

WAY OUT YONDER

Many Texas attorneys are making happy homes and profitable practices in small towns and rural communities by using a tried-and-true model of business.

BY LINDSAY STAFFORD MADER



The north central area of Texas near the Oklahoma border is a transition zone where eastern piney woods gradually morph into tallgrass prairie. With its rolling hills of post oak and blackjack and sweeping plains spotted with deep ravines, it is an undeniably beautiful yet somewhat undiscovered part of the state where wolves are known to show up on doorsteps. The Caddo and Comanche hunted bison here until European settlers moved in, and more recently the area has been home to sparsely populated rural communities while also attracting a handful of weekend bird-watchers, modern-day wildcatters, and city folks looking to replace concrete with caliche.

Attorney H.P. “Mike” Berkley Jr. is one such fellow who was born and raised a Dallas kid but found himself in this expansive openness near the Red River. Berkley, then a 35-year-old bachelor, bought land in Montague County near the 200-resident town of Forestburg as a sort of escape. “I didn’t know what to do with it,” he said. “Then I started realizing that there was legal work to do out here.”

Berkley, now 65, liked the life and the law practice and stayed put. Not long after arriving, he became a rancher and fell in love with the local vet when bringing in a sick cow for treatment. His little plot now spans two miles from one side to the other, and the land between fences, more than 1,000 acres, is where he runs about 300 head of cattle and where he and his wife are raising their two children. Clients meet Berkley at his home law office, and sometimes they stop their cars on the county road, hop the barbed wire, and plod through the grass to ask him a legal question while he’s plowing the pasture.

The vast majority—96 percent—of Texas attorneys continue to strive for or struggle toward success in the state’s metropolitan statistical areas.¹ Still, there are about 3,000 attorneys like Berkley who are working and living in the small towns and rural communities located in non-MSA counties. And by basing their practices on a traditional model of business ownership, many are seeing their professional and personal lives prosper while also serving Texans for whom affordable representation is largely out of reach.

Above: The Cross Timbers ecological region of North Texas.

Photograph courtesy of Earl Nottingham, Texas Parks and Wildlife Department

THE LAW AND THE LIFE

Over the course of his career, Berkley has experienced two types of law practice—what he describes as country law, which is less stressful, and city law, which is more cut-throat. “You might never see that attorney again,” he said, “so you don’t mind playing hardball. In the country, you have a problem, you call the other attorney and get it worked out because the next day he may have a problem with his case.” Berkley without a doubt prefers the country mindset. He likes that clients don’t expect the “big dog and pony show,” and are happy to see him at his ranch, where he’ll get cleaned up but can wear blue jeans. “You still try to render the best service you can for your client,” he said, “but the formalities of the city don’t exist here.”

Like many rural attorneys, Berkley serves a region with a high ratio of attorneys to population; his three-county area has 33 attorneys for almost 39,000 people, or 1:1,171. So, he handles a variety of matters, including agricultural law issues (like fence line disputes, pesticides and herbicides, and livestock ownership), probate, and more. And family law matters are prevalent no matter how big or small the location. “People still get divorced out here,” he said, “they still run around.” In Dallas, Berkley said, it is easier for attorneys to focus on one area of law because there are so many people with that particular problem. “Out here, you have to be more of a general practitioner and be aware of not only the particular problem but also how to fix other things in your clients’ lives.”

There are drawbacks to being so remote, but Berkley is apt to color them positively. His practice is spread across Montague, Archer, and Clay counties, which requires lots of driving, and the district judge of the three-county circuit is in town only certain days of the month. It can be difficult for spouses to find employment, and conveniences and necessities like restaurants and grocery stores are few and far between. But the trade-off for all of this, he said, is a low-key lifestyle where you don’t worry about locking your doors, leaving your keys in the car, or closing the window shades. “You’re free to come and go. In the peace and the quiet, you learn to exist. For me, the value is that I can get up in the morning and tend the cattle. It’s a lot more fun out here—it really is.”

THE ATTORNEY SHORTAGE

Statistics on Texas lawyers reveal some interesting trends of the dispersal of the legal workforce. The state has a ratio of one attorney for every 312 citizens, and metropolitan areas have a ratio of 1:288, which is similar to the national attorney-population ratio of approxi-

mately 1:252.² But in rural areas, the ratio becomes 1:896.

From 2012 to 2013, the number of rural attorneys increased by 2.3 percent, which was 1.9 percent more than the growth from 2011 to 2012, indicating that this population was catching up with that of metro attorneys, whose similar 2.7 percent increase from 2012 to 2013 was up only 0.1 percent from the previous year. Still, most of the growth in the number of Texas attorneys from 2003 to 2013 occurred in metro areas of the state, whose 28 percent increase outpaced the general metro population’s 24 percent increase. The Austin area had the biggest percent growth in attorneys, climbing by 44 percent to arrive at an attorney-population ratio of just 1:169. The number of rural attorneys also jumped during this 10-year period, but by a less monumental 17 percent (although the general rural population grew by just 5 percent).

