

Entrepreneurs in Community Lawyering

Participation Agreement

This Participation Agreement (the “**Agreement**”), dated as of _____, is entered into between the **New Mexico State Bar Foundation** (“**NMSBF**” or “**Party**”), and _____ (“**Participant**” or “**Party**”) (sometimes collectively the “**Parties**”).

Background

NMSBF has developed the Entrepreneurs in Community Lawyering (“**ECL**”) program as a legal “incubator” program. In conjunction with the ECL program, NMSBF has developed a Statement of Principles (attached as Exhibit A) that will guide participation in the ECL program. ECL has invited Participant to participate in ECL in accordance with the Statement of Principles.

Accordingly, the Parties agree as follows:

1. **Term.** The term of this Agreement and Participant’s participation in ECL will begin on _____ and continue for 12 months, or through _____, with the option to remain in ECL for up to an additional 12 months with the mutual agreement of NMSBF and Participant, or thorough _____, unless earlier terminated in accordance with this Agreement (Agreement Period). If Participant wishes to exercise the option to remain in ECL after the initial 12 month period, the Participant shall inform the Program Director of ECL by _____.
2. **Office Space.** Participant will use office space at NMSBF (the “**Office**”), which will include reasonable use of general shared Office space and access to private conference rooms for use in meeting with clients, plus wireless internet access, and access to a printer and/or copier.
3. **Obligations of NMSBF during the Agreement Period.** NMSBF shall:
 - a. Provide Participant with Office space, as defined in Paragraph 2 of the Agreement.
 - b. Provide Participant with business assistance and related services including:
 - i. Assistance in obtaining contract work, referrals from the New Mexico State Bar lawyer referral services, and New Mexico legal services organizations;
 - ii. Assistance with mentorship and licensing fees, as determined in NMSBF’s reasonable discretion;
 - iii. Access to State Bar of New Mexico (SBNM) continuing legal education programs, basic training regarding operating and marketing a legal practice, and mentoring services, all as determined in NMSBF’s reasonable discretion; and
 - iv. Access to bulk and other discounts on products and services from outside providers, as may be made available by those providers, all as determined in NMSBF’s reasonable discretion.
 - c. Provide the services of the ECL Program Director to mentor the Participant in the practice of law, and to act as the Participant’s mentor for the Bridge the Gap

Mentorship Program, if the Participant decides to request mentorship from the ECL Program Director.

4. **Obligations of Participant.** Participant shall:

- a. Pay a participation fee for participation in the ECL program (“**Participation Fee**”), to be paid on the following schedule upon receipt of an invoice from SBNM:
 - i. For months 1 through 3 of the Term, \$0 per month;
 - ii. For months 4 through 6 of the Term, \$250 per month;
 - iii. For months 7 through 12 of the Term, \$350 per month;
 - iv. If the term of this Agreement is extended beyond the initial 12 month period, pursuant to Paragraph 1 of this Agreement, Participant’s monthly fees will be reevaluated and determined at that time, provided that such fees shall not exceed \$350 per month.
- b. Abide by any building or Office rules as established from time to time by NMSBF.
- c. Require each new client of Participant to sign a written fee agreement, which contains an acknowledgment that he or she understands the Participant is a lawyer practicing independently of SBNM and NMSBF. In addition, each new client shall sign a separate acknowledgment form that contains an acknowledgment that he or she understands the Participant is a lawyer practicing independently of SBNM and NMSBF. The acknowledgment provision in the fee agreement and the separate acknowledgement form must be approved by NMSBF. A copy of each client’s signed acknowledgement form must be provided to the NMSBF ECL Program Director within one week of Participant’s formal acceptance of the new client.
- d. Require each new client to provide information regarding client’s income, which shall be provided to the NMSBF ECL Program Director within one week of Participant’s formal acceptance of the new client.
- e. Have in place prior to establishing Participant’s practice or seeing any clients, and maintain throughout the Term and for a period of at least three (3) years after the Ending Date, professional liability insurance in the minimum amount of \$200,000 per occurrence / \$500,000 aggregate, or a greater amount as may be required by the New Mexico Supreme Court Rules, from a reputable carrier licensed to provide the insurance in the State of New Mexico. Participant shall provide NMSBF with proof of this insurance to the NMSBF ECL Program Director prior to Participant accepting any clients.
- f. Be and remain an active licensed attorney in good standing in the State of New Mexico (and in any other courts or jurisdictions in which Participant practices law during the Agreement Period).
- g. Immediately notify NMSBF and the ECL Program Director in writing of: (i) any change in bar-admission/membership status; (ii) any cancellation or change in the insurance coverage required by Section 4(d) above; (iii) any inquiry from or complaint filed with the Disciplinary Board of the Supreme Court of New Mexico

