

DC Affordable Law Firm
EIN 47-3852711
c/o Arent Fox LLP
1717 K Street, NW
Washington, DC 20006-5344
Attachment to Form 1023
May 26, 2015

Part IV, Narrative

Background: the Access to Justice Gap in the District of Columbia

The U.S. civil justice system is too complex to navigate without legal assistance, but legal services are often not financially accessible to populations most in need. Unlike criminal cases, there is no right to free legal counsel in most civil cases. Legal services are often beyond the reach of many low- or even moderate-income people who earn too much to qualify for free legal aid, forcing them to navigate the system alone with potentially very negative personal and financial consequences to them. A 2013 survey by the American Bar Foundation found that 66% of adults in a certain middle-sized city (approximately 350,000 to 450,000 residents, with a 17% poverty rate) experienced civil justice problems within the 18 months prior to the survey, most typically relating to employment, money (wages, unemployment benefits, pension funds mismanagement, governmental benefits, debt), insurance and housing. The impact on them was severe: feelings of fear, loss of income, and damage to physical or mental health, among others.¹

Many residents of the District of Columbia (the "District" or "DC") face the same challenges. Thousands struggle daily with legal problems critical to their lives, with attendant potential loss of shelter, fear of deportation, or family strife. In 2005, at least 95% of defendants appeared without legal counsel in the District's Landlord/Tenant Court, Family Court paternity and child support cases, and Superior Court Probate Division small estate matters, and 98% of both petitioners and respondents in the Domestic Violence Unit of the Superior Court appeared without counsel.² Even when District residents qualify for free legal aid, they are most often turned away due to lack of resources or lack of capacity at the provider level.

In order to qualify for free legal aid, an individual or family usually must have income below 200% of the federal poverty level.³ For 2015, 200% of the poverty guidelines was \$23,540 for a one-person household and \$48,500 for a four-person household in the 48 contiguous states and District of Columbia.⁴ The U.S. Census Bureau estimated that, over the period from 2009-2013, 18.6% of the District's residents were below the poverty level, as

¹ Rebecca L. Sandefur, Accessing Justice in the Contemporary USA: Findings From the Community Needs and Services Study, American Bar Foundation (August 8, 2014), <http://www.americanbarfoundation.org/research/A2J.html>.

² District of Columbia Access to Justice Commission, Justice for All? An Examination of the Civil Legal Needs of the District of Columbia's Low-Income Community (2008), available at <http://www.dcaccessjustice.org/reports>. A copy of the Executive Summary is attached as Exhibit 6A hereto. The above data may be found at p.9 of the Executive Summary.

³ See 45 CFR Part 1611 and Appendix A thereto.

⁴ 2015 Federal Poverty Guidelines, at <http://aspe.hhs.gov/poverty/15poverty.cfm>.

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compared to 15.4% nationally.⁵ Based on the Census Bureau's March 2014 Current Population Survey, one study estimated that (using 2013 data) approximately 35% of the District's residents qualified for legal aid, *i.e.*, their incomes were under 200% of the federal poverty level, and a further 21% fell into the 200% to 399% poverty level category,⁶ for an astounding total of 56% below 400% of poverty level. Applying that 21% against the District's population (per the 2010 Census) of 601,723, a reasonable estimate of DC residents too "wealthy" for legal aid, but still below the 400% poverty level standard for "moderate income,"⁷ exceeds 126,000.

Legal fees for the kinds of civil matters frequently faced by this population are simply not affordable. For example, according to a 2011 national survey of consumer law attorneys' fees, the average hourly billable rates in the District were \$287 for small firms of four or fewer lawyers and \$478 for firms of five or more.⁸ The "Laffey Matrix" prepared by the Civil Division of the United States Attorney's Office for the District of Columbia for use in certain cases in which a "fee-shifting" statute permits the prevailing party to recover reasonable attorney's fees (*e.g.*, cases under Title VII of the 1964 Civil Rights Act) provides another basis for comparison. The 2014-2015 Laffey Matrix rates were as follows:⁹

<u>Experience (years)</u>	<u>Hourly Rate</u>
20+	\$520
11-19	\$460
8-10	\$370
4-7	\$300
1-3	\$255
Paralegal/law clerk	\$150

However, the typical legal services consumer in the United States earns approximately \$25 per hour and is priced out of the legal services market even at low rates of \$125 to \$150 an hour.¹⁰

⁵ <http://quickfacts.census.gov/qfd/states/11000.html>

⁶ Henry J. Kaiser Family Foundation, State Health Facts, Distribution of Total Population by Federal Poverty Level, at <http://kff.org/other/state-indicator/distribution-by-fpl/>.