These numbers suggest that Texas attorneys are disproportionately concentrated in the cities, possibly leaving a significant portion of the state experiencing difficulty in securing legal representation. As of 2013, 83 percent of all active, in-state attorneys were located in the state’s four largest metropolises (the Houston, Dallas-Fort Worth, Austin, and San Antonio MSAs). While approximately 11 percent of the state’s population resided in rural areas, only 4 percent of active, in-state attorneys practiced in these places. And some rural counties had exceptionally high attorney-population ratios, such as 1:2,431 in Zavala County, southwest of San Antonio, where the median household income was \$25,291 (compared with the state average of \$51,714) and 42 percent of the 12,000 residents lived below the poverty line. Eight Texas counties had no attorneys whatsoever and 67 counties had five or fewer. Even more striking, 121 counties—nearly half of the state’s 254—had attorney-population ratios of 1:1,000 or higher.

Roy B. Ferguson knows these shortages well. He is judge of the largely rural 394th Judicial District, which covers more of the U.S.-Mexico border than any other district in the state. Ferguson and his attorney wife, Pene, started their careers in Houston but in 1999 moved almost 600 miles to one of the state’s least-populated regions that has high-desert vistas of the Davis Mountains and Big Bend, a place where Pene has family roots. Their law office in Marfa, which they opened years before the tiny town became a popular tourist destination, was the only full-time practice in Presidio County for more than 13 years, Ferguson said. Excluding county attorneys, four of the district’s five counties have one or no full-time lawyers in private practice. “In the last few years,” he said, “we have had an influx of young attorneys into Alpine, the most populous county seat, who travel among the

For articles on rural pro bono opportunities and what bar associations, state legislatures, and law schools across the U.S. are doing to address rural lawyer issues and shortages, go to texasbar.com/smalltown.



counties. And lawyers from Odessa and El Paso travel two hours for cases that justify the cost. But for the day-to-day needs of local rural residents, the options are few. They either do their best with whatever they can find, or they simply don't assert their rights."

Even when a metropolitan area is a feasible driving distance, rural residents typically have less income to spend on attorneys' fees. Data from the U.S. Census Bureau reveals that the median household income in rural areas of Texas is \$42,499 (compared with \$52,198 of metro areas and \$51,714 statewide) and that rural Texas has a poverty rate of 20.1 percent (compared with the urban poverty rate of 17.2 percent and statewide rate of 17.5). "Remember," Ferguson said, "\$150,000 to a Dallas corporation creates less of an impact than \$10,000 to a small-town resident. To many of your clients, the money they pay you is almost impossible to absorb. They will mortgage their lives and borrow from everyone they know to pay your retainer."

So even though rural attorneys often have more potential clients due to lack of competition, the stakes are higher. Clients must feel that they can trust their attorneys, Ferguson explained, which is partly based on professional and personal reputations because advertising is typically irrelevant and often nonexistent. "Because everyone knows where you are at all times—they recognize your car, for example—you must put in the hours at the office. You must act professionally, both in the courtroom and at the local bar. Stories spread quickly through these tight-knit communities. If you act like a buffoon or fall asleep in court even one time, your business will suffer. If you get drunk in public, or flirt openly with a married woman, your clientele will quietly taper off."

Rural lawyers also help serve clients by providing a patient style of counseling. Before he became a judge, Ferguson said his goal was that every person—client or not—would feel better when they left his office. "I typically spent three hours a day, just listening to people who I did not represent as they unloaded their problems and asked for reassurance. It is emotionally taxing on you, but you can and will make a real difference in their lives. It was not uncommon to spend an hour with an elderly person who received a spam email telling her that she had won a nonexistent lottery or explaining to someone that a bill collector could not have them arrested."

THE MONEY

Part of the difficulty in getting more attorneys to practice in rural Texas likely comes from the perception that city salaries are higher. But a March 2014 income survey

of State Bar members suggests that it is possible to make a comparable living in a small town or rural community. Feedback from more than 10,000 respondents showed that while the median income of metro attorneys increased by 7.6 percent—from \$104,542 to \$112,448—between 2011 and 2013, the median income of rural attorneys increased by an impressive 26.6 percent—from \$83,928 to \$106,250. And the subset of rural private practitioners also had a larger increase in income than metro private practitioners at 27.5 percent and 9.7 percent, respectively.