(or similar agency or bar association in any other jurisdiction); (iv) any action taken against Participant by the Disciplinary Board or any other agency; and (v) any lawsuit or claim brought against the Participant by a client arising from the representation of the client during Participant's participation in ECL, including but not limited to any legal malpractice claim.

- h. Conduct Participant's legal practice and all business related to the practice in an accurate, thorough and professional manner in accordance with the highest ethical and professional standards, the New Mexico Supreme Court Rules, including without limitation the New Mexico Rules of Professional Conduct, the Lawyer's Creed of Professionalism, and any and all other applicable laws and regulations.
- i. Conduct Participant's legal practice, and otherwise act, consistently with the Statement of Principles attached as Exhibit A.
- j. Actively participate in ECL, including regularly attending ECL training programs, cooperating in the evaluation and assessment process for ECL, and sharing information to improve the program.
- k. Work with the ECL Program Director in the Director's role as mentor, if the Participant decides to request mentorship by the ECL Program Director.
- l. Complete all requirements of the Bridge the Gap Mentorship program as specified by Rule 24-110 NMRA (Mentorship program). If Participant is a first year admittee to the Bar, a full year of participation in the ECL program will fulfill the Mentorship program requirement. If Participant was required by Rule 24-110 to have begun the Mentorship program prior to entering the ECL program, Participant will complete the Mentorship program requirements outside of the ECL program.
- m. Take clients and matters that Participant, in consultation with the Director, determines to be those in which the scope, subject matter, and complexity would not prevent Participant from effectively representing a client and to participate in periodic case reviews and practice evaluations.
- n. As part of Participant's training and practice development, Participant agrees to participate in *pro bono* activities with one or more civil legal service organizations during the first 12 months of ECL. NMSBF will provide Participants a list of approved legal services organizations.
- o. As part of Participant's training and practice development, Participant agrees to apply to provide contract services with one of the legal services agencies offering such contracts. NMSBF will provide Participants a list of approved legal services agencies.
- p. Not engage in any activities that would interfere with the NMSBF's status as an organization exempt from taxation under Internal Revenue Code Section 501(c)(3).
- q. Share metrics and general financial information with the NMSBF, as required by the NMSBF Director of Legal Services, so that NMSBF may compile information on the progress and success of the ECL program.

5. **Relationship of the Parties.** Each Party is independent of, and not an agent, employee, or fiduciary of the other Party. This Agreement does not create a partnership, law firm, association, joint venture, or other joint business relationship between the Parties and neither Party has any right or power under this Agreement to create any obligation, expressed or implied, on behalf of the other Party or to bind the other Party in any manner whatsoever. No employee of a Party will be deemed to be an employee of the other Party by virtue of this Agreement. Neither Party may hold itself out to anyone as an agent of the other party. Neither Party may use the other's name, insignia, picture, or logo without written permission.
6. **Termination.**
 - a. Either Party may terminate this Agreement upon 30 days written notice to the other Party.
 - b. NMSBF may terminate this Agreement immediately upon written notice to Participant if Participant's license to practice law is suspended or Participant is disbarred or is otherwise no longer authorized to practice law in New Mexico or any other court or jurisdiction in which Participant had been licensed to practice law during the term of this Agreement, or if Participant is no longer in good standing with the State Bar of New Mexico, or if Participant no longer has professional liability insurance in accordance with Section 4(d) above.
 - c. In its sole discretion, NMSBF may terminate this Agreement upon written notice to Participant for the reasons set forth in subsections (i) and (ii) immediately below, provided however that Participant be given a 14 day period to cure the reason(s) to the reasonable satisfaction of NMSBF if the reason(s) is(are) curable:
 - i. If Participant fails to make any Participation Fee payment or other payment required to be made by the Participant when due; or
 - ii. If Participant breaches any of the other terms of this Agreement, including without limitation the obligations of Section 4 not specifically identified in Section 6(b) above.
 - d. Termination of this Agreement will not relieve Participant of his or her obligations that survive the end of this Agreement. Participant shall pay any unpaid Participation Fees due and unpaid through the date of termination and any other payment due and owing to NMSBF no later than 30 days after the date of termination.
 - e. If this Agreement is terminated prior to Participant completing a full year in the ECL program, Participant may be required, in NMSBF's sole discretion, to reimburse NMSBF for any licensing or mentorship fees paid by NMSBF on behalf of Participant.
 - f. If this Agreement is terminated prior to Participant completing a full year in the ECL program, and Participant was fulfilling Participant's mentorship requirement under Rule 24-110 NMRA through participation in ECL, Participant may, in

