LEGAL NEEDS ASSESSMENT

FOR KENTUCKY ENTREPRENEURS

Prepared by Amanda L. Kool, Esq.
In partnership with Kentucky Bar Association
Commissioned by Kentucky Science & Technology Corporation
# Table of Contents

- **Introduction**
- **Acknowledgments**
- **Executive Summary**
- **Background**
- **Research Process**
- **Findings**
  - Particular Legal Needs
  - Particular Industry Needs
  - Particular Demographic Needs
- **Analysis**
- **Recommendations**
- **Conclusion**
- **Endnotes**
- **Appendix**

---

**TIP**

This Table of Contents is interactive! Click on a category to jump directly to that section. You can also click on any underlined terms to refer back to that section.

The Kentucky Bar Association (KBA) is pleased to partner with Amanda Kool to bring you this *Legal Needs Assessment for Kentucky Entrepreneurs*. The assessment includes thought-provoking research, which serves as a useful means to open the dialogue concerning the unmet legal needs of Kentucky’s entrepreneurs.

This project provides a strong foundation for further development of projects and strategies focused on entrepreneurial development in Kentucky. As part of our ongoing efforts to examine the needs of the legal profession and the communities we serve, the Kentucky Bar Association created the Kentucky Commission on the Future of the Legal Profession. The mission of this commission is, “…to explore all areas relevant to the practice of law and the delivery of legal services.” Kool’s research is exactly the type of assessment needed to help us address the legal needs of Kentucky’s business community.

As many of you know, the field of law is evolving and attorneys are faced with new challenges on a daily basis. The KBA is proud to help promote this assessment and bring awareness to this subject matter. We are hopeful that the research contained herein will be a good starting point for the creation of new tools and strategies for the legal community and the citizens of Kentucky.

– John D. Meyers  
*Kentucky Bar Association*  
*Executive Director*
This Legal Needs Assessment for Kentucky Entrepreneurs relies upon data gathered from more than 130 Kentucky entrepreneurs, lawyers, technical assistance providers, funders, and other stakeholders in the state’s entrepreneurial ecosystem. Tremendous appreciation is owed to those individuals who lent their experience and insight to this project through participation in one-on-one interviews, roundtable discussions, and survey responses. Special thanks are owed to the Board of Governors of the Kentucky Bar Association, Rick Johnson, Heather Scheiwe Kulp, Brian Mefford, Will Metcalf, John Meyers, Carolyn O’Brien, Kelby Price, Michele Statz, PhD, and Bill Strench for comments on prior drafts. Amanda L. Kool, an attorney and legal consultant, designed and conducted research into the legal needs of Kentucky entrepreneurs and authored this resultant report. The final design of the report was completed by Jesi Ebelhar, Graphic Designer for the Kentucky Bar Association. Credit is owed to the Wisconsin Judicare, Inc. Community Needs Assessment, prepared by Jordan Wolf and Michele Statz, PhD in partnership with Wisconsin Judicare, Inc. and the University of Minnesota Medical School, Duluth, as well as the Low-Income Entrepreneur Needs Assessment, prepared by the City of Vancouver’s LED Lab and Community Economic Development Strategic Action Committee, for serving as structural models for this report. This project was commissioned by the Kentucky Science & Technology Corporation to address legal hurdles to entrepreneurship in Kentucky.
Key Findings:

- Many of Kentucky’s entrepreneurs struggle to find lawyers that meet their needs.
- Entrepreneurs with certain types of legal needs struggle more than others, including those seeking legal assistance with alternative business structures, intellectual property, or equity financing matters.
- Entrepreneurs in certain industries struggle more than others, including those in the food and agriculture industries, the creative economy, and emerging Kentucky industries, such as hemp, aerospace, addiction recovery, and workforce reentry-related businesses.
- Demographics influence entrepreneurs’ access to legal services, with entrepreneurs outside the Golden Triangle, entrepreneurs of limited financial means, and women and minorities facing particular challenges to access legal services.
- Kentucky’s law schools receive greater demand for student exposure to transactional law opportunities than supply permits.
- Kentucky’s legal and entrepreneurial ecosystems are ripe for innovation and collaboration toward mutual benefit.

Identified Building Blocks for Successful Startup Legal Practice:

- **Key attributes of successful startup lawyers** include attorneys who are resourceful, entrepreneurial, trusted, and able to play the role of quarterback for their clients.
- **Key innovations for a startup legal market** include alternative approaches to service delivery and billing, consensus adoption of template documents, vibrant networks of attorneys and clients involving entrepreneurship support organizations, and avenues to continuing education.
- **Key components of law school education for future startup lawyers** include recruitment channels from and to communities in need of services, ways to educate students to anticipate market demands, and meaningful engagement with private bar and entrepreneurial communities.

Recommendations

- **Startup law should be supported as a specialty practice** that is distinguished from small business law, yet all transactional law services should be sufficiently primed and networked to meet client needs, maximize efficiency, allow for business model pivots, and support business growth.
- **Existing legal and non-legal resources should be strengthened and extended** to assist entrepreneurs and support startup lawyers.
- **Pervasive gaps in access**, including gaps identified by type of legal need, client industry, or demographics, should be addressed through the creation of new and targeted legal networks and resources. These proposed networks and resources include lawyer clusters, which should form and operate to bring a breadth and depth of legal practice to entrepreneurs across the entire state.
- **In concert with personal reputation and rapport, technology should be leveraged** by every stakeholder at every point in the ecosystem to improve efficiency and maximize impact.
Kentucky has deep roots in entrepreneurship. From restaurants to healthcare, software, agricultural technology, and many industries in between, a quick glance at the Kentucky Entrepreneur Hall of Fame reveals a rich history of individuals creating companies that grow to become institutions. Our entrepreneurs tend to be Kentuckians not only in location but in spirit: in the words of Alltech founder and Kentucky Entrepreneur Hall of Fame member Pearse Lyons, “I’ve been around the world I don’t know how many times, and I’ve never found a place as conducive to doing business or rearing a family as Kentucky — y’all.”

