

NEBRASKA STATE BAR ASSOCIATION

House of Delegates

October 14, 1998
9:00 a.m.

Doubletree Hotel
Omaha, Nebraska

MINUTES

The House of Delegates of the Nebraska State Bar Association met on October 14, 1998 at the Doubletree Hotel in Omaha. Chair of the House of Delegates, Robert M. Hillis of Fremont, called the meeting to order at 9:00 a.m.

Executive Director Jane L. Schoenike of Lincoln called the roll. The following individuals were determined to be present: First District: Allen Fankhauser of Humbolt; Second District: Julie E. Bear of Plattsmouth, and Michael N. Schirber of Papillion; Third District: Linda R. Crump, David R. Buntain, Robert F. Bartle, Hon. Karen Flowers, Steven E. Guenzel, Scott P. Helvie, Harvey S. Perlman, Gail S. Perry, Vicent M. Powers, Rodney J. Rehm, John R. Snowden, Danene J. Tushar and Donald R. Witt, all of Lincoln; Fourth District: Joseph Barmettler, Hon. Joseph Bataillon, Richard Berkshire, Elizabeth Borchers, D.C. "Woody" Bradford, Kathleen A. Cook, William G. Dittrick, G. Michael Fenner, Susan E. Fieber, Keith I. Frederick, Thomas A. Gleason, John P. Grant, Tracy Grinstead-Everly, David Herzog, David S. Houghton, Leo A. Knowles, John C. Lindsey, William Lindsay, Jr., James H. Moylan, Michael J. Mullin, Thomas A. Otepka, Daniel C. Pape, Michael W. Pirtle, William Jay Riley, Robert Rossiter, Jr., Richard E. Shugrue, Robert J. Sivick, Nancy A. Svoboda and Patrick G. Vipond, all of Omaha; Fifth District: Loren Lindahl of Wahoo and Richard K. Watts of Osceola; Sixth District: Robert M. Hillis of Fremont; Seventh District: Matthew D. Hanson of Crete; Ninth District: Michael T. Brogram of Norfolk; Eleventh District: John R. Higgins, Jr. and Jerom Janulewicz of Grand Island; Twelfth District: Terri S. Harder of Kearney; Thirteenth District: Claude Berreckman, Jr. of Cozad and David B. Smith of Lexington; Fourteen District: David W. Urbom of Arapahoe; Fifteenth District: Boyd W. Strope of O'Neill; Sixteenth District: Patrick Connealy of Chadron; Seventeenth District: Paul W. Snyder of Scottsbluff; Nineteenth District: Steven F. Mattoon of Sidney; Twentieth District: Dale C. Crandall of Burwell.

Also present were ABA Delegate Amy L. Longo of Omaha, Nebraska Supreme Court Chief Justice John V. Hendry of Lincoln, Nebraska Court of Appeals Chief Judge John F. Irwin of Lincoln, Nebraska District Judges Association President Judge Earl J. Witthoff of Lincoln, Nebraska County Judges Association President Judge Mary L. Doyle of Lincoln, Nebraska Separate Juvenile Judges Association President Thomas B. Dawson of Lincoln, University of Nebraska Law College Dean Nancy B. Rapoport, Creighton University Law School Dean Lawrence Raful, NCLE President James E. Rembolt of Lincoln, NSBF President Charles Thone of Lincoln, NLTA President Paul Hofmeister of Scottsbluff, Budget and Audit Committee Chair John C. Brownell of Grand Island and a Real Estate Practice Guidelines Committee Representative. Staff

House of Delegates Meeting

October 14, 1998

Page 2

present were: Executive Director Jane L. Schoenike and Communications Director Jennifer Schizas, both of Lincoln.

The minutes of the special meeting held on June 24, 1998 were reviewed. Motion was made, seconded and passed to approve the minutes as distributed.

Chair of the House Robert M. Hillis requested that the agenda, as revised and distributed at the meeting be approved. Motion was made, seconded and passed to approve the agenda as revised.