⁷ *E.g.*, treating 100% to 400% of the poverty line income as "middle class" in the Department of Health and Human Services' discussion of tax credits available under the Affordable Care Act, at <http://www.hhs.gov/healthcare/facts/timeline/timeline-text.html>.

⁸ FN Ronald L. Burdge, United States Consumer Law Attorney Fee Survey Report 2010-2011 (2011), at 16.

⁹ www.justice.gov/.../legacy/2014/07/14/Laffey_Matrix_2014-2015.pdf.

¹⁰ Luz E. Herrera, *Training Lawyer-Entrepreneurs*, 89 Denver University Law Review 887 (2012), at 894 citing Gordon Green & John Coder, *Household Income Trends: January 2012*, SENTIER RESEARCH, LLC, 2 (March

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"Moderate-income" individuals' ability to obtain legal assistance may thus be more limited than those living in poverty due to the eligibility cap for free legal aid.

Charitable organizations and small businesses in the District who serve these populations face similar challenges from the lack of affordable legal services. The District has many economically depressed neighborhoods. According to one study, those with the highest poverty rates are the following neighborhood clusters: Near Southeast, Arthur Capper, Carrollsburg, Navy Yard; Woodland, Garfield Heights, Knox Hill/Buena Vista; Skyland, Douglass, Shipley Terrace; Berry Farm, Hillsdale, Sheridan, Fort Stanton; and Historic Anacostia, ranging from 50.3% for the first in this list to 37.7% for the last.¹¹

The Sponsors' Response

In response to this urgent access to justice problem in the District, the concept for DC Affordable Law Firm ("Applicant") as a "low bono," affordable law firm for the District was initiated by Peter B. Edelman, the Carmack Waterhouse Professor of Law and Public Policy at Georgetown University Law Center (the "Law Center") and the faculty director of its Center on Poverty and Inequality. He is also the Chair of the District of Columbia Access to Justice Commission. Inspired by discussions with Judith Sandalow, the executive director of the Children's Law Center in DC (one of the District's most highly-regarded legal services providers), Mr. Edelman reached out to various DC law firms. Marc Fleischaker, the Chairman Emeritus of Arent Fox LLP ("Arent Fox"), expressed interest in the idea and offered space at his firm. DLA Piper LLP (US) ("DLA Piper") later agreed to participate and provide support. Both of these firms have longstanding commitments to providing substantial pro bono legal services in the District.¹² As a result, Arent Fox and DLA Piper have now teamed up with Georgetown University to form and sponsor Applicant.

Georgetown University ("Georgetown") is a nonprofit institution of higher education located in DC formed under a Congressional charter granted in 1789. One of its core values is to challenge its students to engage in the world and become men and women in the service of others, especially the most vulnerable and disadvantaged members of the community.¹³

2012), available at http://www.sentierresearch.com/reports/Sentier_Research_Household_Income_Trends_Report_January_2012_12_03_01.pdf

¹¹ Stacy Rolland, *Disparities in the District: Poverty is Major Cause of Social Problems in the District of Columbia*, DC Fiscal Policy Institute (Nov. 2, 2006), at 14.

¹² E.g., both Arent Fox and DLA Piper were recognized by *The Washington Business Journal* for their 2010 pro bono services in the District.

¹³ <http://www.georgetown.edu/about/jesuit-and-catholic-heritage/index.html>

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Consistent with those values, the motto of its Law Center is "Law is but the means, justice is the end." The Law Center's dedication to public service is further exemplified by opportunities it makes available to its students to dedicate their careers to serving others, including the ability to participate in 16 different clinics that provide pro bono services to clients and certain post-graduate fellowship programs available to students who dedicate their careers to serving others.¹⁴ In fact, the Law Center has the largest in-house clinical program in the nation, with over 300 of its students expected to participate during the 2015-16 academic year.