Building upon those entrepreneurial roots and our distinctive sense of state pride, Kentucky has made sweeping efforts to support modern entrepreneurial endeavors, including the 2013 establishment of the Office of Entrepreneurship within the Cabinet for Economic Development, as well as the implementation of tax credits to incentivize small and tech-based business growth and early investment in Kentucky small businesses. In the private sector, new entrepreneurship support organizations have been created to support the early stages of business development and existing economic development organizations have added entrepreneurship components to their program offerings (collectively, ESOs). In the recent past, Kentucky has received some impressive accolades for its entrepreneurial climate: the state was ranked 4th in the nation in the 2014 University of Nebraska-Lincoln State Entrepreneurship Index measuring entrepreneurial activity, up 44 spots from the year prior. Likewise, a 2014 US Census Data report of metro areas with the fastest-growing rate of new startups ranked Elizabethtown as #1 in the country, Bowling Green as #3, and Lexington-Fayette County as #14. More recent rankings have been less remarkable, however: a 2018 WalletHub ranking of best and worst states to start a business ranked Kentucky at #22, with the ranking reflecting the composite score of 5th in the nation for business costs, 38th for business climate, and a disappointing 42nd for access to resources for new businesses, suggesting some stark imbalances in our ecosystem-level support of entrepreneurs.

WalletHub’s low ranking of our state’s access to resources for new businesses broadly echoes anecdotal observations within our state’s entrepreneurial communities. In particular, both entrepreneurs and other stakeholders in the entrepreneurial ecosystem have reported that Kentucky’s entrepreneurial ecosystem was hindered, at least in part, by meaningful access to legal resources. In response, the Kentucky Science & Technology Corporation commissioned this report, A Legal Needs Assessment for Kentucky Entrepreneurs, with two outcomes in mind:

**to better understand the legal gaps and barriers that Kentuckians face in starting new businesses and to devise concrete solutions to address those gaps and barriers.**
Scope of Study
A quick search of the Kentucky Bar Association member directory for “Business Attorneys” yields 381 results. Yet respondents to this study indicated that the skills and expertise of many of our state’s business law attorneys did not meet the needs of our startups and entrepreneurs, despite the terms “startup,” “entrepreneur,” “new business,” and “small business” often being used somewhat interchangeably to describe a certain type of clientele. As described by one respondent, “the legal needs of the biotech startup are very different than the legal needs of a coffee shop.” The modern evolution of entrepreneurship has spawned an evolution in the types of founders’ agreements, entity structures, tax issues, financing, contracts, intellectual property, and other legal issues entrepreneurs experience, which itself has necessitated the development of a specialized practice of startup law that is increasingly distinct from the broader practice of transactional law.

The legal market in many areas has not kept pace with this evolution in legal practice, however, which has resulted in a gap in legal expertise for entrepreneurs pursuing a startup, high-tech, or otherwise non-traditional business idea. It is this gap in services for entrepreneurs that is at the heart of this report. This report details the substantial gap in legal expertise for startup, high-tech, or otherwise non-traditional businesses as compared to small business law more generally and will use the term “startup” to signify those types of businesses and the lawyers who serve them. However, in recognition of the significant overlap in entrepreneurs, ESOs, attorneys, and other stakeholders within the broader business community, as well as the fact that some businesses currently in their start-up phase will become mature companies, the report will sometimes address the spectrum of transactional lawyers and legal issues as they apply to the support of all entrepreneurs in Kentucky.

“"The legal needs of a biotech startup are very different than the legal needs of a coffee shop.""
Consequences of Unmet Legal Needs

Lawyers are only one of many types of service providers needed by entrepreneurs during the life cycle of a business, and yet the reality is that the impact of law permeates nearly every aspect of every business, regardless of whether a lawyer is ever involved. From taxation to accounting, business strategy, financing, marketing, human resources, and day-to-day operations involving a product or service offered, the law touches every element of every business. Access to legal resources can make the difference between a business that succeeds and a business that never gets off the ground, the latter either due to fear of the legally unknown or as the result of an uninformed misstep from which it is too difficult to recover. Moreover, not all startup legal advice is created equal: as availability of cash is critical to a startup’s success, having access to a legal advisor who not only understands the legal needs of the fledgling company but can also provide strategy regarding which legal issues demand attention and resources now—versus those that can wait—serves to ensure that the legal issues critical to short- and long-term success of a startup are addressed at the right time and no capital is wasted in the process. As summarized by one respondent, “Without the right lawyers, good ideas are dying on the vine.” In other words, Kentucky’s shortage of startup lawyers likely results in fewer Kentucky entrepreneurs.

“Without the right lawyers, good ideas are dying on the vine.”
The interviews, roundtable discussions, and surveys that form the basis of this report were conducted over the course of approximately two months during the summer of 2018. Prior to engaging with respondents, the project facilitator mapped stakeholders in Kentucky’s entrepreneurial ecosystem. The initial list was over 100 names long and was sorted into eight types of stakeholders.

The initial list was then reduced to a list of interview prospects reflecting a geographically-and demographically-balanced selection of each type of stakeholder and garnering responses that were representative of the breadth of entrepreneurial activity that occurs across the entire state. The reduced list was also reviewed to control for inclusion of individuals and organizations who the project facilitator deemed had perspective that either (a) was likely indicative of a broader class of stakeholders across a particular region or the whole state, or (b) was unique to the individual or organization, because they played a unique and vital role in a particular industry or region. The people on that cultivated list of names were contacted to set up in-person and telephonic interviews, though in the interest of generating rich discussions among participants in related fields, the project facilitator sometimes grouped people into roundtable discussions. An online survey was then passed through professional networks in the entrepreneurial and legal ecosystems to generate additional data beyond what was feasible through individual and roundtable discussions.

The data as presented is the result of over 50 interviews (both in-person and via telephone) and 81 survey respondents representing all eight stakeholder buckets and all nine economic development regions of the Commonwealth of Kentucky.
Questions Asked
The data collected for this report was qualitative in nature rather than quantitative, and so the interviews resembled open-ended conversations that probed the following topics:

1. What legal issues do entrepreneurs typically face?
2. How do entrepreneurs currently find legal services to address those issues?
3. What barriers to receiving legal services do entrepreneurs typically face?
4. Based on your experience, how would you improve the ability of entrepreneurs to access legal services that meet their needs?

