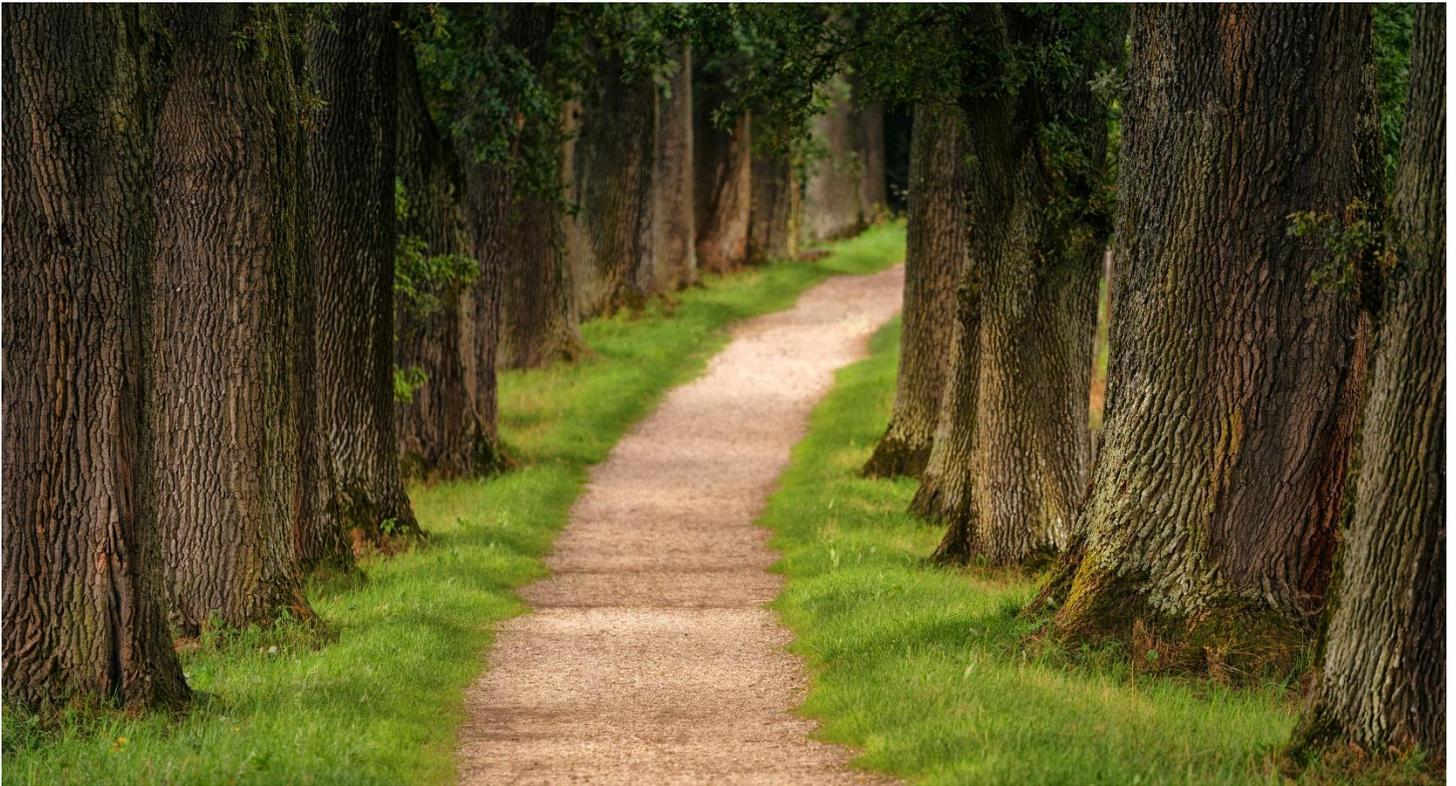




Kansas Task Force on Lawyer Well-Being and the Path Forward

By Bob Lambrechts and Harrison Rosenthal



This article is focused upon the general well-being of lawyers licensed to practice law in the state of Kansas. In August of 2017 the ABA issued a comprehensive report titled *National Task Force on Lawyer Well-Being, Creating a Movement to Improve Well-Being in the Legal Profession*.¹ The preamble to the report provides in part –

To be a good lawyer, one has to be a healthy lawyer. Sadly, our profession is falling short when it comes to well-

being. The two studies² referenced above reveal that too many lawyers and law students experience chronic stress and high rates of depression and substance use. These findings are incompatible with a sustainable legal profession, and they raise troubling implications for many lawyers' basic competence. This research suggests that the current state of lawyers' health cannot support a profession

dedicated to client service and dependent on the public trust.

