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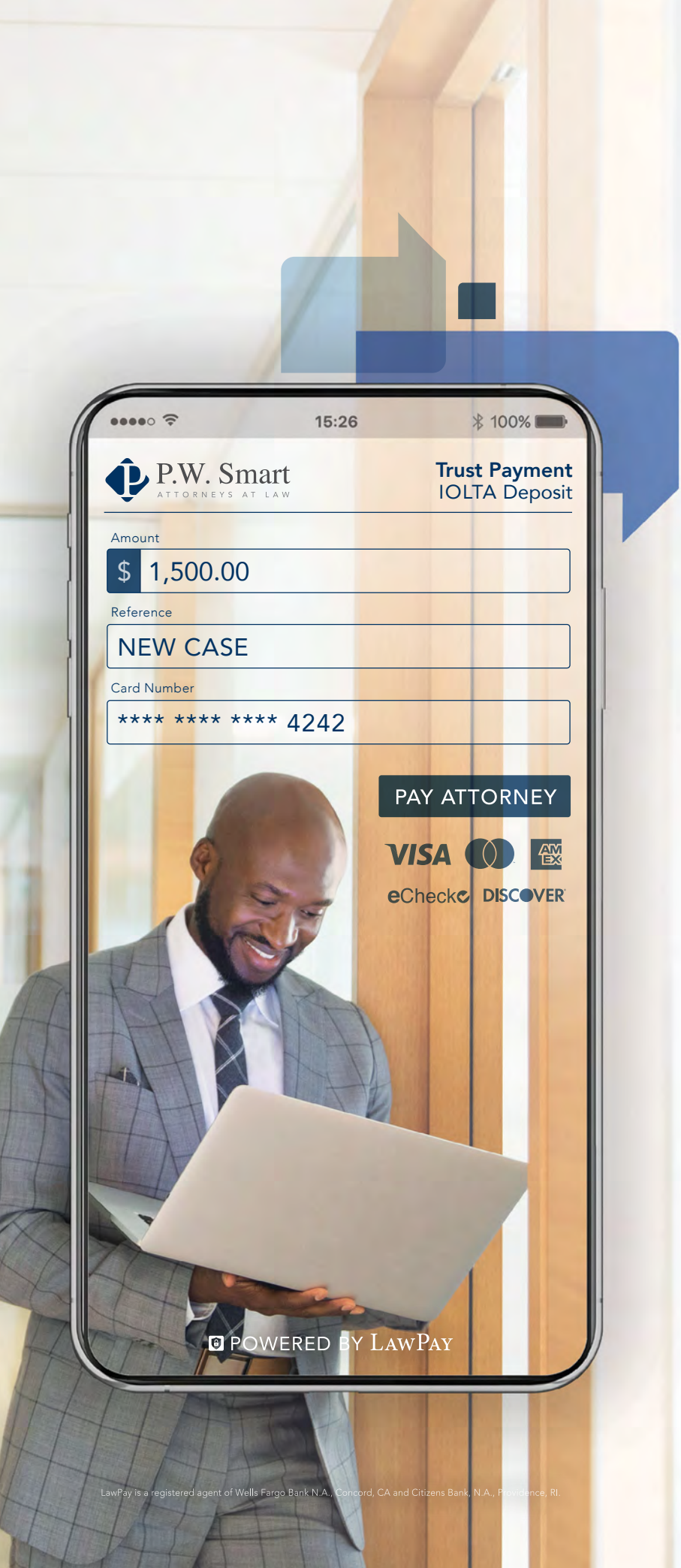

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issue editor

Torrey Gerdes

Torrey Gerdes is a partner with Baylor Evnen, LLP in Lincoln. As the chair of the firm's employment practice group, her practice includes business litigation and employment advising for both private and local government employers. She assists clients in navigating complex issues to manage risk and achieve their goals to avoid claims, throughout discovery, in settlement, and during trial if necessary. Torrey received her JD, with distinction, from the University of Nebraska College of Law.

publications chair

P. Brian Bartels

P. Brian Bartels is a partner in the Omaha office of Kutak Rock LLP. Brian's practice includes advising governmental, tax-exempt, and for-profit employers on health and welfare benefit plans, the Patient Protection and Affordable Care Act, and HIPAA compliance. He also advises clients on employee benefit issues in the context of mergers, acquisitions, and divestitures. Brian graduated *summa cum laude* from Creighton University School of Law. He earned a Master of Arts degree in Political Science from Indiana University and a Bachelor of Arts degree, *summa cum laude*, from Creighton University.

Meet NSBA President, William J. Mueller 2021–2022

William J. Mueller

It is my honor and privilege to serve as the President of the Nebraska State Bar Association. As I write my first president's column, I want to thank the staff of the NSBA for their tireless efforts the past almost two years as we have weathered the pandemic. Executive Director Liz Neeley, Associate Executive Director Sam Clinch, and the NSBA staff have successfully pivoted our association to effectively operate in a virtual world. Thank you! My sincere hope is that things return to normal very soon and we can conduct much less NSBA business over Zoom. I miss interacting with people!

I also want to thank our past president, Jill Robb Ackerman of Omaha, for her service to the NSBA. I have enjoyed immensely getting to know Jill better and working with her. I truly feel sorry for Jill and her predecessor, Steve Mattoon of Sidney. Their terms were very challenging because of the pandemic and much less fun as their personal interaction with lawyers was very limited. In my opinion they were deprived of the most fun part of this job—being with lawyers! Thank you both for your service.

Some of you may remember the President's column of our President, the late David B. Downing of Superior. David wrote about his hunting dog and was pictured in the NSBA magazine, as I recall, with his dog. I don't own a pet, so I am not able to follow David's lead. President Bob O'Connor of Omaha invited his golf pro from the Omaha Country Club, Tony Pesavento, to his president's dinner. I do play golf, but my pro would rather that I not publicly name him as my golf teacher. So, I will just tell you a bit about myself and my love for lawyers and the NSBA.

I love being a lawyer. That's right, I really do. Many of my closest friends are lawyers and judges. I have the privilege of being the son, spouse, and son-in-law of Nebraska lawyers. I have been fortunate to work with many lawyers who have served in leadership positions with the NSBA. They mentored me and solidified my love for our profession and the NSBA. My father, the late William P. "Rocky" Mueller, began practicing law at Kennedy, Holland, Delacy and Svoboda in Omaha where he worked for the late George Delacy, an NSBA president. Our family moved to Ogallala in the early '60s so that he could join the McGinley, Lane & Shanahan law firm. My dad served as President of the NSBA and the Nebraska Association of Trial Attorneys. His law partner, the late James A. Lane, also served as president of the NSBA and NATA (NATA). Despite being a four-year starter, letterman, and captain for the Huskers football team in the late 40s and early '50s, my father's proudest accomplishment was being a lawyer. My father-in-law, the late Cleo F. Robak, practiced law in Columbus for many years. Cleo was the head of most every organization in Columbus and was loved by his clients. It was a common occurrence to have vegetables and cases of beer put in his car by clients for whom he had provided legal services for little, if any, fee. Cleo was bigger than life in Columbus! My spouse, Kim M. Robak, is also a graduate of the University of Nebraska College of Law. I brag about Kim by saying that her law school grade point average was better than any single grade I received. People think that is funny when I say it, but it is also true. Kim practiced law in Lincoln before moving to the Nebraska Governor's office. She served as Lieutenant

Governor of Nebraska. She and I have practiced law together for the past 18 years. People ask me how we have practiced law together as a married couple, and I tell them that I really had no choice. I didn't want her practicing with another firm and competing against me!

As for me, I was born in Omaha and grew up in Ogallala. I graduated from the University in Nebraska-Lincoln and the University of Nebraska College Law. In law school, I was hired as a law clerk at Barlow, Johnson, DeMars and Flodman in Lincoln where I was able to watch the very best lawyers practice law! The late Robert A. Barlow was a president of the NSBA, and Kile W. Johnson served as Chair of the NSBA's House of Delegates. Shortly after graduation, I moved to Omaha and practiced trial law with Sodoro, Daly and Sodoro. One of my fellow lawyers at the Sodoro firm, the Honorable Joseph B. Bataillon, is a past NSBA president. While in Omaha, I was active in the OBA and was an officer in the Omaha Barristers' Club. I loved every minute of my time in the Barristers' Club and the lawyers I met there are still friends!

In the mid-80s I was given an opportunity to return to Lincoln and begin lobbying with Knudsen, Berkheimer, Richardson and Endacott. One of the finest lawyers I have ever known, Richard A. Knudsen, is a past NSBA President. Through my work in politics and my serving as Chair of the NSBA's Young Lawyers Section, I had met and gotten to know Larry Ruth in his role as the lobbyist for the NSBA. Larry was kind enough to reach out to me and ask whether I had ever thought about being a lobbyist. I told him that since I was involved in politics and was a lawyer, I had actually thought that I might end up lobbying. After he hired me, Larry quickly found out that I knew nothing about lobbying, but he was a wonderful teacher, mentor, and ultimately law partner. I am where I am in large part today due to Larry, and for that I will be forever grateful. In the mid '90s, Larry and I formed Ruth and Mueller, now Mueller Robak LLC, where I still practice, representing clients in the Government Relations area. Yes, I am a lobbyist.

One of the best things about joining Knudsen Berkheimer to lobby was that one of our clients was the NSBA. I quickly began assisting Larry in representing the NSBA, and I fell further in love with lawyers and the NSBA. I have served as the Legislative Counsel of the NSBA for the past 35+ years. During that time, I have been blessed to work with every NSBA President who, without exception, have been the finest people I have every worked with. Although certainly unique people, each one loved lawyers and the NSBA and gave freely of their time and talents to our profession. I have also had the opportunity to work closely with every Executive Director of the Association since 1980, including the late Ted Dillow, Bob Spire, and Jane Schoenike, in addition to Liz Neeley and our Associate Executive Director Sam Clinch. I count each of these exceptional leaders as my friend and friends of our profession.

I am proud of the work that I have done as a lawyer on behalf of my clients in the government relations area. I believe that I am the first President of the NSBA to be an active member of the Government Practice Section, an association of which I am also very proud. Practicing nontraditional law for most of my career has provided me an opportunity to interact with many excellent, smart and professional lawyers also practicing in nontraditional practice areas. As THE association for ALL lawyers in Nebraska, I believe that the NSBA has a duty to serve all of our members, including those not working in the traditional private practice of law, and we have and will continue to do so. I have the utmost respect for the other lawyer associations in our state including the Nebraska Association of Trial Attorneys, the Nebraska Defense Counsel Association, the Nebraska County Attorneys Association, and the Nebraska Criminal Defense Attorneys Association, and I pledge to continue to work with these groups and listen to the concerns and suggestions of our members as to how we can collectively best serve the interests of ALL lawyers.

As I begin my term as President of the NSBA, I will do everything in my power to assist our fine staff in continuing the high-quality programs of our Association, including Continuing Legal Education, the Nebraska Lawyers Assistance Program and the Volunteer Lawyers Project. I will also continue to emphasize the NSBA's role as the voice of Nebraska lawyers before the Legislature, the Supreme Court, and the public. I am interested in attending as many local bar events as I can, with our Executive Director Liz Neeley, to speak about the work of our association and more importantly, listen to lawyers' comments about how the NSBA can more effectively serve our members. I also intend to purposefully work to retain and attract lawyer leaders in our Association. We have historically been blessed with very strong lawyer leaders of the NSBA and it is critical that we work to continue this tradition by asking other lawyers to join us in the important work of our Association.

I will close by "borrowing" the moniker first used I believe by NSBA President Howard E. Olsen of Scottsbluff and most recently by President Steve Mattoon: "Proud To Be A Nebraska Lawyer." I am too!

Best Regards,

William J. Mueller, President
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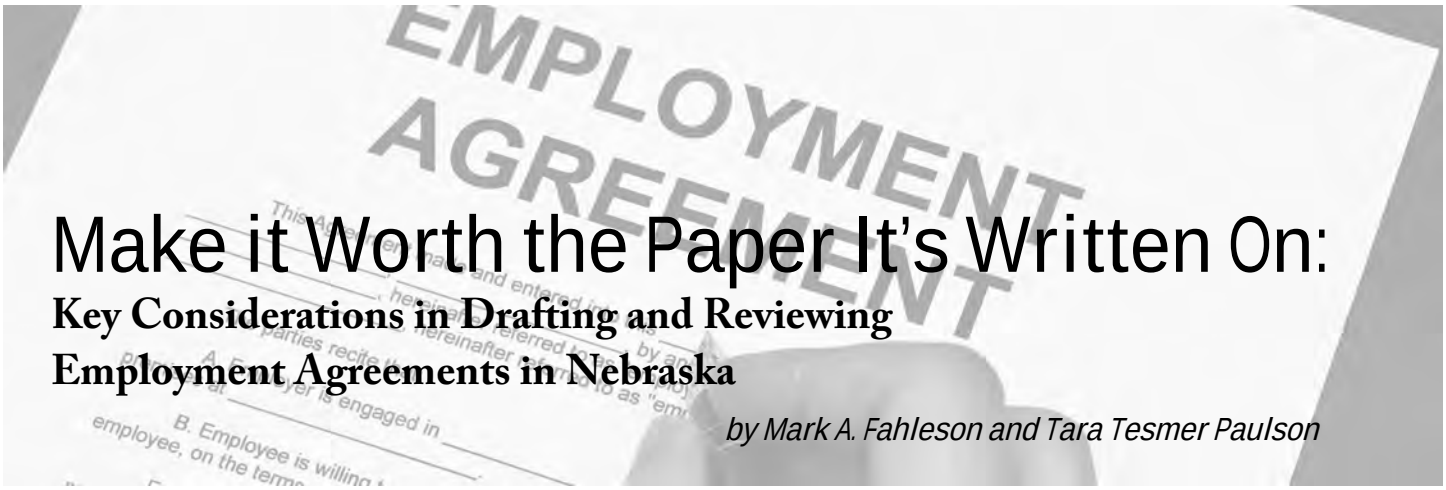

Make it Worth the Paper It's Written On:

Key Considerations in Drafting and Reviewing Employment Agreements in Nebraska

by Mark A. Fahleson and Tara Tesmer Paulson

"Employment gives health, sobriety, and morals. Constant employment and well-paid labor produce, in a country like ours, general prosperity, content, and cheerfulness."

- Daniel Webster, in a speech before the U.S. Senate, July 25, 1846

I. Introduction

Back when in-person cocktail receptions were still in vogue, a common icebreaker question to someone you didn't know was, "So, what do you do for a living?" Like it or not, our work defines us. Most of us still spend far more of our waking hours engaged in our vocation as compared to any avocation. We become inextricably intertwined with our occupations. It should thus be no surprise that something so consequential to our existence becomes fertile ground for disputes and litigation when the employment relationship becomes broken.

When properly drafted, written employment agreements can provide greater certainty to employers and employees and lessen the chance of employment disputes. But that all depends on the agreement being "properly drafted."

The purpose of this article is threefold: (1) to highlight the benefits of using written employment agreements; (2) to identify key provisions that should be considered; and (3) to provide helpful guidance to practitioners in drafting and reviewing such agreements.

II. Why Use Written Employment Agreements?

Nebraska common law has long provided that, absent a contract for a definite term of employment, both the employer and employee may terminate the employment relationship, at any time, for any or no reason.[1] Over the years numerous statutory[2] and common law[3] exceptions to the "employment at will" doctrine have chipped away at this standard. Nevertheless, in Nebraska "employment at will" remains the default unless the parties have agreed to something else.

Mark A. Fahleson and Tara Tesmer Paulson

The authors are members of the award-winning Employment & Labor Law Practice Group at Rembolt Ludtke LLP. Their practice centers on management-side employment and labor law, including the defense of discrimination and other workplace claims in court and counseling employers to prevent such claims. Paulson and Fahleson routinely advise employers and assist in drafting employment policies, employment agreements and separation agreements. They are graduates of the University of Nebraska College of Law.

So why use a written employment agreement? There are many reasons why employers and employees should consider memorializing their relationship through a written agreement. They include:

• *Security*. Written employment agreements are commonly found where the employee holds an executive (*e.g.*, Chief Executive Officer) or professional position (*e.g.*, physician). In these instances, the bargaining power is largely balanced. Employers may benefit from a written employment agreement by implementing restrictions on the employee, both during and post-employment. Employees may benefit from job security, such as a "cause" limitation for termination and delineated severance pay when "cause" doesn't exist.

• *Certainty*. Regardless of the job, written employment agreements provide certainty. They force the parties to address the difficult issues up front, such as when and how the relationship may be terminated and what the employee is permitted to do during and post-employment.

• *Internal Consistency*. Employers may decide to use written employment agreements for employees in a specific class or holding certain positions (*e.g.*, executives). Using written employment agreements in such situations reduces the likelihood of disparate treatment within the class and provides a backstop to attempts by employees to negotiate individual agreements.

• *Conflict Avoidance and Resolution*. What happens when an employee separates, whether voluntarily or involuntarily? Written employment agreements help avoid separation conflicts by identifying what circumstances may lead to ending the employment relationship and what each party is entitled to in certain circumstances. Moreover, an increasing number of employers are implementing mandatory alternative dispute resolution such as mediation and arbitration so as to reduce the costs and risks of protracted litigation.

III. Common Provisions and Issues

Most written employment agreements address a fairly standard set of topics, although the specific language in each may obviously differ. At a minimum, when drafting or reviewing a written employment agreement, practitioners should consider the following potential provisions.

a. Parties

When drafting a written employment agreement, the first question a practitioner must ask is: Who are the parties? While it may seem like a simple question with a simple answer, there are a few nuances worthy of consideration.