The survey questions followed a similar trajectory and used a mix of multiple choice, response rankings/ordering, and open-ended questioning to provoke responses to the following questions:

1. What term best describes your organization?
2. Does your organization regularly encounter and/or assist entrepreneurs, small business owners, or others seeking assistance for their startup ideas or businesses (hereafter referred to as “entrepreneurs”)?
3. In encountering or assisting entrepreneurs, do legal issues or questions about the entrepreneurs’ businesses or ideas sometimes arise?
4. What types of legal issues or questions typically arise in your interactions with entrepreneurs?
5. How, if at all, do you or others at your organization attempt to connect those entrepreneurs to legal resources to meet their needs?
6. Assuming that the entrepreneurs’ legal needs are not all met through these channels, what are typical reasons why their needs remain unmet?
7. In your own words, what do you believe is the biggest barrier to Kentucky entrepreneurs receiving the legal assistance they need?
8. In your own words, what can and should be done to better meet the legal needs of entrepreneurs in Kentucky?
9. What is your name, title, and the name of your organization? (This information is for data analysis purposes only - none of your answers will be shared by the administrator or otherwise made public)

Limitations of Data
Despite our best efforts to solicit reliable survey and interview responses from a multi-dimensional, balanced pool of respondents, the data utilized in this report is limited in a number of ways. First, responses by individuals do not necessarily reflect the opinions of the broader pool of stakeholders they represent, though we assume that they do for purposes of building consensus around concepts and ideas within this report. Second, please note that this report does not identify detailed aspects of legal representation needed by certain subsets of entrepreneurs nor does it identify specific legislative policy angles intended to benefit startup companies; while these highly-specific sorts of needs certainly exist, they fall outside the scope of this ecosystem-level report. Third, while a broad range of ethnic, gender, racial, and regional diversity in participants was sought, it was not always received; as a result, the demographic makeup of respondents tilted somewhat towards white, male stakeholders living within the metropolitan areas of Louisville, Lexington, and Northern Kentucky/Greater Cincinnati (collectively, the Golden Triangle). Finally, please note that respondents’ identities have been intentionally kept confidential to allow for candid conversations and remarks that may not be necessarily representative of the companies, institutions, and organizations with which they are affiliated.

Golden Triangle: the geographic area of Kentucky as demarcated by the metropolitan areas of Louisville, Lexington, and Northern Kentucky.
Many of Kentucky’s entrepreneurs struggle to find lawyers that meet their needs.

The prevailing means entrepreneurs use to find an attorney is through a referral, often given by someone encountered at Hubs or ESOs. Many Hubs and ESOs maintain a small stable (often three or less) of trusted attorneys to which they send clients for legal representation as well as utilize to teach workshops and serve as subject matter experts for informal consultations. Hubs and ESOs often fear over-reliance on their stable of attorneys, not wanting to “wear out their welcome” by repeatedly asking the same attorneys to offer workshops and informal consultations on a pro bono or low bono basis and having no known avenues through which to find additional experienced and reputable attorneys. The more specialized an entrepreneur’s legal needs are, the more difficult it is to find attorneys qualified and able to do the work.

Respondents overwhelmingly reported that entrepreneurs’ legal needs often go unmet. The most frequent reason cited for going without representation was an entrepreneur’s financial inability to pay for services, though distance between entrepreneurs and attorneys was also cited as a reason, especially for rural-based entrepreneurs who reported finding it logistically inconvenient and/or culturally intimidating to travel to Louisville or another city for representation. In contrast, entrepreneurs who seek attorneys with the best reputation and experience in a particular practice area or industry, regardless of cost, reported sometimes hiring attorneys located in other states, indicating that sufficient startup expertise is lacking in Kentucky even in circumstances where distance and financial resources do not present barriers to access.

When representation by a reputable startup attorney isn’t feasible for their clients, ESOs reported giving informal advice to unrepresented parties with the caveat that they aren’t lawyers (or if they are, that they aren’t representing the client). Other entrepreneurs utilize attorneys who do not have expertise with startup companies but with whom they have a pre-existing relationship. Some reported turning to Legal Zoom and other online legal services providers. Some attempt to do the work entirely by themselves. In some instances, entrepreneurs without legal representation reportedly abandon their business ideas altogether out of fear of liability.
Entrepreneurs with certain types of legal needs struggle more than others.

Respondents reported that certain types of legal needs (Particular Legal Needs) fall outside the expertise of available attorneys more often than others, including:

- **Alternative business structures**, such as social enterprises structured as L3Cs, benefit corporations, hybrid for-profit/non-profit models, and cooperatives. On a related note, respondents reported that startup and business attorneys are often not well-versed in nonprofit law (and nonprofit attorneys are often not well-versed in startup and business law), making it difficult for those attorneys to thoroughly counsel a client who is unsure of whether the best legal structure for their business is a for-profit entity, a non-profit entity, or a combination of for-profit and non-profit elements via a hybrid model;

- **Equity Financing**, including early-stage equity financing, equity crowdfunding, direct public offerings, and fund formation; and

- **Intellectual Property (IP)**, including IP strategy, registration, and infringement in the fields of copyright, patent, trademark, and trade secret.

Entrepreneurs in certain industries struggle more than others.

Respondents indicated that certain industries were more unfamiliar to available transactional attorneys than others (Particular Industry Needs), including:

- **Food and Agriculture**

- **Creative Economy** (including the arts, media, fashion, and entertainment industries)

- **Emerging Kentucky Industries** (examples include hemp, aerospace, addiction recovery, and workforce reentry-related businesses)

Entrepreneurs, Hubs, and ESOs working in these fields felt there was a substantial need for attorneys who understand their broader business landscapes and specialize in helping clients within specific industries.
Factors of geography, income, ethnicity, and gender were also found to play a role in the legal services available to an entrepreneur (Particular Demographic Needs). Specifically:

- **Entrepreneurs Outside the Golden Triangle** have a harder time accessing legal services than entrepreneurs within it, and the more rural the location, the less legal resources tend to be available for entrepreneurs. Rural entrepreneurs, Hubs, and ESOs reported that even when traveling to a distant city for legal services was logistically and financially feasible for an entrepreneur, it might be culturally unfamiliar or intimidating to the extent that the entrepreneur may choose to forgo representation rather than travel to meet with an attorney. Respondents noted that even in areas with plenty of active, licensed attorneys, there is a particular lack of startup legal expertise in rural areas; relatedly, respondents noted that a pervasive “rural bias” disadvantages existing legal resources—and even entrepreneurial ideas—in rural communities, as those attorneys and entrepreneurs are often implicitly viewed as inferior to attorneys and entrepreneurs within the Golden Triangle.

