

A LEGAL TRADE-OFF

Clinic offers experience for students, free services for businesses

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Taylor Funk, in his final year of law school at the University of Oregon, had a head full of legal theory but little practice. Kerri Vanden Berg, a longtime bike mechanic who was launching her own repair shop, was anxious about filling out confusing government forms required to start up her business.

They each found what they needed this fall at the UO's Small Business Law Clinic — a whopping dose of practical lawyering.

The law clinic has provided similar help to 99 students and 246 mostly fledgling businesses since it began 7½ years ago, offering hundreds of thousands of hours of free legal work to entrepreneurs launching businesses in Lane County.

“Think of the number of billable hours that are not being paid,” said Gary Smith, faculty at the Lane Small Business Development Center. “If you assume \$150 to \$250 an hour for a lot of these services, there’s quite an economic boon. It’s a leg up to business without a doubt.”

Among the clients the students have helped in recent years are a farm, a life coach, a certified public accountant, a cupcake maker, a pottery studio, a craft brewery, a general contractor, an architect and a biotech company.

“It’s good for the law school; it’s good for the students and really important to the community,” said attorney Kirk Strohm, an alumnus who now has a small business practice in Eugene.

For many of the students, it’s the first big, heart thumping test of their knowledge, poise and confidence as a developing lawyer.

“When somebody looks at you, and they say, ‘Well, what should I do?’ You’re like, ‘Wow, that’s an incredible feeling.’ You want to make sure you get that right,” Strohm said.

The clinic accepts only half of the students who apply — a total of 16 students a year, who work with 32 businesses, under the supervision of two attorneys, said Laurie Strother, the administrative program coordinator.

Before the students meet their clients, they attend intensive seminars on everything from how to explain and recommend business types — sole proprietorship, limited liability company, corporation — to how to put clients at ease.

Before meeting the client, students practice their personal skills and delivery on community business people and business school faculty who volunteer for the duty.

Only then are students ready to put on suits and await the arrival of their assigned business owner.

For many of the small business owners, it’s their first experience with an attorney, said Katherine Moyer, director of the Small Business Law Clinic.



Student and client sit face to face at the conference table with the supervising attorney off to the side. The student is expected to take charge of the meeting. Some evince a momentary panic. Funk's nervousness lasted about 10 seconds, Vanden Berg said. She repairs bicycles; Funk said he once dreamed that he would have a bicycle repair shop.

The first job was to figure out what Vanden Berg needed for her repair shop, which she operates out of her garage in the West Jefferson Neighborhood. Funk, in consultation with Moyer, one of two supervising



attorneys, had to decide what legal work he could reasonably produce based on his skills and within the time frame of a semester. Most often, students help the entrepreneurs form types of businesses — limited liability company or S-corp — that will help them with taxes and protect their personal property from law suits. They write operating agreements. They create contracts that business owners can use with customers. They answer the business owners' questions about employment, including whether someone who works with them is an independent contractor or an employee, which would trigger workers

compensation, wage and hour, and other legal considerations.

Vanden Berg had already decided that a limited liability company would be best for her. It limits the business owner's liability to the cash and assets in the business; creditors usually can't touch a business owner's home or personal assets.

Vanden Berg had already filed the required documents with the Oregon Secretary of State, but she wasn't confident she'd done it properly. "You're really kind of guessing. 'What are they asking me?' I didn't have any kind of background in that," Vanden Berg said.

Funk wrote an operating agreement for Vanden Berg that lays out how the business will operate, including how she will pay herself and how she will handle taxes. The operating documents provide direction for business owners, reassurance for lenders and protection for the business owner.

Funk also filed papers so Vanden Berg could use an assumed business name, Kerri's Neighborhood Bike Shop, without having to add LLC. "For marketing it makes it a lot more accessible to other people," Funk said.

He wrote a bill of sale for Vanden Berg to use with her customers, and he reviewed the documents she'd filed earlier with the secretary of state. He drafted and redrafted Vanden Berg's documents, trading them with Moyer for correction more than a half dozen times.

"It's not cranking out the work as fast as you can," Funk said. "It's learning how to do the work the best that you can."

Moyer said: "We supervise it and we make sure, at the end of the day, it's quality work that we can sign off on and the client can feel comfortable with."

Students occasionally face some tough conversations with clients — such as why a husband and wife or lifelong friends, need an operating agreement that governs how they will handle disputes between them. The students learn to explain that when people are launching a venture, and all the participants are excited and their "best selves," is the best time to figure out how to handle the tough times, Moyer said.

Law clinic students, for example, set up an agreement for Gryphon Scaffolding owner Doug Lambert giving him 49 percent ownership of the business and his wife 51 percent, Lambert said. "What it does is it protects both parties if something goes in default," Lambert said.

The other tough topic for students: How the company will be dissolved and the assets divided at the end of its run, whenever and however that comes.

“You need to know how you’re getting into this business right now but you need to plan in terms of how you’re going to get out of the business,” said Mindy Wittkop, the clinic’s second supervising attorney. “It prevents disputes down the road if you’ve got a clear agreement up front.”

Strohman said he thrived on the challenges during law school when he worked at the clinic. He admired the entrepreneurs, especially those setting out in a difficult economy, and saw he could improve their chances.

“I thought, as a business lawyer, I’d just sit at a computer and draw up contracts all day — and how tedious and terrible a job that would be,” he said. “But when I did the clinic I realized that this is a people business. I had to sit down and really understand relationships and personal situations.

“It was not adversarial. You were helping people grow and succeed. That’s something you don’t spend much time on in law school. You read case law, and cases are all about people fighting with each other.

“In the clinic, we’re sitting down and just helping. It was like, ‘Wow, this suits me. This is the kind of attorney I want to be. I don’t think I would have really realized this kind of attorney existed without the chance to be in the clinic.’”

Vanden Berg said she didn’t understand at first what all the fussy documents were for. “Seeing the final product is when it made sense that this is what needed to happen,” she said.

“Now, I see how much I really need to keep track of everything, keep everything separate,” she said. “It puts more pressure on me in a good way. It gives me more direction.”

The only cost to Vanden Berg was the state’s filing fees. The free legal work she got from the clinic would have amounted to one third of her start-up costs, she said.

Another business owner, Rachel Travis of the Mujeres Salon & Spa in Eugene, has returned to the clinic a couple of times over several years when she needed legal work.

The students helped her form her limited liability company and later switch to an S-corp business entity.

“It always flowed, like, really good,” she said. “They said this is where you should be, so they set it up