In response to the unsettling findings of this ABA report, in January of 2018, the Kansas Supreme Court commissioned a state task force on lawyer well-being. The task force is comprised of members from the state bar association, judges, private practitioners, government lawyers, lawyer assistance programs, law schools and legal insurance providers. Over the past several years the Kansas Task Force has deliberated extensively to discern the optimal path forward for lending support to Kansas licensed lawyers who struggle with well-being and the impact that can have on their professional and personal lives. The ABA report specifically identifies six dimensions in which lawyers should seek to thrive. Those six dimensions are (1) emotional, (2) occupational, (3) intellectual, (4) spiritual, (5) social, and (6) physical. These six dimensions are not listed in any order and will be discussed in greater detail later in this article.

A. Some Nationwide Lawyering Metrics

While attending law school and becoming an attorney remains a professional ambition of many people, few realize the psychological costs and risks associated with achieving this goal.³ Despite the challenges of graduating from law school, passing the state bar exam, and finding suitable work to pay for the typical law school debt, the number of lawyers is expected to increase. According to the ABA National Lawyer Population Survey, there are 1,328,692 active attorneys practicing in the United States as of 2020.⁴ The Law School Admission Counsel also noted that law school applications are up 50.7% compared to one year ago and up 82.0% from two years ago.⁵

The Bureau of Labor Statistics Occupational Outlook Handbook states, “Employment of lawyers is projected to grow 4% from 2019 to 2029, about as fast as the average for all occupations. Competition for jobs over the next 10 years is expected to be strong because more students graduate from law school each year than there are jobs available.”⁶ In

addition, many lawyers and judges continue to practice long after retirement age. This not only creates problems regarding job competition but also focuses on concerns that accompany cognitive decline associated with increasing age.

The practice of law remains one of the most stressful and psychologically challenging professions. The statistics are alarming - lawyers are 3.6 times more likely to be clinically depressed than non-lawyers.⁷ And this “depression epidemic,”⁸ is responsible for increased incidences of lawyer and law-student suicide⁹ and the bar’s fourth-place rank in proportion of suicides by profession; behind dentists, pharmacists, and physicians.¹⁰ Despite this evidence, there have been few theory-driven empirical studies investigating the experiences, attitudes, and motivations of practicing lawyers and how those factors relate to attorney emotional health and well-being.¹¹

Research conducted by the Hazelden Betty Ford Foundation and the American Bar Association Commission on Lawyer Assistance Programs in 2016 demonstrated that attorneys continue to suffer disproportionately high rates of mental illness and substance abuse. Lawyers in private practice also confront very high levels of stress and exhaustion that accompany continuous conflict with peers, clients, and opposing counsel. The psychological toll of legal practice can be considerable, and can often lead to the development of psychological and physical problems. These problems can then lead to an impairment that can manifest as professional misconduct or incompetence.

B. Some Kansas Lawyering Metrics

The population of Kansas in the year 2011 was approximately 2.869 million.¹² In 2019 the population of Kansas rose to 2.913 million¹³, a 1.5% increase. Interestingly, the resident active attorney count in 2011 for the state of Kansas was 8,129 while in 2019 the count was 8,045,¹⁴ a one percent drop. Kansas currently has about 28 lawyers per 10,000 residents and ranks 35th among all states¹⁵ for lawyers’ per capita population. Kansas also

ranks 38th among all states for the number of employed lawyers per 10,000 residents, with just over 16 meaning that over 42% of the lawyers in Kansas are considered excess.¹⁶ If only about 58% of the lawyers in the state of Kansas are employed (not to be confused with those that simply maintain an active license) then 4,666 attorneys in the state of Kansas are engaged in the active practice of law.

Statistics from the Office of the Disciplinary Administrator of the Kansas Judicial Branch reveal that on average there are between 800 and 1,000 complaints made against lawyers in a typical year. This means that on average a complaint is filed against about one in five practicing Kansas attorneys annually. This is a rough assessment because some lawyers, unfortunately, are repeat offenders and will be the subject of more than one complaint per year thereby skewing slightly upward the one in five number, but likely not considerably.