Likewise, rural respondents noted that existing channels of information and resources related to entrepreneurship are not as effective in some rural communities due to differences in the ways information and resources are disseminated, including circumstances in which rural people are unaware that city-based resources are also intended to be available for surrounding rural communities. Rural-based respondents noted that there is significant potential for entrepreneurship in rural communities in the wake of rural broadband expansion as well as due to tremendous shifts in local economies as a result of the decline of the coal industry, and that startup lawyers will play a vital role in realizing that entrepreneurial potential.

- **Entrepreneurs of Limited Financial Means** struggle more than other entrepreneurs to find adequate representation for their business legal needs. ESOs and entrepreneurs noted that even high-growth-potential companies are in need of avenues to access legal services before funding is received, and especially when they are not affiliated with (or have already completed) an incubator, accelerator, or boot camp program. Respondents reported that few startup attorneys utilize deferred fee arrangements, legal work in exchange for equity, limited pro bono representation, and other alternative billing arrangements to accommodate clients who are unable to pay billable hour or flat fee rates at the time of service.

Survey respondents reported that the #1 reason that entrepreneurs’ legal needs go unmet is because the lawyers to which they are referred have fees that are unaffordable for the entrepreneurs; in another question, “cost” was also singled out by respondents as the biggest barrier to Kentucky entrepreneurs receiving the legal assistance they need.
Respondents reported that startup representation was typically relegated to specialized boutique firms, solo practitioners, or to large firm practices, leaving an undeveloped middle legal market for startup clients. Moreover, while some areas of startup legal practice are highly specialized particular to representing startups and require lawyers with certain expertise, other specialized areas of practice, such as patent law, are more readily transferrable between startup clients and other types of business clients and therefore might benefit from a pool of existing attorneys who could expand their clientele to meet those legal needs.

Respondents indicated that existing volunteer lawyers programs and pro bono referral networks do not typically handle transactional matters, and even fewer cater to business-related transactional legal matters; this is despite the goal established by the Kentucky Rules of Professional Conduct for all Kentucky attorneys to donate 50 hours of pro bono service per year. Even existing technical assistance programs that are intended to encourage microenterprise ownership by disadvantaged populations as a path to economic prosperity are not typically coupled with pro bono legal representation. According to respondents, the only two pro bono transactional legal services programs in the state are the Entrepreneurship Law Clinic at Brandeis School of Law at the University of Louisville and the Small Business and Nonprofit Law Clinic at Chase College of Law at Northern Kentucky University; only the latter, located at the far northern end of the state, represents non-university-affiliated clients. This means that there is one pro bono transactional legal services program open to the public in the state. Legal aid providers that have considered representing or that formerly represented small business clients reported difficulties qualifying entrepreneurs as clients under existing programmatic requirements, especially income thresholds, which are imposed by funders and limit the provision of legal services to only certain types of clients.

Women and Minorities were reported to face increased difficulties in accessing legal services for their businesses. These difficulties are attributed to a lack of diversity in the Kentucky bar as well as to a perceived broader lack of respect for women and minority entrepreneurs, which may presumably lead to a systemic disconnect between women–and minority-owned businesses and startup technical assistance providers, including legal counsel.
Kentucky’s law schools receive greater demand for student exposure to transactional law opportunities than supply permits.

Kentucky law schools reported significant student interest in transactional experiential learning opportunities and job placements—including demand for exposure to startup law and entrepreneurs—which substantially outpaces availability. As a result, students who express interest in transactional law during law school often graduate without sufficient transactional experience and exposure and thus end up following non-transactional career paths.

Kentucky’s legal and entrepreneurial ecosystems are ripe for innovation and collaboration toward mutual benefit.

An ecosystem-level assessment of Kentucky's legal and entrepreneurial landscapes reveals underutilized points of intersection between lawyers and entrepreneurs as well as opportunities for mutually-beneficial collaboration. By weaving these landscapes together and capitalizing upon opportunities for collaboration, Kentucky’s lawyers and entrepreneurs can generate economic momentum for the state, as well as develop innovative models for collaboration and broader ecosystem design to be employed by other states seeking to support the legal needs of entrepreneurs.

By weaving these landscapes together and capitalizing upon opportunities for collaboration, Kentucky’s lawyers and entrepreneurs can generate economic momentum for the state.
Interview and survey responses identified the following categories of building blocks for the successful practice of startup law:

- key attributes of successful startup lawyers,
- key innovations for a startup legal market, and
- key components of law school education for future startup lawyers.

Each of these building blocks will be discussed in turn, below.

### Key attributes of successful startup lawyers

**Resourceful.** Respondents stated a preference for attorneys who function as resourceful, collaborative partners in their clients’ businesses rather than as service providers who complete discrete tasks as dictated by their clients. Likewise, respondents noted that they prefer attorneys who are nimble in their approach to representation, are willing to serve as strategic partners in addition to legal advisors, and who take the time to educate their clients regarding the legal tasks at hand. Note that this approach contradicts what many lawyers assume is a client’s preferred style of lawyering, which is to not bother the client with the details of the task and deliver the final product with minimal client interaction. Likewise, respondents frequently expressed a concern that entrepreneurs “do not know what they do not know” and look to an attorney to issue spot across the breadth of their business, give preliminary advice, address the legal needs that they are well-equipped to handle, and recommend other attorneys who can effectively meet the legal needs that the initial attorney cannot.

Respondents also indicated that they seek attorneys who maintain a “can-do” attitude towards legal hurdles, who are inclined to find ways over or around legal problems rather than attorneys who highlight liability or other potential pitfalls without offering alternative paths forward. Respondents reported that many entrepreneurs recoil from discussions about liability—and therefore recoil from talking to attorneys—unless the attorney counters the “bad news” information with knowledge that empowers the entrepreneur to move forward with their business.

The entrepreneurs’ preference for attorneys who take a partnership approach rather than a deliverables-based approach to representation extends to a preference for attorneys with strong professional networks. Entrepreneurs reported seeking to hire attorneys whose networks bring additional value to their clients beyond the legal services provided, through access to additional legal expertise, access to funders, and a working knowledge of the other service providers in the client’s industry so that non-legal needs might be addressed alongside legal needs in a coordinated fashion. An ideal lawyer, respondents noted, serves as a springboard to further a business’s resources and networks.

