The House of Delegates of the Nebraska State Bar Association met on October 14, 2020.


Also present were NSBA President Steve Mattoon, NSBA President-Elect William Mueller, Chief Justice Heavican, Chief Judge Pirtle, Dean Richard Moberly, Dean Josh Fershee, Counsel for Discipline Mark Weber, NSBA Executive Director Liz Neeley, NSBA Associate Director Sam Clinch. Legislative Counsel Tim Hruza

Judge Freeman noted that at the time that the agenda was developed, it was not clear whether item number 17, the Volunteer Lawyers Tenant Assistant Project,
would be a discussion item or action item. With that note, a motion was made and seconded to approve the agenda. The motion carried.

Minutes of the January 31, 2020 meeting were approved.

Reports

Chair of the House
Chair of the House of Delegates, Judge Freeman thanked the NSBA staff for their work in supporting the Association through the pandemic.

President
President Mattoon reported that the renovations to the NSBA office space discussed at the last House of Delegates meeting have been completed. Mattoon reported that the Nebraska Supreme Court approved a one-time transfer of $100,000 from the Attorney Services Division Cash Fund to the Client Assistance Fund in February of 2020. President Mattoon reported participating in Client Assistance Fund Board meetings and that there are no significant claims at this time. Mattoon reported that the Nebraska Supreme Court approved the NSBA’s proposed revisions to the MCLE Rules clarifying when CLE programs focused on technology competency should receive ethics credit. Mattoon reported that the NSBA’s recently established Liaison Committee met in response to the pandemic. Mattoon reported on the October Swearing-In Ceremony which was held outdoor at the Pinewood Bowl. Mattoon also thanked NSBA staff for their support over the past year and applauded their work during the pandemic.

Chief Justice, Nebraska Supreme Court
Chief Justice Heavican reported on the operation of courts during the pandemic and noted that lawyers should expect e-filing to be mandatory on January 1, 2021. Heavican discussed the expansion of problems solving courts including a mental health court and a DUI court. Heavican discussed the National Center for State Court’s Judicial Workload Assessment and indicated that the report has been posted for comment. Heavican reported on the Branch’s efforts related to Access to Justice including recent and planned public engagement activities with Native American and other communities of color.
Chief Judge, Court of Appeals
Hon. Mike Pirtle introduced himself as the new Chief Judge of the Nebraska Court of Appeals and thanked former Chief Judge Moore for her service and leadership. Chief Judge Pirtle discussed the impact of the pandemic on the Court of Appeals’ docket, filings and public outreach efforts. Judge Pirtle noted that proposed revisions to the Appellate Practice Rules are being developed and will be posted for comment. Judge Pirtle, a former 20-year member of the House, thanked members of the House of Delegates for their service.

Legislative Update
Tim Hruza provided a summary of the last seventeen days of the 2020 session. Hruza highlighted interim studies of interest and discussed NSBA section related proposals, particularly from the Real Estate Probate and Trust Section.

Nominations Committee
Julie Bear, Chair of the NSBA Nominations Committee shared the following nominations:

- Ken Hartman to serve as Chair Elect Designate of the House of Delegates
- Amie Martinez to be appointed for a two-year term as the ABA Delegate
- Frosty Peetz for another three-year term to the Nebraska State Bar Foundation
- Hon. Joe Bataillon for another three-year term to the Nebraska State Bar Foundation

A motion was made and seconded to adopt the recommendations of the Nominations Committee. The motion carried.

2019 Audit and Current Financial Statement
Budget and Planning Committee Chair Frank Mihulka presented the NSBA and NLF 2019 Audit. NSBA/NLF received a clean audit with no reported deficiencies. A motion was made and seconded to accept the 2019 audit. The motion carried. Frank Mihulka also presented the NSBA Financial Statement from January 1, 2020 through August of 2020.

2021 Budget
Mihulka presented the Budget and Planning Committee’s proposed 2021 budget. The Committee prepared two budgets. One budget assumes the pandemic will continue restricted travel and in-person events. The second budget assumes the pandemic has subsided and there are no limits on travel and live events. The Budget and Planning Committee recommends that the NSBA proceed with the
virtual budget and if at some point in 2021, the pandemic subsides, they will make the adjustments necessary to convert to the live budget. There were no recommended changes. A motion was made and seconded to approve the proposed virtual budget. The motion carried.

Susan Spahn asked about the Real Estate Probate and Trust Section’s Estes Park contracts. Neeley indicated that the Section should contact the venue to determine their current comfort level with future contracts. Neeley also advised that the NSBA has sample language it would require in future contracts to make sure the Section would not be financially penalized for a cancellation due to the pandemic.

**NSBA Fee Arbitration Rules**
The NSBA Fee Arbitration Committee proposed numerous revisions to the Fee Arbitration Rules. The rules were originally adopted in 1993 and they have not been updated since. Chris Aupperle discussed the proposed revisions recommended by the Fee Arbitration Committee. Larry Roland proposed language clarifying whether term limits applied to alternate district administrators. A motion was made and seconded to adopt the proposed revisions with Mr. Roland’s clarification. The motion carried.