Rural attorneys in certain practice areas—such as family law and wills, trusts, and probate—had a higher median income than attorneys in some metro regions. Personal injury litigators in rural areas, for example, had a median income of \$210,714, which was higher than attorneys in all major metro regions. Rural criminal lawyers' median income (\$98,333) surpassed that of criminal attorneys in El Paso (\$95,000), Houston (\$81,250), Central Texas (\$75,000), Austin (\$73,333), Dallas (\$72,666), San Antonio (\$65,000), and Beaumont (\$59,999). Further, with a median income of \$114,204, rural solos earned more than solos in many metro regions, including Austin (\$105,113), Dallas (\$99,545), Houston (\$94,166), and San Antonio (\$88,571).

Still, rural attorneys statewide made less money overall than their metro counterparts, and rural lawyers with two or fewer years of experience earned lower than those in all but one metro region. Money is one reason why Berkley, the ranching attorney in North Texas, continues to make the four-hour round trip to Dallas one to two days a week to see clients and go to court. "I have two young and active kids to provide for," he said. "And I have a one-fourth ownership interest in the Dallas office building. It took me 35 years to build up my Dallas practice and it is very hard to give it up."

Like Berkley, attorney Paul Looney maintains an office in Houston despite his preference for working with clients in nearby Hempstead (population about 6,300), who he described as "real people with real issues and real lives and real problems." Looney, who has an impressive collection of bolo ties and boots, left the city about 20 years ago to raise his daughter in Bellville. He started off commuting to Houston every day but gradually practiced more and more in Hempstead. "I wanted to get back to working for normal human beings," Looney said. "In a big community, in order to support a practice, we end up all-too-frequently working for nothing but corporations and rich people. While that makes a living, it's just boring as hell. It's as rewarding as it can be when you step in when

Snapshots. Next page, clockwise from top left: Attorney Mike Berkley with his Angus and Charolais cattle on his ranch near Forestburg; Meridian attorney Natalie Cobb Koehler and her family attend St. Olaf Lutheran Church, also known as the Old Rock Church, in Cranfills Gap, population less than 300. Photograph courtesy of *Traces of Texas*; Paul Looney outside his Hempstead law office. Photograph courtesy of Roxanne Avery; the West Texas ranching country of Jeff Davis County, one of five counties in Roy Ferguson's 394th Judicial District. Photograph courtesy of Carolyn Nored Miller.





The Koehler family on their ranch in Cranfills Gap.

clients are in a time of need and you put them in a position where they can have their life back.”

Looney, a partner in Looney & Conrad, has a small historic building next door to the Waller County Courthouse in Hempstead where he sees clients with a range of issues, such as divorce and probate. He says his work there is a steady stream as opposed to the sporadic big payday more common in metro practices. Looney’s small-town success likely has something to do with the community involvement he puts in after-hours, attending civic meetings, chatting with local business owners, and holding happy hours at his home—a law practice model that he says goes back about 40 years and will be the wave of the more competitive present and future. But he still goes to Houston about five days a month, and the two offices bring in similar amounts of revenue. Still, Looney isn’t planning a permanent return to the city any time soon. “Now that my daughter is grown, I always expected to go back to Houston,” he said. “But you couldn’t pry me out of the small town with a crow bar.”

THE RIGHT FIT

Clearly, many attorneys’ job decisions are about more than money. This was the case for Natalie Cobb Koehler, who rejected a high salary offer from a large Dallas firm to practice law in her small hometown. Koehler was a student at South Texas College of Law in Houston and was preparing to take the bar exam when she and her husband decided on a lifestyle where their kids could be involved in agriculture and raised in a close-knit family environment. So after graduation, they moved to the oak- and cedar-spotted family ranch in Cranfills Gap, a town of less than 300 in Central Texas. “I was extremely nervous about rescinding the offer,” said Koehler, now 38. “But I am so glad I did. I believe that God always provides, and he puts you on the perfect path for where you need to be. I was meant to practice in a rural community. Anyone who knows me can tell you I am most comfortable in a pair of boots.”

The transition was not without hurdles. Koehler missed friends, restaurants with fine food and wine, and stores like Central Market. But she and her husband enjoyed not sitting in traffic. “It was a totally different way of life,” she said. For her first job, Koehler practiced family, real estate, and probate law, which required a lot of winging it and trying her best. She credits her success to her first boss’s good mentoring, her law school professors who prepared her to “actually practice law,” and the moot court program that helped her become a confident public speaker. She now has a broad solo practice in a small beige-painted aluminum building in nearby Meridian (population about 1,500) and has twice been elected as Bosque County attorney, serving as civil legal counsel and prosecutor for CPS, misdemeanor, and protective order cases. Like Judge Ferguson in Marfa and Looney in Hempstead, Koehler participates in community and civic organizations and focuses on building client relationships. “I usually know their kids’ first names and even their grandkids’ first names, as well as their life stories,” she said. “Being a willing listener and counselor is what a lot of my clients need, and they seek me out to provide that for them. As you can imagine, I never do the same thing any two days in a row, and I like it that way.”