Nominations

Chair of the House Committee on Nominations Donald R. Witt of Lincoln gave the report of the committee. The committee nominates Linda R. Crump of Lincoln for the position of Chair-elect of the House of Delegates, Warren R. Arganbright of Arapahoe for membership on the Ways, Means and Planning Committee, and Sandra Dougherty of Lincoln and Steven E. Guenzel of Omaha for the positions of Nebraska State Bar Foundation Board of Directors. Chair Hillis requested additional nominations. There being no additional nominations from the floor, a motion was made, and seconded that the individual nominated be elected to their respective positions by acclamation. The motion passed.

Resolutions

Chair of the House Committee on Resolutions Leo A. Knowles of Omaha gave the report of the committee. The committee introduced and read two resolutions, honoring the retirement of Nebraska Supreme Court Chief Justice C. Thomas White and the retirement of Nebraska Supreme Court Justice D. Nick Caporale. A motion was made and seconded to adopt the resolutions. The motion passed.

Elections

Chair of the House Committee on Elections Matthew D. Hanson of Crete reported that the Committee had conducted the election for the Executive Counsel Sixth District. Steven F. Mattoon of Sidney was elected to the Executive Counsel. He reminded members in odd numbered districts that their terms will expire at the end of the Annual Meeting in 1999, and that elections will be held in the summer of 1999.

President's Report

President Bradford reported on the issues and topics of concern to the members during his year as president. The first concern is to maintain the independence of the judiciary in Nebraska. In past elections, judges have faced special interest groups who oppose their retention. The NSBA passed Guidelines for Response to the Unjust Criticism of the Judiciary. While these guidelines do not apply to retention elections, it has helped to clarify topics for continued public education on the merit system in general.

The second topic was the future of legal services in Nebraska. President Bradford convened a legal services summit of all the stakeholders in the provision of civil legal services to the poor. In looking at the current state of legal services, Nebraska is fortunate to have recently passed LB 729, which will give providers between \$600,000 to \$800,000 in the first year. As a result of the summit, we are working toward a coordinated intake system, and a goal of a lawyer in each community to provide legal services. The VLP has increased its support for pro bono by initiating the development of a poverty law manual, producing pro bono roundtable and encouraging mentoring relationships for pro bono lawyers.

Bradford thanked the House of Delegates and the Budget and Audit Committee for all the work that was done on the finances of the NSBA. The Supreme Court approved a \$45 increase, and mandated the continuation of the Client Security Fund.

The Unauthorized Practice of Law Committee will work with the Court on additional submissions on rules. The petition on prosecution of the unauthorized practice of the law by the Office of Counsel for Discipline is still pending.

The NSBA has approached diversity in a very positive way. Respect and professionalism will allow us to resolve issues related to bias in the profession. When we do the right things, our image will improve immeasurably. He thanked the House again for its support.

Executive Director's Report

Executive Director Schoenike thanked the House for its attention to the finances and budgeting of the NSBA. She feels that there has been great improvement, and that all of those involved learned a great deal. Relationships with affiliate organizations has supported the mission. She recognized the staff of the NSBA and thanked them for their contributions this year.

Judicial Reports

Chief Justice John V. Hendry reported for the Nebraska Supreme Court. He talked about the recent article in the Lincoln Journal Star about the diversity on the bench. There are: one woman on the appellate courts, three women on the district court, seven on the county court, one juvenile and one worker compensation court judge. There are three minority judges in the state. There is a need to recruit candidates, but must not confuse that with promise. All need to encouraged candidates to take the risk. As one having just gone through it, there is nothing more encouraging then colleagues urging you apply. He hopes that it will be encouraging to lawyers of color if they are contacted and encouraged them to apply.

The Chief Justice commended the bar for workings with Justice Hasting on the Gender Bias Report, and commends it for bringing in the Mixed Blood Theater company. The production was eye-opening. He believes the judiciary has made positive strides. The bar has pushed the judiciary in working on the issue of bias and he will continue to encourage judges to participate and attend programs on the elimination of bias.