---

**Key attributes of successful startup lawyers:**

- Resourceful
- Entrepreneurial
- Trusted
- Quarterbacks
**Key attributes of successful startup lawyers (Continued)**

**Entrepreneurial.** As Kentucky’s business culture further shifts to encourage and support entrepreneurship, respondents felt that lawyers who represent entrepreneurs should respond by learning the business of entrepreneurship, as well as by embodying an entrepreneurial spirit in their own practices. Respondents stated that the personality of a startup attorney should align with startup culture, noting that creativity, flexibility, a passion for their work, an understanding of their clients’ business, a drive to stay current on industry and legal trends, and a willingness to craft innovative legal solutions were crucial to an attorney’s relationship with their startup clients. Respondents noted that successful startup attorneys should view the practice of law with the same fresh, critical lens as an entrepreneur would use in developing a disruptive product or service, which would include the lawyer leveraging technology to increase efficiency and improve client service outcomes.

**Trusted.** Respondents identified trust as a cornerstone to a successful attorney-client relationship and expressed a desire to work with attorneys who are known through first- or second-hand experience to be “the best,” with a preference for attorneys who are considered trustworthy by members of the communities in which the entrepreneurs live and work. Respondents recounted negative stories of attorneys who completed legal work that was not timely or necessary as well as stories of attorneys who professed a capability to complete a legal task that was outside their range of expertise and who subsequently produced sub-par client results. In contrast, respondents expressed loyalty to attorneys who explain legal tasks up front without “starting the clock” on hourly billing, and who advise courses of action that are in the best interest of the company even when that course of action may result in less paying work for the attorney. Paradoxically, some entrepreneurs fear talking to attorneys about a legal problem because they feel that they don’t know enough about the legal issue and are afraid that their lack of knowledge will result in more billed hours and thus higher legal fees; a willingness to work around the billable hour during the early stages of representation goes a long way towards establishing attorney-client rapport and trust. However, respondents did express reservations about over-reliance on one attorney, especially when that attorney serves as a “biological database” for the legal affairs of the company. These reservations highlight the importance of entrepreneurs maintaining their own functional level of understanding of the company’s legal affairs, as well as the need for entrepreneurs to ensure ongoing input into the company’s legal needs by more than one attorney, thereby acknowledging that no one attorney can successfully meet every legal need in the life cycle of a company.

**Quarterbacks.** Though respondents recognize the value of having more than one attorney involved in the legal affairs of a business and hope to establish attorney-client relationships in which the attorneys take the time to educate the entrepreneurs, entrepreneurs recognize that they are ill-equipped, in terms of both time and expertise, to identify and triage their myriad legal needs and coordinate involvement by multiple attorneys. For that reason, respondents identified the art of “quarterbacking” as a key attribute for successful startup attorneys. Specifically, entrepreneurs want attorneys who will act as additional business counsel in identifying legal issues and strategies, tell them when and why additional attorneys are needed, recommend reputable attorneys—or even other, non-legal service providers when called for—to complete the work, and coordinate with the additional attorneys to minimize the amount of coordination that must be done by the entrepreneurs themselves. Startup attorneys who play the “quarterback” role for a business are able to provide a one-stop shop amenity for entrepreneurs looking to access needed legal services. In this way, startup attorneys are playing a role typically reserved for in-house counsel, though for companies for whom hiring in-house counsel is premature, unaffordable, or otherwise inadvisable. Note that while “quarterbacking” is a skillset and service in high demand by entrepreneurs, it is also a service that is not currently provided by many attorneys and a service for which even fewer attorneys bill, as it is not in itself legal work.
Key innovations for a startup legal market

Alternative Approaches to Service Delivery and Billing. Respondents highlighted a disconnect between the business of entrepreneurship and traditional models of legal services delivery and billing. In particular, respondents noted that the hourly rates that are traditionally incurred for legal services are incompatible with—and unaffordable for—many early-stage businesses. Likewise, attorneys noted that much of the work of finding, meeting, and counseling early-stage companies is not legal work for which the attorney can easily bill with an hourly rate, and moreover, that many early-stage companies are unable to pay for even the portion of the attorney’s work that is billable legal work, at least at the time the work is completed. While no one disputed the considerable demand for legal services by entrepreneurs, many respondents question how startup attorneys can maintain profitable legal practices while meeting the needs of startup clients who are unable to afford their hourly rates.

This economic disconnect between startup cash flows and traditional legal services models presents opportunity for innovation regarding how attorneys interact with their clients and bill for their services. Innovative models have already been implemented by some attorneys and can serve as catalysts for broader adoption as well as for further innovation. For example, some startup attorneys and Hubs (in which attorney involvement is coordinated at least somewhat within the Hubs and across multiple companies) have created—and shared—menus of common legal tasks offered by the attorneys, including flat-fee pricing for the completion of each task. Flat-fee billing for legal tasks aligns incentives between the client and the attorney, motivating the attorney to complete the task as quickly and efficiently as possible. Making the costs of services transparent to other entrepreneurs and attorneys signals integrity to clients, removes secrecy to make way for collaboration with other attorneys, levels the playing field across attorneys and entrepreneurs (especially those participating simultaneously in Hub programs), and provides a tangible “issues list” of the types of legal issues that attorneys and early-stage entrepreneurs alike should bear in mind.

In addition to flat-fee and/or transparent billing, some lawyers choose to implement other alternative pricing schemes to bridge the gap between needed legal work and a client’s ability to pay. For example, FAST Agreements or similar work-for-shares arrangements are sometimes utilized to enable early-stage legal needs to be met in exchange for equity ownership in the company. Attorneys may also choose to bill at different rates for different types and levels of service. Likewise, deferred fees or sliding-fee scales may be implemented for clients by attorneys to better align pricing with a clients’ ability to pay, enabling attorneys to make some money now and engender loyalty as the company grows.
Key innovations for a startup legal market (Continued)

Consensus Adoption of Template Documents. Respondents noted that widespread adoption of well-vetted, regularly-updated, and annotated template legal documents for entity formation and other common startup legal matters would reduce transaction costs, foster a level playing field for entrepreneurs seeking funding (especially those entrepreneurs contemporaneously involved with attorneys and seeking funding through Hub programs), and improve attorney work product. A cohort of Kentucky startup attorneys could create a set of documents (or adopt and improve upon existing ones14), providing space for the attorneys to collaborate and educate one another, bringing benefit to their own practices and clients, and building a stronger network of startup attorneys within the state. Limited efforts have been made within the state to develop template documents to be used by multiple attorneys (and a number of efforts have been outside the state, as well15), but further work remains to explore the viability of this approach.