**Nebraska Find a Lawyer Website Rules**
Earlier in the year, the NSBA Executive Council voted to change the registration fees related to participation in the Nebraska Find a Lawyer website. The website’s Advisory Committee drafted proposed revisions to the rules consistent with that decision for ratification by the House of Delegates. The proposed revisions also clarify registration requirements and a process granting the Advisory Committee discretion to make exceptions. A motion was made and seconded to adopt the proposed revisions. The motion carried.

**Elder Law Section Bylaws**
Judge Freeman presented proposed bylaw revisions for the NSBA Elder Law Section. The revisions make the bylaw language gender neutral and change the title and purpose of the Section to include special needs individuals (The Elder Law and Special Needs Section). A motion was made and seconded to approve the revisions. The motion carried.

**Tenant Assistance Project**
In response to the COVID-19 pandemic, the Volunteer Lawyers Project (VLP), in partnership with Legal Aid of Nebraska and the University of Nebraska College
of Law Civil Legal Clinic, began a program called the Tennant Assistant Project (TAP) whereby volunteer lawyers provide limited-scope representation to tenants facing eviction in Lancaster County.

Since inception of the program in March, there have been instances (5-6), when these volunteer attorneys have sought leave to appear as amicus curiae (friend of the court) where the volunteer attorney, in his or her professional opinion, feels it is appropriate in the interest of justice (e.g., service was not perfected or a tenant could not appear because of a COVID-19 diagnosis). A question had been raised as to whether this practice is ethical.

The NSBA requested an ethics opinion from the Nebraska Attorney Ethics Advisory Committee. The Opinion, No 20-01, indicates that it is ethical for a licensed attorney to appear as amicus curiae at the trial court level in a civil matter.

After confirming that the practice was ethical, the NSBA, based on concerns raised by landlord lawyers stating that they perceived the practice to be crossing the line into “advocacy” on behalf of tenants, discussed whether the Association should support the practice and the Tennant Assistance Project. For discussion purposes, the NSBA Executive Director asked VLP staff to propose a policy for when they felt it would be appropriate for volunteer lawyers to appear as Friend of Court.

There was considerable discussion. The Volunteer Lawyers Project historically has not attempted to regulate how lawyers volunteering through VLP practice law. There being no client in these instances, the lawyer is not acting on behalf of the Volunteer Lawyers Project and is not covered by their malpractice insurance.

The NSBA House of Delegates took the position that it should continue to allow lawyers to be guided by the Rules of Professional Conduct and their own professional judgement as to whether to enter as Friend of Court. A motion was mad and seconded that the NSBA should not adopt a policy related to Friend of Court appearances. The motion carried.

**Responding to the Pandemic**
President-Elect Jill Ackerman reported on the discussions from the NSBA Executive Council’s virtual summer planning conference which focused on identifying the impact that the pandemic has impacted the practice of law, law firm operations, the NSBA and access to justice. The Executive Council discussed
ways the NSBA can assist its members with responding to the pandemic and reported that some of the efforts identified through the Summer Planning Conference have already begun. Specifically, coordination of monthly roundtable discussions for young lawyers and brief how-to videos on topics specific to supporting them. Members with additional thoughts and feedback were invited to provide comments to Jill Ackerman or Liz Neeley.

Report of the Law Schools
University of Nebraska College of Law School Dean Richard Moberly and new Creighton University School of Law Dean Josh Fershee provided updates to the NSBA House of Delegates on behalf of their respective law schools.

Executive Director Report
Neeley reported that the NSBA Health Insurance Consortium renewal for 2021 is an overall 0%. Blue Cross Blue Shield of Nebraska estimates that the renewal for the small group market will be 12-15% and 10-11% for the large group market, so the NSBA has a strong opportunity to grow during the 2021 renewal period.

The NSBA 2020 Economic Survey Report will be released in the coming weeks. The report provides information about annual salaries, billing rates by practice area and areas of the state. The report also includes questions about succession planning, law student debt, the benefits lawyers look for in an employer, etc. The survey will be free to dues paying members of the NSBA in the NSBA store and library.

Neeley reported that the NSBA Practice and Procedure and Judicial Resources Committees will be asked with developing the NSBA’s response to the Judicial Workload Assessment, which was posted for comment by the Nebraska Supreme Court.

Written Reports
House of Delegates Chair, Judge Freeman referenced the annual reports made by the various level of courts, the NSBA Committees, Sections and asked if there were any questions.

Other/New Business
Judge Otte raised the issue of revising the terms dues paying and non-dues paying members and asked that the House consider this issue in future meetings.

Passing of the Gavel
Chair of the House of Delegates, Hon. Tricia Freeman passed the gavel to Susan Sapp. The House of Delegates thanked Judge Freeman for her service and welcomed Susan Sapp as Chair. NSBA President Steve Mattoon passed the gavel to Jill Ackerman. The House of Delegates thanked Steve Mattoon for his service and welcomed Jill Ackerman as President.

There being no other business, the meeting adjourned at 12:00.

Respectfully submitted,

Elizabeth Neeley