Arent Fox is a national law firm with approximately 400 attorneys, including approximately 225 in the District. Its practice is highly diversified, with an emphasis on litigation, intellectual property, life sciences and real estate/finance. Its commitment to work in the public interest dates from its founding partners' belief that community service and pro bono public interest work were integral parts of the practice of law and they made it a priority to be at the forefront of the private bar's efforts to ensure that indigents have access to justice.

DLA Piper is a global law firm with approximately 4,200 lawyers in the Americas, Asia Pacific, Europe and the Middle East, including approximately 136 in the District. Its major practice areas include corporate, finance, real estate, franchise, government affairs, intellectual property, labor and employment, tax and restructuring. DLA Piper develops, manages and delivers pro bono in like size, scale and scope, including initiatives in less developed and post-conflict countries through its New Perimeter affiliate.¹⁵

Georgetown, Arent Fox and DLA Piper (collectively, the "Sponsors" and individually, a "Sponsor") share the belief that lawyers have the special obligation to the administration of justice which is reflected in the Law Center's motto. To address their mutual concern about the need for equal access to justice, they caused the formation of Applicant, are and will be closely involved with Applicant's operations and have committed to make significant financial and pro bono contributions to Applicant for at least its initial 3 years--over \$1 million total per year as more fully described at Part VIII, Line 4a and Part IXA, Line 1 below--as a way to increase assistance to those in need, while at the same time instilling a commitment in the next generation of lawyers to give back to their communities.

¹⁴ <http://www.law.georgetown.edu/about/public-service/index.cfm>

¹⁵ For further information about New Perimeter, see <http://www.newperimeter.com/about/>.

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Applicant's Activities to Carry Out its Charitable and Educational Purposes

Applicant was incorporated as a nonprofit corporation in the District of Columbia on March 11, 2015 for exclusively Section 501(c)(3) charitable and educational purposes--charitable primarily in the sense of providing relief of the poor and distressed or the underprivileged and educational in both the sense of instructing or training individuals for the purpose of improving or developing their capabilities and also instruction of the public on subjects useful to the individual and beneficial to the community. Applicant expects to be operational starting in Fall 2015 and plans to operate to carry out those purposes in the manner described below, philanthropic support permitting which will enable it to provide legal services substantially below cost to the charitable class described below.

Substantive Areas of Law

Applicant will provide its legal services solely in matters of civil law, initially in the following practice areas:

- For individuals: family law, consumer protection, immigration, housing and landlord/tenant, and basic estate planning (wills, trusts, powers of attorney, health care directives) and probate.
- For small businesses and charities: business formation; contracts and other transactional matters; corporate and nonprofit governance; litigation; and regulatory compliance.

Applicant believes that these represent not only areas likely to be of greatest need for its prospective clients, but also areas in which well-trained and -supervised first-year attorneys will be able to provide high-quality legal services to those clients, particularly if (as is the case with Applicant's first group of attorneys discussed below) such attorneys have already had experience in a number of those areas through their clinical studies at the Law Center, internships, or volunteer activities. In each case, the client's legal matters would have to be based in the District or in jurisdictions where at least one of Applicant's attorneys is licensed.

Charitable Class

Applicant will provide its legal services, on a substantially below-cost basis, to the charitable class to consist of:

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(a) Poor, distressed, or underprivileged individuals whose income is too high to qualify them for free legal aid, but who are still unable to afford legal representation at prevailing rates. Applicant estimates that clients in this category will account for about 75% of its client base or caseload.

These individuals would reside, work or attend school in the District. Their incomes generally would be either (i) from 200% to 400% of the 2015 federal poverty guidelines or (ii) between 125% and 200% of the guidelines if they do not otherwise qualify for free legal aid under any of the authorized exceptions set forth in 45 CFR Sections 1611.3 to 1611.5. Similar to the approach taken in 45 CFR 1611.3, both income and available assets would be taken into consideration, but excluding the prospective client's principal residence, vehicles used for transportation, assets used in producing income and other assets which are exempt under DC or federal law. Applicant may determine that the prospective client is ineligible if the client has sufficient includable assets to permit retaining a lawyer for consumer law matters at prevailing rates for the matter without causing undue hardship. Conversely, Applicant may also make exceptions to include individuals whose income is up to and including 450% of the federal poverty guidelines where circumstances warrant, for example, if the client needs to expend a disproportionate amount of income on medical or nursing home expenses or due to the high cost of living in the Washington, DC metropolitan area¹⁶ and it would make it difficult for the client to pay a lawyer at prevailing rates without suffering undue hardship.