NMSBF's sole discretion, be required to make alternative arrangements for completion of the Rule 24-110 requirements.

- g. Upon termination for any reason, Participant must immediately vacate the Office and surrender all keys to NMSBF.

7. **Notice of Cessation of Law Practice.** If Participant stops practicing law completely during the term of this Agreement, Participant shall terminate this Agreement in accordance with Section 6(a) above and promptly provide NMSBF with written certification that Participant has stopped all client representation and provide a statement in writing that proper law firm closure protocols have and will continue to be followed, including, without limitation, notification of existing and potential clients and disbursements of trust fund accounts, according to the New Mexico Rules of Professional Conduct and other applicable law.

8. **No Warranty.**

- a. Except as expressly provided in this Agreement, no representations or warranties are or have been made to the Participant. NMSBF does not guarantee or promise Participant's profitability or business success.
- b. Participant specifically represents and acknowledges that the independent business venture to be undertaken by the Participant depends on the ability of the Participant as an independent business entity, as well as other factors, such as market and economic conditions, beyond the control of NMSBF and Participant. Participant acknowledges that success or failure of Participant's business will be dependent on the business and legal acumen and diligence of Participant. Participant agrees that no default, defect or omission by NMSBF or any of its directors, officers, agents, employees or related or affiliated Parties, in providing and performing business assistance services shall be deemed to be a default by any of them under this Agreement.
- c. Participant understands, and by signing this Agreement acknowledges, that the NMSBF, its directors, officers, agents and employees and any related or other affiliated Parties will not provide Participant with any tax advice of any kind in connection with Participant's business. Participant agrees that it is Participant's sole responsibility to obtain independent tax advice from a qualified bookkeeper, accountant or licensed CPA of Participant's choice.
- d. Participant agrees to accept the services provided by NMSBF and ECL on an "as is" basis with no warranties of any kind. NMSBF does not make, and hereby disclaims, any and all express or implied warranties, including, but not limited to, warranties of merchantability or fitness for a particular purpose.

9. **Limitation on Liability.** Neither NMSBF nor any of its directors, officers, agents, employees or related or affiliated Parties, including the Director of ECL, shall be liable to Participant in any action or claim for consequential or special damages, loss of profits, loss of opportunity or loss of use, whether the action in which recover of damages is sought is based on contract, tort (including sole, concurrent or other negligence and strict liability), statute or otherwise to the extent permitted by law. Participant waives any statutory

remedies that are inconsistent with the provisions of this Agreement. NMSBF and its directors, officers, agents, employees or related or affiliated parties, including the Director of ECL, shall not be liable for any indirect, incidental, punitive, special or consequential damages, or damages for loss of profits or revenue, incurred by Participant or any third Party, in contract, tort (including negligence) or otherwise, even if advised of the possibility of such damages.

10. **Indemnification.** Participant assumes all risks incidental to participant's law practice and is solely responsible for any and all consequential or special damages arising out of claims of negligent or grossly negligent legal representation, including any actions by participant's agents and employee for damages arising out of or in connection with the participant's law practice. Participant hereby agrees to indemnify and hold harmless the State Bar of new Mexico, NMSBF, its directors, officers, commissioners, agents, employees or related or affiliated parties, including the Director of ECL, against any cost, damage, claim, liability or expense arising in any manner from participant's law practice. This indemnification will survive the termination of this Agreement.
11. **Notice.** All notices, consents, requests, demands, and other communications required or permitted under this Agreement must be in writing and will conclusively be deemed effective:
 - a. on personal delivery,
 - b. on confirmed delivery by courier service,
 - c. on confirmed facsimile or electronic mail transmission, or
 - d. three days after deposit in the United States mail by first class/certified/registered or certified mail, postage prepaid, addressed to the Party to be notified as set forth below:

If to NMSBF:

New Mexico State Bar Foundation
P.O. Box 92860
Albuquerque, NM 87199-2860
Attn: Director, Entrepreneurs in Community Lawyering Program
Email: rpregenzer@nmbar.org

If to Participant:

[address and e-mail address of Participant]

Any Party may change its address for purposes of this Section by giving written notice of its new address to the other Party in the manner set forth above. This Section does not constitute a waiver of the requirements for service of process.

12. **Authority.** Each Party signing below warrants that they have the authority to enter into and perform the conditions of this Agreement and to bind themselves and the principal(s) set forth below.

- 13. **Amendment/Modification.** This Agreement contains the entire understanding of the Parties with respect to subject of this Agreement, and supersedes all previous agreements between the Parties concerning the subject matter, and cannot be amended except by a writing signed by both Parties.
- 14. **Severability.** If a court of competent jurisdiction finds any provision of this Agreement unenforceable, all other provisions will remain in full force and effect and the unenforceable provision will be replaced with an enforceable provision that most nearly achieves the intent and economic effect of the unenforceable provision.
- 15. **No Third Party Beneficiary.** This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire any right by virtue of this Agreement.
- 16. **Non-Assignment/Delegation.** The Parties shall not at any time assign or transfer, or attempt to assign or transfer, any rights, interests or obligations under or in respect of this Assignment to any person; except that NMSBF may assign this Agreement to any successor or any related or affiliated entity that is created to oversee or manage ECL in whole or part.
- 17. **Governing Law.** This Agreement is governed by New Mexico law. Jurisdiction for any lawsuit arising under this Agreement is exclusively in the courts located in Bernalillo County, New Mexico.
- 18. **Survival.** In the event of a termination of this Agreement, the following provisions will survive the termination: Sections 5, 6(d), 6(e), 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18. Expiration or termination will not relieve the parties of any obligation accruing prior to such expiration or termination.
- 19. **Counterparts.** This Agreement may be signed in any number of counterparts, each of which will be deemed an original. The Parties may rely upon and enforce a facsimile or other electronic transmission of any authorized signature as if it were the original.

New Mexico State Bar Foundation

Participant

By: _____

Richard Spinello,
Executive Director of NMSBF

(Print Name)

Date: _____

Date: _____

Exhibit A

ECL Statement of Principles

The Entrepreneurs in Community Lawyering (ECL) is a small business incubator for recent law school graduates to start socially conscious law practices. These firms will develop market-based solutions to serve moderate-income New Mexicans who cannot afford legal services at traditional firms. Central to the project is developing innovative service models that maximize technology, leverage existing referral networks, and feature attorney-client collaboration and à la carte service offerings.

Lawyers participating in the ECL are committed to:

1. Serving the legal needs of moderate-income clients who typically have too much income to qualify for free legal aid but do not have the means to afford legal assistance in the traditional legal market. The ECL target market is generally defined as people earning between 150% and 400% of the federal poverty level.
2. Concentrating on areas of law where the legal market does not provide sufficient access to legal assistance for low and moderate-income peoples such as: family law, consumer issues, debt problems, SSDI, employment law, workers' compensation, landlord/tenant law, adult guardianship, small-estate planning, etc.
3. Making legal assistance more approachable by placing deliberate emphasis on understanding clients' perspectives and adapting to their needs, and by working with clients in a collaborative effort to address their legal issues and achieve their goals.
4. Utilizing innovative methods to make legal assistance more accessible and affordable for clients in the target market and to reach those clients, including:
 - a. Using fixed fees and other alternatives to the billable hour in order to provide greater fairness, flexibility, transparency and certainty to clients; and
 - b. Offering limited scope representation, when appropriate, to provide clients with additional options for representation.
5. Maximizing the use of technology to create efficiencies in practice that benefit the client and the law practice.
6. Collaborating with fellow ECL participants and other ECL partner entities.
7. Actively participating in efforts to improve the profession, the practice of law and the larger justice system.
8. Developing economically sustainable and replicable delivery models for meeting the legal needs of the ECL target market.
9. Complying with the highest standards of professionalism.