Situations arise where an employer client desires the employee to be employed by one entity, even though there are related entities the employee may perform duties for. It's not uncommon for a business client to believe that its risk can be circumscribed through the use of multiple entities. Basic principles of employment law often disregard such legal gymnastics.

In determining whether separate entities will be treated as a single employer for employment law purposes, courts and administrative agencies generally examine the following factors:

(1) interrelation of operations;

(2) common management;

(3) centralized control of labor relations; and

(4) common ownership or financial control.[4]

While no one factor is controlling,[5] centralized control over labor relations is generally regarded as the most important factor.[6] This doctrine may result in two or more relatively small employers being aggregated for purposes of determining coverage under certain employment laws, such as Title VII. Attorneys representing employers should be mindful of the single employer/common enterprise doctrine so as to avoid subjecting one entity to liability for the employment decisions of another.

A related, but different, potential landmine is the "joint employer" doctrine.[7] Under this doctrine, an employer may be deemed a joint employer of another entity's employees and subject to the same legal obligations as the primary employer.[8] In recent years, the expansiveness of this doctrine has undergone review and revision by the U.S. Department of Labor depending upon which political party controls the executive branch.[9]

b. Duties

When reviewing an employment agreement, one should pay special attention to the level of specificity used in defining the employee's duties. Generally, an employee will want the employment agreement to include more detail as to their responsibilities and the expectations of their employer. A common practice is incorporating by reference a written job description. By contrast, employers generally prefer a role's duties be broad and subject to the discretion of the employer. A pro-employer provision may look like the following:

> The exact nature and extent of Executive's duties and services shall be defined from time to time by the Company, *and may be extended or curtailed in such manner and to such extent as the Company may determine from time to time to be necessary and appropriate to meet the needs of the Company*.

The italicized language may give the employer greater latitude in reassigning or limiting an employee's duties without giving rise to a claim of constructive discharge. In the event the agreement contains a provision that the employee may be entitled to severance and other benefits in the event the employee terminates for "good reason" such as a diminution of duties the employer should pay careful attention to the duties language so as to not trigger a severance pay obligation.

Consideration should also be given to the reporting chain. Who does the employee report to? Board of Directors? President? Identifying this in advance will help avoid conflicts.

In addition, employers should consider placing limitations on the outside activities employees may engage in.[10] A standard provision looks like the following:

> Employee agrees as follows:
>
> a. To at all times perform her duties under this Agreement faithfully, to the best of her ability, experience and talent, and in connection therewith, to conduct herself and perform her duties in an ethical, professional and competent manner;
>
> b. Except while on permitted leave, to be engaged in the performance of her duties on behalf of the Company on a full time basis and in connection therewith, to devote substantially all of her available working time, skill and energy to the performance of her duties on behalf of the Company;
>
> c. To perform her duties in compliance with all applicable federal, state, and local statutes, laws and ordinances, and all rules, regulations, policies, procedures, codes or requirements adopted, issued, promulgated and/or imposed pursuant thereto; all rules, regulations, policies and procedures issued, adopted, and/or imposed by the Company; and all terms of all contracts between the Company and any third-party, including its affiliates; and
>
> d. To not engage in any other business or occupation, except that Employee may (a) serve as director or trustee of any charitable or non-profit organization; (b) acquire and own any publicly-traded securities that do not conflict with the financial or business interests of the Company

> and/or its affiliates; and (c) participate an inactive basis in a business activity or venture with any other person or entity, so long as and to the extent that such activities do not have an adverse effect on Employee's ability to perform her duties on behalf of the Company under this Agreement; do not conflict with the business and/or financial interests of the Company and/or its affiliates; are not otherwise prohibited, limited or restricted by the terms of any of the statutes, laws, ordinances, policies, procedures, rules, regulations, codes, rulings, requirements or third party contracts; and such activities have been approved in writing in advance by the Company's Board of Directors.

c. Definite Term or At-Will or Both?

When drafting employment agreements, the anticipated duration of the employment relationship is a vital issue to address. Will the employee work for a definite term? Will the employment be at-will, allowing both the employer and employee to terminate the relationship at any time? Can it be both?

As noted earlier, absent an agreement to the contrary, employment-at-will is the default under Nebraska law[11] and the law in most states. This broad discretion is limited by constitutional, statutory, or contractual restrictions.[12] Most employees want job security and thus want something more than at-will employment, yet employment for a definite term may restrict the employee's ability to depart and obtain more suitable employment. Nevertheless, it is appropriate to have a written employment agreement of indefinite duration as it may provide the employer and employee of greater assurance of what happens during and post employment.

Employment for a definite term is more common in written employment agreements, but it can cut both ways. While many employees view employment for a definite term as security, the employee is obligated to remain employed for the entire term, and employees failing to fulfill their employment duties for the entire term can be subject to liability.[13]

As discussed in the Termination section below, many written employment agreements attempt to create a hybrid of definite and indefinite employment by allowing employers to terminate for "cause," allowing employees to terminate for "good reason," and allowing both parties to terminate with an agreed-upon notice period. The respective rights of the employer and employee differ under each.

d. Compensation and Benefits

The employee's compensation and benefits are specifically set forth in most written employment agreements. Once again, the parties' interests diverge: employers likely desire less specificity and more unilateral discretion, and employees likely want more specificity and to lock in what the employee is guaranteed to receive. Common components of compensation and benefits include:

• *Base Salary*. Most written employment agreements specify the employee's base salary. Counsel should always be mindful of the overtime requirements of the federal Fair Labor Standards Act of 1938 (FLSA)—simply because an employee is paid on a salaried basis does not automatically mean the employee is exempt from the FLSA's overtime pay requirements.[14] When the agreement is for a definite term, the parties should consider whether to include a mechanism for determining the base salary during any renewal term. Moreover, the agreement should make clear that the base salary covers all of the employee's duties for the employer, including any service on the organization's board or committees. For example:

> During any Renewal Term, the Company shall pay Employee a Base Salary of not less than the Base Salary Employee is paid during the Initial Term, which may be increased as determined by the Company's Chief Executive Officer. All such wages shall be subject to applicable taxes and withholdings and payable in equal periodic installments according to the Company's customary payroll practices. The Base Salary compensates Employee for all duties to be performed hereunder, including Employee's service on any boards or committees of the Company for which Employee shall not be entitled to any additional compensation.

• *Commissions*. If the employee is to be employed in a commissioned position, the Nebraska Wage Payment and Collection Act (NWPCA) must be considered. In defining "wages" to be paid to an employee, the NWPCA provides the following:

> Unless the employer and employee have specifically agreed otherwise through a contract effective at the commencement of employment or at least ninety days prior to separation, whichever is later, wages includes commissions on all orders delivered and all orders on file with the employer at the time of separation of employment less any orders returned or canceled at the time suit is filed.[15]

The NWPCA further provides upon termination:

> unpaid wages constituting commissions shall become due on the next regular payday following the employer's receipt of payment for the goods or services from the customer from which the commission was generated. The employer shall provide an employee with a periodic accounting of outstanding commissions until all commissions have been paid or the orders have been returned or canceled by the customer.[16]

• *Other Incentive Compensation*. Many organizations seek to motivate employees to achieve individual and organizational goals through the use of incentive compensation. This can take many forms. Depending upon the parties' goals, it may be in the form of additional monetary compensation or equity. In Nebraska's current tight labor market, signing bonuses and recruitment bonuses are becoming more common. Again, employers generally desire greater latitude and discretion in awarding incentive compensation while employees will want as much specificity and certainty as possible. Counsel for employees may consider including language that ensures some degree of consistency and equity, such as "in no event shall Employee's bonus be less than any individual annual bonus received by other employees holding the same or similar position as Employee within the Company."

• *Fringe Benefits*. In most situations employees are allowed to participate in the employee benefit plans of the employer, but are subject to the specific eligibility requirements in those plans. Standard language looks like the following:

> Employee shall be permitted to participate in such health insurance, leave, vacation, retirement and other employee benefit plans of the Company that may be in effect from time to time, to the extent Employee is eligible under the terms of such plans or policies and subject to the terms and conditions of the applicable plans and policies.

Providing employees with vacation or paid time off requires special attention. Under the NWPCA, earned but unused vacation and paid time off are considered "wages" that must be paid to an employee upon separation.[17] For this reason many employers have implemented "caps" on the amount of paid leave employees can accrue, thereby limiting the employer's exposure and providing greater certainty for this unfunded liability. Some progressive employers have chosen to adopt unlimited vacation/PTO policies under which paid leave is neither earned nor accrued and thus there is nothing to pay out upon separation. A well drafted employment agreement provides employees and employers with certainty regarding this common benefit.

• *Expense Reimbursement*. In the event the employee is entitled to reimbursement of business expenses, the written agreement should provide for such. Counsel should consider whether an expense reimbursement provision should reference the employer's existing policies regarding submission of expense documentation and approval process. In addition, consider including language that requires submission of documentation for expense reimbursement within a set number of days after the employment relationship is terminated by either party.

e. Termination

Perhaps the most important (and most litigated) language in written employment agreements is found in the termina-

tion provisions. For each type of termination the agreement should specify what compensation and benefits the employee is entitled to, if any. Depending upon the client's goals, the following types of termination should be considered:

• *Termination by Employer for Cause*. In instances where the relationship is not at will, employment agreements often provide that the employer may immediately terminate the employee's employment for "cause." While case law and arbitration decisions provide countless examples of what constitutes "cause," it is in the employer's and employee's mutual best interests to define what is "cause," although their positions likely diverge on the specific definition. "Cause" often includes:

- Conviction or plea of guilty or no contest to a felony;
- Misconduct or neglect that harms the employer;
- Participation in any fraud or embezzlement;
- Unauthorized disclosure or use of employer's trade secrets or confidential information;
- Being under the influence of alcohol or illegal drugs while on duty except for the consumption of alcohol in moderation while attending or participating in business and/or social functions where alcohol is permitted or served;
- Breach of any material term or condition of the employment agreement;
- Material violation of the employer's policies; and
- Failure to perform job duties.

Counsel for employees should seek to narrow the definition of "cause" and request the inclusion of procedural prerequisites such as a "notice and cure" provision. For example:

> For purposes of this Agreement, "Cause" shall only exist if is not remedied by Employee within thirty (30) days following Employee's receipt of written notice from the Company specifying in detail the nature and factual basis of such breach, or such shorter period as may be reasonable in the event of repeated breaches or a breach which threatens immediate and material financial damage or irreparable injury to the Company.

• *Termination by Employee for Good Reason*. Written employment agreements often provide that the employee is entitled to severance benefits[18] in the event the employee terminates the employment relationship for "good reason." Like a for "cause" termination by the employer, it is important that the term "good reason" be expressly defined in the agreement.[19] Common elements of "good reason" include:

- Material diminution in the employee's title and/or duties;
- Material reduction in compensation;
- Relocation from the employee's primary workplace;
- Change of control/sale of the company/cessation of business; and
- Breach of any material term or condition of the employment agreement.

Counsel for the employer will want to seek the same kinds of procedural requisites that employees often seek in "for cause" terminations. These may include a notice and cure provision and requiring the employee to terminate the employment relationship within a specified number days after becoming aware that "good reason" exists.

• *Termination by Either Party Without Cause or Good Reason*. While not technically "at-will" employment, such provisions are common so as to give both parties a "safety valve" to end the employment relationship for any or no reason upon an agreed-upon number of days' notice. When it is the employee who terminates without "good reason," the employee is often entitled to ordinary compensation and benefits during the notice period but often removed from material duties and usually not entitled to severance pay (unless the parties have contracted for it). When it is the employer who pulls this "safety value," employees often are entitled to receive severance pay conditioned upon execution of a comprehensive waiver and release agreement prepared by the employer.

• *Termination by Death or Disability*. The parties should contemplate what happens in the event the employee dies or becomes disabled. With respect to disability, it is important that the agreement contains a definition of "disability" that comports with the Americans with Disabilities Act of 1990 as well as any long term disability plan that might be in place.

f. Protection of Employer Proprietary Information and Goodwill

Employers invest significant resources in creating trade secrets and proprietary information as well as developing goodwill with customers and suppliers. These are all protectable interests of the employer, which may be protected so long as the restrictions are objectively reasonable. Typical provisions include the following:

• *Confidentiality/Nondisclosure*. Employment agreements usually contain restrictions on the employee's ability to use or disclose the employer's confidential and proprietary information. When properly drafted these restrictions survive the termination of employment. Depending upon the bargaining power, counsel for employers may seek to include language on post-employment inspection rights such as the following:

> For the purpose of verifying that the Company's Proprietary Information is not being misused or misappropriated, during the Employee's employment and within 60 days after the termination of Employee's employment by either Party for any

reason, or in any litigation or arbitration involving Employee's employment with the Company, the Company may issue an "Inspection Notice" to Employee requiring Employee to deliver to the Company: (1) all computer devices and electronic storage mediums that Employee owns or over which Employee has control (and provide access codes and passwords) that Employee has used in connection with Employee's employment with the Company, and (2) access codes and passwords to any personal email account or other personal electronic communication accounts or records that Employee controls, or that are maintained by a third-party on Employee's behalf, that Employee has used in connection with Employee's employment with the Company. Upon receiving an Inspection Notice, Employee shall have ten (10) days to comply with the notice. Employee hereby consents to the Company's inspection of such computer devices, electronic storage mediums, and personal electronic communication accounts and waives any right Employee may have to keep private from the Company or its legal counsel any information that may reside on such devices, mediums, or accounts.

• Trade Secrets. In addition to protecting the employer's confidential and proprietary information the employer should incorporate language protecting its trade secrets. Practitioners should take note of the federal Defend Trade Secrets Act (DTSA) which creates a separate federal remedy for trade secret misappropriation provided the requisite immunity notice has been provided to the employee.[21]

• *Nonsolicitation of employees*. Written employment agreements typically include restrictions on an employee's ability to "poach" the employer's employees for a specified period of time once the employment relationship has ended. To be enforceable, these provisions must be narrowly drafted to protect the employer's legitimate business interests.

• *Nonsolicitation of customers*. Agreements attempting to limit an employee's ability to compete with a former employer post-employment are, for the time being,[22] creatures of state law. Under Nebraska law, these provisions are enforceable where they are reasonably limited to restricting the former employee from contacting customers with whom the former employee had personal contact and actually did business with while employed by the former employer and where they contain reasonable temporal restrictions.[23] While space limitations prevent a thorough discussion of this topic, practitioners should carefully review contemporary Nebraska decisions when incorporating and reviewing such provisions.

g. Dispute Resolution

The parties may wish to consider whether to include language in an employment agreement that provides a process for resolving conflicts short of litigation. For example, the parties may include contractual language that requires disputes arising out of the employment agreement be submitted to a neutral mediator as a precondition to litigation. Some employers prefer going one step further by including a mandatory arbitration clause.

Arbitration in Nebraska is governed by the Uniform Arbitration Act (UAA) as enacted in Nebraska.[25] Nebraska's UAA can present stumbling blocks to practitioners and parties if the agreement is not properly drafted. For example, Nebraska's UAA requires that when arbitration is the sole remedy for dispute resolution the following statement must appear in "capitalized, underlined type adjoining the signature block: THIS CONTRACT CONTAINS AN ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES." If this is not included, the arbitration provision is unenforceable.[26]

However, if the employment agreement involves interstate commerce, it is instead governed by the Federal Arbitration Act (FAA). In such situations Nebraska's arcane notice provision would not apply due to preemption by the FAA.[27]

For this reason counsel for employers desiring to incorporate a mandatory arbitration provision should determine whether the agreement involves interstate commerce and including appropriate language in the agreement to impose arbitration of disputes.

h. Choice of Law

Although often considered mere boilerplate, practitioners should consider whether to include a choice of law provision and, if so, which jurisdiction should be denoted. Consideration of such a provision is most important when the employee resides or works in a jurisdiction that is different from the employer's principal place of business. It is important that that the jurisdiction designated have a defensible connection to the employment relationship. Parties' choice of law can be disregarded when the chosen jurisdiction's laws are contrary to the fundamental public policy of another jurisdiction with a greater interest in the employment relationship. This is particularly true when courts are called upon to determine the enforceability of employment noncompetition provisions.[28]

IV. Conclusion

While at-will employment remains the default under Nebraska law when the employment is indefinite in duration, the use of written agreements to detail the terms and conditions of employment are a benefit to employers and employees. Such agreements provide greater certainty and clarity to the relationship and, if properly drafted, reduce the risk and cost of conflict. When drafting or reviewing employment agreements, practitioners should, at a minimum, give thoughtful consideration to the specific elements identified in this article.

Endnotes

1 *Schriner v. Meginnis Ford Co.*, 228 Neb. 85, 87–88, 421 N.W.2d 755, 757 (1988) (citing *Stewart v. North Side Produce Co.*, 197 Neb. 245, 248 N.W.2d 37 (1976)).

2 *See, e.g.*, Neb. Rev. Stat. § 48-1104 (Nebraska Fair Employment Practice Act prohibits terminations and other adverse employment actions based on an employee's race, color, religion, sex, disability, marital status, or national origin).

3 *See, e.g., Goff-Hamel v. Obstetricians & Gynecologists, P.C.*, 256 Neb. 19, 23, 588 N.W.2d 798, 801 (1999) (recognizing the doctrine of promissory estoppel in employment at will relationships where requisite elements are met).