The reader no doubt appreciates that most Bar complaints are filed by clients (52%) with the next most significant number of filings (22%) by attorneys. The remaining number of complaints are filed by the Disciplinary Administrator's office (7%), opposing party (6%), self-reporting (6%), judges (4%) and finally miscellaneous (3%). The primary reason for the filing of the disciplinary complaints are alleged violations of Rule 1.3 (diligence)¹⁷ and 1.4 (communication)¹⁸. Next in line are allegations of lack of cooperation under rules 8.1¹⁹ and 207²⁰, 8.4(c)²¹ and rule 8.4(d).²²

Approximately 70-75% of the 800-1,000 complaints filed with the Office of the Disciplinary Administrator of the Kansas Judicial Branch each year are handled informally and 25-30% (200-300) are docketed. Of those cases that are docketed roughly 20-25 cases go to hearing each year. Of those not receiving a hearing, there are 10-20 informal admonitions, 7-12 lawyers surrender their law license; roughly 15-25 undergo diversion; and 20-30 are dismissed with a letter of caution. One additional noteworthy statistic is that since January 1, 2010, 46% of attorneys who went to hearing had some sort of impairment. If 25 cases are typically

heard by an administrative tribunal and 46% involve some level of impairment then roughly 12 attorneys per year are found to be impaired. We think it is not unreasonable, based upon the statistics from the ABA's 2017 report that far more than 12 lawyers, practicing in Kansas, have some sort of an impairment.

An important not so clear take-away from the above discussion is that not all lawyer behavior that does not align with the Kansas rules of professional conduct finds its way into a formal bar complaint. Many times, clients are simply unaware of how to act against a member of the bar that mishandles their case, improperly handles trust fund monies or is simply unresponsive. Sometimes clients are unmotivated to act against the lawyer because they believe the bar will simply close ranks behind a lawyer that has violated the rules of professional conduct and nothing will happen to the lawyer.

The issue is timely because the Hazelden Betty Ford Foundation and the American Bar Association Commission on Lawyer Assistance Program study referenced at the start of this article found that 28 percent of licensed, employed attorneys struggle with depression, 20.6 percent qualify as problem drinkers and another 19 percent suffer from anxiety — all at a higher rate than other professionals. It marks the first time there's been a comprehensive study focused on the legal profession's behavioral and substance abuse since 1990.

C. What Lawyers Report about Getting Support from the Legal Profession

In the ABA's 2020 *Profile of the Legal Profession*²³ report, lawyers reveal that their workplaces are not exactly supportive when it comes to well-being issues. Only 26% of lawyers surveyed reported that their firms provided information on 12-step programs or other mental health resources. And only 16% of lawyers strongly agreed that their firms were very supportive of their mental health needs, while 6% strongly agreed that their firms didn't support them at all.

Support for working parents was also unimpressive. Only 18% of lawyers surveyed strongly agreed that their jobs allow them sufficient time to spend with their family, while 48% agreed, but not strongly, that they were able to spend sufficient amounts of time with their family. Similarly, less than half of all lawyers (43%) reported that their firms provided “very good” support for working parents. 29% reported the support was “good,” 24% classified it as “acceptable,” 3% said it was “poor,” and 1% said “very poor.” Nearly a third of lawyers surveyed (32%) reported that they felt pressure to refrain from taking vacation time.

D. What is the Kansas Task Force on Attorney Well-Being Doing to Promote Well-Being?

Before attempting to fix a problem, it is always good to know what needs to be fixed. If in this instance, the Kansas Task Force members do not know what segment(s) of the Kansas lawyer population are being most adversely impacted by the many-fold challenges of the profession, then it will be exceedingly difficult to channel resources to assist those lawyers. For example, knowing what dimension of their lives, *i.e.*, social, spiritual, physical, *etc.*, are being adversely impacted will allow those with the appropriate resources to lend the greatest support. Moreover, knowing the demographics of those adversely impacted will further allow tailoring of support. For example, are practitioners in small western Kansas communities generally most adversely affected by the stress of the profession due to isolation from other members of the Bar, or is it possibly practitioners at large law firms in the Kansas City or Wichita areas who are struggling because of the soul crushing demand for ever more billable hours at ever increasing hourly rates.

Recognizing this research paucity, the American Bar Association (ABA) Commission on Lawyer Assistance Programs, together with the National Organization of Bar Counsel and the Association of Professional Responsibility Lawyers, established the National Task Force on Lawyer Well-Being

(national task force) in 2016.²⁴ To discharge its stated mission of “catalyz[ing] a movement to improve health and well-being in the legal profession,” the task force published its groundbreaking 2017 report titled “The Path to Lawyer Well-Being: Practical Recommendations for Positive Change.”²⁵ In one key finding, the report recommends reconceptualizing well-being as a six-part, multi-modal continuous paradigm:²⁶

1. **Physical:** striving for regular physical activity, proper diet and nutrition, sufficient sleep, and recovery; minimizing the use of addictive substances; seeking help for physical health when needed;
2. **Emotional:** recognizing the importance of emotions; developing the ability to identify and manage personal emotions to support mental health, achieve goals, and inform decision-making; seeking help for mental health when needed;
3. **Occupational:** cultivating personal satisfaction, growth, and enrichment in work; financial stability;
4. **Social:** developing a sense of connection, belonging, and a well-developed support network while also contributing to our groups and communities;
5. **Intellectual:** engaging in continuous learning and the pursuit of creative or intellectually challenging activities that foster ongoing development; monitoring cognitive awareness; and
6. **Spiritual:** developing a sense of meaningfulness and purpose in all aspects of life.

