

Kansas Lawyers Assistance Program – Why you should care!

By Carol R. Bonebrake

So what is this Lawyers Assistance Program Committee? Who are its members? Is this Committee made up of drug addicts and alcoholics? Just what is it that they do? Why should you care? This Committee usually does its work confidentially and behind the scenes. During the past two years, however, the American Bar Association assisted in the evaluation of the Kansas Lawyers Assistance Program(KLAP). Recommendations were made and the Committee developed an action plan to enhance and improve the lawyer assistance services to the bench and bar.

During this evaluation, some important statistics that make the work of the Committee very important to the legal community came to light:

1. Approximately 20% of attorneys may have a substance abuse problem.
2. An impaired lawyer in a mid-size firm can cost that firm as much as \$25,000 per year because of missed deadlines, poor judgment and similar problems
3. Kansas disciplinary officials believe that half or more of all disciplinary actions involve an impairment.

As one of the newer members of the Kansas Bar Association (KBA) Lawyers Assistance Program Committee, I have had the opportunity to come to know many longstanding members and learn the history of the Committee and its work. The founding fathers of the Committee are Cliff (Tino) Ratner, Wally Underhill, and Wayne Hundley.

Later, Miles Mustain and Don Zemites became very active. They learned of disciplinary problems of their brethren in the bar and simply could not turn away and watch good lawyers get disbarred. Over the years, all of these gentlemen have been involved in their local Lawyers Assistance Committees. Ratner and Underhill in Sedgwick County, Hundley in Shawnee County, and Mustain and Zemites in the Kansas City area. They have worked with individual lawyers and in their capacity as Committee members to see that good lawyers get the help they need in order to address personal issues that are interfering with their practice of law.

Initially, the most common personal issues that came to the attention of this group were alcohol abuse and drug abuse and addiction. Sometimes an informal chat was effective in assisting the impaired lawyer with understanding that help was available. On other occasions, meetings with colleagues and/or family members, referred to as interventions, were utilized to encourage the lawyer to get professional assistance. On occasion, a judge would assist the Committee member in getting the lawyer's attention.

Over the years, the Committees in Wichita, Topeka, and Kansas City garnered more members and while all of the lawyers involved participate as their schedules permit, one common thread is evident. The Committees and Committee members want to help. Clients need to be protected; good lawyers may sometimes need assistance with issues interfering with their practice. Over time, new issues have surfaced including

depression, mental illness, gambling addiction, and sex addiction. Members of the Committee may or may not have personally experienced the ravages of addiction or depression or mental illness. Some have experiences through family members; others have no personal stories to tell, but simply want to help lawyers in trouble maintain their practice.

Over the past two years, under the able leadership of Don Zemites in 1999-2000 and Anne McDonald in 2000-2001, the KBA Committee has worked diligently to comprehensively review the Lawyers Assistance services available in Kansas. Zemites contacted the ABA commission on Lawyer Assistance Programs. The ABA Commission appointed John C. Brownrigg, a former commission member from Omaha, Neb., and William R. Leary, a current commission member and Executive Director of the Louisiana Lawyers Assistance Program to serve as evaluators. In October 1999, the Committee invited Brownrigg and Leary to visit Topeka and evaluate the current Kansas Lawyer Assistance Program. They requested and received extensive materials about the Kansas program including a history and overview of the current program operations. In addition to meeting with KLAP members, Brownrigg and Leary met with members of the KBA Board of Governors as well as KBA staff, Justice Don Allegrucci, Carol Green, Clerk of the Appellate Courts, Disciplinary Administrator Stan Hazlett, and KBA Executive Director Dennis Harwick.

The ABA Commission's guiding principles for Lawyer Assistance Programs formed the basis for the evaluation. Those principles include 1) a statewide program; 2) confidentiality; 3) immunity; 4) recovering community ties; 5) relationships with local programs; 6) a monitoring program; 7) referrals by disciplinary agencies; 8) outreach efforts; 9) CLE/law school curricula; and 10) periodic review. Brownrigg and Leary generally found that KLAP is poised to move to the next level of service for Kansas lawyers. They concluded that Committee members and volunteers are very dedicated, the KBA leadership and executive staff are supportive and the relationship with the Disciplinary Administrator's Office is very good. They also acknowledged, however, that there have been no funds available for the Program and much of the Committee's work is informal with little coordination. The evaluators' recommendations were limited to activities that could be pursued at modest funding levels, yet lead to the establishment of an effective program that could demonstrate the appropriate accountability for obtaining permanent funding. Six recommendations were made:

1: Establish the Kansas Lawyers Assistance Program as a stable, permanent program of the Kansas Supreme Court, or establish it as a separate entity, and hire a full or part-time director with the experience, skills and attributes necessary to effectively coordinate the operation of the program and to make appropriate reports to the Kansas Supreme Court, the KBA, and the Disciplinary Administrator.