4 *Baker v. Stuart Broad. Co.*, 560 F.2d 389 (8th Cir. 1977) (Nebraska employment dispute); *see also Bluff's Vision Clinic, P.C. v. Krzyzanowski*, 251 Neb. 116, 555 N.W.2d 556 (1996) (Caporale, J., dissenting and discussing *Baker*).

5 *Webb v. Am. Red Cross*, 652 F. Supp. 917, 919 (D. Neb. 1986).

6 *Turley v. ISG Lackawanna, Inc.*, 774 F.3d 140, (2d Cir. 2014).

7 *See generally* 29 U.S.C. ch. 8.

8 *Janda v. City of Omaha*, 7 Neb. App. 98, 580 N.W.2d 123 (1998) (joint-employer for FLSA purposes).

9 *Compare* 86 Fed. Reg. 40939 (July 30, 2021) and 29 CFR 791.2(a)(1)(i)–(iv) (2020).

10 *Buell, Winter, Mousel & Assocs., Inc. v. Olmsted & Perry Consulting Engineers, Inc.*, 227 Neb. 770, 771, 420 N.W.2d 280, 282 (1988).

11 *Hillie v. Mutual of Omaha Ins. Co.*, 245 Neb. 219, 223 (1994).

12 *Id.*

13 *Arrowhead Sch. Dist. No. 75, Park Cty. v. Klyap*, 2003 MT 294, 318 Mont. 103, 79 P.3d 250 (2003).

14 29 U.S.C. § 213(a)(1); *see Dinsmore v. Madonna Centers, Inc.*, No. A-94-037, 1995 WL 552016, at *8 (Neb. Ct. App. Sept. 19, 1995).

15 Neb. Rev. Stat. § 48-1229(6).

16 Neb. Rev. Stat. § 48-1230.01.

17 *Fisher v. PayFlex Sys. USA, Inc.*, 285 Neb. 808, 829 N.W.2d 703 (2013).

18 Nebraska public employers and their counsel should be cognizant of the nuisances of providing severance pay and benefits to public employees. *See, e.g.*, *Myers v. Nebraska Equal Opportunity Comm'n*, 255 Neb. 156, 582 N.W.2d 362 (1998).

19 *See, e.g., Marr v. West Corp.,* 310 Neb. 21, 963 N.W.2d 520 (2021).

20 Nebraska Trade Secrets Act, Neb. Rev. Stat. §§87-501 to 87-507.

21 18 U.S.C. § 1833(b).

22 Exec. Order 14036, 86 C.F.R. 36987 (July 14, 2021).

23 *Aon Consulting v. Midlands Fin. Benefits*, 275 Neb. 642, 748 N.W.2d 626 (2008).

24 *See generally* Fahleson, *Attention Practitioners: Employment Noncompetition Provisions are Enforceable in Nebraska–Sort Of*, THE NEBRASKA LAWYER, 2-14 (Oct. 2000); *See also* Dunn, *The Basics of Employment Based Non-Competes in Nebraska*, THE NEBRASKA LAWYER, (Nov./Dec. 2021); Dunning; Sheldon, *Business Use and Enforceability of Noncompete Agreements,* THE NEBRASKA LAWYER, (Sept./Oct. 2021)

25 Neb. Rev. Stat. §§ 25–2601 to –2622.

26 *Kramer v. Eagle Eye Home Inspections*, 14 Neb. App. 691, 716 N.W.2d 749 (2006).

27 *Doctor's Associates, Inc. v. Casarotto*, 517 U.S. 681 (1996).

28 *Mertz v. Pharmacists Mut. Ins. Co.*, 261 Neb. 704, 625 N.W.2d 197 (2001).


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Significant Labor and Employment Law Developments Under the Biden Administration

by Michaelle L. Baumert and Ross M. Gardner

The National Labor Relations Board ("NLRB" or "Board") is charged with enforcing the federal statute that governs employees' rights under the National Labor Relations Act ("NLRA") to organize and engage in collective bargaining and related activities. Its General Counsel ("GC") directs investigations and pursues enforcement of employee rights. NLRB members adjudicate complaints filed by employees, labor unions, and employers. Changes in presidential administrations drastically impact the individuals holding the GC and Board member roles, and relatively quickly thereafter, these changes affect labor law precedent and policy.

President Biden's appointees have been seated, reflecting a 3-2 Democratic and generally pro-labor majority. The NLRB's new GC, Jennifer Abruzzo, has issued a directive to shape future cases the Board will consider. While one of organized labor's most important legislative priorities, the Protecting the Right to Organize Act (PRO Act), languishes with a seemingly limited chance of being enacted, employers still must brace for substantial pro-union and employee friendly changes impacting the workplace.

On August 12, 2021, GC Abruzzo issued a Memorandum requiring all Board Regions to submit cases concerning certain NLRB precedents to her office's Division of Advice prior to any decision.[1] The previous NLRB GC, Peter Robb, issued a similar memorandum at the beginning of his term[2], which resulted in numerous changes in NLRB case law under former President Trump. It is expected Abruzzo will have similar success in the opposite direction, with a union-leaning NLRB under the Biden administration.

Overall, GC Memorandum 21-04 identifies three broad categories of topics that must be submitted to the Division of Advice, including: (1) subject matter areas in which the Board in recent years overruled previous legal precedent; (2) new initiatives that the GC would like to more carefully examine; and (3) matters traditionally submitted to Advice. The following are some of the critical precedents the NLRB likely will seek to change while President Biden is in office:

Michaelle L. Baumert

Michaelle Baumert is a principal in the Omaha office of Jackson Lewis, P.C. Her practice is concentrated in labor and employment law, class action, and wage and hour. She provides preventative counseling and assistance to employers regarding the full spectrum of labor and employment law matters and represents employers in litigation and NLRB proceedings.

Ross M. Gardner

Ross Gardner is a principal in the Omaha, Nebraska, office of Jackson Lewis P.C. He represents management in all aspects of traditional labor law and related litigation. Ross attended the University of Nebraska—Kearney prior to earning his law degree from the University of Nebraska.

I. Initiatives that Could Radically Change NLRB Case Law

Expanding Damages for Unfair Labor Practices

Monetary remedies for violations of the NLRA have been limited to "make whole" relief—restoring an employee's employment status and actual wages lost because of an employer's (or a union's) unfair labor practices. However, as urged by the Biden Administration and new AFL-CIO President Elizabeth Shuler, GC Abruzzo is preparing to seek increased damages for unfair labor practices, which would completely redefine what constitutes "make whole" relief. Specifically, GC Abruzzo is seeking review of the Board's decision in *Ex-Cello Corp.*, 185 NLRB 107 (1970). In *Ex-Cello*, an employer unlawfully refused to negotiate a collective bargaining agreement with a certified union. The then-GC urged the Board to award backpay based on speculation as to what the employer *would have* agreed to had it negotiated a contract. However, the Board refused to base backpay awards on such conjecture. If the NLRB now decides to reexamine monetary damages arising from refusals or delays in bargaining, the Board could effectively *impose* its view of what an employer *should* agree to. This argument, which has not been raised in over 50 years, would not only create a new monetary award in the context of collective bargaining that did not previously exist, but would also complicate the mechanics of negotiations between employers and unions.[3]

In a related vein, in *Voorhees Care and Rehabilitation Center*, 371 NLRB No. 22 (Aug. 22, 2021), NLRB Chairwoman Lauren McFerran recently stated her view that the Board should reconsider "make whole" relief to include new remedies that, for the first time, would include consequential damages (such as costs arising from interest fees on unpaid credit card bills, withdrawal penalties for 401(k) loans, or foreclosure on a home). Now, with McFerran heading a Democrat-majority NLRB and GC Abruzzo preparing cases, it appears this may soon be considered.

Card Check

Unions typically gain recognition by winning a secret-ballot election conducted by the NLRB. For many years, labor organizations have sought mandatory employer recognition based on the presentation of signed authorization cards (commonly known as "card check") from a majority of the employer's workers in a given work unit. Card check legislation has consistently stalled in Congress. The PRO Act would have made card check recognition a remedy in most cases in which an employer is found to have engaged in objectionable pre-election conduct. However, based on her reference to "Joy Silk" bargaining orders in her first GC Memorandum, GC Abruzzo appears willing to take up the mantle of card check by revisiting the Board's 70-year-old decision in *Joy Silk Mills*, 85 NLRB 1263 (1949).

In *Joy Silk*, the union presented an employer with signed authorization cards from a majority of the employer's workers and requested recognition. The employer refused and insisted on an election. The Board held that an employer could only decline voluntary recognition where it had a "good faith doubt" that the union truly represented a majority. Further, the Board found that the employer subsequently committed several (minor) unfair labor practices. The Board concluded these violations established that the employer did not have a "good faith doubt" as to the union's majority status and directed the employer to recognize the union. While this remained the law for a short time, for many decades the Board has abandoned the "good faith doubt" card check analysis, directing secret-ballot elections except in rare cases involving egregious conduct by employers. Employers can expect an effort to reverse this stance moving forward.

II. Reversing Trump Board (and Older) Precedents

In addition to initiatives that would radically change well-settled law, GC Abruzzo also seeks reversal of numerous Trump-era Board decisions and a return to many positions the Obama Board first implemented (many of which had upended longstanding NLRB precedents).

Scrutinizing Employee Handbooks—Again

The GC has targeted the Trump Board's decision in *The Boeing Co.*, 365 NLRB No. 154 (2017), which established a three-part test for determining whether an employer's work rules unlawfully infringed on employees' rights to engage in concerted activity protected by the NLRA. It appears likely the GC will advocate a return to Obama-era Board precedent, under which the standard for proving a work rule violated the NLRA was very low. Employers should be ready for another round of handbook reviews. This is true for unionized and non-unionized employers, as the rights guaranteed employees to engage in protected activity apply equally to both union and non-union work environments. All employee handbooks and policies drafted under *The Boeing Co.* as precedent will need to be revisited if the Biden Board overturns that decision.

Raise the Bar for Independent Contractor Status

The GC has asked for cases suitable to asserting more stringent standards for establishing independent contractor status. Further, the GC appears to be reviving an Obama-era argument (actually rejected by the Board) that an employer's mistake in classifying employees as independent contractors constitutes an independent violation of the NLRA.

Strike Replacement Restrictions

Permanent replacement of economic strikers has been lawful since the U.S. Supreme Court held it so in 1938. It appears the GC is preparing to argue that permanent strike replacements

should be unlawful if the employer was motivated by a desire to undermine the union—a threshold that seems like a low bar to overcome in a strike situation and which has been rejected by the Board in the past. Further, the GC is likely to contend that employers should not be permitted to provide strike replacements (permanent or temporary) with higher compensation than the strikers were receiving (which has long been held lawful).

Undermining Employer Confidentiality Interests

NLRB Regions must submit cases involving confidentiality and non-disparagement clauses in settlement agreements for scrutiny based on possible inhibition of employee Section 7 rights. The GC is also seeking test cases to argue for lowering the threshold for requiring employers to provide a union with confidential financial data during collective bargaining. Additionally, the GC has her sights set on restoring the Obama Board's restrictions on employers' ability to maintain the confidentiality of workplace investigations.

Protecting Employee Misconduct During the Course of Protected Concerted Activity

GC Abruzzo is apparently calling for the reversal of General Motors, 369 NLRB No. 127 (2020). That case overruled previous Board precedent that had often extended protection to employees who engaged in abusive or offensive conduct while in the course of otherwise protected concerted activity. General Motors was widely seen as a long-overdue recognition of employers' interest in promoting civility in the workplace.

III. Other Potential Changes

The GC's Memorandum identifies a number of other topics that may increase risks for employers. Among them are:

• ***Bargaining over discipline prior to a first contract***. Restore the prior Board's rule requiring employers to bargain over discipline during first contract negotiations.

• ***Weingarten representatives***. A return to *Weingarten* rights (requiring employees be permitted a representative during disciplinary investigations) for non-union employees; also requiring an employer to provide information regarding the investigation to a union.

• ***Salts***. Lowering the threshold for "salts" (individuals applying for work, but actually sent by a union for organizing purposes) to be considered "employees" under the law and expanding the monetary remedies available to them.

• ***Withdrawal of recognition***. Eliminate employers' ability to withdraw union recognition after the third year of a collective bargaining agreement (but while the contract is in effect). Revisit the Board's current 45-day requirement for a union to

file a petition following an employer's anticipatory withdrawal of recognition.

• ***Cessation of dues checkoff upon contract expiration***. Restore the Board's prior policy of requiring employers to continue wage deductions under dues checkoff provisions even after the contract expires.

• ***"Status quo" increases***. Require continued wage and benefit increases beyond the expiration of a contract and prior to agreement upon a renewal.

• ***Company media***. Restore the decision in *Purple Communications*, 361 NLRB 1050 (2014), limiting the ability of employers to restrict employee use of company provided communication vehicles to engage in union organizing and other forms of protected activity.

• ***Stronger remedies for settlements***. Require "full remedies" as opposed to the Board's current policy of imposing settlements on charging parties based on the "reasonableness" of proposed remedial action. Potentially restrict or eliminate waivers of employee reinstatement in settlements.

• ***Duty to bargain***. A return to the Board's "clear and unmistakable" contract waiver rule, which required most changes in terms and conditions to be bargained even where there is a broad management-rights contract provision.

These are not the only changes the GC may seek. Expanding the definition of "protected concerted activity," union access to private property, union solicitation rules, NLRB jurisdiction over religious institutions, surface bargaining, successor employers, deferral to arbitration, expanded union information requests, intermittent strikes, secondary picketing, employers' burden to prove non-mitigation by charging parties, mandatory arbitration, expansion of the bargaining order remedy, raising the threshold for successful employer defenses in "mixed motive" cases, and threats under Section 8(a)(1) are among the other potential changes.

Employers should take heed of these direct signals from the NLRB indicating significant changes on the horizon that will affect nearly every aspect of labor relations.

Endnotes

1 "Mandatory Submissions to Advice" GC Memorandum 21-04 (August 12, 2021).

2 "Mandatory Submissions to Advice" GC Memorandum 18-02 (December 1, 2017).

3 On September 8, 2021, GC Abruzzo issued a new Memorandum, "Seeking Full Remedies" GC Memorandum 21-06 (September 8, 2021). The procedural purpose of the directive is to shepherd cases that include expanded remedies for employees and labor unions, which could be reviewed by the full Board. Included among the remedies to be sought: expanded consequential damages (such as unreimbursed medical costs due to terminated insurance coverage for a discharged employee), front pay, remedies for unlawfully discharged undocumented workers, expanded union access, reimbursement of union organizing costs, publication of Board notices to employees and in local newspapers, broader cease and desist orders, and many others. The GC also reminds Regions in the Memo that she is considering advocating overruling *Ex-Cell-O Corp.*, 185 NLRB 107 (1970). This new Memo will affect all unfair labor practice cases, and possibly post-election objections, for the foreseeable future.

The Basics of Employment Based Non-Compete Agreements in Nebraska

by John C. Dunn

When someone calls to discuss restrictive covenants between an employer and employee in Nebraska, there are certain questions and issues that frequently arise and every attorney should be prepared to address. One likely question is: "Are non-competes enforceable in Nebraska?" Another is: "Nebraska will only enforce a non-solicit, right?" Or, perhaps the open-ended request: "What can you tell me about having an employee sign a non-compete in Nebraska?" With these types of questions in mind, this article offers a concise explanation of the basic rules and issues that impact the enforceability of employment-based restrictive covenants under Nebraska law.

This article provides a brief history of employment-based restrictive covenants in Nebraska with a focus on the trends and changes in controlling precedent. It also outlines the standards that govern non-competition and non-solicitation restrictions between an employer and an employee under Nebraska law.

John C. Dunn

John Dunn graduated from Creighton University School of Law, *summa cum laude*, in 2016. John has worked at Koley Jessen, P.C., L.L.O., in its Employment, Labor and Benefits practice group since 2016. In his practice, John counsels both individual and business clients alike, providing practical and effective legal solutions on a wide variety of employment-related issues with an emphasis on employment-based restrictive covenants.

