchase and maintain their own malpractice insurance throughout their time in the program. They are responsible for setting up their law firm bank accounts, including their escrow accounts, and insuring that they follow appropriate client fund security practices.

#### PROGRAM IN PRACTICE

Since this is the first year of the program, the program is evolving as it progresses. The Widener Law Clinic Director and the Executive Director of the DCBA regularly review the program's progress and the needs of the participating attorneys and discuss ways to make the program work better and more efficiently. While informal mentoring, monthly training sessions and regular interaction with Mid-Penn Legal Services attorneys and the Widener Law Harrisburg clinic director were included in the original plan, it became plain fairly quickly that a more formal structure for regular meetings and discussions about practice would be helpful, at least initially. The DCBA arranged for a senior attorney from Mid-Penn Legal Services and the DCBA pro bono/public services coordinator to meet bi-weekly with the incubator attorneys in a "partner-style" meeting to discuss their cases and the development of their practices. These meetings provide some structure for the incubator attorneys' practices, establish a routine of reviewing and reflecting on cases and are an opportunity for the new attorneys in the program to review their cases and strategize with experienced lawyers. These meetings supplement the monthly training sessions.

To satisfy the one-hundred hour pro bono requirement, the incubator attorneys were trained to screen cases for Mid-Penn Legal Services. This screening work furnishes the attorneys with experience in client interviewing, real-world legal problem identification and case assessment and provides a much needed service to Mid-Penn. The attorneys also may be referred cases from Mid-Penn or the law school clinic to satisfy the pro bono requirement.

The program attorneys are participating in the bar referral service, including the Modest Means panel, and have received a number of cases from the referral service in the first few months. The DCBA also runs regular clinics in divorce and custody matters staffed by vol-



unteer attorneys and in which the incubator attorneys can participate. In these clinics, attorneys act as facilitators for people who are proceeding pro se in custody or divorce matters. The attorneys endeavor to assist the pro se litigants with document preparation and provide guidance on how to navigate the legal system. The bar association also runs a homeless outreach program. These programs afford the incubator attorneys the opportunity to hone their skills in interacting with clients and providing legal advice. Additionally, since more experienced attorneys are also volunteering in these programs, the incubator attorneys can increase their knowledge in these areas of law through interaction with and observance of experienced attorneys “in action.”

The program has received a significant amount of interest and support from the local legal community and the community at large. Local attorneys, both alumni of Widener Law Harrisburg and those unconnected with the law school, have reached out to offer their assistance to the program. Local elected officials have met with the program director about expanding the program into other areas of Harrisburg, particularly to those areas with the highest levels of poverty. Because public transportation in the region is poor and many local residents of limited means do not have a reliable source of private transportation, maintaining an office in a high-needs area could increase the availability of legal services to these residents. A local Hispanic center has also expressed an interest in providing an office for a bilingual incubator attorney to advise and potentially represent Spanish speaking residents of Dauphin County. Others have suggested expanding the program to attorneys who wish to transition from a government position to private practice. Representatives of the law school and bar association will review the program and its potential for future expansion toward the end of the first program year and periodically thereafter to determine if and when expansion is prudent.

#### ADVANTAGES OF LAW SCHOOL AND BAR ASSOCIATION COLLABORATION

The partnership between the law school and the local bar association has a number of distinct advantages that has made the program better than either could have designed or implemented on its own. The arrangement permits the two entities to share the cost of setting up and running the program, which has made the program economically viable for the law school in this time of strained resources in legal education. The law school has established contacts with recent gradu-

ates who might be interested in participating in the program and the knowledge and experience to screen participants to maximize their chance of success in the program. With twenty-five years experience in clinical education, the Widener Law Harrisburg clinic director has an extensive background in training and guiding young lawyers in practice and has been able to put this expertise into use in setting up and running the program. The law school also has an extensive and engaged group of alumni who are willing to assist in training sessions, to offer advice as the program was developed and continues to evolve and to provide guidance and support for the new attorneys.

With its large network of attorneys and close relationship with the Mid-Penn Legal Services, the DCBA had much to bring to the table in developing the program. The bar association already had in place extensive networking opportunities for new attorneys, from social hours to volleyball leagues to an active young lawyers' section. The association regularly sponsors continuing legal education sessions, in which the program attorneys could participate to improve their knowledge and skills in the practice of law and to engage with the local bench and bar. The DCBA was able to leverage its connection with Mid-Penn Legal Services to arrange for numerous opportunities for the program attorneys to gain experience in the practice of law, interact with practicing attorneys and receive professional guidance from experienced legal aid lawyers. The various volunteering opportunities run by the DCBA directly also provided valuable experience for the incubator attorneys. Participation in the DCBA Lawyer Referral Service has been invaluable to program attorneys as a source of "paying" clients as they build their practices. And, of course, one of the most valuable contributions the association made was office space that permitted the attorneys to maintain professional offices.

The Widener University School of Law-Dauphin County Bar Association Incubator Program was able to maximize the synergies between a law school and bar association to provide a low cost program for recent graduates that increases the number of hours of pro bono service given to and the availability of lower cost legal services for local residents and puts the graduates on track to the establishment of successful law practices. By partnering with the local bar association and reaching out to alumni, local attorneys, the regional legal aid office and even the state bar association, Widener Law Harrisburg was able to provide recent graduates who wanted to open their own law firm an economic and professional leg up on the start of their practice. Through the program, Widener Law Harrisburg serves its graduates by providing a low cost and mentored opportunity for them to begin a solo practice. The law school's goal and that of the bar

association is to put these graduates on the road to a successful and economically viable professional practice. Widener University and the law school in Harrisburg are also committed to civic engagement and increasing access to justice for low and moderate income citizens through this program furthers this mission. The Dauphin County Bar Association participation in and support for the program serves two of its key objectives— increasing available legal representation for residents of Dauphin County and supporting local attorneys, particularly new attorneys, in the development of their practices. The bar association also views this program as an excellent way to encourage new attorneys to become active, long-term members of the association. By furthering the goals of both organizations and setting the incubator attorneys on the path to become successful practicing lawyers, the program has been a win-win-win for Widener Law Harrisburg, the Dauphin County Bar Association and the program participants.