BOULDER COUNTY BAR ASSOCIATION NEWSLETTER DECEMBER 2015

photo by Kelvin Images

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CALENDAR OF EVENTS FOR DECEMBER

Tuesday, December 1
SOLO/SMALL FIRM
Technology Issues for Small Practitioners
Presenter: Reba Nance
Noon @ Dickens Tavern, Longmont
$25 CLE, $15 New/Young Lawyer, $13 lunch

Thursday, December 3
REAL ESTATE, NATURAL RESOURCES/ENVIRONMENTAL LAW & NEW/YOUNG LAWYERS
What Every Real Estate Attorney Should Know About Environmental Law
Presenter: David Steinberger
Noon @ Caplan & Earnest
$25 CLE, $15 New/Young Lawyer, brown bag lunch

Tuesday, December 8
EMPLOYMENT
Coats v. Dish Network: What Should Employers Know About the Supreme Court's Recent Decision on Marijuana and the Workplace
Presenter: Meghan Martinez
Noon @ Bryan Cave
$25 CLE, $15 New/Young Lawyer, brown bag lunch

Wednesday, December 9
CRIMINAL
Professionalism in Managing Victim & Client Expectations
Presenter: Catrina Weigel, Keith Collins, Caryn Datz and Christopher Estoll
Noon @ Justice Center Training Room East
$25 CLE, $15 New/Young Lawyer, brown bag lunch (We have applied for 1 ethics credit for this program)

Tuesday, December 15
ELDER & TAX, ESTATE PLANNING AND PROBATE
Do-It-Yourself Estate Planning Documents – Draft at Your Peril
Presenters: Jonathan Leinheardt, Renee Ezer, Daniel Doherty & Jodi Martin
Noon @ Justice Center Training Room East
$25 CLE, $15 New/Young Lawyer, brown bag lunch

Thursday, December 17
BANKRUPTCY
Monthly Roundtable
Noon @ Agave

Thursday, December 17
Boulder FREE Legal Clinic.
5:15 PM at Sacred Heart Of Jesus
14th and Mapleton
Please volunteer if you are able.

Wednesday, December 2, 2015
HIPPA and PRE/CFI Investigations: Navigating the Waters
Presenters: Judge Judy LaBuda, Megan Pound, Matt Ullrich
BIDC meetings will be held at the Millennium Harvest House
1345 28th Street, Boulder, CO 80302

11:30am - 1:15pm Networking: 11:30am to Noon
Lunch and Speaker: Noon - 1:15pm

LUNCH: $25.00 IDC MEMBERS • $30.00 NON-MEMBERs
You may pay at the door (cash or check), or online.
LUNCH: $25.00 IDC MEMBERS; $30.00 NON-MEMBERS

ADVISING START-UP CLIENTS ON CHOICE OF ENTITY

BY ALICE WARREN-GREGORY

In many ways, the climate for entrepreneurs has never been more favorable. In Boulder and elsewhere, startup communities are thriving due to increased interest from investors, the proliferation of accelerators, incubators, coworking spaces, and coding academies, and the cultural cachet currently enjoyed by entrepreneurs thanks to the high-profile success of companies like Uber, Airbnb, and Snapchat and the popularity of shows such as Silicon Valley and Shark Tank.

As the number of startups has grown and the volume of resources targeted to them has increased, however, a one-size-fits-all mentality has arisen, particularly with respect to entity formation and fundraising. For at least the last decade, the prevailing wisdom has been that a tech startup should plan on acquiring venture capital (“VC”) financing and, in preparation for such financing, should form as a Delaware C corporation. For many early-stage startups, however, forming as a limited liability company (“LLC”) is a far better choice.

WHY DO VC FIRMS PREFER DELAWARE C CORPORATIONS?

VC firms prefer to invest in Delaware C corporations for several reasons. First, the shareholders of a C corporation are only taxed on income from dividends they receive from the company. In contrast, members of LLCs, which are “pass through” entities for tax purposes, are issued K-1s each year and must report the profits and losses of the company on their individual income tax returns. Further, members must file tax returns in each state in which the company does business. For VC firms that are investing in hundreds of companies, the headache at tax time would be substantial.