1. A Brief History of Judicial Decisions Addressing Restrictive Covenants in the Employment Context

In order to understand the current state of Nebraska law regarding employment-based restrictive covenants, a basic understanding of historical precedent is essential. The first reported case in Nebraska involving a restrictive covenant between an employer and employee was in 1924 in *Dow v. Gotch*.[1] In *Dow*, the Nebraska Supreme Court addressed the enforceability of a non-compete agreement between an employee, Ms. Gotch, and her employer, Ms. Dow, which prohibited Ms. Gotch from "engag[ing] in the business of hair or facial treatment" within the City of Grand Island.[2] Following a detailed discussion of the historical approach to restraints of trade, the Court concluded that the restriction was enforceable under the facts of the case.[3] In reaching its conclusion, the Court stated that "the law in the state of Nebraska" is that partial restraints of trade "will be enforced if they are ancillary to a main contract and limited either as to time or space, provided that they are also reasonable in their terms and operation."[4]

After *Dow*, the Nebraska Supreme Court did not provide any meaningful guidance on employment-based restrictive covenants until 1960, when it decided *Securities Acceptance Corp. v. Brown*.[5] In *Securities Acceptance*, the Court described the "three general requirements relating to partial restraints of trade," which continue to guide the analysis of restrictive covenants under Nebraska law:

> First, is the restriction reasonable in the sense that it is not injurious to the public; second, is the restriction reasonable in the sense that it is no greater than is reasonably necessary to protect the employer in

> some legitimate interest; and, third, is the restriction reasonable in the sense that it is not unduly harsh and oppressive on the employee.[6]

Following the *Securities Acceptance* decision, the Court, albeit infrequently, enforced covenants not to compete that were based on industry or occupation and geography.[7] For example, in *Dana F. Cole & Co. v. Byerly*, the Court enforced a non-compete that, in pertinent part, prohibited the employee from being connected with a business that was engaged in the "type of business conducted by the company" within a 75 mile radius of "the city limits of Atkinson, Nebraska."[8] The Court determined that the covenant was reasonably necessary to protect the company's interest in protecting its customer goodwill because the majority of the customers with whom the employee had an opportunity to develop a relationship were located within the 75 mile radius.[9]

The next, and perhaps most, significant development in the law governing employment-based restrictive covenants was the Court's decision in *Polly v. Ray D. Hilderman*.[10] In *Polly*, the Court announced the rule it had "gleaned" from earlier cases in Nebraska, which was that an employment-based non-compete is only enforceable to the extent it "restricts the former employee from working for or soliciting the former employer's clients or accounts with whom the former employee actually did business and has personal contact."[11] In support of this rule, the Court noted that non-competes are only enforceable to the extent they protect an employer from "unfair competition," rather than "ordinary competition."[12] The Court further reasoned that unfair competition arises when an employee "siphons off" the goodwill that the employee may have developed with the employer's customers.[13] Thus, according to the Court in *Polly*, a restriction only protects against unfair competition if it is limited to the customers with whom the employee "actually did business and has personal contact" and any broader restriction is unreasonable and invalid.[14]

The customer-specific rule stated in *Polly* currently governs the enforceability of employment-based restrictive covenants. In fact, whether the restriction uses the phrase customers "with whom the employee did business and had personal contact" has become a threshold issue in determining the enforceability of employment-based restrictive covenants in Nebraska.[15]

2. A Brief Discussion of the Enforceability of Employment-Based Restrictive Covenants Under Nebraska Law

As noted above, Nebraska courts consider three factors in analyzing restrictive covenants between an employer and employee. The factors are whether the restriction is: (1) injurious to the public; (2) no greater than reasonably necessary to protect a legitimate interest of the employer, and (3) unduly harsh and oppressive on the employee.[16] Provided below is a brief analysis of each of these factors; however, courts regularly "start with the second factor before proceeding to the other factors" because the question of whether a restriction is greater than reasonably necessary to protect a legitimate interest is often the key threshold issue in the case.[17] Taking a cue from these courts, the three factors will be discussed in the order of significance rather than numerical order.

a. The restriction must be no greater than reasonably necessary to protect a legitimate interest.

An employer may "have a legitimate interest in protecting its customer goodwill and confidential information."[18] The question of whether a restriction is reasonably necessary to protect a legitimate interest is frequently dispositive as to the enforceability of the restriction. In Nebraska, an employer only has a legitimate interest in protecting itself from "unfair competition" rather than "ordinary competition."[19] As such, any restriction that ventures beyond "unfair competition" into the arena of "ordinary competition" is unenforceable.[20]

i. Customer goodwill.

With respect to customer goodwill, an employer has a protectable interest only in restraining "an employee from working for or soliciting" customers "with whom the former employee actually did business and ha[d] personal contact."[21] With that said, the emphasis on customer-specific restraints has led to a view among some practitioners that only "non-solicitation" restrictions were enforceable in Nebraska.[22] As explained in more detail below, this view is incorrect.

In *Farm Credit Services of America, FLCA v. Mens*, the United States District Court for the District of Nebraska addressed an agreement wherein the employee, Ms. Mens, agreed not to "seek or accept employment with," "call on or solicit the business of, or sell to, or service" any of the customers with whom the employee "actually did business and had personal contact . . . ."[23] In an opinion upholding a Preliminary Injunction, the court rejected the argument that prohibiting Ms. Mens from "seeking or accepting employment with customers" that she "worked with while employed at Farm Credit" was overbroad and unreasonable.[24] In its reasoning, the court pointed to the language that carved out "activities 'unrelated to and not competitive with'" the employer's business.[25] Although the court emphasized this carve out language in response to Ms. Mens' argument, Nebraska precedent indicates that the absence of such carve out language would not have been fatal to the enforceability of the restriction.

In analyzing the scope of restrictions that may be reasonably necessary to protect an employer's customer goodwill, the focus is usually on whether the restriction complies with the "'customer specific' rule."[26] To that point, the Nebraska Supreme Court, in *Polly* and elsewhere, has expressly stated

that a restrictive covenant may prohibit an employee from "working for" customers, as long as the restriction contains the requisite customer-specific language.[27] The Court's use of the phrase "working for" demonstrates that a broad range of activities would be enforceable as long as the restriction was properly customer specific. For example, in *American Security Services, Inc. v. Vodra*, the Court addressed a non-compete prohibiting a former employee, Mr. Vodra, from "solicit[ing] business from, contract[ing] with or tak[ing] employment with" certain customers with whom Mr. Vodra had contact in the course of his employment.[28] The Court concluded that this covenant "was reasonably necessary to protect [the employer's] legitimate business interest in customer good will."[29] In sum, a restriction that prohibits a former employee from working for or accepting employment with a specific customer is consistent with governing precedent.[30]

To clarify one point, the inclusion of a customer-specific restraint in a non-compete does not render the covenant enforceable automatically or as a matter of law. The enforceability of any restriction "must be assessed upon the facts of a particular case and determined on all the circumstances."[31]

ii. Confidential information.

As noted above, an employer has a legitimate interest in protecting its confidential information; however, this interest is frequently discussed only in connection with an employer's customers.[32] Indeed, under current precedent, there is no case where an employer has successfully enforced a non-compete solely on the basis of protecting its confidential information.[33] With that said, in *Kaiser v. Arthur J. Gallagher & Co.*, the United States District Court for the District of Nebraska denied a motion for summary judgment in a declaratory judgment action based on the argument that the non-compete was overbroad because it covered customers about whom the employee "acquired confidential information . . . ."[34] The motion was ultimately denied without prejudice on the grounds that it was not ripe for adjudication, but in its analysis, the court explained that the employee's argument "overlooks [the employer]'s stated need to protect its confidential information" and further noted that "employers 'have a legitimate interest in protecting confidential information.'"[35] Although the court's discussion has no precedential value, it does indicate that under the proper circumstances an employer's interest in protecting confidential information may provide grounds for extending the scope of customers that may be included in a "customer specific" restriction.

b. The restriction must not be injurious to the public.

In many cases, this factor is not disputed and therefore is not discussed.[36] In a case where the employee claims that the restriction is injurious to the public, the court tends to focus on the potential "injury" the public may suffer by being deprived of the employee's services during the restricted period. For example, in *Dow v. Gotch*, the Court concluded that the non-compete did not cause "the city [to] suffer. It had beauty parlors a plenty, a number of them."[37] The manner in which the Court resolved this factor in *Dow* remains instructive on how courts will address the issue today.[38] In any event, there does not appear to be a single reported case in Nebraska where this factor was material to the court's decision.[39]

c. The restriction must not be unduly harsh and oppressive.

The third and final factor, whether the restriction is unduly harsh and oppressive, involves the application of a balancing test in which the court considers a variety of factors ranging from the disparity in bargaining power to whether the employee will be forced to change his or her "calling or residence."[40] In considering these factors, the "harshness and oppressiveness on the covenantor-employee is weighed against protection of a valid business interest of the covenantee-employer."[41]

It is necessary to point out that the applicable balancing was developed in *Philip G. Johnson & Co. v. Salmen*, which was decided prior to *Polly*. Thus, the test was created and initially applied when territorial non-competes were enforceable in Nebraska. Under *Polly*, however, there does not appear to be any reported cases where this factor had a material impact on the enforceability of an otherwise narrowly tailored restriction.[42]

3. Drafting and Other Considerations

In order to properly advise clients and colleagues regarding employment-based restrictive covenants, it is necessary to have a working knowledge of some common pitfalls and practical considerations. In preparing a restrictive covenant, practitioners should be careful to draft the restriction consistent with the customer-specific rule detailed above. If the restriction is found to be greater than reasonably necessary to protect the employer's legitimate interest, the covenant will be thrown out in its entirety and could jeopardize the enforceability of other restrictions.[43] Unlike in many states, Nebraska courts will not reform or "blue pencil" a restrictive covenant on the grounds that "[i]t is not the function of the courts to reform unreasonable covenants not to compete solely for the purpose of making them legally enforceable."[44] In other words, a Nebraska court "must either enforce [a non-compete] as written or not enforce it at all."

Though Nebraska courts' approach to analyzing and enforcing employment-based restrictive covenants can make drafting tedious, the law is nonetheless predictable. As long as practitioners are careful to follow the case law and guidance described above, they can have confidence that the restriction has a reasonable chance of being enforced and, in any event, will not be found unenforceable "on its face."[45]

Endnotes

1 113 Neb. 60, 201 N.W. 655 (1924).

2 *Dow v. Gotch*, 113 Neb. 60, 201 N.W. 655, 656 (1924).

3 Noting its departure from the "old rule", the Court explained that in the past where "[p]eople did not go away from home, they stayed where they were put," but "[t]he situation is different today" where "[m]en and women of all employments go from one end of the country to another . . . people do not remain rooted to their native soil." *Id*.

4 *Id.*

5 *Secs. Acceptance Corp. v. Brown*, 171 Neb. 406, 417, 106 N.W.2d 456, 463 (1960).

6 *Secs. Acceptance*, 171 Neb. at 417, 106 N.W.2d at 463.

7 Riekes, Steven J., *Dead or Alive? Territorial Restriction in Covenants-Not-To-Compete in Nebraska*, 33 Creighton L. Rev. 175, 182 (1999) (correctly noting that "[m]any Nebraska cases have been decided since *Securities Acceptance*, and most Nebraska cases have found the covenant-not-to-compete invalid.")

8 *Dana F. Cole & Co. v. Byerly*, 211 Neb. 903, 905, 320 N.W.2d 916, 918 (1982).

9 *Dana F. Cole*, 211 Neb. at 905, 320 N.W.2d at 918.

10 *Polly v. Ray D. Hilderman & Co.*, 225 Neb. 662 407 N.W.2d 751 (1987).

11 *Polly*, 225 Neb. at 668, 407 N.W.2d at 756 (emphasis added).

12 *Id.* at 665-66, 407 N.W.2d at 755.

13 *Id*.

14 *Id.* at 659, 407 N.W.2d at 756 ("Because the covenant not to compete in this case attempts to restrict Polly from soliciting or working for Hilderman's clients with whom Polly did not work and did not even know, it is greater than is reasonably necessary to protect Hilderman's legitimate interest in customer goodwill, and is thus unreasonable and unenforceable.")

15 *See, e.g, Signature Style, Inc. v. Roseland*, No. 4:19-CV-3089, 2020 WL 58456, at *4 (D. Neb. Jan. 6, 2020) (concluding that the "provision is unenforceable as a matter of law because it does not restrict Roseland from *unfairly* competing by soliciting customers with whom he actually did business, but rather purports to prevent him from competing *at all*.") (emphasis in original). *But see Thrivent Financial for Lutherans v. Hutchinson*, 906 F.Supp.2d 897, 904 (D. Neb. 2012) (enforcing a non-solicitation restriction that applied to clients about whom the employee "had access" to confidential information because the employer had policies in place that limited the employee's access to confidential information to those customers with whom the employee actually worked).

16 *Mertz v. Pharmacists Mut. Ins. Co.*, 261 Neb. 704, 711, 625 N.W.2d 197, 204 (2001).

17 *Farm Credit Servs. of Am., FLCA v. Tifft*, No. 8:18-CV-80, 2019 WL 10894030, at *6 (D. Neb. Dec. 31, 2019). *Accord Gaver v. Schneider's O.K. Tire Co.*, 289 Neb. 491, 499, 856 N.W.2d 121, 127–28 (2014).

18 *Kistco Co. v. Patriot Crane & Rigging, LLC*, No. 8:19-CV-482, 2019 WL 6037416, at *6 (D. Neb. Nov. 14, 2019).

19 *Aon Consulting, Inc. v. Midlands Fin. Benefits, Inc.*, 275 Neb. 642, 653, 748 N.W.2d 626, 638 (2008).

20 *Aon Consulting*, 275 Neb. at 653, 748 N.W.2d at 638.

21 *H & R Block Tax Servs., Inc. v. Circle A Enterprises, Inc.*, 269 Neb. 411, 418, 693 N.W.2d 548, 554 (2005).

22 This misperception is certainly understandable based on the frequency in which customer-specific restrictions are generically referred to as "non-solicitation" restrictions. *See, e.g., W. Point Auto & Truck Ctr., Inc. v. Klitz*, 492 F.Supp.3d 936, 944 (D. Neb. 2020) ("In the employment context, the Nebraska Supreme Court has made it clear that a 'non-compete' provision must be limited to non-solicitation of customers with whom the affected employee had personal contact and actually did business."); *Bryant v. Nationwide Anesthesia Servs., Inc.*, No. 8:21-CV-335, 2021 WL 3912264, at *5 (D. Neb. Sept. 1, 2021) ("Nebraska courts will only enforce an agreement which restricts an employee from soliciting customers with whom the employee had personal contact and with whom the employee did business on behalf of the former employer.")

23 *Farm Credit Servs. of Am., FLCA v. Mens*, 456 F. Supp. 3d 1173, 1178 (D. Neb. 2020).

24 *Farm Credit Servs. of Am., FLCA v. Mens*, No. 8:19CV14, 2019 WL 1013256, at *2 (D. Neb. Mar. 1, 2019).

25 *Mens*, 2019 WL 1013256, at *2.

26 *H & R Block*, 269 Neb. at 418, 693 N.W.2d at 554.

27 *Polly*, 225 Neb. at 668, 407 N.W.2d at 756; *H & R Block*, 269 Neb. at 418, 693 N.W.2d at 554. *See also* WORK, Black's Law Dictionary (11th ed. 2019) (defining "Work" as "[p]hysical and mental exertion to attain an end, esp. as controlled by and for the benefit of an employer . . . .")

28 *Am. Sec. Servs., Inc. v. Vodra*, 222 Neb. 480, 489, 385 N.W.2d 73, 79 (1986) (emphasis added). Although *Vodra* was decided a year before *Polly*, the case was cited approvingly in *Polly* and otherwise remains good law.

29 *Vodra*, 222 Neb. at 489, 385 N.W.2d at 79.

30 *See, e.g., id.* (enforcing restriction that prohibited employee from "tak[ing] employment with" certain customers); *Presto-X-Co. v. Beller*, 253 Neb. 55, 64-65, 568 N.W.2d 235, 240-41 (1997) (stating rule that a covenant may be valid if it "restricts the former employee from working for or soliciting" certain customers) (quoting *Polly*, 225 Neb. at 668, 407 N.W.2d at 756); *Terry D. Whitten, D.D.S., P.C. v. Malcolm*, 249 Neb. 48, 52, 541 N.W.2d 45, 48 (1995) (same). *See also* WORK, Merriam-Webster's Collegiate Dictionary 1442 (11th Ed. 2003) (defining work as "1: activity in which one exerts strength or faculties to do or perform something: . . . the labor, task, or duty that is one's accustomed means of livelihood . . . .")

31 *Vodra*, 222 Neb. at 489, 385 N.W.2d at 79.

[32] *See, e.g.*, *Gaver*, 289 Neb. at 506-07, 856 N.W.2d at 133 (noting that the employee "was not exposed to, and did not acquire, confidential information . . . regarding it's customers or potential customers, such as customer lists."); *Thrivent Financial*, 906 F.Supp.2d at 903-905 (recognizing that employer had a legitimate interest in protecting confidential information, but noting that restriction was enforceable because it only applied to customers with whom the employee's "contact [was] sufficiently close that he developed goodwill with those clients . . . .").

[33] *Mertz*, 261 Neb. at 712, 625 N.W.2d at 204–05 ("As a general rule, 'a covenant not to compete in an employment contract may be valid only if it restricts the former employee from working for or soliciting the former employer's clients or accounts with whom the former employee actually did business and has personal contact.'") (quoting *Professional Bus. Servs. v. Rosno*, 256 Neb. 217, 225-26, 589 N.W.2d 826, 832 (1999)).

[34] *Kaiser v. Arthur J. Gallagher & Co.*, No. 8:17-CV-454, 2018 WL 7958816, at *4 (D. Neb. Mar. 8, 2018).

[35] *Kaiser*, 2018 WL 7958816, at *4.

[36] *See, e.g.*, *Presto-X-Co.*, 253 Neb. at 62, 568 N.W.2d at 239 ("…we cannot conclude from the record that the covenant not to compete was injurious to the public interest. We, therefore, focus our inquiry on whether the covenant protected a legitimate business interest…"); *C & L Indus., Inc. v. Kiviranta*, 13 Neb. App. 604, 698 N.W.2d 240, 247 (2005) ("There is no indication or claim that enforcement of the covenant not to compete in this case will be injurious to the public."); *Kistco*, 2019 WL 6037416, at *6 ("There is no reason to believe the contract is injurious to the public.")

[37] *Dow*, 113 Neb. 60, 201 N.W. at 657.

[38] *See, e.g.*, *Thrivent Financial*, 906 F.Supp.2d at 903-904 (concluding that non-solicitation restriction was "not injurious to the public" because restriction "will only affect a limited segment of the public" and the affected customers "have access to many other financial service firms to obtain financial services.")