Having served as 2011-2012 president of the Texas Young Lawyers Association, Koehler recognizes that many new lawyers don’t consider small-town practice because they have dreamed of that job at a big firm in a skyscraper. But even though rural attorneys aren’t all making “big bucks”—a client once paid her fee with a horse—Koehler said that Texas’s global economy, improving job market in suburban areas, and rural oil and gas plays shouldn’t be ignored. “There are lots of opportunities outside metropolitan areas where lawyers are desperately needed and

appreciated,” she said. “I have found that the financial and personal gain is tremendous in the long run.”

But another obstacle to increasing the number of rural and small-town attorneys is that not everybody enjoys the lifestyle as much as Koehler. When Kimberly Clark graduated from the University of Arkansas School of Law in 2008, she was unable to secure a law firm position—an experience she described as a “dream crusher.” So she found herself hanging out a shingle in Rusk, the East Texas town of about 5,500 where she grew up. “I was the young law student who saw getting a job at a firm as ideal,” she said. “So to start my own solo practice soon after was quite stressful because I learned that I really didn’t know anything about the practice of law.”

After less than a year, Clark became a defense attorney and two years later accepted an assistant district attorney position in nearby Palestine. She loved her work, particularly handling civil and criminal cases as well as felonies. “It’s a mad rush as soon as you walk in the door,” she said of docket days. “It really prepared me to handle any situation. And you get the opportunity to know your judges and develop mentoring relationships with them—and that’s not something I hear my city friends speak of.”

Working in a smaller community also meant that the pay wasn’t great, scheduling conflicts often came up, and awkward encounters were sometimes inevitable. “They say that the justice system moves slowly, but it moves even slower when it’s a smaller town,” Clark said. “And you go to the local Wal-Mart and run into people you might have recently sentenced to jail or probation.”

Clark, who had fallen in love with city life while attending undergrad at the University of Texas in Austin, said that most professionals in the area were older and married, and she missed being able to network with other young lawyers. “Activities are simply limited,” she said. “For a woman my age, it was just a different ball game.” Clark eventually moved to Houston and commutes to her job with the Special Prosecution Unit in Huntsville.

THE REALITY

For the nearly 85,000 active attorneys in the massive and diverse Lone Star State, the decision of where to practice law is as unique as the varied landscapes of the Cross Timbers, Hill Country, Gulf coastal plains, and desert mountains that cut through our countryside. But one thing seems definitive: the small towns and rural communities of Texas leave their own unique stamp on the practice of law. Entrepreneurship and the work ethic that business ownership requires are handy skills to have, with 41 percent of rural attorneys working as solos and 20 percent working in firms of two to five. Additionally, most small-town lawyers should be willing to operate a general practice, taking on cases that span numerous areas of law.



Kimberly Clark after attending an inmate deposition in Huntsville, where she works for the Special Prosecution Unit.

And they need to respect their clients and the citizens of the community and interact with them often.

Ferguson, the judge in Marfa, believes that the rural setting enables attorneys to practice law as it was meant to be done. “You care for the community and fight for justice,” he said. “And in return, you are financially rewarded and personally fulfilled beyond your expectations, in a way often absent from city practice. I encourage each lawyer to examine his or her goals. Go where you want to be. Work hard, and success will follow.” **TBJ**

NOTES

1. “Rural,” as used in this article when discussing population statistics, means attorneys practicing in counties that are not a part of a metropolitan statistical area. All numbers reflect active in-state Texas attorneys who were in good standing as of Dec. 31, 2013 (which includes attorneys who choose to remain in active standing but are not currently practicing law, as well as attorneys who practice part-time). All information comes from the State Bar of Texas membership database, and geographical breakdowns—obtained from members’ addresses—are based on county of practice. Metro and rural distinctions are based on the U.S. Office of Management and Budget’s definition of an MSA, which contains one or more counties, has a core urban area of 50,000 or more, and can include any adjacent counties that have a high degree of social and economic integration (which is measured by residents who commute to the urban core for work). Some counties are categorized as metro despite having small populations and high attorney-population ratios, as well as feeling worlds away in terms of lifestyle, environment, and socioeconomic situations. Because the State Bar of Texas uses U.S. Census data to compile its density reports, 2013 is the most recent year for which statistics were available as of press time.
2. American Bar Association, National Lawyer Population by State (2013), U.S. Census Population Clock on Dec. 31, 2012. To conduct its survey, the ABA asked individual state bar associations or licensing agencies to provide the number of resident, active attorneys as of Dec. 31, 2012. For its ratio calculation, the *Texas Bar Journal* excluded numbers from American Samoa, Guam, the North Mariana Islands, Puerto Rico, and the Virgin Islands.