Second, for VC firms structured as limited partnerships, as most are, pass-through taxation may cause severe problems for the firm’s tax-exempt and foreign limited partners. The tax-exempt partners may be subject to “unrelated business income tax”, and the foreign partners may be required to file U.S. tax returns if they are deemed to be “doing business” in the United States.

Third, Delaware C corporations provide a fairly high degree of predictability with respect to shareholder and corporate governance issues given the substantial body of law that has developed over the years and the considerable experience of Delaware judges in presiding over business disputes. Furthermore, the various nuances of the corporate laws of other states can have serious consequences. For example, while an amendment to the certificate of incorporation required to create "preferred stock" is effective upon filing in Delaware, in California, the Secretary of State reviews any amendments to a company’s articles of incorporation, and may even reject the filing, requiring the company to propose a different amendment and refile, a process which could substantially delay a closing.

The bottom line is that VC firms prefer Delaware C corporations for good reason. So why shouldn’t all startups form as Delaware C corporations? Because the reality is that, by most estimates, fewer than 1% of startups ever receive a dime of VC funding. So, how are most startups funded and what are the alternatives to forming as a Delaware C corporation?

COMMON SOURCES OF FUNDING FOR STARTUPS

Given the rarity of venture financing, especially for early-stage companies, most startups are forced to consider

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ADVISING START-UP CLIENTS *(continued from page 3)*

a variety of other funding options. Common among these are friends and family, angel investors, personal savings, bank loans, credit cards, and, somewhat less commonly, accelerators such as TechStars or Y Combinator. While personal savings, bank loans, and credit cards are self-explanatory, the others merit a brief description.

Friends and Family

Friends and family rounds are typically between $25,000 and $250,000 and are often structured either as convertible notes (i.e., loans that convert into equity at a future date or on the occurrence of a milestone such as a subsequent financing round) or as equity. Convertible notes may be more advantageous than equity because they allow the company to keep a clean cap table and to avoid setting a valuation, both of which are factors that can negatively affect future financing rounds. Fred Wilson of Union Square Ventures recommends convertible notes with a 20-25% discount to the next round and a valuation cap that results in around a 10% interest in the company upon conversion.

Angel Investors

Angel investments commonly follow friends and family rounds, though angels can and do invest throughout the life cycle of a startup. The amount of such investments varies widely, but is typically between $25,000 and $500,000. Angel investors generally prefer to structure their investments as convertible notes with discount rates of around 20-25%, and they will almost always demand a valuation cap.

Accelerators

Startups that are fortunate enough to gain entry to an accelerator will likely find that the funding they receive comes in the form of, you guessed it, a convertible note. TechStars, for example, grants companies admitted to its accelerator program a $100,000 convertible note entitling TechStars to 6% of the common stock of the company upon conversion. (It should be noted that some accelerators will require companies to convert to Delaware C corporations even if they plan to invest in the form of convertible debt either because they intend to make an additional investment through a VC firm affiliated with the accelerator or simply because they are positioning companies they admit to seek VC and other institutional funding.)

Given the extreme rarity of venture capital in early-stage financing and the prevalence of convertible debt, a Delaware C corporation simply doesn't make sense as a default choice of entity for most startups. Forming as an LLC can be a great alternative.

BENEFITS OF THE LLC FORM FOR EARLY-STAGE COMPANIES

Deduction of Losses

For VC firms, the pass-through taxation associated with LLCs is a deterrent, but for early-stage founders, it can actually be one of the most appealing aspects of the LLC. Most startups lose money for at least the first year of their existence, and often much longer. As a member of an LLC, your share of the company's losses are passed through to your individual tax return and deducted from your other personal income. In the event that your losses exceed your income for the year, you may have a Net Operating Loss that you can then carry back or carry forward to reduce your tax liability for past or future years.