[39] The only case the author could find that came close was *Akkad v. Nebraska Heart Inst., P.C.*, No. A-11-572, 2012 WL 1233008, at *8 (Neb. Ct. App. Apr. 10, 2012), where the Court of Appeals of Nebraska noted that "[d]epriving the entire state of Nebraska of the services of a highly specialized physician like Akkad, an interventional cardiologist, is certainly arguably injurious to the public . . . ." However, the fact that the restriction was "arguably injurious to the public" was immaterial to the decision because the court found the restrictions were greater than "necessary to protect the goodwill of NHI . . . ." *Akkad*, 2012 WL 1233008, at *8.

[40] *Tifft*, 2019 WL 10894030, at *6.

[41] *Vodra*, 222 Neb. at 491, 385 N.W.2d at 80.

[42] *See, e.g., id.*; *Kiviranta*, 13 Neb.App. at 615-16, 698 N.W.2d at 250-51; *Tifft*, 2019 WL 10894030, at *6.

[43] *See, e.g., CAE Vanguard, Inc. v. Newman*, 246 Neb. 334, 339, 518 N.W.2d 652, 656 (1994) (adopting the "minority view" under which "courts may not revise an agreement so as to make it enforceable."); *Controlled Rain, Inc. v. Sanders*, No. A-04-858, 2006 WL 1222772, at *12 (Neb. Ct. App. May 9, 2006) (concluding that several textually separate "paragraphs constitute a single, integrated covenant not to compete" and because one paragraph "is invalid, we must conclude that the other paragraph . . . is likewise invalid.")

[44] *Newman*, 246 Neb. at 339, 518 N.W.2d at 655-56 (quoting *Vlasin v. Len Johnson & Co.*, 235 Neb. 450, 455, 455 N.W.2d 772, 776 (1992)). *See also Bryant*, 2021 WL 3912264, at *4 (noting that "Nebraska caselaw has consistently rejected the 'blue pencil' rule . . . .")

[45] *Klitz*, 492 F.Supp.3d at 944 (noting that a Nebraska court will not reform "a covenant that is unenforceable on its face."). *See also Gaver*, 289 Neb. at 509, 856 N.W.2d at 134 (concluding that noncompete was invalid and unenforceable as written).

From *Nebraska Real Estate Practice Manual (2017)*. This manual was created to assist lawyers practicing in all aspects of the real estate practice.

2-1(d) Water Rights

a. Clearly define irrigation surface water rights or well registrations.

b. Transfer groundwater well and surface water right registrations at closing.

i. Form for transfer:

1. https://dnr.nebraska.gov/sites/dnr.nebraska.gov/files/doc/ground water/contractors/CHG-OWN2008.pdf

c. Define pumping restrictions, number of certified irrigated acres, the remaining allocation, and potentially how many acre inches are being transferred (if applicable in your NRD).

i. Possible language for agreement: "It is acknowledged and accepted by Buyer that the subject property is located in the _____ Natural Resource District and is subject to water pumping restrictions and certified irrigated acres. The subject property includes ___ certified acres and ____ acre inches remaining under the applicable allocation which can be pumped over ____ years. There is a current restriction for inches pumped in this NRD. ALL remaining acre inches and certified acres shall pass to Buyer with the subject property at closing."

ii. Be mindful of "pooling agreements" which have become more prevalent in some NRD's (utilized to pool and distribute water allocations among farms in the pool), and make sure that your client is getting what he or she is bargaining for if a farm was subject to one of these agreements.

HELP! My Client Received a Charge of Discrimination From the Nebraska Equal Opportunity Commission

by Nichole S. Bogen and Lily L. Ealey

Whether you were sworn into the practice of law in 2020 or 20 years ago, when you receive a charge of discrimination from the Nebraska Equal Opportunity Commission ("NEOC" or "Commission") claiming your client engaged in wrongful discrimination, the unfamiliar legal process and regulatory language can be overwhelming. This article will give you an overview of the process and a roadmap to best assist your client.

From 2015 to 2019, the NEOC received over 4,000 claims of discrimination—in employment, housing, and public accommodations.[1] In the employment context, retaliation, disability, and race or color were the top three types of discrimination alleged by employees.[2] Not surprisingly, discharge, terms and conditions of employment, and harassment were the top three types of issues alleged by employees.[3]

Understand how the complaint process works. First a Complainant will meet with an Intake Investigator to determine whether the Commission has jurisdiction to file a charge. This is followed by a more formal intake interview, in which the Complainant will review, sign, and notarize the formal charge of discrimination.[4] A Complainant is not required to be represented by an attorney when they file a charge with the NEOC. The Complainant can file a charge against their employer at any time during or after they have left employment, so long as it is within the time limit for filing, discussed further below. Next, the employer (your client) as the Respondent will be served.[5] The Respondent must then prepare a response, produce documentation requested at the time of service, and file the response.[6]

The Complainants and Respondents will have the opportunity to voluntarily participate in Alternative Dispute Resolution ("ADR") as an alternative to formal investigation.[7] If the parties do not participate in ADR the claims process moves into the investigation stage.[8]

During the investigation, the investigator will request information, names of witnesses, dates, timelines, and documentation from both parties; witnesses may be interviewed; and the

Nichole S. Bogen

Nichole Bogen is a partner in the Lamson Dugan & Murray Lincoln office. She has represented clients in federal and state courts involving railroad and transportation litigation, employment discrimination, harassment, medical leave, wrongful termination, wage and hour claims, and retaliation.

Lily L. Ealey

Lily Ealey is an attorney at Lamson Dugan & Murray in the firm's litigation group. She received her J.D. from Loyola University Chicago School of Law, where she was an editor on the *Children's Legal Rights Journal* and the *International Law Review*, and a member of the Appellate Lawyers Association Moot Court Team and Willem C. Vis International Commercial Arbitration Moot Team.

opportunity for responses, rebuttal interviews, and evidence to support one's respective position will be given.[9] The case is then forwarded to the Commission for a determination.[10] Both parties will receive a Formal Determination letter from the Commission. The Formal Determination states and provides a brief explanation of its decision and any subsequent required and optional actions.[11] The Formal Determination will be either: (1) No Reasonable Cause; or (2) Reasonable Cause.[12] No Reasonable Cause indicates that the Commission found no reasonable cause to believe discrimination occurred and no subsequent action needs to be taken, and the Commission has reached the end of its processing of the case. There is no appeal process within the Commission.[13] If the charge has been dual-filed with the federal Equal Employment Opportunity Commission ("EEOC"), then the Complainant may, within 15 days, email the EEOC a request for a "substantial review" of the decision of the Commission.[14] Otherwise, the only other option available to the Complainant is to file a lawsuit within 90 days of receipt of the No Reasonable Cause determination.[15] The Complainant may file suit regardless of the outcome in this administrative process before the NEOC.[16]

In the event of a Reasonable Cause determination, the case will be forwarded to the Director of Conciliation to work with the parties to resolve the matter.[17] Conciliation, similar to mediation, is a voluntary process for the parties to reach an amicable agreement after a Reasonable Cause determination.[18] A proposed conciliation agreement is sent with the determination to indicate what would make the Complainant whole, as if the discriminatory act had not occurred.[19] Specific relief is negotiated by the parties during the conciliation process.[20] If the parties are able to reach an agreement, it is formalized into a Conciliation Agreement and the case is considered resolved.[21]

If the parties are unable to reach a mutual agreement, the Commission may order a public hearing or forward the case to the Equal Employment Opportunity Commission, in the case of a federal employment charge, or simply issue a right to sue letter to the Complainant and allow them to file a lawsuit in court against your client.[22] If the Complainant requests a public hearing, the Commission will first make a determination on whether to send the case to public hearing or, in the alternative, issue a decision which allows the Complainant to pursue his or her claim in state court.[23] A public hearing is an administrative proceeding, governed by the same rules which govern Nebraska district courts.[24] In a public hearing the Commission does not represent either party.[25] Both parties present their case to the hearing officer (provided by the Commission), who then either issues an order of relief for the Complainant or a dismissal of the case for the Respondent.[26]

Know the deadlines and jurisdictional days. Once a formal charge has been filed, the Respondent must be served within 10 days.[27] An employment respondent has 30 days to file a response. Employment respondents may request a 30 day extension.[28] You will almost always want to seek an extension, because you will want to conduct a thorough investigation with your client into the charge. If the employee was discharged, you need to understand the reason(s) why and state them clearly in the response. You'll need to review and understand the employee's complete employment file. You'll also have to know and understand the employer's policies and procedures, disciplinary rules, communications with the employee, prior interactions about the alleged facts in the charge, any prior reports or complaints of discrimination, harassment, or whatever is at issue. You will need to take adequate time to gather and review the documents and information requested by the NEOC and prepare and assert any objections to the requests. Finally, you will need time to prepare a complete and thorough response to the NEOC for you client's review and approval. This is especially crucial if the client is new to you and not one you have worked with in the past.

There is a time limit for filing a charge. As an attorney for a *potential* Respondent, it is a crucial responsibility to note these deadlines to protect your client from a charge filed outside the required timeframe.

i. 300 days from the date of harm for employment discrimination.[29]

ii. 4 years from the date of harm for Equal Pay claims (under the Equal Pay Act of Nebraska).[30]

Review the charge of discrimination carefully. The charge of discrimination should include all pertinent information that was provided by the Complainant in the intake interview with the NEOC. This is where the facts related to the asserted unlawful discrimination are contained. Go over the charge with your client to compare the version of events and timelines so you can rebut the facts in your response. The law broadly covers individuals and various entities, however, check the statute anyway to ensure whether your client is exempt for any reason: religious organizations, private employers with less than 15 employees, employed by a relative, or in domestic service.[31] Follow all the directions on the charge notice. This will inform you of deadlines (*see above*), important contact information, and any further instructions you must follow in filing a response to the charge.

Familiarize yourself with the law. The Nebraska Fair Employment Practice Act (NFEPA) is the main governing body of law for employment discrimination in Nebraska, and it is codified at Neb. Rev. Stat. §§ 48-1101 through 48-1126.[32] Most important to know are the protected classes for employment discrimination under NFEPA: race, color, national origin, religion, sex (including pregnancy), disability, marital status, and age.[33] Each protected class is further defined within NFEPA.[34] For example, "Race is inclusive of characteristics

such a skin color, hair texture, and protective hairstyles; and protective hairstyles includes braids, locks, and twists."[35]

The Act defines what is an "unlawful employment practice" for an employer.[36] As a practitioner, you'll want to compare the allegations of the charge of discrimination and your client's explanations to the statutory language, because you will need to determine if you can respond to the charge of discrimination and ethically characterize your client's actions lawful.

Consider alternative dispute resolution (ADR). ADR, whether predetermination settlements, post-determination settlements, mediation, conciliation, or arbitration, is an important tool in your toolbox to help your client resolve the charge before it leaves the NEOC and becomes a public lawsuit. ADR is a voluntary process that your client can enter, which provides the parties with the opportunity to resolve the matter without a formal investigation or determination on the merits of the case.[37] ADR allows your client to resolve the charge quickly and confidentially, and at a lower cost:

i. ADR cases are normally handled within 30-60 days, saving your client time and money.[38]

ii. ADR cases are 70% successful.[39]

iii. ADR is confidential and prevents information employer clients might not want to be revealed in the litigation process from becoming public record.[40]

Proactive, Produce, Protect. Being proactive in responding to a charge of discrimination and developing a plan will ensure the best possible outcome for your client. This includes carefully reviewing the charge, understanding the applicable law, investigating the complaint or incident, and providing a thoughtful, thorough, written response.

Equally important is cooperating and producing, to the extent you are able and your client agrees, all the documentation and information requested by the Commission throughout the complaint process. This documentation typically includes the employee handbook, the employee's personal file, comparable employees' information, supervisor information, relevant communications, and any relevant company policies and procedures.

Properly advise your client on their duties under the law to refrain from retaliating against any Complainant as well as any employees testifying or participating in an investigation by the NEOC. While investing the charge, you client's employees should be reminded that they are protected from retaliation and should report any retaliation to the appropriate person according to the company's policy. Protecting employees from retaliation is equally important as defending against a discriminatory charge. Retaliation lawsuits are much more severe than initial discrimination charges and accounted for 55.8% of all charges filed with the NEOC in 2020.[41]

While investigating the charge with your client, keep in mind the common defenses available to employers in discrimination cases: misconduct, business judgment, business necessity, undue hardship, "same decision," and after-acquired evidence.[42] You'll want to gather relevant documents to include in the response, and even if not directly responsive, to hold and preserve as relevant to the pending claim and your client's defense. For example, if the Complainant is alleging they were terminated because of their sex but your client says it was because of their excessive absenteeism, you'll want to gather evidence of the employer's policy stating it does not discriminate on the basis of sex, the attendance policy, records of the Complainant's attendance records, their reasons given for absences (if any), statements by supervisors of the Complainant's reasons given for absences, emails or texts from the Complainant about their absences, and the termination letter stating the employer's reason for the termination was excessive absenteeism. You may also want to gather information showing that other employees, not of the Complainant's same sex, were also terminated under the same policy for excessive absenteeism substantially similar to Complainant's history to show that the employer applies the attendance policy in a non-discriminatory manner.

Writing the response. As cleverly tweeted by political reporter Olivia Nuzzi, "Dance like no one is watching; email like it may one day be read aloud in a deposition." The same can be said for writing the response to the NEOC on a charge of discrimination. The response should be thorough enough to provide information and context to the NEOC about your client, its industry, working environment, and policies and procedures, without creating a treatise. It should also concisely answer the interrogatories and requests for production served by the NEOC. Case law that is on point with the facts of the charge can also be helpful to include in the response.

Hopefully this article has given you a brief roadmap start on your first NEOC charge of discrimination, and put you in the best position to represent, support, and assist your client.

Endnotes

1 https://neoc.nebraska.gov/reports/pdf/AnnualReport18-19.pdf (last visited 10/1/2021).

2 *Id.* at 5.

3 *Id.* at 6.

4 *Complaint Process: How to File,* Nebraska Equal Opportunity Commission, https://neoc.nebraska.gov/complaint/complaint.html

5 *Complaint Process: Service of a Charge,* Nebraska Equal Opportunity Commission, https://neoc.nebraska.gov/complaint/complaint.html.

6 *Id.*

7 *Complaint Process: Alternative Dispute Resolution,* Nebraska Equal Opportunity Commission, https://neoc.nebraska.gov/complaint/complaint.html.

8 *Complaint Process: Investigation,* Nebraska Equal Opportunity Commission, https://neoc.nebraska.gov/complaint/complaint.html.

9 *Id.*

10 *Complaint Process: Determination,* Nebraska Equal Opportunity Commission, https://neoc.nebraska.gov/complaint/complaint.html.

11 *Id.*

12 *Id.*

13 *Id.*

14 29 C.F.R. § 1614.302(c)(1)

15 *Complaint Process,* Nebraska Equal Opportunity Commission, https://neoc.nebraska.gov/complaint/complaint.html.

16 *Id.*

17 *Id.*

18 *Complaint Process: Conciliation,* Nebraska Equal Opportunity Commission, https://neoc.nebraska.gov/complaint/complaint.html.

19 *Id.*

20 *Id.*

21 *Id.*

22 *Complaint Process: Conciliation,* Nebraska Equal Opportunity Commission, https://neoc.nebraska.gov/complaint/complaint.html.

23 *Complaint Process: Public Hearing,* Nebraska Equal Opportunity Commission, https://neoc.nebraska.gov/complaint/complaint.html.

24 *Id.*

25 *Id.*

26 *Id.*

27 *Complaint Process: Service of a Charge,* Nebraska Equal Opportunity Commission, https://neoc.nebraska.gov/complaint/complaint.html.

28 *Id.*

29 *Jurisdictional Days,* Nebraska Equal Opportunity Commission, https://neoc.nebraska.gov/complaint/complaint.html.

30 *Id.*

31 Neb. Rev. Stat. § 48-1102(2), § 48-1103.

32 This article is limited to the NEOC and NFEPA and does not attempt to identify and address every municipal, state, and federal employment related law that could be involved in one particular employment discrimination matter.

33 Neb. Rev. Stat. § 48-1101 [Note: Federal law may cover additional classes].

34 Neb. Rev. Stat. § 48-1102.

35 *Id.* at 48-1102(20).

36 Neb. Rev. Stat. § 48-1104.

37 *Complaint Process: Alternative Dispute Resolution,* Nebraska Equal Opportunity Commission, https://neoc.nebraska.gov/complaint/complaint.html.