Vibrant Networks of Attorneys and Clients (involving ESOs). Respondents indicated that despite legal services being integral to entrepreneurship, lawyers were largely absent from conversations about entrepreneurial ecosystem building across the state. This data indicates a need for lawyers to prioritize network building, including relationships with other attorneys as well as non-attorneys who are stakeholders in the entrepreneurial ecosystem. Moreover, in addition to building their own networks, attorneys should endeavor to become valuable players in others’ networks, especially the networks belonging to ecosystem “nodes,” such as ESOs or other organizations and people that serve to curate and facilitate resource networks within the ecosystem. While all of the work of ecosystem building is certainly not paid legal work, an injection of legal expertise and experience into all points of an ecosystem can serve to strengthen the network, elevate the attorney’s exposure and reputation, and lead to more clients down the line.

Avenues to Continuing Education. Respondents lamented the lack of targeted education available to startup lawyers and would-be startup lawyers. Respondents noted that a subset of continuing legal education courses, which are required annually in Kentucky to maintain a license to practice law, could be tailored to focus on legal issues for entrepreneurs. Respondents also noted that cultivating functional networks of startup law attorneys may generate momentum for ongoing educational and mentoring opportunities that would serve the dual purpose of improving the legal skills and expertise of network members as well as increasing attorneys’ exposure to one another, thereby facilitating opportunities for collaboration. Beyond startup attorney networks, respondents also highlighted the potential for focused educational opportunities among startup attorneys and other stakeholders within the entrepreneurial ecosystem, including education relevant to startup lawyers and industry-specific groups, funders’ networks, accountants, and law student associations, for example.
Key components of law school education for future startup lawyers

Recruitment Channels from and to Communities In Need of Services. Broadly speaking, one identified strategy for law schools seeking to funnel students into practice in certain communities is to recruit students from those communities and then present viable pathways for those students to return to practice law there. This approach might therefore be employed by law schools to recruit students with backgrounds in communities in need of services, including students with a demonstrated interest in the fields of business or entrepreneurship, students with backgrounds in the creative, food, or agriculture industries, students from rural communities, and/or students who are women or minorities. However, career trajectories are often set by students’ exposure and experiences while in law school, and so the most important step of the recruitment channeling is the second one, which is to meaningfully expose those students—and all students—to viable paths to jobs in those areas, through intentional exposure to attorney mentors and others in the field, experiential education opportunities, and related coursework.

Ways to Educate Students to Anticipate Market Demands. Law schools must remain flexible to shifts in the legal profession so that modern legal education reflects the legal markets into which the students are graduating. To accomplish this goal, law school classes can be taught by legal practitioners who are leaders and pioneers in the legal community, including, in this instance, well-respected startup law attorneys. Doctrinal courses such as contracts and business organizations should have current legal topics included in the syllabus to give real-world context to how legal concepts are applied in modern startup and corporate practice. Likewise, allowing cross-registration for classes with business schools and other related fields of study can ensure well-rounded, business-savvy lawyers as well as law-savvy business majors. Law practice management courses should stress the importance of networking, Hubs, and ESOs, alternative practice and billing systems, and other aspects of startup legal practice. Experiential education offerings, such as clinics like the Entrepreneurship Law Clinic at Brandeis School of Law at the University of Louisville and the Small Business and Nonprofit Law Clinic at Chase College of Law at Northern Kentucky University, as well as externship and internship programs, provide valuable, practical, hands-on learning experiences for law students. Such programs also provide valuable services to the clients they serve and thus should remain flexible to evolving community legal needs that are not easily or sufficiently met by the private bar or legal aid; in the case of entrepreneurship, experiential educational offerings in which low-income micro-entrepreneurs are represented by students pro bono or low bono under the supervision of licensed attorneys would serve to educate students and fill the market need for representation of individuals who do not possess the means to hire private market attorneys. Similarly, research, policy work, self-help publications, and community workshops, all of which are often not easily undertaken by the private bar or legal aid, can be valuable contributions made by law students to the legal, entrepreneurial, and startup ecosystems.
Law schools play a unique role in the state’s legal ecosystem and can serve as centralized beacons of new ideas and opportunities.

Key components of law school education for future startup lawyers (Continued)

Meaningful engagement with private bar and entrepreneurial communities.
Law schools seeking to provide pathways to startup law practice should cultivate ongoing interaction between law students and practicing startup law attorneys throughout students’ time in school and beyond, including opportunities for student internships and externships, recruiting practicing lawyers as faculty, mentoring programs, professional networking events, lunch talks or other informal presentations, featured post-graduate fellowship and job opportunities, facilitation of law practice succession planning (as existing law practices can be modernized to include representation of entrepreneurs), and hosting events to gather networks of attorneys and others working at the intersection of law and entrepreneurship. While the bulk of legal representation of entrepreneurs will always occur in private practice, law schools play a unique role in the state’s legal ecosystem and can serve as centralized beacons of new ideas and opportunities, including in the entrepreneurial space.

Moreover, Kentucky’s three law schools could collaborate around experiential education opportunities, curricula offerings, scholarship, and events related to law and entrepreneurship in order to maximize the efficiency and impact of their efforts; such joint efforts among law schools can also tap into governmental-based and other economic development efforts as well as the private bar to ensure that all complementary initiatives around the state are primed to maximize impact.
1. Startup law should be supported as a specialty practice that is distinguished from small business law:
   - Law schools and continuing legal education programs can respond to student/attorney demand as well as the identified, unmet, and specialized needs of startup clients with specialized educational opportunities.
   - Attorneys with existing startup law skills and experience can better distinguish, network, and market their services accordingly.
   - The identified key attributes of successful startup lawyers, key innovations for a startup legal market, and key components of law school education for future startup lawyers that are identified within this report can be taught, modeled, supported, marketed, and built upon by engaged members of a robust startup legal ecosystem within the state.
   - Law schools, bar associations, Hubs, ESOs, and other nodes of the entrepreneurial ecosystem can partner to play specific and prominent roles in growing, educating, and marketing the startup law community in Kentucky.