Lower Formation Costs

When a company is just getting started, an expenditure of even a few hundred dollars can impact the bottom line. For a company doing business in Colorado, the cost of forming as a Delaware C corporation can quickly reach into the thousands once you take into account the one-time fees, such as the fee to file a certificate of incorporation and the fees

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associated with required Colorado filings (e.g., the Statement of Foreign (Entity Authority), as well as the ongoing costs such as the annual cost of a registered agent service, and the annual Delaware franchise tax, which ranges from $175 to $180,000 plus a $50 filing fee. The cost to file articles of organization in Colorado is $50, a company can serve as its own registered agent, and there is no annual franchise tax.

Flexibility

An early-stage company is likely to go through numerous, often dramatic, changes as it hires and fires employees, takes on investors, redefines its business model, etc. It is critical, therefore, that founders are able to address such changes quickly and get back to the important job of building their companies. One of the greatest benefits of forming an LLC is that it does away with many of the corporation's time-consuming formalities, allowing its owners to make critical operational decisions in a timely and cost-effective manner.

Not only are LLCs flexible from a management standpoint, but the form itself is flexible. LLCs can elect to be taxed as partnerships, C corporations or S corporations, can determine the distribution of cash and other assets and the allocation of profits and losses in a variety of different manners, may be managed by all of their members or solely by appointed managers, may create a board of directors, a president and officers just like a corporation, can choose to have periodic meetings of their members or to ignore such formalities entirely, and may limit the actions requiring consent of the members as the managers see fit. In addition, if a company decides it does want to pursue VC funding or other institutional capital, the process of converting an LLC to a C corporation is usually fairly simple.

MISCONCEPTIONS ABOUT LLCS

Many entrepreneurs are either unaware of the benefits associated with LLCs or have been mislead by inaccurate information in online forums or on websites geared toward startups. Below are some common misconceptions startup clients hold about LLCs and simple explanations you can provide to set them straight.

Ability to Incentivize Employees and Other Service Providers with Equity

Most entrepreneurs are familiar with the concept of incentivizing employees through stock options granted subject to vesting. Because LLCs are less widely understood than corporations, founders may fear that forming as an LLC will prevent them from offering option-style incentives and therefore restrict their ability to recruit high-caliber employees and advisors. The truth is that LLCs enable startups to offer a number of different incentives that work in much the same way as stock options in a corporation. For example, LLCs are able to offer profits interests that entitle the recipients to a percentage of the future appreciation of the business. Profits interests may be granted subject to vesting or forfeiture. If the recipient files a protective 83(b) election, any future gains may be taxed at capital gains rates rather than as ordinary income.

Separation of Ownership and Control

One of the fundamental characteristics of corporations is the separation of ownership and control. Though shareholders are owners of the corporation, the authority to manage the business is vested in the board of directors. Founders often believe that if they form their company as an LLC, the management of the company, including critical decisions such as whether to accept an acquisition offer or take on a substantial outside investment, will be subject to the whims of its equity-holders. However, due to the flexible nature of LLCs, ownership and control can be separated in a manner nearly identical to that present in a corporation. The interests of certain members can be designated as non-voting so that, though they hold an economic interest in the company, they have no decision-making authority. This can actually serve as an advantage over the corporate form since many states, Delaware included, grant certain basic voting rights to corporate shareholders.

The decision whether to form as an LLC, Delaware C corporation or other entity will of course depend not only on whether a company plans to seek institutional capital but also on the particular tax situations of the individual founders and the nature of the business, among other issues. The critical thing for attorneys to help entrepreneurs understand is that the Delaware C corporation is not always the best choice and certainly not the only one.

Alice Warren-Gregory is a co-chair of the BCBA Business Law Section. She is a member of the Modus Law, LTD firm and specializes in complex commercial litigation and transactional work.

PRESIDENTS PAGE

Greetings Boulder County Bar Association members!

Greetings fellow Boulder County Bar Association Members!

As I sit here five pounds heavier and full of delicious turkey, viscous gravy, creamy mashed potatoes and smooth pumpkin pie all I can think of is how special this time of year is and the wonderful opportunity this is to spend quality time with friends and family. I hope you all had a wonderful Thanksgiving and are planning an even more magnificent Winter Holiday!