The NSBA budget, and request for a dues increase needed to be dealt with quickly. The Supreme Court has strong positive feeling toward the bar and what it does

and how it has been accomplished. The Supreme Court has approved a two year dues increase. The Court will institute an 18 month study to review the operation of the bar. The Court needs to be more involved in the bar, in order to evaluate the request. The Chief Justice will chair the study committee, along with two other justices, so that there is a dialogue on the programs, costs and administration. Part of the review will involve the Office of the Counsel for Discipline. Justice Wright requested that the ABA do a review of the current system. The Supreme Court met with the ABA and with the NSBA during the site visit. One of the preliminary recommendations is that the Office be separate from the bar association.

It is his view that the Chief Justice needs to be the liaison to the bar association, and will assume the position currently held by Justice Stephan on the Executive Council and in the House of Delegates. If the NSBA requests, will meet regularly with the President to discuss issues related to the bar. This is a good step in continuing the dialogue with the court that began with Howard Olsen.

Chief Judge John F. Irwin reported for the Nebraska Court of Appeals. As a past member of the House, he sees a lot of familiar faces, and commends the members for their dedication. In three months, the Court of Appeals will celebrate its seventh anniversary. In that period of time there have been many changes. The personnel on the Court has changed, notably three of the six original members of the Court of Appeals are now on the Supreme Court, including Justice Miller-Lerman, the first woman appointed to the Nebraska Supreme Court. The court functions in two panels of three. While waiting for appointment of Justice Miller-Lerman's replacement, the Court of Appeals has recruited a number of retired judges to fill in.

Resources determine output, as in any organization. Each judge now has two full time law clerks, and the Court of Appeals a staff attorney. The time on appeal has decreased in both civil and criminal cases, and the backlog has been reduced. Filings have increased. Each judge is required to write seven opinions each month and review ten other cases. The Court's workload is also affected by the legislature, including changes in appeals to district court and they are expecting an increase in probate and juvenile cases.

The relationship between the two appellate courts is good, and both are willing to talk out issues. Since July, unpublished opinions are no longer contained in the advance sheets. This has caused some confusion, but was done to contain cost. The precedential value of Court of Appeals decisions was laid to rest with the Supreme Court's passage of Rule 2(e). Unpublished opinions will be available to the parties, and are available electronically from West publishing.

Judge Earl Witthoff of Lincoln reported for the Nebraska District Judges Association. The association is reviewing legislation. The bill to merge the clerks of the courts is expected again in 1999. Last session, the retirement system was modified, so that judges may retire at age 60, and the request to increase filing fees was removed. A new joinder statute was passed, and the Supreme Court's Civil Practice and Procedure Committee will look at the need to amend court rules.

Filings in district court are also increasing. New positions were added by the legislature last session. He welcomed the following new member to the district bench: Judges Korsland, Gilbride, Lamberty and Coffey.

Judge Mary L. Doyle of Lincoln reported for the Nebraska County Judges Association. The County Judges Association is a voluntary organization. It is very active and has focused on education. She recognized the judges who served as committee chairs in 1998. Judge Gerald Jorgensen was elected president for 1999. He will appoint new chairs.

The association instituted a program in rural courts to allow individuals to serve as voluntary bailiffs. This lets citizens in the community become familiar with the courts, and the function it serves. The association has also worked on legal services issues with President Bradford. She is hopeful that there will be a civility program developed for judges. The format of the Mixed Blood production was very good. Judges must be civil to each other, and set the example.

Several judges were recognized the past year with awards, such as Judge Gossett. She also recognized judges Gilbride and Brodbeck for their contributions to *The Nebraska Lawyer* magazine. She welcomed new Judges Hendrix and Hutton.

Budget Overages for 1998

John Brownell, Chair of the Budget and Audit Committee presented the actual budget overages in various line items in the NSBA budget for 1998. Despite these overages, Jane Schoenike believes that the total projected deficit approved for 1998 will not be exceeded. The motion was made and seconded to approve the overages. The motion passed.

Annual Plan for 1999

Jane Schoenike presented the first draft of the Annual Plan for 1999, that will accompany the budget for 1999. The Ways, Means and Planning Committee, and then the Executive Council will make a final review before the end of the year. If any members of the House have comments, they should contact Schoenike, or Joyce Dixon, the new chair of the Ways, Means and Planning Committee.