(b) Small businesses serving distressed communities within the District that carry out a charitable purpose within the meaning of Section 501(c)(3) through their business activities (e.g., that combat community deterioration, eliminate prejudice, reduce neighborhood tensions, or promote social welfare by providing livelihoods and expanded job opportunities for unemployed or underemployed District residents) and unable to afford legal representation at prevailing rates. Applicant estimates that clients in this category will account for approximately 20% of its client base or caseload.

No single definition will be applied in assessing eligibility of a small business. Most small business are microbusinesses with five or fewer employees. Of the nation's

¹⁶ The Washington, DC metropolitan area has one of the highest cost of living indices in the country. See U. S. Census Bureau, Statistical Abstract of the United States, Table 728. Cost of Living Index—Selected Urban Areas, Annual Average: 2010 (2012). Legal aid agencies funded by the Legal Services Corporation are also permitted to make exceptions when there are extenuating circumstances such as high medical or nursing home expenses. 45 CFR Section 1611.5.

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27.9 million small businesses, 22.5 million are self-employed individuals who do not have employees and 3.6 million have between one and four employees. Nearly one-half of microbusiness owners—13 million—earn less than \$50,000 annually.¹⁷ The District had 17,123 businesses with four or fewer employees in 2012.¹⁸

Similar to the approach taken in 45 CFR 1611.6, Applicant will consider the assets available to the entity, its income and income prospects, and obligations without necessarily setting strict dollar-amount limits. Applicant expects that this category will consist of microbusinesses with generally five or fewer employees that:

1. Are sole or majority-owned by individuals who would qualify for legal services under the law firm's eligibility guidelines for individuals;
2. Lack access to capital and access to legal services at rates they can afford to pay;
3. Operate in economically depressed areas of the District of Columbia; and
4. Carry out Section 501(c)(3) charitable purposes by combatting community deterioration, eliminating prejudice, reducing neighborhood tension or promoting social welfare through creating employment or entrepreneurial opportunities for the unemployed or underemployed in the District and improving community social services, education programs, and infrastructure.

Exceptions might be made in extenuating circumstances as to the first-listed characteristic, but not the others.

(c) Small Section 501(c)(3) organizations which are public charities serving the poor and distressed or underprivileged of the District or distressed communities within the District which are unable to afford legal representation at prevailing rates. Applicant expects to give preference to charities whose annual gross receipts are normally under \$100,000 and which do not otherwise have access to pro bono legal services from the private bar. Applicant estimates that clients in this category will account for about 5% of its client base or caseload.

¹⁷ See CFED, "Enhancing Support for Lower Income Entrepreneurs through Major Public Systems " (2014), available at http://cfed.org/assets/pdfs/Enhancing_Support_for_Lower_Income_Entrepreneurs.pdf.

¹⁸ Statistics of U.S. Business Historical Data Tables by Enterprise Size – 2012, at <http://www.census.gov/econ/susb/data/susb2012.html>

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Referral Sources and Community Outreach Initiatives

Applicant's prospective clients will learn of the availability of its services (at least initially) primarily through referrals from free legal service providers in the District that are subject to income eligibility restrictions which, as is the case for Legal Services Corporation-supported agencies, are set at 125% of federal poverty guidelines with exceptions up to 200% of the guidelines. Applicant has already held discussions with legal service providers that offer services in each of Applicant's initial practice areas. In every case, these providers have informally agreed that, following recognition of Applicant's Section 501(c)(3) status, they will tell their applicants who exceed their income eligibility guidelines about the availability of Applicant's legal services. Such referral sources will likely include the following:

1. D.C. Legal Aid Agency (family law, consumer protection, housing and landlord/tenant)
2. Neighborhood Legal Services (consumer protection, family law)
3. Legal Counsel for the Elderly (consumer protection, estate planning and probate, housing and landlord/tenant)
4. D.C. Bar Pro Bono Program on Community Economic Development (small business and charities)
5. Capitol Area Immigrant Rights (immigration)
6. Washington Legal Clinic for the Homeless (housing and landlord/tenant)
7. Children's Law Center (family law)

Applicant will also seek to establish similar informal referral arrangements with community organizations in DC such as the Latino Economic Development Center, Iona Senior Services, La Clinica del Pueblo, Mary's Center, and the Local Initiatives Support Corporation; local churches and other religious organizations; local schools, colleges and universities; DC government agencies such as the D.C. Department of Consumer & Regulatory Affairs, the Office of the Tenant Advocate, and the Office of Administrative Hearings; and law firms besides Arent Fox and DLA Piper through contacts with their pro bono partners and attorneys providing pro bono training, mentoring and supervision to their lawyers.