This is also a fitting time to reflect on the past year and look for opportunities to help those less fortunate than us. There is no shortage of such opportunities and a small time or financial commitment makes a big impact on their lives and holiday season. I highly encourage each of our members to make a small contribution to any cause you may feel worthy.

With over 1800 BCBA members if we each made a $100 donation we can raise over $18,000! If we each donated an hour of our time that would be the equivalent of a full time attorney dedicated to pro bono service. These efforts can be exponentially expanded if we dedicate our efforts to larger donations, more pro bono service and encouraging others to do the same.

Looking forward past the holiday season and I see a choice opportunity to accomplish all the above goals. Coming up in February is my favorite event of the year… Food, Wine, Jazz, Art! What a perfect time and event to make a small donation to Legal Aid Foundation of Colorado, enjoy some craft beer, delicious food, let my hair down and have a great time socializing with other attorneys. If it is any indicator of how great this event is my wife is considering attending and hanging out with a bunch of attorneys.

So with that in mind happy holidays in the following manners and forgive me if I left out few:

• Merry Kwanzaa (may your seven principles be honored),
• Merry Winter Solstice (may your days grow ever longer),
• Merry Saturnalia (may your role reversals be joyous and benevolent),
• Happy Hanukkah (may your candles burn bright and long),
• Merry Christmas (may your stockings be full of gold, frankincense and myrrh),
• Merry Dies Natalis Solis Invicti (may Mithras save your world as the unconquered sun),
• Merry Brumalia (may your wine ever floweth into jars and your gullets),
• Happy Sankranti, (may your reincarnation cycle begin a new life),
• Merry Hogmanay (may your first-foot bring you good fortune) and
• Merry Boars Head Carol (may the boars head you present to royalty be served with mustard.)

Best wishes to you, your loved ones, your family and your friends from all of us at the Boulder County Bar Association!

LAWYERS ANNOUNCEMENTS

KINGSBERY CPAs

KINGSBERY • BARIS • VOGEL • NUTTALL

Kingsbery CPAs
is pleased to announce that

Christopher Denham, CPA, J.D.

became a Shareholder of the firm.
Chris, who is a graduate of CU Law School and CU-Denver, practices in all areas of taxation including an emphasis on Estate and Gift Tax.

Chris can be reached at
cld@kingsberycpas.com

Shoemaker Ghiselli + Schwartz LLC
is pleased to welcome:

Liza Getches, Partner

Liza was formerly with
Moye White LLP in Denver, CO.

Liza's practice focuses on employment disputes, complex commercial litigation and appellate work. Liza has been listed as a Colorado Super Lawyer, Rising Star, every year since 2010.

SGS
Shoemaker Ghiselli + Schwartz LLC
sgslitigation.com

SGS is a boutique litigation firm specializing in complex trials, appeals and investigations

www.sgslitigation.com

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You are an outstanding attorney, *exceptionally knowledgeable*...but there is one problem. You are busy, you cannot dedicate as much time as each case deserves.

You need more support.

Leverage my team's experience to your firm or client's benefit. We specialize in Criminal/Civil cases, Surveillance, Divorce and Custody Investigations, Witness/Suspect Interviews, Background Investigations and Serving Subpoenas. Contact us today.
720-724-7374
bcba@FlatironsPI.com

STAHLY
Stahly LLC | Informed Divorce

Stahly LLC is pleased to announce:
Stephanie A. Ryder has joined the firm as an Associate
&
Nichole R. Perry as a Paralegal

2760 29th St., Suite 2E
Boulder, Colorado 80301
303.797.2900
(please note our new Boulder address)
•
1041 Lincoln Avenue, #270
Steamboat Springs, Colorado 80487
970.819.7079
•
www.stahlyllc.com

MARK YOUR CALENDARS NOW!

Come and Celebrate the 15th year of the Boulder County Bar Association's continued support of the Legal Aid Foundation of Colorado through our FOOD WINE JAZZ ART Event.

This year's celebration is going to be over the top FANTASTIC!
Wednesday, February 17, 2016
eTown in Boulder with Phat Daddy for dancing and entertainment.
Wine tasting provided by Boulder Wine Merchant
Special Young lawyer lounge and signature cocktails.

