Launching a Law Firm

Entity selection and startup considerations

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DC Bar Lunch + Learn

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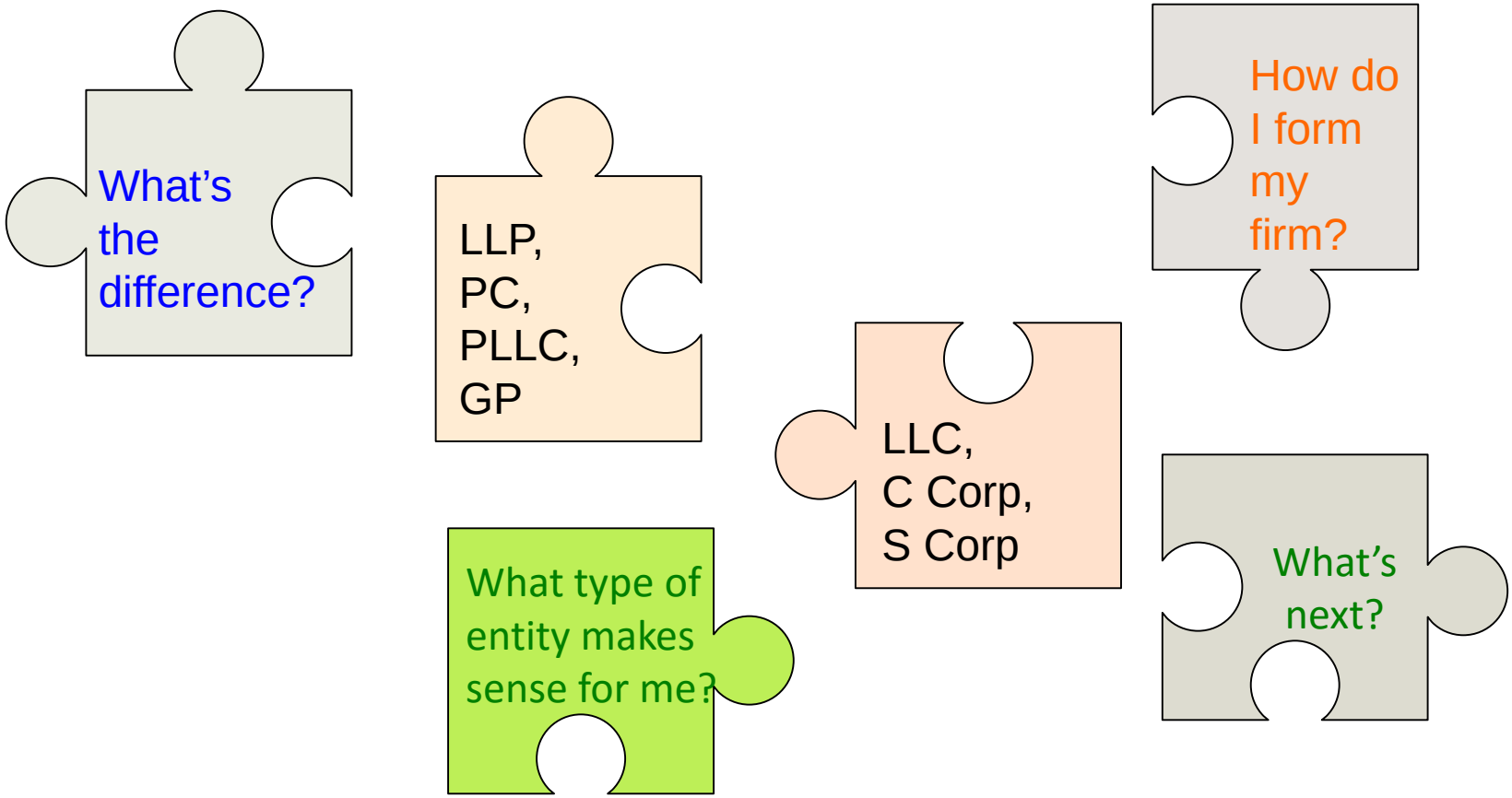
Nothing in this presentation is intended as legal advice. The information contained herein is general information. Please consult a lawyer and/or tax professional for application to your specific facts and circumstances. Heather Batzel is licensed in DC, MD, PA and VA only.