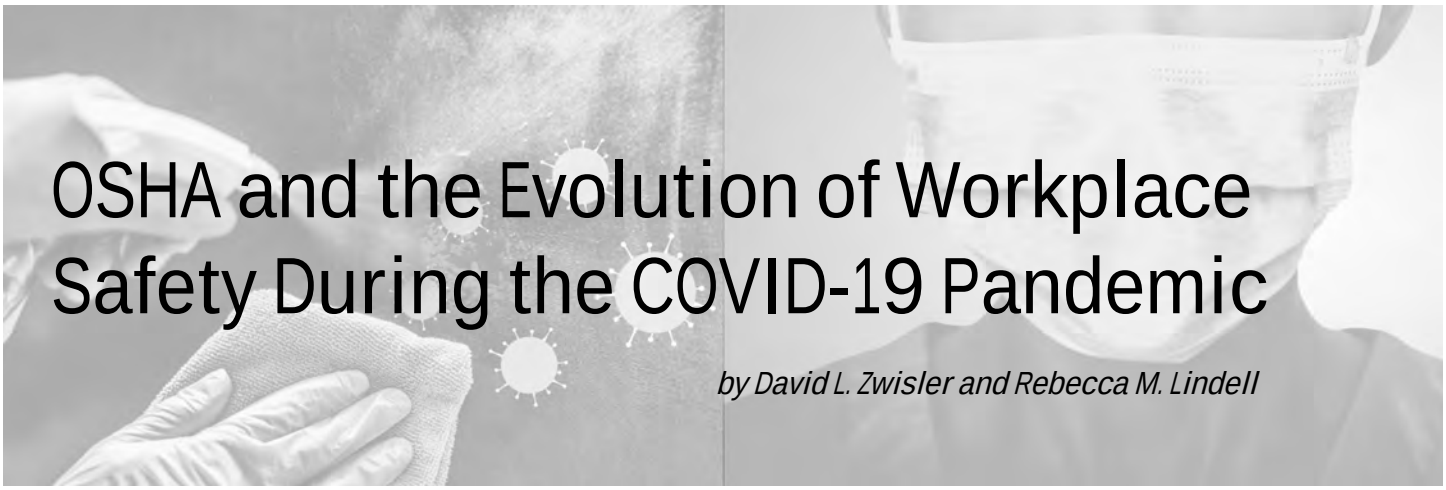
38 *Id.*

39 *Id.*

40 *Id.*

41 *EEOC Releases Fiscal Year 2020 Enforcement and Litigation Data,* U.S. Equal Employment Opportunity Commission, https://www.eeoc.gov/newsroom/eeoc-releases-fiscal-year-2020-enforcement-and-litigation-data.

42 https://ecf.mowd.uscourts.gov/jmi/REV5.0CivilJuryInstructions-2021.pdf (last visited 10/1/2021).



OSHA and the Evolution of Workplace Safety During the COVID-19 Pandemic

by David L. Zwisler and Rebecca M. Lindell

In March 2020, the World Health Organization declared COVID-19 a global pandemic. That same month, U.S. states entered into partial shutdowns, implemented emergency health orders, and permitted only essential workers—those who are vital to maintaining critical infrastructure, services, and functions—to work in person. This caused enormous disruptions to the workforce as employers grappled with shutdowns and varying health and safety regulations. Concerns over workplace health and safety reached an all-time high.

This article will explore the impact that COVID-19 has had on workplace safety, examine the role the Occupational Safety and Health Administration (OSHA) has played in addressing COVID-19 safety concerns, and discuss the interplay between federal and state responses.

Give Me the Numbers

OSHA stands at the forefront of workplace health and safety standards and is responsible for 130 million workers at more than 8 million worksites nationwide.[1] For this reason, the pandemic shone a spotlight on the agency as the country sought guidance on how to stop the spread of COVID-19 in the workplace and keep employees and customers safe.

Since the start of the pandemic, the number of complaints that OSHA has received has risen exponentially. By April 20, 2020, just over a month after former President Donald Trump declared a national emergency, OSHA had received 2,342 COVID-19–related complaints. By the end of December 2020, the total number of COVID-19–related complaints that OSHA had received exceeded 12,000, and by mid-September 2021, the number had surpassed 16,000.[2] Regarding just the 2020 data, the U.S. Department of Labor's (DOL) Office of Inspector General (OIG) stated in a report issued on February 25, 2021, that "[c]ompared to a similar [8-month] period in 2019, OSHA received 15% more complaints in 2020, but

David L. Zwisler

David Zwisler is a shareholder in the Denver office of Ogletree Deakins with a 20+ year history of representing employers in all aspects of traditional labor, safety and health, and employment compliance. David also regularly represents employers accused of violating state and federal health and safety regulations. David obtained his undergraduate degree from the University of Colorado and his J.D. from the University of Denver College of Law.

Rebecca M. Lindell

Rebecca Lindell is an associate in the Denver office of Ogletree Deakins. Rebecca represents clients in claims brought under state and federal employment laws. Rebecca also assists clients with various employment issues, including wage and hour, health and safety, and personnel policies. Rebecca received her undergraduate degree from the University of Colorado and her J.D. from the University of Denver Sturm College of Law

performed 50% fewer inspections."[3] To many observers, the threat to workplace safety posed by the COVID-19 pandemic revealed OSHA's lack of resources in handling such a large-scale crisis.[4]

Most OSHA inspections during the pandemic were conducted remotely via telephone, video conference, or email. The DOL's OIG raised concerns regarding the effectiveness of remote inspections in its February 2021 report, citing a report it issued in 2017 in which it found that "for approximately one third of OSHA-issued citations reviewed, employers abated the hazard during the inspection or within 24 hours of OSHA identifying the hazard."[5] The OIG's report made a number of suggestions to OSHA based on compiled interviews with OSHA officials, pre-pandemic inspection and complaint data, and data from the pandemic.[6] In the report, the OIG presented, and OSHA accepted, the following recommendations: (1) prioritize employers whose employees are at high risk of COVID-19 exposure in order to improve OSHA's on-site inspection strategies; (2) retroactively and prospectively track remote inspections; (3) compare remote and on-site inspections; and (4) adopt an emergency temporary standard to help abate COVID-19 workplace exposures.[7]

OSHA's Response

OSHA Tests the Water

The first case of COVID-19 in the United States was announced by the U.S. Centers for Disease Control and Prevention (CDC) on January 21, 2020,[8] and OSHA issued its first guidance relating to the pandemic in early February 2020.[9] The guidance predominately focused on industries with workers at increased risk for contracting COVID-19, such as healthcare, laboratories, airlines, border protection, solid waste and wastewater management, and death care.[10] Employers in these industries were instructed to implement infection control strategies, were provided advice on how to handle suspected cases in the workplace, and were advised to train employees on the sources of exposure, hazards associated with an exposure, and procedures in place to prevent exposure.[11]

As COVID-19 rapidly gained traction in the United States, OSHA issued guidance for all employers on March 9, 2020.[12] This new guidance, which separated employers into categories based on the risk of exposure, provided recommendations on engineering controls, administrative controls, and personal protective equipment to protect employees from the virus. This guidance seemed to raise more questions than it answered as employers navigated unchartered waters; employers, therefore, digested the guidance jointly with guidance from the CDC. Further, many common issues employers were facing at the time were not addressed, such as whether employees could voluntarily wear surgical masks or respirators in the workplace. As a result, OSHA issued supplementary guidance. In fact, OSHA released COVID-19–related guidance seven times during the month of April 2020, creating even more volatility in an already unpredictable situation.[13] Employers were tasked with hitting a moving target.

OSHA acknowledged the challenges employers faced in juggling preexisting OSHA regulatory obligations—such as recurring training, auditing, reporting, assessment, testing, and medical surveillance requirements—and the continuously evolving guidance related to COVID-19. In light of these concerns and the strained availability of employees and contractors who normally provided assistance in these areas, OSHA turned its focus to the pandemic and issued a temporary enforcement policy. This policy relaxed the enforcement of many of OSHA's traditional policies by giving the agency discretion not to enforce regulatory obligations that were infeasible or clashed with COVID-19 guidance by increasing the risk of workplace spread.[14] However, to ensure certain regulatory obligations were not lost during the pandemic, OSHA foreshadowed a program under which it would conduct inspections of worksites that did not receive citations once the pandemic was over.[15]

One of the most commonly raised questions regarding OSHA's COVID-19 guidance relates to its enforceability. While most of the guidance released by the agency has stated that its recommendations "are advisory in nature" and create "no legal obligations," inspectors may consider compliance with COVID-19–related guidance when determining whether an employer has met the Occupational Safety and Health Act's (OSH Act) General Duty Clause. This clause states that "[e]ach employer shall furnish to each of [its] employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to [its] employees" and "shall comply with" the standards under the OSH Act.[16] As a catchall, this clause sweeps in any workplace hazards that may not be explicitly promulgated in the OSH Act and places an affirmative duty on employers to protect employees from health or safety hazards. To issue a General Duty Clause citation, OSHA must prove that (1) the employer failed to keep the workplace free of a hazard to which its employees were exposed, (2) the hazard was recognized by the employer, (3) the hazard was causing or likely to cause death or serious physical harm, and (4) there was a feasible method to correct the hazard.[17] The General Duty Clause is most effective when an employer disregards workplace hazards that are well established by the industry. Many health and safety officials felt that in the face of the COVID-19 pandemic, the General Duty Clause was not enough by itself and they pushed for OSHA to issue something with more teeth to protect workers and provide employers with clearer expectations.[18]

OSHA Issues a National Emphasis Program and a Long-Awaited Emergency Temporary Standard

On March 12, 2021, OSHA issued a new National Emphasis Program (NEP) in order to shift the agency's focus to specific hazards in workplaces where COVID-19 issues were most prevalent.[19] The NEP specifically targets healthcare offices, grocery stores, meat and poultry processing plants, and restaurants, and it prioritizes inspections derived from complaints and referrals. In an attempt to stay on top of the increase in complaints, the NEP directs that inspections be "conducted in a manner to achieve expeditious issuance of COVID-19–related citations and abatement."[20]

Three months later, OSHA issued its first emergency temporary standard (ETS) for the COVID-19 pandemic. An ETS becomes effective immediately upon publication, without an opportunity for public notice and comment. It serves as the proposed version of a permanent rule, which must be adopted within six months. In order for OSHA to issue an ETS, Section 6(c) of the OSH Act requires OSHA to show that "employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards …" and that "such emergency standard is necessary to protect employees from such danger." However, OSHA rarely uses this authority. Since the agency was established in 1971, it has only issued a handful of ETSs, many of which were heavily challenged. In fact, the last time OSHA used this authority was 38 years ago to address asbestos in the workplace.

This first COVID-19 ETS applies strictly to the healthcare industry and requires designated healthcare employers to develop and implement COVID-19 plans for each worksite that address COVID-19 hazard assessments and provide policies and procedures for minimizing the risk of COVID-19 transmission for each employee.[21] The ETS also requires, among other things, that covered employers limit points of entry and screen various categories of non-employees entering facilities; implement standards and transmission-based precautions; engage in health screenings (which include daily screenings of every employee each workday and each shift); conduct employee trainings; provide personal protective equipment, including facemasks; utilize physical distancing, barriers, cleaning, and ventilation for limiting the spread of the virus; implement mini-respiratory protection programs; prohibit retaliation; conduct COVID-19 recordkeeping and reporting; and develop COVID-19 plans for each worksite.[22] Notably, the ETS requires employers to provide support for vaccination by providing exemptions for fully vaccinated workers, and it requires employers to give their employees reasonable time and paid leave to get vaccinated and recover from any side effects.[23] In the preamble to the ETS, OSHA provides a number of options for employers to track employees' vaccination statuses, including by allowing employers to vaccinate their workforces themselves, check employee vaccination cards or other types of approved verification, review state-issued passes, or ask workers to attest whether they are fully vaccinated without requiring further proof.[24]

OSHA provided additional guidance for employers not covered by the ETS, permitting employers to stop engaging in COVID-19 exposure-prevention practices in workplaces where all employees are "fully vaccinated."[25] OSHA nevertheless encouraged employers to continue taking steps to protect unvaccinated workers and others at risk of infection. The guidance includes advising unvaccinated and high-risk employees to stay at home following a workplace exposure to COVID-19, requiring facemasks for unvaccinated employees, implementing

social distancing for unvaccinated employees, maintaining ventilation systems, training employees about COVID-19 policies and procedures, performing routine cleaning and disinfecting, recording and reporting COVID-19 infections and deaths, and prohibiting retaliation against employees who voice concerns.[26]

A New ETS Is on the Horizon and Already Facing Pushback

Following the release of the first ETS, on September 9, 2021, President Joe Biden issued an executive order mandating that some federal contractors and subcontractors comply with guidance published by the Safer Federal Workforce Task Force.[27] The President also called on OSHA to implement a new ETS requiring employers with 100 or more employees to mandate that their employees receive COVID-19 vaccination or get tested once a week. While limited information has been released regarding the details of the ETS, the COVID-19 ETS for healthcare and the federal contractor mandate may provide insight into what to expect. It is hard to predict which mandates or recommendations will be included. It is possible, if not likely, that employers will be required to pay for vaccinations and provide paid leave to employees for the time it takes to get vaccinated and recover from any side effects. At this point, there is limited information on what will or will not be required.

OSHA's actions unsurprisingly came with great pushback. Twenty-four attorneys general, including the Attorney General of Nebraska, wrote a letter in opposition to the vaccination mandate in response to President Biden's announcement regarding the ETS. The letter argued that OSHA does not have the authority under Section 6(c) of the Act to issue the ETS because COVID-19 is not a "grave danger," COVID-19 is not a "hazard," "substance," or "agent" that is "relate[d] to the dangers presented by [an employee's] … job itself," and vaccine mandates or weekly testing are not "necessary" under the OSH Act.[28] Arizona's attorney general, one of the signers of the letter, separately filed a lawsuit against the Biden administration, alleging that the planned ETS violates the Equal Protection Clause of the U.S. Constitution by permitting migrants but not American citizens to decline inoculation.[29]

The issuance of the ETS will undoubtedly prompt a wave of litigation against not only the federal government but employers as they attempt to adopt and implement policies in compliance with the ETS and navigate various religious and disability-based accommodation requests.

States Take Matters Into Their Own Hands

Nebraska's enforcement of occupational safety and health rules is conducted by the federal OSHA. However, 28 states have established their own OSHA-approved workplace safety and health programs. Six of the 28 states' plans are limited to protecting only local and federal government workers. Pursuant to the OSH Act, these plans must be at least as effective as OSHA in preventing work-related injuries, illnesses, and deaths.[30]

In the midst of rising COVID-19 cases, some states have used their own programs to fill in the gaps where OSHA's guidance was lacking or to add teeth to OSHA's recommendations. For example, California first implemented an ETS in November 2020, seven months before OSHA issued its first ETS, requiring employers to adopt a COVID-19 Prevention Program, draft exposure notification processes and testing protocols, and comply with strict recordkeeping and notification procedures.[31] Seven months later, on June 17, 2021, California updated the ETS by mandating that employers document employee vaccinations, require unvaccinated workers to wear face masks, issue N95 respirators to employees upon request, and provide trainings on COVID-19 vaccination, testing, and leave policies, among others.[32] On the other hand, New York sidestepped its state plan, which applies only to government workers, and implemented legislation to address workplace safety for all workplaces during the pandemic and thereafter. The New York Health and Essential Rights Act (NY HERO Act) provides specific guidelines for the New York State commissioner of labor to create an airborne infectious disease exposure prevention standard that addresses topics such as health screenings, face coverings, social distancing, cleaning and disinfecting, and personal protective equipment.[33] Two months later, in response, the New York State Department of Labor published the Airborne Infectious Disease Exposure Prevention Standard which requires employers adopt an exposure prevention plan in line with guidelines provided in the Standard.[34]

As the DOL's OIG noted in its report of February 25, 2021, states may have been more effective than OSHA at enforcing workplace safety standards during the pandemic. From February 1, 2020, to October 26, 2020, U.S. states and territories issued 1,679 violations for 756 COVID-19–related inspections, while OSHA issued 295 violations for 176 COVID-19–related inspections. In sum, states and territories issued 85% of the total COVID-19 violations.[35] Without as many restrictions and political pressures as OSHA, states have been able to respond to COVID-19–related concerns and implement (or not implement) regulations as needed. While some states' workplace-related responses to COVID-19 will end when the pandemic ends, others may have a more lasting effect and change workplace safety standards permanently.

Takeaways

After more than a year and a half, employers are starting to see the light at the end of the tunnel and better understand the process for controlling the spread of the virus. However, the lasting effects of the pandemic on workplace safety are yet to be seen. As federal and state authorities iron out workplace safety expectations for a post-pandemic era, employers may want to

remain vigilant in promoting and enforcing their workplace safety protocols. Employers may want to review all of OSHA's published guidance and, if applicable, any state guidance for best practices to address workplace hazards. Employers may also want to conduct thorough reviews of their policies and procedures since the start of the pandemic and check and update them for compliance with federal and state guidance.

Endnotes

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19 OSHA Directive No. DIR 2021-01 (CPL-03) (Mar. 12, 2021), https://www.osha.gov/sites/default/files/enforcement/directives/DIR_2021-01_CPL-03.pdf.

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The Power of Workplace Culture:

Lessons From a Pandemic

by Susan M. Foster

It is often through crises that we learn critical lessons about the importance of being prepared for the unexpected. As employment lawyers, our practice includes assisting our employer clients to proactively identify and prepare for workplace issues that may arise in the future. Thankfully, changes in workplace laws and regulations are often foreseeable and predictable, which allow companies and human resource professionals to plan and adapt. Knowing business trends and proposed regulations in advance affords employers time to adjust strategically, creatively, and practically, and to communicate change in a manner that promotes positive workplace culture. For many employers, the COVID-19 pandemic has been a rollercoaster ride affecting and transforming the workplace in an unprecedented manner without the luxury of time to adjust to its rapid fluctuations.

Susan M. Foster

Susan Foster practices employment and litigation law at Baylor Evnen, LLP. She advises and defends employers on issues across the employment law spectrum, including discrimination and harassment, wage and hour, disability and FMLA leave management, employment and severance agreements, personnel policies and procedures and workplace culture. She also provides management and employee training and conducts internal investigations. Susan has significant Title IX experience and provides counseling and representation to parties involved in Title IX complaints and investigations.

The pandemic has forced employers to closely examine workplace culture and test its resiliency in many different ways. Over the past year and a half, employers have balanced staying afloat, keeping employees safe, operating in different ways and places, communicating quickly and effectively, maintaining productivity, abiding by constantly changing and sometimes-confusing guidance and regulations, and maintaining connectedness while often interacting from a distance. Employers have implemented a wide array of difficult decisions—from implementing furloughs and lay-offs, closures and re-openings, sending people home to work remotely and then bringing them back to the worksite, managing illness and loss of employees—all while trying to remain productive and balance business needs.