2. ...yet all transactional law services should be sufficiently primed and networked to meet client needs, maximize efficiency, allow for business model pivots, and support business growth.
   - As startup businesses represent only one type of specialty within a broader field of transactional law (and one type of business within a broader economy), all transactional attorneys, including startup attorneys, can leverage the overlap in client bases and legal issues by actively associating themselves with networks of transactional lawyers within the state.
   - Attorneys, Hubs, and ESOs can be sufficiently networked with one another to serve as reliable connectors to legal resources for all of our state’s businesses, regardless of a business’s age, size, resources, scalability, or industry.

   In addition to generating return visibility and subsequent work for attorneys seeking clients of a particular size, at a particular stage, or with a particular need, contributing to and maintaining a functional legal network allows more clients to hire more attorneys and widens the client pipeline for lawyers at all stages of the ecosystem.

   - Attorneys, Hubs, and ESOs can streamline processes of legal representation and provide educational workshops and self-help materials to entrepreneurs to improve client readiness for legal services.
3. Existing legal and non-legal resources should be strengthened and extended to assist entrepreneurs and support startup lawyers.

Kentucky possesses a number of valuable existing networks within our legal and entrepreneurial ecosystems that can be expanded to assist entrepreneurs and support startup lawyers. Specifically:

- **Existing pro bono referral programs** can expand their parameters to accept startup cases that align with their broader missions.¹⁶

- **Law firms and in-house attorneys** seeking community goodwill, opportunities for increased exposure to startups, or client interaction and transactional law experience for their junior lawyers, can meaningfully engage with ESOs to offer community workshops, office hour consultations, or pro bono client services for affiliated entrepreneurs.

- **Bar associations** can convene members who are interested in startup law through various programming for networking, education, incentivized service initiatives, and related advocacy work.

- **Law schools** can capitalize upon unmet student demand for transactional experience and job placements by implementing and expanding upon the **key components of law school education for future startup lawyers** as identified in this report, further scrutinize barriers to transactional law career paths for graduates, and retool course offerings and programming (including post-graduate programming) to overcome those barriers.

- **ESOs and Hubs** can serve as proactive conveners of startup attorneys and entrepreneurs for growth and engagement (beyond referring entrepreneurs for direct client services).

- **Lenders and Investors** can engage with networks of startup lawyers to identify legal and educational barriers to financing for startup companies and work together on policy and education initiatives to overcome those barriers.

- **Membership-based organizations** that represent certain populations that include entrepreneurs, such as Chambers of Commerce and the Kentucky Chapter of the National Association of Women Business Owners (NAWBO), can highlight and support entrepreneurship within their membership by engaging with ESOs and Hubs for programming.

- **Statewide public networks**, such as public libraries, county extension offices, institutions of higher learning, and K-12 public schools, can design and engage in network-wide programming designed to promote entrepreneurship as a broad professional field rather than as a singular endeavor, and funnel entrepreneurial-minded individuals into appropriate points of entry within the entrepreneurial ecosystem.

- **Government offices**, including state and local economic development offices and other entities that work indirectly with entrepreneurs, can support entrepreneurial activity in their communities by funding and facilitating partnerships that serve to meet critical startup legal needs and to support startup attorneys, and by engaging with Hubs and ESOs to identify regulatory barriers to entrepreneurship (such as onerous permitting or licensing requirements) as well as potential targeted incentives for entrepreneurship.
4. Pervasive gaps in access, including gaps identified by type of legal need, client industry, or demographics, should be addressed through the creation of new and targeted legal networks and resources...

- The **Particular Legal Needs**, **Particular Industry Needs**, and **Particular Demographic Needs** as identified in this report can be treated as opportunities rather than problems, as these unmet needs amount to untapped entrepreneurial potential for the legal ecosystem and the state.

- Primary legal ecosystem members can strive to cultivate and share expertise on **Particular Legal Needs**, building and elevating such expertise within the legal ecosystem to increase access beyond a subset of entrepreneurs, and positioning Kentucky lawyers as national thought-leaders where relevant expertise is also lagging at a national level.

- Secondary and tertiary ecosystem members that serve entrepreneurs with **Particular Industry Needs** or **Particular Demographic Needs** can proactively connect their constituencies at all levels of the primary legal ecosystem, including, for example, by:
  - connecting with law schools to expose students to research and practice opportunities in those areas, through hosting law students as interns, externs, and fellows, and by hosting events;
  - in the case of **Particular Industry Needs**, by convening stakeholders within industry clusters around legal topics, including positioning our state as a national industry leader and inviting stakeholders from outside the state when applicable;
  - co-sponsoring referral networks and other programming to connect their constituents to new and existing legal resources; and
  - by bringing lawyers to the table within the industry and demographic communities they aim to serve to limit cultural and geographic barriers.

- Industry-focused lawyers and non-legal technical assistance providers can strive to proactively and mutually share industry-specific information (for example, the existence of USDA loans and grants for certain rural businesses) through workshops and other educational opportunities.

- Bar associations, law schools, and organizations that represent entrepreneurs with **Particular Demographic Needs** can partner with one another to identify recruitment strategies and career opportunities designed to increase the diversity of the state bar to better reflect communities with lagging access.
5. ...including lawyer clusters, which should form and operate to bring a breadth and depth of legal practice to entrepreneurs across the entire state.

- Kentucky’s rurality limits the economic viability of specialized firms (or even specialized solo practitioners) from physically locating in many small or remote communities. However, resources from state government, bar associations, law schools, and other stakeholders can be utilized to grow attorney clusters in regions across the state and deploy technology to facilitate those clusters as they engage in specialized legal practice across distances.18

- For example, an entrepreneur in Pikeville might be able to meet and build face-to-face rapport with a patent attorney within her city, and that attorney can then help identify the entrepreneur’s other legal needs and play quarterback for those needs with other specialized attorneys living across Eastern Kentucky.

- In turn, the other attorneys can outsource work from their clients to the patent attorney, allowing him to maintain a specialized practice in a town that might otherwise be too small to draw enough patent work.