Introduction



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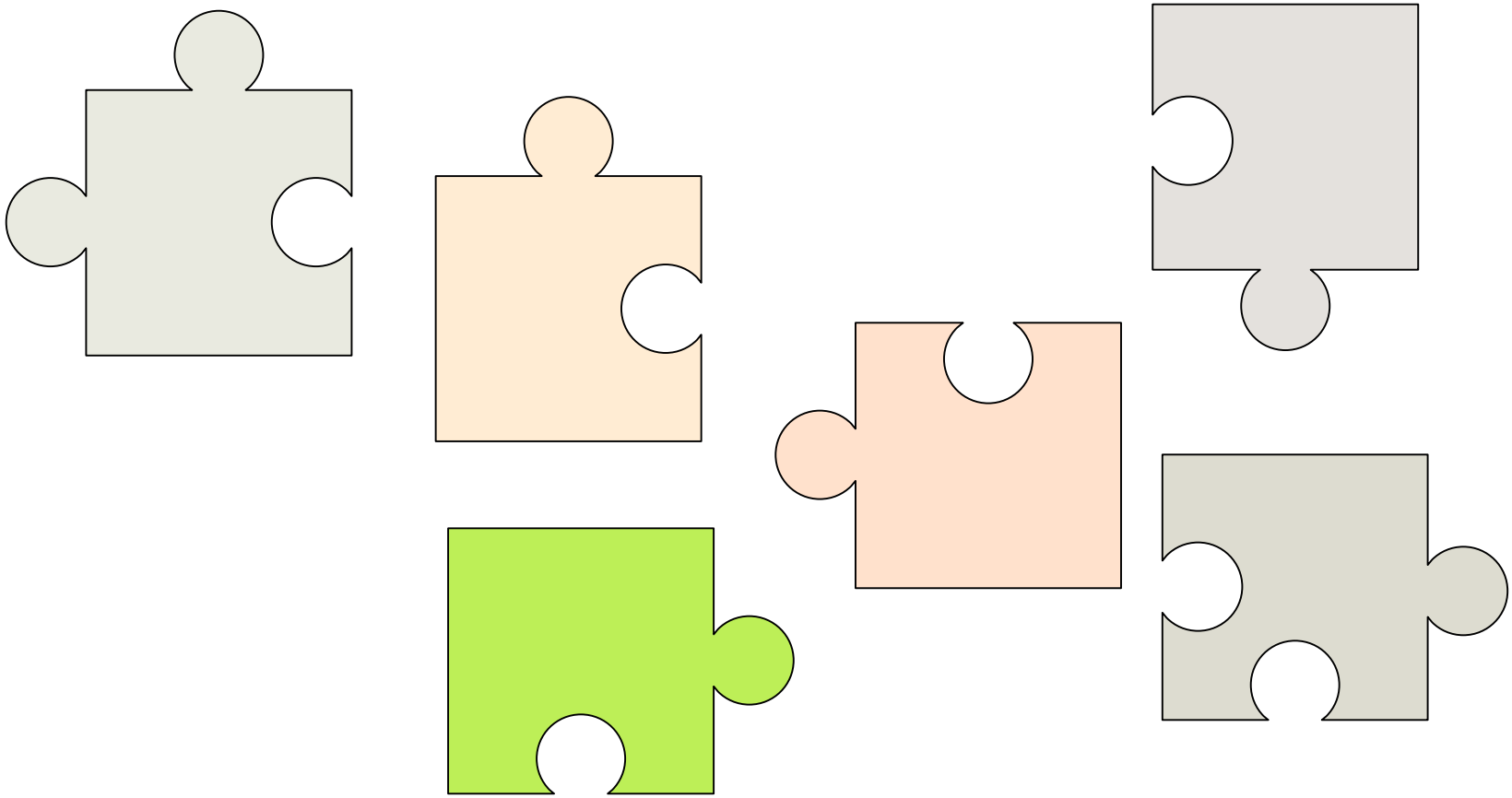
3 Goals for Today

1. Discuss **considerations** relevant to choosing one over another
2. Outline available entity **options** for law firms
3. Equip you with **to-do items** for forming your law firm and beyond