The ABA’s report spawned a proliferation of insightful psycho-legal scholarship. Even so, no attorney well-being investigation has operationalized well-being using the ABA’s six-part

paradigm. This inquiry is pressing. Without empirical research exploring these variables, state-level task forces cannot fully understand the condition of their attorneys' well-being. Furthermore, this knowledge gap prevents states from implementing targeted, data-driven initiatives tailored to address well-being multidimensionally.

The Kansas Task Force has developed a survey that is slated in the near term for electronic distribution to all attorneys licensed in Kansas. The survey will create the nation's first multi-modal assessment of attorney well-being as defined by the ABA's national taskforce. By operationalizing each dimension through four- to seven-item scales—and comparing those measurements to independent variables such as age, race, gender, geography, firm size, and practice area—this survey provides actionable data to help craft targeted well-being initiatives. And importantly, the instrument provides sister states with a statistically valid and reliable instrument to use when investigating their own attorney populations.

E. Conclusion

The legal profession is at a crossroads and our current course, one that involves widespread disregard for lawyer well-being and its effects, is unsustainable. We have ignored this state-of-affairs long enough. To preserve the public's trust and maintain our status as a self-regulating profession, we must become more watchful and empathetic toward the members of our profession. This can only be accomplished through a strong commitment to caring for the well-being of one another, as well as ourselves.



Bob Lambrechts serves on the Executive Committee of the Kansas Supreme Court Commissioned Task Force on Attorney Well-Being. Bob is a partner in the Overland Park office of Lathrop GPM, LLP, where he practices in the areas of intellectual property and environmental law. He formerly served with the U.S. Environmental Protection Agency in the Clean Air Division and as a special assistant to the Regional

Administrator. In addition to a law degree from St. Louis University, Bob earned a Bachelor's and Master's Degree in Mechanical and Aerospace Engineering from the University of Missouri at Columbia and prior to practicing law, he served as a robotics engineer with the Bendix Corporation in Kansas City. As avocations, Bob served as an Engineering Duty Officer in the U.S. Navy Reserves for 28 years and since 1993 has served as an adjunct faculty member for the University of Missouri at Kansas City Schools of Law and Engineering. Bob may be reached at bob.lambrechts@lathropgpm.com and at (913) 451-5126.

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Harrison M. Rosenthal is an attorney and Ph.D. candidate at the University of Kansas, studying media law and policy. While a law student, he founded the Mindfulness in Law Society of the University of Kansas: a student organization that aims to improve law students' well-being through mindful practice. Rosenthal researches new media content regulation, cyber-hate, and First Amendment freedoms of speech and press. He teaches communications law, media ethics, and principles of gamification. He clerked for the American Civil Liberties Union of Kansas, the Seventh and Tenth Judicial Districts of Kansas, and the Kansas Court of Appeals. Harrison may be reached at rosenthalhm@gmail.com

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¹² U.S. Census Bureau.

¹³ Id.

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https://www.americanbar.org/content/dam/aba/administrative/market_research/national-lawyer-population-by-state-2010-2020.pdf

¹⁵ <https://lawschooltuitionbubble.wordpress.com/original-research-updated/lawyers-per-capita-by-state/>

¹⁶ Id. “Excess Attorneys” may be judges, politicians, businesspeople whose careers advanced due to their law degrees; or, they may be people who were unable to find careers as lawyers, are working in fields that don’t require law degrees, are choosing not to work, or are unemployed yet still maintaining active licenses. Alternatively, they could simply indicate the measurement gap between employed lawyers measured by the Current Population Survey and the Employment Projections program.

¹⁷ Rule 1.3 - A lawyer shall act with reasonable diligence and promptness in representing a client.

¹⁸ Rule 1.4 - (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

¹⁹ Rule 8.1 - An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or
(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

²⁰ Rule 207 - The members of the bar or any state or local bar association shall assist the Disciplinary Administrator in investigations and such other matters as may be requested of them.

²¹ Rule 8.4(c) - engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

²² Rule 8.4(d) - engage in conduct that is prejudicial to the administration of justice;

²³

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