This pandemic has taught employers significant lessons about critical business operations preparedness, such as IT capability, emergency and safety plans and teams, remote working and communication, leave and disability management, clear employment policies, and protecting confidential company information. Equally important, employers have had to evaluate organizational values, employee empowerment and loyalty, employee and company well-being and company culture. Through my practice and working with my law firm during the pandemic, I experienced firsthand how strong employee relations contribute to a company's ability to maintain resilience during uncertain times. Below are four important lessons the pandemic highlighted for adapting to unexpected change in the workplace.

One: Live By Your Values.

Decisions made during difficult times send a strong message about an employer's goals and values. Many companies

have created and published mission statements and values outlining a desire to operate with integrity, honesty, diversity, and teamwork. The need to create and abide by company values is extremely important at all times in order to develop and attract talent, hold people accountable for decisions, create a strong and loyal workforce and customer community and empower growth. While written intentions are valuable, utilizing them as a guidepost when making difficult decisions creates and reinforces a workplace culture that aligns with that message.

Throughout the pandemic, employees and customers have observed and experienced firsthand whether a company's stated values and mission align with its decision making. During the pandemic, we have observed company management take pay cuts and/or provide alternate job duties to keep employees on the payroll, extend voluntary paid COVID leave benefits, provide remote working, give pay raises, bonuses and incentives, institute mental health benefits, and provide work flexibility to allow for family and personal care. All of these actions demonstrate a "people first" company culture where organizations provide extra assistance and empathy to employees during a difficult time. Employees and customers take note of corporate kindness, resulting in goodwill and reputational value for the company.

It can be challenging to remain true to values and culture and deny a crisis the opportunity to erode them, particularly when faced with employment actions such as reducing hours, enacting furloughs or layoffs, or shutting down operations. However, even in the most difficult times, employers can prioritize employee well-being, do their best to proactively and directly communicate, address concerns, manage and make decisions based upon well-defined objective criteria, demonstrate empathy and kindness, and manage intentionally with accountability and openness. While employers cannot always control the arrival and impact of crises, they can use the opportunity to demonstrate company values and strengthen culture through decisions and actions.

Two: Know and Empower Your Employees.

As the pandemic has revealed, there are an incredible number of moving parts to manage during an emergency or disaster. A company that regularly communicates a shared sense of purpose and establishes an appreciation of employees' experiences, talents, and needs will have greater flexibility to meet unexpected demands. Unanticipated change and lack of predictability can cause confusion, nervousness, and frustration at all levels. Under such conditions, companies must be able to inspire supervisors and employees to engage and operate at the best possible level even when faced with uncertainty. That requires strong relationships and dedication. Many employers during the pandemic have had to rely on smaller groups of employees to meet the demand of multiple tasks and long hours due to quarantines or social distancing measures. Doing so required an understanding of employee skills, talents and abilities, and steadfastness from some employees to perform multiple duties.

Companies foster employee dedication and loyalty in good and difficult times by creating unity in purpose, treating employees fairly and demonstrating respect and appreciation for hard work. Employers should regularly assess and understand employee skills, talents, and aspirations through surveys, focus groups, regular meetings, and conversations. Doing so provides the opportunity to engage in open and honest communication, increase trust, and improve engagement. Two-way, purpose-shared communication between the C-Suite, supervisors, and employees inspires persons at every level to work together to create and meet shared goals and expectations as a team. Employers empower employees to face challenges by providing cross-training through a team approach to getting work done, including shared responsibility, goals and expectations.

Three: Be Flexible and Adaptive.

There has been no such thing as "normal" for some workplaces for more than a year. Moving forward from the pandemic may prove to be complicated for many employers, particularly those who have provided remote working or who have furloughed workers and then bring them back. Employees who have been reporting to the office may have carried out different and elevated duties in order to limit crewmembers on site. Those responsibilities may change once others return to the workplace. Remote employees may have experienced exhaustion from changed duties, months of social isolation and online meetings. Some employees and former employees have eluded a commute, altered childcare or other family responsibilities, or may have moved. Pandemic needs may have resulted in operational changes that will linger post pandemic, resulting in a permanent shift in employee positions or responsibilities.

Companies must recognize that employees have also been on a roller coaster in their professional and personal lives, and be thoughtful about how they return employees to the workplace. It will be important to display kindness, empathy, and an understanding that returning to work (whatever that will look like) may require a transition for many employees and their families. An abrupt change may result in unnecessary stress. Employers need to consider whether alternative working environments will allow some employees to be more productive and successful and will allow the company to retain talent. There may be new work norms and policies requiring clear communication and adjustment. Relationships may need to be developed or re-developed. Transitioning slowly over time will allow for training where needed and adjustment to working together again.

Company agility moving forward is critically important, including flexibility in business, technology, and workforce strategy. There may be different opportunities for various employee groups with alternative options for accomplishing the same result. Different teams may have their own efficient way of operating. Depending on job responsibilities and company needs, there may be different ways and times people work, interact, and communicate. Employers must be willing to periodically reevaluate their workplace environment and expectations to ensure that it allows employees to be the most productive and successful.

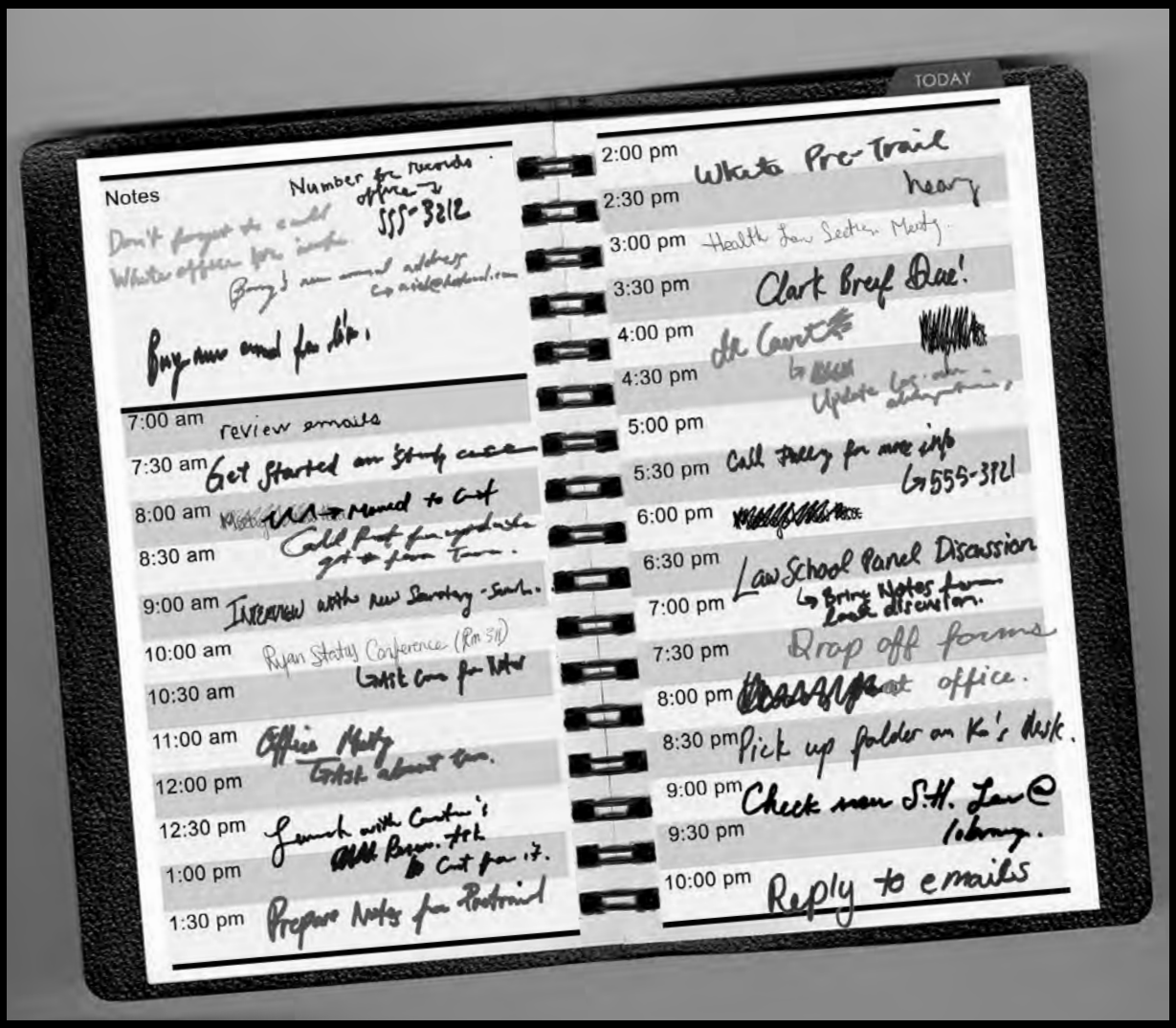
Four: Stay Informed and Know the Legal Boundaries

The pandemic reemphasized that being aware of options and legal requirements makes it much easier to make quick and lawful decisions. For employment practitioners, staying abreast of constantly changing COVID numbers; local, state, and federal guidance; disability and leave management options; evolving law; and other COVID-related legal issues has been a constant but necessary battle. The pandemic has generated a need to constantly create, revise, and update policies and procedures. The luxury of time to research the law or available options has seldom been available during weekly (and sometimes daily or momentary) need for transformation. Knowing the law as it relates to layoff notices, disability, and leave management, and having well-drafted policies and human resource professionals already in place has allowed many employers to respond quickly to significant unpredictable change.

Some employers also had emergency preparedness teams in place when the pandemic started. Such teams allow companies to address quickly initial and continuing needs during a disaster or emergency. Team members should include appropriate executive decision makers, human resource professionals, facilities management, IT, supervisors, and trusted employees who can evaluate the needs of the company based upon its size, structure, and available resources. The team should create a response plan designating member responsibilities in the event of an emergency. Employees should be aware of employee action portions of the plan so they know who to contact and what to do in the event of an emergency. Of course, all plans require flexibility depending on the specific situation. However, identifying membership, initial considerations, and identifying potential steps in an established written plan affords a head start to respond to future crises. Establishing levels of responsibility and preliminary steps will position a business for an effective early response.

Workplace culture and strong employer-employee relations have always been important. In today's almost post-pandemic (I hope) world, it is vital. Employers must take the time to create, embrace, and exhibit positive cultural values at all levels of a company. Employee skills, knowledge, talent and drive must be nurtured, valued and appreciated. Communication must be constant, open, clear and team oriented. If nothing else, the pandemic has taught us that we must build relationships with and value our employees, remain true to company culture, be flexible and stay abreast of the legal landscape and employment options. Change is constant. There is no better time for employers to best position themselves for future unknowns.

Pencil yourself in.



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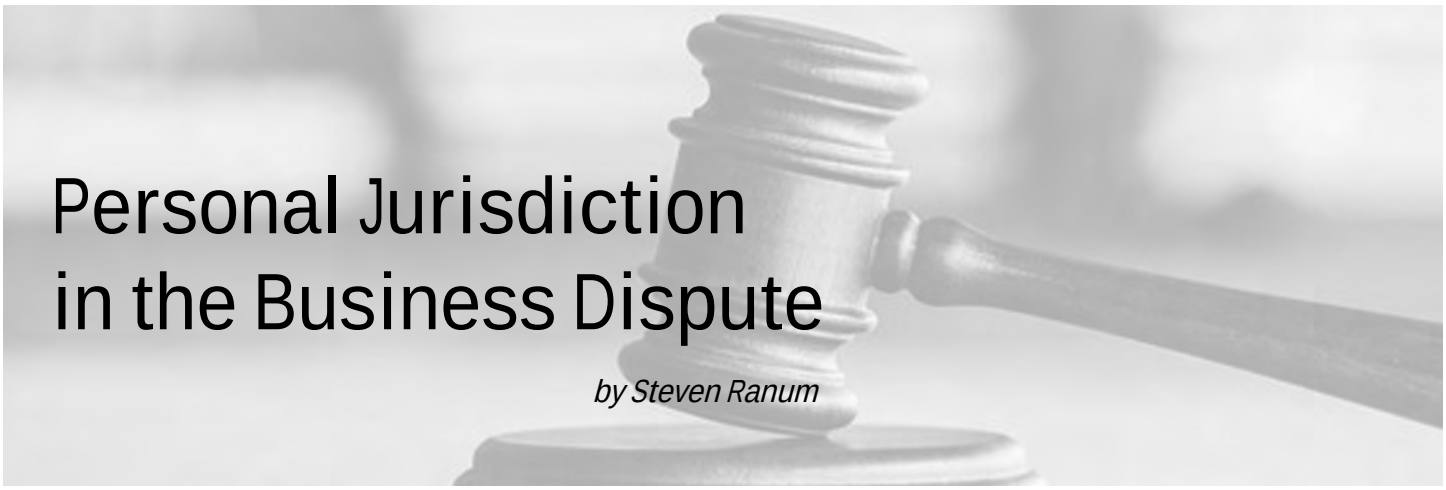

Personal Jurisdiction in the Business Dispute

by Steven Ranum

In a vast majority of lawsuits filed, no question exists as to whether the forum state has jurisdiction over the defendant. The defendant is often the resident of the forum state, and even if not, the underlying cause of the lawsuit—be it the car accident that occurred in the forum or a title issue over real estate located in the forum—is such that the forum's jurisdiction over the defendant is intuitive and never questioned.

But one area where personal jurisdiction questions often arise is a business dispute. If plaintiff is in State A, the defendant is in State B, and the contract called for the plaintiff to ship goods from State Y to State Z, deciding whether A, B, Y, or Z is an appropriate forum is not instinctual and needs to be thought through.

This article is meant to help you analyze the issue of whether personal jurisdiction exists in a business dispute. In addition to a refresher on the law of personal jurisdiction, this article will address some key points to help you think about the issue of personal jurisdiction with respect to your case. This article will also touch on the effect of a forum selection clause, an important but often glossed-over aspect of a contract.

Steven Ranum

Steve Ranum is a member of Croker Huck Law Firm. His primary areas of practice are real estate, commercial and real estate litigation, and business law. He has assisted clients in a wide range of litigation and transactional matters. Steve received his law degree from Creighton University School of Law.

Summary of Personal Jurisdiction

Personal jurisdiction is chockful of lawyerly jargon to the extent that the topic can seem quite dense, but personal jurisdiction is essentially a question of fairness: is it fair for the defendant to have to defend a lawsuit in the forum state? For jurisdiction to exist, the defendant must have enough minimum contacts with the forum state so that the defendant could expect to be sued there.[1] Personal jurisdiction exists in two forms: general or specific.[2] A court has general jurisdiction over a defendant who has continuous and systematic contacts with a forum state even when the alleged injuries at issue did not arise out of defendant's contacts with the forum.[3] Specific jurisdiction exists when a plaintiff's claim arises out of or relates to a defendant's purposeful contacts with the forum, such that there is a substantial connection between the defendant's contacts with the forum state and the operative facts of the litigation.[4]

You can find a very good, highly quotable summary of the law of personal jurisdiction in any of the several personal jurisdiction cases decided by our Nebraska appellate courts,[5] and the law remains stable in this area.[6] Given that the issue of personal jurisdiction depends on a defendant's contacts with the forum state, the issue is highly factual in nature, and case specific. With that said, the following is a series of tips that may be helpful for you in thinking about your case and deciding how to proceed.

There are a vast amount of cases to cite as authority in your brief.

Nebraska law confers jurisdiction to the fullest extent permitted by the due process clause of the United States Constitution.[7] This means that any case analyzing personal jurisdiction under the minimum contacts analysis established

by the U.S. Supreme Court is authority worth citing, even if it is from another jurisdiction. In doing your research, you should go beyond researching just the black letter law and search in multiple jurisdictions (including federal courts) to find cases with similar factual patterns. While the ideal case to find is a case from Nebraska with similar facts (and Nebraska appellate courts have decided numerous personal jurisdiction cases), a case with a similar factual pattern from another jurisdiction that applies a minimum contacts analysis is more persuasive authority than a case from Nebraska that states the black letter law but is not factually analogous.

If you are questioning whether jurisdiction exists, general jurisdiction is probably lacking.

In order for general jurisdiction to exist, a defendant must have continuous and systematic contacts with the forum state. The U.S. Supreme Court recently explained the high bar to establish general jurisdiction against a corporate defendant in the case of *Daimler AG v. Bauman*.[8] In *Daimler*, residents of Argentina sued the German car manufacturer in federal court in California under the Alien Tort Statute and the Torture Victim Act of 1991, based on allegations that an Argentinian subsidiary of Daimler collaborated with state security forces to kidnap and kill workers of the subsidiary.[9] The plaintiffs argued that the California contacts of Daimler's United States subsidiary was enough to establish personal jurisdiction.[10] The district court disagreed, but the Ninth Circuit Court of Appeals reversed.[11]

The U.S. Supreme Court found that no personal jurisdiction existed over Daimler. The Court's opinion explained that continuous and systematic contacts with a forum state are not enough to establish general personal jurisdiction, but rather a corporation's contacts with a state must be so continuous and systematic as to render the company essentially at home in the forum.[12] The Court stated that, absent exceptional circumstances, a corporation is only at home in two places: the state of incorporation and the state where its principal place of business is located.[13] This would mean that if a Delaware corporation had its headquarters in Georgia, general jurisdiction would likely exist in only Delaware or Georgia.