- The face-to-face rapport aspect of the lawyer-client relationship is integral to success of the cluster model in rural communities, as the community relationships with the local attorney can then be leveraged to share work with the rest of the attorney cluster.

- Attorneys may choose to cluster in a number of ways, from as closely-affiliated as a law firm spread across a geographic distance to as detached as a group of attorneys who occasionally refer work to one another.

- Attorney clusters can be formed based on geography, industry, or around other attorney or client commonalities.

- Leveraging the cluster model provides opportunities for Kentucky’s legal market to bring targeted breadth and depth of legal experience to all entrepreneurs within the state, and holds particular promise for entrepreneurs with Particular Industry Needs, with Particular Legal Needs, and with Particular Demographic Needs.
6. In concert with personal reputation and rapport, technology should be leveraged by every stakeholder at every point in the ecosystem to improve efficiency and maximize impact.

- Remote conferencing technology can be utilized to facilitate remote client representation and lawyer and entrepreneurial educational programming across distances.

- Cutting-edge technology, such as collaborative legal platforms and law practice management software, can be utilized by attorneys to increase their efficiency and match the culture of their entrepreneurial client base.

- Existing community facilities can be equipped with conferencing technology to allow for local groups of entrepreneurs or attorneys to simultaneously participate in statewide programming, building local in-person networks and connecting disparate networks via technology.

- Bar associations, law schools, and law firms can collaborate to develop online repositories of legal resources and information for entrepreneurs; ESOs, HUBs, public libraries, and other community resources for entrepreneurs can then be educated to become primed points of entry for entrepreneurs into those online repositories.

Technology should be leveraged by every stakeholder at every point in the ecosystem to improve efficiency and maximize impact.
As this report reveals, the legal needs of Kentucky’s entrepreneurs extend far deeper than a defined set of legal tasks, calling into question the broader ecosystem that supports entrepreneurs and generates the attorneys who serve them. This report aims to be a starting point for widespread, coordinated action to better meet the many and multi-faceted legal needs of Kentucky entrepreneurs, so that ultimately, wherever there are resources for entrepreneurs, there will also be lawyers to represent those entrepreneurs. Just as there is no one set of legal tasks, there exists no one-size-fits-all solution, especially in light of the field’s rapid and ongoing evolution. What is clear, however, is that lawyers who aim to improve the way we represent entrepreneurs must first be willing to become more than direct client service providers, actively engaging with the broader entrepreneurial ecosystem—as collaborators, consultants, conveners, presenters, teachers, writers, and leaders as well as lawyers—to weave legal expertise into the fabric of the entire entrepreneurial landscape. Successfully meeting the legal needs of Kentucky entrepreneurs will require lawyers and others to build a nimble and well-networked patchwork of resources that is able to grow, learn, adapt, and innovate along with the field of entrepreneurship. Perhaps then we might collectively reach the point at which a lack of legal resources never again stands in the way of a Kentucky business realizing its full potential.


5. Thompson, Eric and William Walstad. “DigitalCommons @ University of Nebraska – Lincoln State Entrepreneurship Index 2014.” University of Nebraska – Lincoln State, digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1155&context=bbbrbim (accessed August 10, 2018).


9. Rules of the Supreme Court of Kentucky, SCR 3.130(6.1).

10. There may be pro bono referral networks that take certain transactional matters, but such resources were not uncovered during the interviews and surveys that form the basis of this report. A new resource will be arriving soon, however: The Center for Intellectual Property Research at Indiana University’s Maurer School of Law facilitates a USPTO program called PatentConnect, which connects inventors in need of pro bono patent services with pro bono attorneys. PatentConnect will be extending its referral network into Kentucky starting September 2018. Indiana University Bloomington. “PatentConnect.” The Trustees of Indiana University, http://ip.indiana.edu/pro-bono-services/patentconnect/ (accessed August 10, 2018).


13. For one example of tiered levels of service, see Lawgood, https://lawgood.io/ (accessed August 10, 2018).


Survey respondents provided a wealth of information and ideas that were invaluable to the preparation of this report. While much of the data provided by respondents has been included within the report, in the interest of brevity, some has not. The survey’s final substantive question, “In your own words, what can and should be done to better meet the legal needs of entrepreneurs in Kentucky?” provoked particularly rich responses, which are provided in an anonymized, excerpted list here to serve as an ideas repository for future initiatives on behalf of Kentucky startup lawyers and the entrepreneurs they represent. Please note that none of the responses have been vetted for viability (including legality), some similar responses have been combined, and most responses have been edited for the sake of consistency and clarity.

- Incentivize pro bono services by corporate attorneys; encourage more firms to do pro bono business development work.
- State support for pro bono assistance given by law schools; expand law school clinical programs to be open to all entrepreneurs; expand Kentucky’s limited practice rules to allow law students to do more work for start-up ventures.
- Train better startup attorneys; cultivate better awareness of firm reputations (good and bad).
- Price menus; more transparency on costs.
- Develop more reasonably priced services, including attorneys who offer reduced up-front fees, perhaps deferred up to the point of funding with the hopes of being their fully-trusted legal counsel someday.
- Utilize more open source and standardized legal agreements.
- Some generic forms, information, recorded seminars on common legal topics, and self-help resources (like checklists) for different types of legal needs could be provided directly to entrepreneurs.
- Establish regional sources of legal information for entrepreneurs; connect experienced attorneys to entrepreneur centers, perhaps through cooperative agreements.
- Consider a pro bono for start-ups model, where a piece of equity upon success goes back to the 501c3.
- Develop centralized locations for information, including online directories of legal entities available to help at pro bono or discounted cost; development of a centralized website where entrepreneurs can access appropriate counsel; bring together resources in a one stop support location; referral networks.
- More open office hours; more 2-3 hour session with attorneys who can identify needs and ideas for next steps and legal items entrepreneurs need to be proactively thinking about as they grow their business.
- Create hotline or online chat services for entrepreneurs to consult with attorneys; utilize virtual settings to reduce costs.
- Create more publicity about resources, including training for librarians, chambers of commerce, and extension offices.
- Offer state-sponsored reimbursements for legal expenses for businesses that have been in operation for a certain length of time or who have registered with the state - this approach would allow an entrepreneur to begin a trusted relationship with a longer-term attorney at a discounted rate versus volunteer attorney services.
- Look to other cities and states for ideas for building our ecosystem here.