Choice of Entity Considerations



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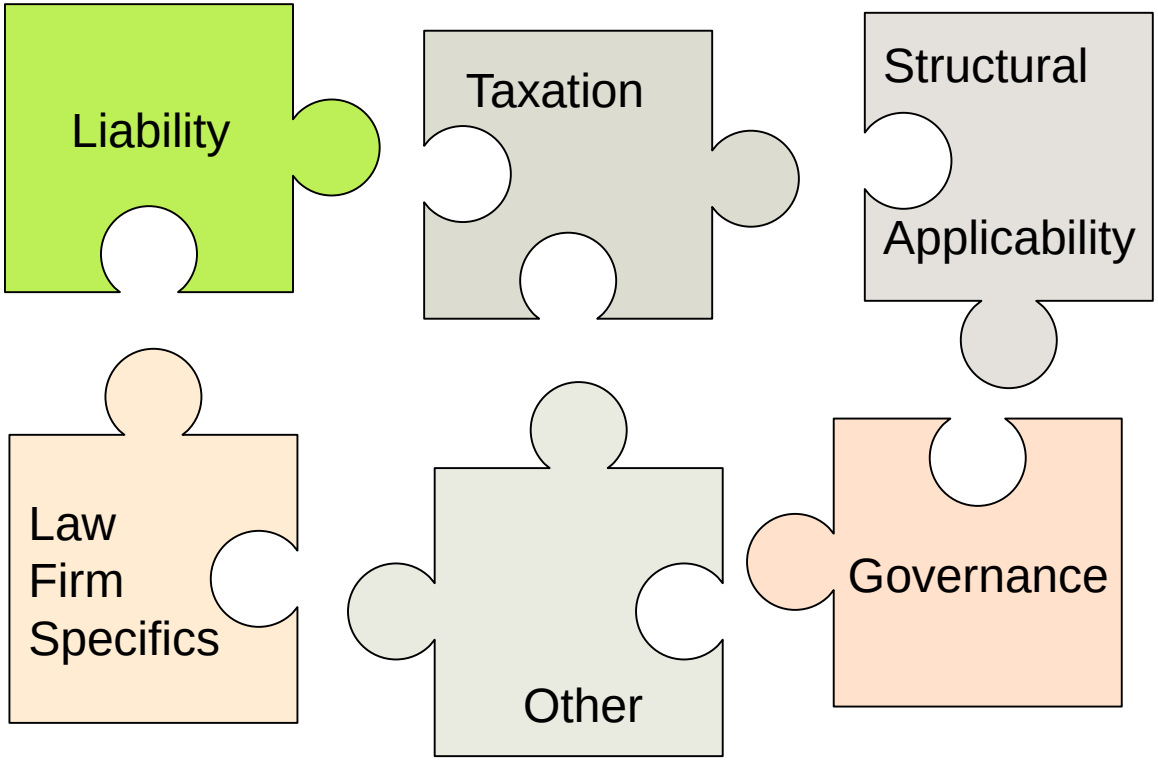

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Liability: Limited vs. Unlimited

- Limited* liability
  - Owner's liability is limited to the amount of capital contributed
    - * Professional liability exception: Lawyers aren't shielded from liability for own professional acts.
    - Additional exception: Personal guarantees
- How to accomplish limited liability
  - Register a limited liability entity
  - Observe applicable formalities
  - Don't commingle funds
  - Don't act outside authority

Taxation: Single vs. Double

- Some entities are taxed separately and some have "pass-through" treatment
  - Income from "pass-through" entities is allocated directly to ultimate owners rather than federal income tax at entity level.
  - Consider both federal and District/state treatment
    - DC generally assesses income taxes on registered entities
      - Non-recognition of S Corp status
      - Unincorporated Business Franchise Tax of 9.2%
- Nuances and Complications
  - DC exception to Unincorporated Business Franchise Tax
  - Inter-jurisdictional aspects
  - Tax returns
  - Deductions

Structural Applicability

- Ownership
- Control
- Involvement
- Compensation structure
- Later goals

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Special Considerations for Law Firms

- No limitation of liability for own professional acts
- Generally, ownership/financing restricted
- Variation on Corp and LLC prescribed
  - → PC and PLLC
- Naming
  - DC naming requirements at **§ 29–103.02**
  - DC Bar Rules of Professional Conduct (and your other jurisdictions)

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Governance

- Management structure
  - Simplicity/ease/flexibility/fit
- On-going governance
  - Level of formalities
  - Meeting requirements
  - Ease of operations

Other Considerations

- Costs
- Branding
- Preferences

Select Entity Types for Law Firms

- Sole Proprietorship (Sole Prop)
- General Partnership (GP)
- Limited Liability Partnership (LLP)
- Professional Corporation (PC)
- Professional Limited Liability Company (PLLC)

Liability

- Distinction in liability shield is tied to whether entity automatically arises or is created by registration process

Unlimited Liability	Limited Liability*
Sole Proprietorship	Professional Corporation
General Partnership	Limited Liability Partnership
	Professional Limited Liability Company

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**Professional liability exception*

Taxation

- For federal tax purposes, most of the entities receive pass-through treatment rather than two levels of taxation but need to consider state/local tax treatment.