2: After a program director has been hired and trained, establish a statewide toll-free telephone number on which calls for assistance can be received, and effectively educate Kansas lawyers of the existence of the program, the toll-free number, and the confidential nature of any call for assistance.

3: Build on the excellent relationship established between KLAP and the Disciplinary Administrator by developing a formal monitoring program (see ABA Model Recovery Monitoring Guide).

4: Obtain assistance of the Kansas Supreme Court to require that every law student attend a seminar presented by KLAP on the effects of substance abuse and other impairments on lawyers and the legal system. Programs in law schools should be implemented.

5: Request funding from the Kansas Supreme Court and/or other sources to pay for a program director and for the director's continuing education, including attendance at the annual workshop sponsored by the ABA Commission on Lawyer Assistance Programs.

6: Revise Kansas Supreme Court Rule 206(c) and (e) in a manner that will afford communications between KLAP and those seeking or obtaining its assistance with the same degree of confidentiality as a communication between lawyer and client would enjoy.

These recommendations were approved by the KBA Board of Governors in April 2000. Zemites took the lead in developing an action plan, and the Committee as a whole worked to tailor the plan to needs of Kansas lawyers and the legal community's commitment to professionalism. During the course of our work, it became abundantly clear that an educational component is very important. Many lawyers and judges often tell you that something is "just not right" but may not be aware of the signs and signals of an impairment or other condition for which assistance would be appropriate. KLAP also needs to do a better job of getting the word out about the availability of Committee members, various treatment programs, and treatment services that can provide great assistance such as twelve step programs (Alcoholics Anonymous; Narcotics Anonymous), support groups (cancer survivors, single parents), peer counseling and spiritual growth opportunities. While many of us handle these types of issues with our clients every day, many lawyers and judges simply do not realize that on occasion, they too may be in need of assistance.

As the action plan developed, the intended purposes emerged: 1) to strengthen and enlarge the present network of lawyers working to assist other lawyers; and 2) to formalize Committee activities such as education, training, and monitoring of lawyers seeking to get their practice back on track. Three specific goals were agreed upon: 1) to protect clients from harm caused by impaired lawyers; 2) to assist impaired lawyers in recovery; and 3) to educate the bench and bar to the causes of and remedies for the impaired lawyer. The action plan includes the appointment of a director to implement policies and procedures and to coordinate lawyer assistance state wide. In the action plan, the Committee recommends that the program be known as the Kansas Judges and Lawyers Assistance Program. The Committee has also proposed amendments to Kansas Supreme Court Rule 206 that would provide that the communications between KLAP and those seeking and/or obtaining its assistance the same degree of confidentiality as a communication between a lawyer and a client. Confidentiality is a crucial component of a successful program. The promise of confidentiality serves as a sanctuary for those who are not "already in the soup" with the Disciplinary Administrator. Further, the Committee has recommended amendments to Rule 203 that would provide for the referral of attorneys to a diversion program once a lawyer is notified by Disciplinary Administrator's Office that a complaint has been docketed for investigation.

In the spring of 2001, Zemites and Hundley developed a projected budget. The action plan and proposed budget were completed as were the proposed amendments to Supreme Court Rules 203 and 206. The proposed rule amendments as well as the proposed action plan and budget are currently under consideration by the Kansas Supreme Court. The work of the Committee, however, has not stopped pending the Court's consideration of the proposals. Judges, family members, friends, and colleagues can contact a KBA Committee member or a member of a local Committee if there are concerns about an attorney and the attorney's ability to competently practice law. In the more rural areas, lawyers may be geographically isolated. In the urban areas, solo practice can also result in isolation. Many lawyers simply do not have the collegial support of professional colleagues that is so often helpful when one faces a personal or family crises or struggles with the incredible pace that lawyers keep and the stress of deadlines and client demands. Committee members are able to convey that there is help available – confidential help – if it will be accepted. Very often the Committee can provide assistance outside the local community. Last fall, another KLAP Committee member and I met with an attorney in trouble. This attorney's credentials are outstanding. As she became more and more overwhelmed with both personal and family demands, clients were not receiving the attention that they needed. A member of the bench assisted in introductions. We sat down, we talked heart to heart; hard talk. We focused on the needs of her practice and made suggestions. She looked at us and said, "You guys are manna from heaven."

The Committee is optimistic that there will soon be changes with the Kansas Lawyers Assistance Program that will enhance educational and training opportunities and efforts to provide effective help to lawyers needing assistance. As we in the legal profession navigate new frontiers in the twenty-first century, we need to be on the look out for those outstanding members of our profession who may simply need a helping hand along the way.

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