Budget for 1999

Dues Increase Petition and Budget Overages

. The Supreme Court granted the NSBA an increase which is to be effective for the next two years. Dues were increased to \$250 for active members, \$150 for junior active, \$75 for retired and \$75 for inactive members. The Court also ordered that the NSBA continue its contribution to the Client Security Fund at 1998 level of \$20,000. The order also establishes a joint committee of the Supreme Court and NSBA to study the operation and funding of the Office of Counsel for Discipline and the overall operation of the NSBA. The increase approved by the Supreme Court is less than the amounts requested in the petition. Jane Schoenike has analyzed the impact of the Court's order and reported that the NSBA will have a shortfall in the proposed 1999 budget of \$85,000. \$65,000 as a result of the reduction in dues requested and \$20,000 from the mandate to fund client security.

John Guthery said that Jane provided an analysis of the options to react to the shortfall. The NSBA has four basic options: 1) Reduce expenses for 1999 in the amount of \$85,000. 2) Offset part of the shortfall by eliminating the projected surplus from operation of \$52,000 and reducing expenses by \$33,000 3) Offset the shortfall by dipping into the reserve for 1999 for the full amount, and propose a deficit budget for 1999 or 4) eliminate the surplus from operations and make up the \$33,000 balance from the reserve.

President-elect John Guthery reported that the Supreme Court has entered its order on the petition submitted by the NSBA to increase dues. Guthery said that the Supreme Court has approved a two year plan which would set dues at \$250 for active members, \$150 for junior active members, \$75 for inactive and retired members. The Supreme Court also mandated continued funding of the Client Security Fund at current levels. Finally, the Supreme Court will establish a joint committee with the NSBA to study the operation and funding of the Office of Counsel for Discipline and the funding and operations of the NSBA. The dues increase approved is less than requested, and will result in a revenue shortfall. Jane Schoenike has calculated that the shortfall will be \$65,000 for 1999. Add to that the mandate to continue Client Security Funding, which was \$20,000 in 1998, the total shortfall will be \$85,000. Guthery said that the Budget and Audit Committee met earlier today and considered a number of options to offset the revenue shortfall. The Committee considered four options: 1) reduce expenses 2) use the reserve to offset the shortfall 3) eliminate the surplus from operations projected for 1999 or 4) combine the elimination of the surplus with a reduction of expenses. The 1999 proposed budget contained a surplus from operations of \$52,000.

John Brownell, Budget and Audit Committee chair said that the committee does not support a deficit budget, and feels that the reserve of \$500,000 should be maintained. The committee is concerned about the discount factor on the number of members that the approved dues increase will have. The amount of non-dues revenue proposed for 1999 is the most that has ever been contained in the budget and we may still need to dip into the reserve if all the projected revenue is not realized. Finally, the Supreme Court did not give the additional dues increases of \$10 per year. The committee will have to make additional adjustments for the 2000 budget.

Guthery said that Jane Schoenike provided the committee with a list of possible expense reductions. Some may have an effect on the morale of leaders and staff, others may effect the members perception of the value of services provided. Even though there is a shortfall, the dues increase is substantial and the committee was concerned about cutting any services to members. The Budget and Audit Committee recommends that the budget be balanced to zero. We would eliminate the 1999 surplus from operations of \$52,000 and also reduce expenses in the amount of \$34,500. Specific reductions would be a reduction in officer and staff travel of \$20,000, reduce the budgeted increase in staff salaries from 4% to 3%, resulting in a savings of \$7500, and eliminate the gift of portolios to new admittees, for a savings of \$4,000, and reduce the funding for the Community Coalition for Justice, saving \$3,000.

The Executive Council discussed the options, and said that they welcome the opportunity to work with the Supreme Court on the study. Guthery moved and Rembolt

House of Delegates Meeting

October 14, 1998

Page 7

seconded a motion to adopt the recommendations of the Budget and Audit Committee.

The motion passed.

Endorsement Guidelines

New Title Standard 16.1 – Conveyance by Attorney-in-Fact

Committee/Section Reports

Chair Hillis directed the members of the House to the committee and section reports contained in their materials. These reports are for information purposes.

ABA Delegates Report

Affiliated Organizations Reports