Your Firm could be a highlighted sponsor for this event.

PRO BONO PAGE

Pro Bono Referrals

Twelve cases were referred during the month of October. Thank you to the following attorneys:

Norm Aaronson CULADP
Christina Ebner
Judson Hite
Chris Jeffers
Conrad Lattes
Gary Merenstein
Michael Morphew
Richard Romeo
Jeffrey Skovron
Todd Stahly
Christopher Tomchuck

Pro Se Program Volunteers

Sheila Carrigan
Danielle Danaher
M.L. Edwards
Toni Gray
Chris Jeffers
Tucker Katz
Michael Morphew
Michelle Stoll

BCAP Volunteers

There were no requests for pro bono referrals for the Boulder County AIDS Project in October.

Pro Bono Corner

Interested in a Pro Bono case?

Please call Erika at 303-449-2197. CLE credits available for pro bono service.

PROFESSIONALISM ON-CALL LIST

December 7	Anton Dworak	303.776.9900
December 14	Steve Meyrich	303.440.8238
December 21	Mike Rafik	303.444.9292
December 28	Curt Rautenstraus	303.666.8576

The Professionalism Committee assists lawyers, clients and other members of the community with questions or complaints about behavior by lawyers that fails to meet generally accepted standards of professionalism and courtesy, or that is cotrary to the BCBA Principles of Professionalism.

The Professionalism Committee does not address allegations of criminal or ethical violations by lawyers, as regulated by the Colorado Rules of Professional Conduct, and any such violations should be addressed to the Office of Attorney Regulation Counsel.

CLASSIFIED ADS

TSCERTIFIED SIGNING AGENT/MOBILE NOTARY AND CONTRACT PARALEGAL SERVICES. Litigation specialist, Civil Litigation. ADC/CJA. Roz Lynn Dorf, M.A. 303.494.6935

Perfect office space located at 1790 30th Street, Boulder, CO. Share an office suite with three lawyers. Free Parking, two conference rooms and office space for growth, legal assistant, or recpetionist. Call Scott Hamerslogh, 720.415.0322

CONTRACT BOOKKEEPER. Get your books in order, maximize cash flow. Using Quickbooks/ PClaw software. Trust/ general banking. A/P, A/R, invoicing, financial reporting, payroll. CHRISTINA STANTON 720.254.2935 or clmstanton@gmail.com. PERSONAL INJURY PARALEGAL (Boulder)

Small, established, highly rated Boulder personal injury law firm seeking exceptional paralegal / legal assistant with personal injury and litigation experience. Excellent Word, Excel and writing skills required. Please submit resume, cover letter and salary requirements to books@sloatlaw.com.

Downtown Boulder Office Space – Beautiful Historic Mansion - NW Corner of Broadway and Mapleton. Garden level suite of 2 private spaces: includes private entrance and private bath. Bright, welcoming, and quiet---perfect for a therapist or other professional, or a small business or organization. Comfortably warm in winter, cool in summer. Parking available. 5 minute walk to Pearl Street Available November 30th. $1,200 mo. incls all utilities except phone and internet. 303-449-2830

Large windowed office, across from the Justice Center with full services including receptionist, copy and fax, parking, conference room and other amenities.
Gross rent $800.00/month 303-444-1700

Rare opportunity in unique Boulder location for first class suite or synergistic office:
(1)Our finest 2nd floor suite with reception area, two offices and scenic conference room/outside private patio available November 1 for first time in 20 years.
(2) 3rd floor individual office w/support area (if needed) gorgeous mountain views, wall of windows, shared, spacious conference room. Collaborate/network in shared suite w/successful professionals/attorneys. Build your business in architecturally unique 250 Arapahoe Avenue. Close to downtown, mountain setting, spectacular views, free parking
Contact Jill 303-443-6690; waters@slblaw.com

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Details for sponsorships are coming soon.

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COMMERCIAL ADVERTISING INFORMATION IS AVAILABLE BY CONTACTING christine@boulder-bar.org

OR THE BAR'S WEBSITE www.boulder-bar.org