Using the guidance of the U.S. Supreme Court, the Nebraska Supreme Court, in *Lanham v. BNSF Ry. Co.*,[14] held that Nebraska did not have general jurisdiction over BNSF despite the railroad's significant presence in Nebraska, because the company was incorporated in Delaware and headquartered in Texas.[15] Given the guidance in *Daimler* and *Lanham*, the issue of general jurisdiction over a corporate defendant should be clear at the outset and a matter of common sense. If you are questioning whether general jurisdiction exists, it probably does not, and your focus should instead be on analyzing whether specific jurisdiction exists.

The plaintiff's contacts with the forum are not important in the personal jurisdiction analysis.

A specific jurisdiction analysis should focus on the relationship between the defendant, the forum, and the litigation, not the plaintiff's contacts with the forum state. This concept was stressed relatively recently by the U.S. Supreme Court in the case of *Walden v. Fiore*.[16] In *Walden*, a police officer working at the Atlanta airport seized cash from Nevada residents passing through the Atlanta airport on their way home from a trip to Puerto Rico (the Nevada residents claimed to be professional gamblers).[17] The police officer subsequently helped draft an affidavit to show probable cause for forfeiture of the cash.[18] The Nevada residents eventually got back their funds but then filed a civil suit against the police officer in federal court in Nevada alleging their Fourth Amendment rights were violated.[19]

The U.S. District Court for Nevada dismissed the lawsuit for lack of personal jurisdiction, but on appeal, the Ninth Circuit Court of Appeals (quite unbelievably) found personal jurisdiction existed, reasoning that the police officer's affidavit was submitted with knowledge that it would affect people who had a significant connection to Nevada.[20]

In the context of U.S. Supreme Court cases, the *Walden* case had to be one of the easier cases for the justices to decide, and they unanimously held that the Nevada court lacked personal jurisdiction over the police officer.[21] In so doing, the Court stressed that the contacts with the forum for specific jurisdiction must be contacts that the defendant creates, not simply contacts between the plaintiff and the forum.[22] Furthermore, the defendant's contacts must be with the forum itself, not simply with persons who happen to reside there.[23] While the *Walden* case does not have any factual similarity to a business dispute, the facts of the case perfectly illustrate the concept that the plaintiff's contacts with the forum state do not matter.

This concept was applied in the business context in *Fastpath, Inc. v. Arbela Technologies Corp.*,[24] a case decided by the Eighth Circuit Court of Appeals following *Walden*. The *Fastpath* case is highly instructive for business lawyers. In *Fastpath*, the appellate court affirmed the district court's dismissal for lack of personal jurisdiction of a lawsuit by an Iowa corporation against a California company for breach of a confidentiality agreement.[25] Representatives for the plaintiff and defendant met at various trade shows and conferences in Atlanta, Las Vegas, and Houston and exchanged emails and held a conference call to discuss a potential partnership and agreed to a confidentiality agreement.[26] Later, the parties participated in a conference call and webinar together, and representatives from each party attended a trade conference in Seattle.[27] But the parties never met in Iowa, the defendant had no employees or offices in Iowa, the defendant never traveled

to Iowa for purposes of the agreement, and the defendant's alleged breach occurred outside of Iowa.[28]

Citing *Walden*, the Eighth Circuit Court of Appeals stated that the plaintiff's contacts with Iowa could not form the basis of personal jurisdiction over the defendant.[29] Even though the defendant may have aggressively pursued a business relationship with plaintiff, this alone was of no consequence because the defendant's contacts must be with the forum state itself, not just with a company that happens to reside in the forum.[30]

Fastpath reflects a modern business arrangement—where two parties become familiar with each other at national trade shows and then conduct business over the phone and through email thereafter. The plaintiff in *Fastpath* could have been located anywhere, and it would not have really changed the relationship between them or the relationship the defendant had with Iowa.

A Nebraska decision that also elaborates this point is *RFD-TV, LLC v. Wildopenwest Finance, LLC*,[31] where the Nebraska Supreme Court held that no personal jurisdiction existed over out-of-state cable companies, when the programming received from the Nebraska plaintiff was produced in Tennessee and the only contacts with plaintiff in Nebraska were occasional communications to discuss and pay invoices.[32] All these cases make clear that if you are defending a motion to dismiss for lack of personal jurisdiction, you need to be able to articulate the defendant's contacts with Nebraska, not your client's contacts with Nebraska.

A contract alone is not enough to establish personal jurisdiction.

A defendant having a contract with a resident of the forum is alone not sufficient to establish personal jurisdiction, and for good reason: think of all the one-off consumer transactions you have with out-of-state companies and how unfair it would be if you could be sued in the company's home state. You should view a contract as an indication of the contacts that will matter in personal jurisdiction—the negotiations, the course of dealing, the expectations of the parties—but the contract itself is not sufficient enough to establish the requisite minimum contacts.[33]

This is not to say that a multitude of contacts is needed to establish personal jurisdiction over a defendant. In *Hand Cut Steaks Acquisitions, Inc. v. Lone Star Steakhouse & Saloon of Nebraska, Inc.*,[34] personal jurisdiction existed over an out-of-state guarantor of a lease of Nebraska real estate.[35] This result is similar to the finding that personal jurisdiction existed in *24th & Dodge Limited Partnership v. Commercial National Bank of Chicago*,[36] where an out-of-state lender never made the loan, but delivered a loan application to the Nebraska borrower, accepted an application fee, and had a loan officer travel to Nebraska to evaluate the real estate that would serve as the collateral.[37] These two cases suggest that when the defendant's contacts relate to transactions involving Nebraska real estate, even if the defendant's contacts with Nebraska are just a few, the contacts that do exist are sufficient to create jurisdiction.

Then there is the case of *Quality Pork Int'l v. Rupari Food Services, Inc.*,[38] a case which remains good law (it was cited by the Nebraska Supreme Court in the 2018 opinion in *Hand Cut Steaks*) but should be viewed somewhat skeptically, as the defendant's contacts with Nebraska seem insufficient to confer jurisdiction, contrary to the Court's opinion. In *Quality Pork*, a Florida defendant orally agreed to pay for orders made by a Texas food distributor with a Nebraska pork producer, who was to then ship the products to Texas.[39] The Nebraska Supreme Court reasoned that personal jurisdiction existed over the Florida defendant because it induced the Nebraska company to ship the products, and therefore could expect to be sued in Nebraska.[40] The decision in *Quality Pork* appears to be out-of-step with more recent specific jurisdiction cases given the Florida company's limited contacts with Nebraska, but it remains good law. If you are a defendant filing a motion to dismiss, you should be prepared to distinguish your case from *Quality Pork*, as it will likely be cited by the plaintiff due to its finding that personal jurisdiction existed even though the defendant's contacts with Nebraska were minimal.

Forum selection clauses should not be overlooked in negotiating a contract.

Forum selection clauses are typically enforceable, under the rationale that the defendant could expect to be sued in a state where the defendant agreed jurisdiction was appropriate.[41] If the forum selection clause is the sole basis for establishing jurisdiction, the validity of a forum selection clause is evaluated under the Model Uniform Choice of Forum Act (the "Forum Act"), Neb. Rev. Stat. § 25-413, et. seq.[42] The chosen forum will usually be upheld, and you should assume the clause will be upheld when negotiating a contract. Clients rarely wish to discuss the forum selection clause when working on a contract, but it has real implications when a dispute arises. If you are representing a small business in Nebraska, you should think about whether a forum selection clause that requires disputes to be resolved in New York or California has the practical effect of making the contract unenforceable if breached, due the high cost of litigation in those forums compared with the damages that may be at issue. It is worth pushing back on these clauses. If the clause is a sticking point in negotiations, you might propose to add Nebraska as an acceptable forum along with the other party's chosen forum, such that your client could sue in Nebraska if needed, while accepting the risk of being sued in the other party's chosen state.

But forum selection clauses are not automatically enforced in litigation.

Though assuming a forum selection clause is valid when negotiating a contract is recommended, you should not blindly assume the forum selection clause is valid if you are in litigation. If the only basis for personal jurisdiction is the forum selection clause, the clause will be enforced if four factors are met, the most applicable being that Nebraska is a reasonably convenient place for trial.[43] In *Ameritas Investment Corp. v. McKinney*,[44] the Nebraska Supreme Court stated that "the plaintiff's choice of forum should rarely be disturbed," but said the trial court should consider practical factors that are important in litigation (location of evidence, witnesses, etc.) and whether the trial court would have to deal with difficult choice of law issues and unfamiliar laws.[45] In *Applied Underwriters Captive Risk Assurance Company, Inc. v. E.M. Pizza, Inc.*,[46] the Nebraska Court of Appeals, applying essentially the same concepts as stated in *Ameritas*, held that Nebraska was not a reasonably convenient place for trial because a Nebraska court would have to apply California's workers' compensation law, which the Court noted was complex and would be best administered by a California court.[47] It appears to be a high bar to have a forum selection clause disregarded, but the enforcement of a forum selection clause is not automatic.

You should challenge the existence of personal jurisdiction if you think it is lacking.

Clients often wish to pursue the most cost-effective means to resolve a dispute and are looking for advice from their attorney on how to accomplish this. You might, therefore, question whether the issue of personal jurisdiction is worth fighting about at all (it can be waived), given that it doesn't actually resolve the merits of the lawsuit. Why spend time and attorney fees on arguing about the forum, just to fight the dispute later in a proper forum?

If cost-effectiveness is the client's goal, the proper way to think about the issue is to assess how likely it is that the plaintiff would sue the defendant in the proper forum if a motion to dismiss is successful. A successful motion to dismiss is often dispositive of the litigation, in that the plaintiff does not thereafter sue in the proper forum and the dispute is either settled favorably or goes away altogether. To put it another way, the inconvenience upon the plaintiff to fight the dispute in the proper forum was the reason the plaintiff did not sue there in the first place, so the plaintiff could very likely just drop the matter altogether rather than fight in the inconvenient forum after dismissal.

The cost-conscious client should also consider whether the costs associated with fighting in an inconvenient forum, which include the defendant's travel, increased deposition costs for deposing out-of-state witnesses, and getting local counsel up to speed on the dispute, would be greater than simply trying to get the case dismissed on the basis of lack of personal jurisdiction.

You should raise the issue of personal jurisdiction in a motion to dismiss.

Personal jurisdiction needs to be asserted as a defense and can be asserted in a pre-answer motion to dismiss or as a defense in your answer.[48] But if you are serious about getting the case dismissed on personal jurisdiction grounds, you will want to raise the issue of personal jurisdiction in a motion to dismiss, in order to isolate the issue at the outset of the litigation and limit any discovery by the plaintiff to the issue of personal jurisdiction.

Conclusion

The words "personal jurisdiction" has no meaning to lay people, but clients who are sued in a state that they have had little contact with are able to very acutely articulate the fundamental unfairness of it and take it very seriously. It is easy for lawyers to look at personal jurisdiction as a dry procedural issue, due in part to the lawyerly jargon that accompanies it ("minimum contacts", "general jurisdiction," etc.). But the concept exists to preserve a defendant's constitutional right to due process, and at the core of personal jurisdiction lies a simple question of fairness. Hopefully this article helps you to cut through the jargon and think about the issue in a more practical way.

Endnotes

1 *Hand Cut Steaks Acquisitions, Inc. v. Lone Star Steakhouse & Saloon of Neb., Inc.*, 298 Neb. 705, 724, 905 N.W.2d 644, 661 (2018).

2 *Fastpath, Inc. v. Arbela Techs. Corp.*, 760 F.3d 816, 820-21 (8th Cir. 2014).

3 *Lanham v. BNSF Ry. Co.*, 305 Neb. 124, 132-33, 939 N.W.2d 363, 370 (2020).

4 *Fastpath*, 760 F.3d at 821.

5 The above is a brief summary, not an extensive recitation of the black letter law in this area. One aspect not described is that certain factors can be considered in addition to evaluating the defendant's contacts to determine whether the exercise of jurisdiction would be fair. *See Hand Cut Steaks*, 298 Neb. at 725, 905 N.W.2d at 661-62 (citing these factors). These factors are often not consequential in a decision as to whether personal jurisdiction exists, so a discussion of them was not included in this summary.

6 *See, e.g., Lanham*, 305 Neb. at 128-30, 939 N.W.2d at 367-68; *Ameritas Inv. Corp. v. McKinney*, 269 Neb. 564, 570, 694 N.W.2d 191, 199 (2005); *24th & Dodge Ltd. P'ship v. Com. Nat'l Bank*, 243 Neb. 98, 101-02, 497 N.W.2d 386, 389-90 (1993).

7 *Hand Cut Steaks*, 298 Neb. at 724, 905 N.W.2d at 660-61.

8 571 U.S. 117 (2014).

9 *Daimler*, 571 U.S. at 120.

10 *Id.*

11 *Id.* at 124-125.

12 *Id.* at 139.

13 *Id.* at 137.

14 305 Neb. 124, 939 N.W.2d 363 (2020).

15 *Lanham*, 305 Neb. at 137-38, 939 N.W.2d at 372-73.

16 571 U.S. 277 (2014).

17 571 U.S. at 279-80.

18 *Id.* at 280-81.

19 *Id.* at 281.

20 *Id.* at 281-82.

21 *Id.* at 282.

22 *Id.* at 284.

23 *Id.* at 285.

24 760 F.3d 816 (8th Cir. 2014).

25 *Fastpath*, 760 F.3d at 819.

26 *Id.*

27 *Id.*

28 *Id.* at 822.

29 *Id.* at 822-23.

30 *Id.*

31 288 Neb. 318, 849 N.W.2d 107 (2014).

32 *RFD-TV*, 288 Neb. at 328, 849 N.W.2d at 116.

33 *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985); *Crete Carrier Corp. v. Red Food Stores, Inc.*, 254 Neb. 323, 330, 576 N.W.2d 760, 765-66 (1998).

34 298 Neb. 705, 905 N.W.2d 644 (2018).

35 *Hand Cut Steaks*, 298 Neb. at 734, 905 N.W.2d at 667.

36 243 Neb. 98, 497 N.W.2d 386 (1993).

37 *24th & Dodge Ltd. Partnership v. Commercial Nat'l Bank*, 243 Neb. 98, 497 N.W.2d 386 (1993).

38 267 Neb. 474, 675 N.W.2d 642 (2004).

39 *Quality Pork*, 267 Neb. at 477, 675 N.W.2d at 646-47.

40 *Id.* at 484, 675 N.W.2d at 651-52.

41 *Ameritas Investment Corp. v. McKinney*, 269 Neb. 564, 571, 694 N.W.2d 191, 200 (2005).

42 *Ameritas*, 269 Neb. at 572, 694 N.W.2d at 200.

43 Neb. Rev. Stat. § 25-414.

44 269 Neb. 564, 694 N.W.2d 191 (2005).

45 *Ameritas*, 269 Neb. at 575, 694 N.W.2d at 202.

46 26 Neb.App. 906 (2019).

47 Applied, 26 Neb.App. at 919-921.

48 Neb. Ct. R. of Pldg. § 6-112(b)(2).

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Nebraska Court Rules Modernized

by Justice William B. Cassel

Special thanks to Trevor Lee for assisting in drafting this article.

I. Introduction

Modernized court rules are coming soon and will affect every lawyer who files any document in our state court system. This article is intended to alert Nebraska attorneys to major changes, but the full extent of the rule amendments exceed the scope of this article.

With approximately 60% to 70% of all civil documents and appellate court documents filed electronically in Nebraska courts, the Nebraska Supreme Court recognized a need to update the Nebraska Court Rules (the "rules"), including the rules of appellate practice, to reflect technological change in the practice of law. In the spring of 2019, the Court sought commentary from the public, attorneys, court staff, and judges on rule changes to modernize the rules. Specifically, the Court sought commentary on (1) the modernization of the rules regarding mandatory electronic filing for all Nebraska attorneys, changes in terminology, and transitioning to electronic bills of exception; (2) suggestions for self-represented litigants to have access to electronic filings; (3) suggested changes to formatting and appearance of briefs and other filings in the trial and appellate courts; (4) suggestions for changes and improvements to court technology; and (5) whether the rules permitting fax filings should be eliminated. The Court's request was unusual; ordinarily, comments are sought after proposed rules have been drafted.

Sixty-five comments were submitted. A drafting group, consisting of Erika Schafer, the Court's Staff Attorney; Wendy Wussow, Clerk of the Supreme Court and Court of Appeals; and myself, began regular meetings. We analyzed the comments and drafted rule amendments to accomplish all of the project's goals. The group frequently consulted members of the Court's technology staff regarding technical requirements, judges from both appellate benches regarding policy choices, and, occasionally, retired judges regarding the historical reasons underlying existing rules. The intervening pandemic did not speed up this process. Near the end of 2020, the group presented the proposed rule changes to the Court, logging them in through the normal rulemaking process. The Court then submitted the draft rules for an extended public comment period. Once again, the bench and bar, and other participants in the system, responded with extensive and thoughtful comments.

After receiving this commentary and some tweaking by the drafting group to incorporate many of the suggestions, the Court approved changes to the rules that will be effective on January 1, 2022.[1] (All of the citations to court rules are to those becoming effective on January 1.) This article serves as a brief guide to the practical effects that the changes to the rules

Justice William B. Cassel

Judge William B. Cassel, of O'Neill, NE, is one of the 7 members of the Nebraska Supreme Court. He was appointed in April 2012, after having served for 8 years as a judge of the Nebraska Court of Appeals, and for 12 years as a general jurisdiction trial judge on the district court in north-central Nebraska. