



GUIDE FOR PRO BONO LEGAL VOLUNTEERS

Updated as of August 2022

Thank you for participating in the Start Small Think Big (“Start Small,” “we,” “us”) pro bono legal volunteer network! We are excited to have you join our efforts in helping under-resourced businesses gain access to essential legal services from a network of top-tier legal professionals. The following is a guide for pro bono counsel, coordinators, and volunteer attorneys working with the Start Small Legal Program (“Guide”). To the extent helpful, we are available to discuss any of the content included in this Guide.

Contact Information for Start Small Legal Program Staff:

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Please contact our Legal Program Coordinators if you: (1) have any questions about this Guide or a client’s background or legal matter; (2) need to report any additional legal needs you may have identified with a client; (3) have questions regarding matter placement or management, including as related to closing matters and follow-ups; or (4) have difficulty reaching a client.



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I. About Start Small Think Big

Start Small Think Big is a nonprofit that helps small businesses with high potential and limited access to the resources needed to create thriving businesses. We connect small business owners to legal, finance, and marketing professionals who provide their expertise for free.

Our Commitment to Equity and Learning

Start Small Think Big is deeply committed to building an inclusive and anti-racist organization where small business owners, staff, and volunteers of all identities feel seen, heard, and valued. We recognize the long history of exclusionary practices that have intentionally kept many marginalized communities, especially communities of color, out of the business sector. We have a responsibility to play an active role in fighting systems of oppression and advancing equity in small business ownership.

We take an intentional approach to centering the needs of communities who face unique challenges stemming from structural racism and other forms of oppression—challenges that systematically limit access to the much-needed resources to build, grow, and sustain their businesses. This approach shapes our strategic priorities across all areas of our work. We are committed to an active learning process to continually transform our policies, structures, and organizational culture to better support small business. By centering those at the margins, we aim to create the conditions for all groups to be successful.

Who We Serve

Start Small works with small businesses located across all 50 states (with legal services only offered in a limited number of states—primarily New York and California, but also Washington, D.C., Maryland, New Jersey, Pennsylvania, and Washington). We serve small business owners who:

Identify with one or more marginalized communities, including:

- ☐ Black, Latinx, and other communities of color
- ☐ Women
- ☐ LGBTQIA+ communities
- ☐ Immigrant communities
- ☐ Veterans
- ☐ People with disabilities
- ☐ Formerly incarcerated individuals
- ☐ Federal program recipients (e.g., SNAP, Medicaid, Housing assistance)

Are currently operating and selling goods/services and have:

- ☐ At least \$500 of recurring sales within the past 3 months
- ☐ Up to \$1MM in annual business revenue
- ☐ Household Income under 750% FPG
- ☐ Household has \$100K or less in assets

Small businesses serve as cornerstones in our communities, especially in communities of color, despite obstacles facing their creation and success. Start Small Think Big works to create an ecosystem of coordinated support for these businesses, including through curation of a dedicated volunteer network that shares our organizational values and is ready to do the work to support equity and inclusion.

II. Legal Program Overview

Start Small Think Big delivers services across three core programmatic areas: the Legal Program, the Financial Program, and the Market Access Program. The Legal Program helps under-resourced entrepreneurs develop a sound legal infrastructure for their businesses, specifically by providing access to legal information and assistance through tailored referrals to volunteer pro bono counsel as well as in-house counseling, education materials, and webinars or other presentations.

The Legal Program provides services primarily in New York and California—though we also offer services through a more limited network of volunteer attorneys in Washington D.C., Maryland, New Jersey, Oregon, Pennsylvania, Virginia, and Washington. The traditional key areas of service within the Legal Program are:

- Business entity selection, formation, and restructuring;
- Corporate governance (e.g., partnership agreements, operating agreements, corporate bylaws);
- General contract review and drafting;
- Commercial lease review and drafting;
- Intellectual property (i.e., trademark, copyright, patent, trade secrets);
- Doing business online (e.g., terms of use and privacy policy review and drafting); and
- Employment law and labor law compliance (e.g., worker classification counseling, independent contractor agreement or employment offer letter review and drafting).

Our areas of service generally depend on the availability and legal expertise of our volunteer pro bono network. Accordingly, if there are additional areas of law in which you are able to provide ongoing assistance or advice (e.g., entertainment, tax, real estate), please email us at legal@startsmallthinkbig.org to discuss further.

Who is the client?

The majority of individuals seeking legal services through Start Small maintain sole proprietorships or single-member LLCs. **For purposes of the legal engagement, Smart Small's position is that the client is the business entity, and not the individual business owner.** See, e.g., Model Rules of Prof'l Conduct R. 1.13(a) (2020), *Organization as Client*. Please consult your firm's pro bono coordinator and/or professional responsibility department if you have questions.

→ **Please note:** Notwithstanding the above, this Guide uses “client” to refer to the individual business owner that has sought assistance on behalf of their business.

Financial and Marketing Services Offered by Start Small Think Big

Start Small also offers eligible businesses access to pro bono finance and marketing services, including:

- Bookkeeping, budgeting and projections, financing analysis and options, financial management and planning; and
- Website and logo design, sales optimization, e-commerce advising, search engine optimization, and branding and digital marketing support.

If you learn during your interactions with the client that they may have additional finance and/or marketing needs, please refer them back to Start Small for further information and assistance.

III. Intake and Referral Process Overview



To receive services through Start Small, prospective clients fill out a short application online describing their particular financial, marketing, and/or legal business needs. Start Small then conducts an eligibility screen, and any eligible prospective clients are invited to attend an initial onboarding intake appointment with our Client Relationship Management (“CRM”) team. The purpose of the initial intake is to verify the prospective client’s eligibility and identify the areas of service requested by the client.

If legal services are requested, newly onboarded clients are invited to schedule their legal intake with the Start Small Legal Program. The purpose of the legal intake is to (1) provide basic information responsive to a client’s legal needs and questions; and (2) prepare referrals for matters that require more extensive support through a legal engagement or consultation with our volunteer pro bono network.

After the legal intake, a description of the client and their legal needs are added to our referral list, a link to which is emailed every Monday to all current pro bono legal volunteers. You can then request to be assigned to matters of interest that fall within their expertise and for which they have capacity. **Before requesting to be assigned to a client’s matter(s), please ensure that you or someone else on your team is licensed to practice law in the state in which the client’s business is domiciled (as reflected in the “Location” fields on the referral list).** (This requirement may not apply if the referral involves a matter of federal law – e.g., federal trademark registration). It is critical to resolve any jurisdictional issues *before* matters are placed so as to avoid retracting assistance from Start Small clients. Please consult your firm’s pro bono coordinator and/or professional responsibility department if you have questions.

Once you have been approved to handle a client’s matter, you will receive a “referral memo” containing background information on the client, including a summary of their business and their legal needs.

→ **Please note:** Start Small operates administratively on a four-day work week. Accordingly, we aim to respond to all referral placement requests by the end of the day on Thursday. Requests made after that point will be responded to the following week.

Legal Clinics Hosted by Volunteer Partner Law Firms

Clients’ legal needs may also be addressed through legal clinics hosted by our volunteer partner law firms. Many of our partner firms regularly host clinics that clients are able to attend. The purpose of these clinics is to provide subject-specific information and/or advice that may be pertinent to the client (e.g., clinic discussing the process for trademarking a business name or logo and answering any client questions concerning their trademark-related needs). The scope of the volunteer attorney’s engagement is limited to the clinic, and does not require additional time commitment or work product.

If you are interested in hosting a subject-specific clinic, please contact Start Small’s Senior Program Manager, Saadia McIntosh, at saadiah@startsmallthinkbig.org.

IV. General Guidelines for the Selection and Supervision of Matters

Selection of Matters on Weekly Referral List

Pro bono partners are free to select one or more matters presented by an individual client, depending on the partner's areas of expertise, availability, and interest. Pro bono counsel and coordinators should ensure that volunteers have competence in the subject matter area(s) required for the representations they have selected and that they are in a position to devote the time required to bring the matter to a timely conclusion. **Where possible, Start Small encourages partners to assemble teams capable of addressing all the client's requested matters.** We have found that this generally leads to a more productive and efficient experience for the client and the attorneys, and helps to build trust and rapport with the client. For this reason, if more than one firm requests the same client matter, we will generally give preference to the firm that has requested all or multiple client referrals.

→ **Please note:** Start Small clients often have multiple legal teams across different firms assisting them with their matters. Please be mindful that clients may become confused about which legal team is overseeing their matters—it will help to clarify your role with the client, if there appears to be some uncertainty. Please also reach out to us if there are any issues around this.

Small Business-Specific Considerations for Attorney Volunteers

You should be aware of the particular needs of low- to moderate-income small business owners, and how the circumstances of this client base may differ from those of a firm's much larger corporate clients. Start Small expects that you will take a client-centered approach to their meetings with clients—one that takes into account their needs and experiences, and the unique structural challenges that limit the growth and sustainability of their businesses. you should consider, for example:

- **Financial Costs.** Start Small does not assess at intake a client's ability to absorb costs associated with complying with various legal requirements. Compliance or other legal costs (e.g., trademark registration) that may be minimal to large companies are often significant hurdles for clients. Accordingly, please be mindful of your advice with respect to potential financial constraints.
 - **NOTE:** Start Small advises pro bono partners not to advance costs to our clients. Further, Start Small does not cover any registration or other costs for clients as all matters are assigned on a *pro bono basis only*.
 - Start Small also asks that you refrain from using third-party services that impose additional costs on Start Small clients (e.g., expeditors, trademark or incorporation search or filing services). If use of such services is preferred by you or the partner firm, we ask that any costs be absorbed by firms and **not** passed along to clients. **If such services are unavoidable and the firm is not able to absorb the cost, please reach out to Start Small to explore potential alternatives.**
- **Administrative Burdens.** Start Small's clients frequently lack the staff or access to technology that might help them assume significant administrative burdens. Accordingly, ease of implementation of proffered advice may be a more important consideration in choosing among various options.
- **Best Practices vs. Legal Requirements.** In advising the small business client, you should distinguish "best practices" and similar recommendations from clear legal mandates and requirements,

particularly when financial costs or administrative burdens are involved.

- **Effective and Clear Communication.** When undertaking any actions on the client's behalf, you should communicate clearly to the client, preferably both in writing and orally, what steps they are taking and why. Moreover, particularly in settings where clients have limited interaction with you (e.g., during a clinic), legal concepts and advice should be explained as clearly as possible and in layman's terms, perhaps several times.
- **Informed Decision Making.** If a client is deciding among alternative courses of action, you should make sure that the client is equipped to make their own fully informed decision (as opposed to simply following what they think you want them to do).
- **Scheduling Flexibility.** Small business owners do not always have employees or others to whom they can entrust the management of the business, so you should be as flexible as possible in scheduling meetings and phone calls to accommodate their schedules. Moreover, if the meeting is remote, clients may have no option but to take their meetings or calls while at their place of work during business hours. If this becomes too distracting or impedes the effectiveness or confidentiality of the meeting, you may reschedule the meeting with the client at a later time.
 - Please be patient with clients that may be difficult to reach. Do not take it personally, and do not assume a client does not care about their legal matter if they become unreachable. Clients often suddenly have other priorities that take precedence over their legal matter(s), including handling their business's daily affairs. Be persistent in reaching out, and if you have continued trouble contacting the client, please reach out to our Legal Program Coordinators.
- **Client Sensitivity.** Keep in mind that clients may feel intimidated meeting with an attorney, especially at a law firm office; reticent to share information about their finances; or confused about their representation (especially if they have multiple legal teams assisting them with discrete matters). Clients may also not proactively reach out or follow-up on prior correspondence due to power dynamics issues. We ask that you encourage the client to communicate with you and reassure them that consistent communication will help you represent them effectively. Please be mindful of these dynamics as you interact with the client.

We understand that working with pro bono clients from under-resourced backgrounds can present unique challenges for both the attorneys and clients alike. Upon request, Start Small is available to conduct a training session with you on working with low- to moderate-income small business clients.

Supervision of Matters by Partners and Senior Associates

To ensure that a client's legal matters are comprehensively addressed, Start Small recommends that:

- A partner be assigned to every matter and, if possible, sign off on work product being sent to the client or on their behalf;
- Junior associates be actively supervised by an experienced senior associate and/or partner, including review of written work product, where applicable; and
- If junior associates are providing advice in a group clinic setting, an experienced associate and/or partner be present to answer more complex questions that may arise during the session.

Please consult with your firm's pro bono coordinator and/or professional responsibility department concerning appropriate staffing.

Involvement of Law Firm Corporate Clients

In the past, some of Start Small's partner law firms have involved their corporate clients' in-house legal counsel to assist in the provision of legal services to Start Small clients, particularly in a one-hour consultation or clinic format. We welcome this approach and are happy to work with our partner law firms to facilitate it, wherever feasible. Please contact legal@startsmallthinkbig.org if this is of interest to you.

Involvement of Summer Associates

Partner law firms are welcome to include summer associates in clients' matters, including by inviting them to participate in client consultations and performing legal research. However, a permanent law firm attorney should **always** conduct the consultations, and remain the primary point of contact for the client in order to ensure the requisite level of experience and maintain continuity in the client relationship.

V. Confidentiality & Privilege Considerations

Start Small believes that the ethical obligations owed to pro bono clients are no different than those owed to paying clients, especially with respect to the bedrock principles of confidentiality and attorney-client privilege. Please consult your firm's pro bono coordinator and/or professional responsibility department concerning this issue, if you have questions.

In any event, there may be some unique circumstances to consider during the representation of Start Small clients that may require additional research or analysis. For example:

- **Clients seeking pro bono legal assistance may wish to include informal business partners, family members, or other individuals in meetings they attend with you.** Before allowing any third party to attend the meeting, be sure to explain to the client that any attorney-client privilege may be waived as a result and what the consequences of said waiver could mean for the business. You should also explain to the client that, although the meeting may not be privileged, it is still confidential and any information shared during the meeting will not be further disseminated outside of the partner firm (or legal team) without their informed consent or as required by law or court order.
- **Some clients may have no choice but to take virtual meetings or phone calls from their place of business during operating hours.** If possible, please ask the client to retreat to a private location. It may be helpful to explain the importance of discussing business matters in areas with a reasonable expectation of privacy, including to prevent inadvertent disclosure of nonpublic information or breach of trade secrets. At their discretion, volunteer attorneys and clients may opt to reschedule meetings if there are concerns about protecting a client's confidentiality and business information.
- **Clients may use a business or personal email address and/or computer to which employees, family members, or others have access.** Please be sure to verify that a client's email and/or computer account is secure and private, and advise clients, where appropriate, about possible waiver issues if emails are not kept private or are forwarded to third parties.

Please do not hesitate to contact us if you encounter any issues with clients concerning the above.

VI. Client Meeting Tips

Prior to meeting with the client, volunteers should read all documentation provided by Start Small in connection with the matter and should, to the extent possible, anticipate the issues to be discussed and conduct any necessary preparatory research. Below are additional important considerations for scheduling and conducting meetings with clients:

- Meetings should be scheduled at the mutual convenience of the client and the volunteer attorney and may be held virtually. If the meeting is taking place in person at the partner law firm, please explain to the client in advance how to access the building, including if they will need ID. Please also consider meeting the client in the lobby and escorting them to the meeting location.
- Start Small recommends that if more senior counsel has been assigned to supervise the volunteer attorney conducting the client meeting, the supervising attorney be present at the meeting or otherwise available to answer any questions that may arise.
- While Start Small notifies clients when their matters have been placed, the **volunteer attorneys assigned to the matters are responsible for reaching out to clients** to introduce themselves and begin the representation within a **three-week period**.
- We recommend that an introductory call be made as early as possible, prior to sending the engagement letter. We have found that even if the volunteer is not yet ready to devote a substantial amount of time to the matter they have accepted, making that initial contact with the client and explaining the likely timetable for the representation is an important first step in managing expectations and establishing a good relationship with the client.
- Volunteer attorneys should be prepared to reach out to clients via email, text message, and phone call. **Many clients respond more promptly to text messages or phone calls than to emails.**
- Start Small generally develops ongoing relationships with its clients through the provision of multiple services, sometimes over an extended period. We thus encourage volunteers to communicate with us about their experiences with clients, and regard us as a resource in resolving any issues they may encounter. **Please do not hesitate to reach out to Start Small if you have difficulty communicating with and/or scheduling meetings with clients, or any issues with attendance and punctuality.**

Use of Template Contracts and Other Work Product

Partner law firms may use templates to advise Start Small clients with similar needs (e.g., catering contracts, website terms of use). **However, Start Small recommends that such templates be reviewed and approved by any pro bono partner intending to use them (specifically, by partners or senior associates with the relevant expertise), and tailored to the client's needs as appropriate.**

Templates should be reviewed with individual clients and adapted to their particular business needs; they should not be distributed to clients without accompanying legal advice. To the extent there are successive drafts of work product, please make clear to the client which version is final and review any changes with them. Questions concerning the use of templates may be referred to Start Small Legal Program staff.

VII. Closing Matters and Follow-Up

As soon as you believe the representation is complete, this status should be clearly communicated to the client and Start Small, as well as internally in accordance with the pro bono partner organization's protocol. You should encourage the client to come back for clarification of any advice they may not have understood, or any further help they may need in fulfilling a legal requirement, so long as it is within the scope of the representation.

Any additional legal matters the client raises directly with you, and any additional legal matters identified by you, that are outside the scope of the initially agreed upon representation, should be referred back to Start Small Legal Program staff. Of course, the pro bono partner handling the original matter may request that the new matter be assigned to them as well; Start Small will attempt to accommodate that request, where possible.

Status Updates

Start Small may send volunteer attorneys emails during their representation requesting an update about their client's matters. You are encouraged to proactively update us regarding the services provided thus far, next steps, and any additional legal and/or other needs that may have been identified. Receiving this information from you is very helpful for Start Small's case management, tracking, and reporting, and helps to achieve the organizational commitment to holistic representation. You do not need to share any privileged information when you update us on the status of your matter.

Additionally, you are encouraged to reach out by email to the Start Small Legal Program if you ever have questions, concerns, or comments about the representation, the client, or other matters. Please email legal@startsmallthinkbig.org for assistance.

VIII. Issue-Specific Guidance

Discussed below are the categories of issues that often call for more specific guidance. Please note this is not a comprehensive listing of the types of matters handled by Start Small's pro bono partners.

Commercial Lease and Contract Review

- Referrals for lease or other contract review usually call for (1) reviewing the agreement, and (2) advising the client with respect to the meaning of its provisions, modifications they may wish to seek, and strategies for pursuing those modifications. **The referrals do not, unless otherwise stated in the matter description, require that the volunteer attorney negotiate directly with the counterparty.** However, if the volunteer and the client agree it would be to the client's advantage to do so, and the volunteer and pro bono counsel/coordinator approve, volunteers are encouraged to conduct direct negotiations. The referral memo will contain applicable conflicts information.

Doing Business Online

- Clients may feature customer reviews or other endorsements on their website or social media to promote their business. Where appropriate, please make clients aware of any Federal Trade Commission guidance or consumer protection issues related to reviews and endorsements (e.g., posting fake reviews, moderating or deleting "negative" content, required disclosures).

Entity Selection, Formation and Restructuring

- The decision to form a limited liability company (LLC) or a corporate entity has significant tax

implications, at the federal, state and local level, for a small business owner. **Volunteer attorneys advising Start Small clients on this issue who do not have the necessary tax expertise should seek guidance from tax attorneys within their own organization and/or seek out appropriate training and/or consult resource materials prepared by Start Small prior to rendering this advice.**

- Volunteers should also be sure to discuss with the client the option of remaining as a sole proprietorship and the nature of the risks that can and cannot be covered with other risk mitigation tools such as insurance policies and contracts.
- When a client is considering the sale of shares in a corporate entity, or the offering of equity participation in an LLC, to individuals other than the original founders, it is imperative to research or seek guidance on the applicability, if any, of the requirements of the securities laws.
- Volunteer attorneys should be sensitive to the possibility that clients may be non-compliant with local business license requirements, sales or income tax obligations, or other regulatory matters at the time of consultation, and should always advise such clients concerning their exposure for past conduct as well as how to eliminate or reduce it going forward.

Employment/Labor Law

- Start Small recommends that volunteer attorneys providing employment advice begin by discussing with the client the legally appropriate classification of the individuals who work for, or who are anticipated to work for, the business. Start Small staff will gather at intake as much information as possible that is pertinent to this issue, which will be made available to the volunteer prior to the first meeting with the client. Once the determination has been made that the workers should be classified as employees, independent contractors, or (in the rare instance) interns, the volunteer should, where applicable schedule, a separate meeting with the client to review the client's obligations to those individuals.
- Volunteer attorneys should be sensitive to the possibility that clients may be non-compliant with wage/hour, workers' compensation, payroll deduction requirements, and/or other employment laws at the time of consultation, and should always advise such clients concerning their exposure for past conduct as well as how to eliminate or reduce it going forward.

Intellectual Property

- Clients with trademark registration matters on the referral list have typically already received assistance with a knockout search and have discussed the benefits and disadvantages of pursuing trademark registration. Volunteers should, wherever appropriate, provide advice concerning trademark registration options for clients who do not appear to require protection outside of their state of business as well as applicable trade secrets law.
- Volunteer attorneys should be sensitive to, and advise their clients concerning, costs for various intellectual property protections as well as ongoing requirements to continue to maintain intellectual property protection (e.g., cease-and-desist letters, litigation).

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On behalf of Start Small Think Big, thank you for your partnership and for joining us in supporting the #allforsmall community! We look forward to working with you and are here to assist you with any questions or issues you may have during your volunteer journey.