

**A Handbook for
Transactional and
Small Business Clinics**

A Handbook for Transactional and Small Business Clinics

Steven M. Virgil

EXECUTIVE DIRECTOR

EXPERIENTIAL EDUCATION

CLINICAL PROFESSOR OF LAW

WAKE FOREST UNIVERSITY SCHOOL OF LAW



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Preface

This handbook is meant to serve law students working in transactional or small business focused legal clinics during law school. This is a fairly broad community, but one that is underserved. While much of law school is spent understanding substantive knowledge of the law and the technical skills, such as drafting and legal research, that are needed for practice, clinics are often left to the side of most legal texts. Clinics offer students something entirely different from their other work during law school and clinics are usually the first place a student will put knowledge and expertise into practice by working with real clients on real issues and in the role of a lawyer. The experience is very similar to what can be expected during the first few years of practice and also provides a place for reflection where students may critically consider how well they have integrated the components of practice when assisting a client, identifying areas that need improvement, and areas where mastery seems near. Most importantly, clinics provide a space for students to integrate all of the elements of practice along with their sense of professional identity, in a way no other part of law school is capable of doing. The clinical experience is unique.

The materials in this book aim to help law students develop the habits of mind and practice that are needed to engage in this integration within clinical practice, particularly a clinical practice focused on advising small businesses and the community-based nonprofit organizations that support them. While these habits and methods are described in the context of a particular practice, they may be equally applied to other practice areas. The goal here is not to instruct on areas of law, but rather to help clinic students consider and reflect upon their role as counselors in the broadest sense, enabled with the knowledge and training that is gained in law school but only brought to fruition through experience and self-reflection. With these broad goals in mind, the materials follow the life of a small business clinic client and the clinic student's role during that time.

The materials in this handbook are organized to align with the typical progression of issues that present for a client in a transactional clinic. From initial interviews to advising on entity selection at the beginning, to considering insolvency and litigation at the end. A typical Part begins with a one- to two-page overview of the topic with brief points on practice, followed by a more detailed introductory overview of the topic before concluding with exercises. Exercises may be found at points throughout the text as well as at the end of each part. The exercises intend to provide material for classroom simulations that may be used to cover topics and material not otherwise presented by clients during a semester or year. In this way, the handbook serves several purposes. First, the materials present clinic students with the background and introductory material they may need when first encountering a new client in an unfamiliar area of law. No topic is presented with adequate detail to replace work in another class, but every topic is presented with enough detail and description to move forward a clinic student who has no other background. A clinic student who has no background or experience with intellectual property law, for example, should be able to read the chapter on this topic and then begin an initial interview with a new client in a clinical setting. It goes without saying that more detailed research will be needed for any topic, but the handbook should get things started.

Second, the handbook prompts students to reflect critically on their own experience in practice. Throughout the handbook students are asked to reflect on how well they have engaged clients and applied their craft and skill to assist the client in resolving concerns and navigating challenges. This is an active process and one required to succeed in practice, as such students are encouraged to develop habits during their clinical setting that they can bring to practice after law school. Finally, the exercises enable topics to be discussed during class that are not otherwise part of a clinic experience. Live-client clinics provide the benefits of working with real clients in real situations. At the same time, not every interesting or relevant issue can be part of each semester. Clients bring different needs to the practice. The exercises can be used to supplement client work in a way that assures coverage of relevant, timely topics. The materials in this handbook can be adjusted or revised in ways to make the clinic classroom component successful. Transactional lawyers are not immune from moral and ethical aspects that are part of the practice of law. Such considerations are a regular part of advising clients on how to allocate resources or enforce rights. To that end, another theme explores how well individual lawyers in a business practice can engage the common good. Throughout it all, the materials can be adjusted to meet particular goals on any topic or course.