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Applicant also plans to engage in active public awareness initiatives rather than rely solely on referrals. With the pro bono assistance of a public relations firm whose clients are primarily or exclusively law firms, Applicant will create an active outreach program strategically focused on its potential client base that will include a user-friendly, interactive and informative website, brochures and other forms of advertising describing its legal services. Other outreach will be made through social media as well as in-person presentations by Applicant's attorneys to local community groups on legal topics likely to be of interest or concern to them. The website is similarly likely to serve an educational function by including brief articles containing substantive legal information on those types of topics as well as links to government or other resources useful to the likely reader.

Client Intake Process

Where referrals are made by a legal aid service provider that has already undertaken its own intake screening, then, with the consent of the potential client, Applicant will review the results of that provider's screening to confirm eligibility based upon Applicant's own guidelines. Applicant also expects to develop and use its own application forms similar to those used by legal aid service providers. It will ordinarily expect to rely upon information provided by the prospective client in making eligibility decisions without further inquiry other than to confirm the legal existence and good standing of entities and Section 501(c)(3) and public charity status of any charity against Exempt Organizations Select Check (Pub. 78) on the Internal Revenue Service's website. Applicant plans to select and use intake screening software to assist it in making eligibility and conflicts determinations from among the programs made available by competing vendors.

Affordable Fee Structure

Applicant plans to charge its clients affordable rates for its legal services, using a sliding scale based on the client's ability to pay and offering flexible payment plans. Applicant estimates that its blended hourly rate, on average, would be approximately \$75 (in 2015 dollars). It will probably set a maximum hourly rate of \$125 to \$150 or less. The rates will be well below those charged for similar legal services in the District. By way of comparison, the hourly rate for consumer matter legal services in the District ranged from \$287 to \$478 in 2011 (and is likely higher now) and the Laffey Matrix hourly rate for the District in 2014-2015 for a first-year attorney's time was \$255.

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Applicant will try to enter into fixed-fee or capped-fee arrangements when appropriate. The preparation of a set of basic estate planning documents (will, trust, health care directive and durable power of attorney), for example, may be the type of matter well-suited to that fee structure. The kinds of civil legal matters which Applicant plans to handle probably are not conducive to contingent fee arrangements.

Applicant is also exploring the possibility of being added to lists of approved providers under prepaid legal service plans or similar insurance arrangements established under collective bargaining agreements or otherwise sponsored by local labor unions or private employers (e.g., in the hospitality industry) whose members or employees probably include many individuals who would meet Applicant's eligibility requirements. Certain types of matters which Applicant expects to handle for its clients may also qualify, under fee-shifting statutes, for an award (if the client is the prevailing party) of the client's reasonable attorneys' fees against the other party.¹⁹

Otherwise eligible prospective clients will not necessarily be turned away even if they are unable to pay at the lower end of Applicant's hourly rate scale. Applicant plans to include a pro bono component in its practice, not only during its initial start-up period before reaching a full caseload, but thereafter as well, although it has no present estimate of how much of its time will be devoted on average to providing pro bono legal services.

In light of the client base Applicant will serve and even with a sliding scale of charges set according to ability to pay and flexible payment plans, Applicant estimates that, at best, it may be able to collect only around 50% of fees billed, particularly since it will not employ debt collection practices commonly used by a for-profit business given the economic stress to which its client base is already subject. Even if that collection rate were higher, fee income is neither expected nor planned to cover Applicant's costs of operation. The balance is expected to come from financial and in-kind support from its Sponsors, private foundations, public charity grants and other sources of public support. *See also* Part IXA below.

Qualifications, Training and Supervision of Applicant's Attorneys

Applicant's exempt function purposes will be carried out through its attorneys who will provide its "low bono" legal services. Applicant's attorneys will initially consist of a group of 6

¹⁹ *See, e.g.*, D.C. Code §42-3509.02 (certain housing-related matters) and D.C. Code §28-3905(k)(2) (consumer protection claims for unlawful trade practices).