Single Level of Taxation	Double Levels of Taxation
Sole Proprietorship	
General Partnership	
Limited Liability Partnership*	
Limited Liability Company*	
Professional S Corporation *	Professional C Corporation

Structure + Governance

- In DC, law firms must be the “Professional” version if electing to be a Limited Liability Company or Corporation.
  - Affects naming, ownership, transferability and liability, but otherwise DC laws of those entities apply.
- Structured governance may or may not be desirable (board, meetings). Corp has rigid defaults; LLC is more flexible.
- S Corps further restrict ownership.
- Who can bind the entity varies among entity types.
- How viewed across jurisdictions might be important to you.

To Do Items: Generally speaking

- Rules of Professional Conduct guide everything we do as lawyers
  - Familiarize yourself with them
  - Monitor them and opinions
  - Be mindful of different rules in different jurisdictions
- Order presented is not the only way
  - Your facts and circumstances may warrant a different course, or order, of action

1: Seek the advice you need.

- Attorney
- Tax Advisor
- Financial/Wealth Advisor
- Business
- DC Bar/PMAS and other available resources

2: Make a plan.

- Before you quit your day job (ideally), sort out what you're doing and with whom.
- Consider what you are and are not allowed to do while still practicing elsewhere (corporate/partner fiduciary duties, ethics rules, contracts)
- Ensure you have agreement with whomever you are going into business with as to roles, rights and responsibilities.
- Draft governing documents if possible/practical and not inconsistent with duties/undertakings.
- Consider key items like costs/funds, lease, insurance, etc.

3: Form your company.

- Corporate registration for LLP, PLLC, PC
  - https://dcra.dc.gov/service/corporate-registration
- Naming requirements
- Foreign registrations/qualifications to do business in other jurisdiction(s)
- Registered Agent(s)
- Finalize governing documents

4: Attend to tax matters.

- Federal
  - Apply for Employer Identification Number https://sa.www4.irs.gov/modiein/individual/index.jsp
  - If applicable, file your S-Corp election https://www.irs.gov/pub/irs-pdf/f8832.pdf
- DC
  - Office of Tax and Revenue Registration
    - FR500 Combined Tax Form at https://mytax.dc.gov/_/
- Make a plan for ongoing tax requirements
  - estimated taxes, tax withholding requirements, annual returns.

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5: Procure necessary permits and licenses.

- Bar license(s)
- Basic Business License (BBL) generally required of all businesses in DC but because law-firm principals are regulated by another licensing body, DC currently does not require BBLs for law firms.
- Certificate of Occupancy and/or Home Occupancy Permit

6: Procure needed insurance.

- Professional Liability Insurance
  - Check if you are in a jurisdiction requiring insurance.
- General Business Liability Insurance
  - Check your lease for requirements as well.
- Workers Comp
- Unemployment Insurance through DC Department of Employment Services (DOES).
- Others: Life, Disability, Business Continuity

7: Open bank accounts.

- Operating Account
  - Take certificate of formation/incorporation and your IRS EIN letter
  - Some banks ask for operating agreement.
- Trust Account
  - IOLTA
    - STRICT requirements in accounting and handling.
- Remember to keep operating funds separate from personal funds, if a registered entity, and **in any case** to keep client funds held in trust and separate from operating funds.

8: Plan compliance and governance.

- Calendar regulatory requirements such as:
  - DC's Biennial Report due April 1 every other year beginning with first year
  - Applicable tax return (annual deadline depends on entity) and quarterly estimated tax payments
  - Issuing 1099s by Jan 31 (and then filing with IRS)
- Determine how and when to hold meetings and keep records.
- Make a plan for accounting and financial books and records.

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9. Prepare for Operations.

- Software for law practice management
  - Conflicts
  - Billing
  - Accounting
- Workspace arrangements/Lease
- Staffing
  - Employees
  - Independent contractors
  - Virtual assistance
  - Bookkeeper, CPA
- Legal research resources

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Additional Online Resources

- https://www.lexisnexis.com/hottopics/dccode/
- http://dccode.org/simple/Title-29/
- https://dcra.dc.gov/book/just-starting-your-business
- http://otr.cfo.dc.gov/service/business-tax-service-center
- https://cfo.dc.gov/page/district-columbia-tax-rates-individual-income-and-business-franchise-taxes
- https://www.irs.gov/businesses/small-businesses-self-employed
- https://www.irs.gov/businesses/small-businesses-self-employed/business-structures
- https://www.dcbar.org/bar-resources/practice-management-advisory-service/

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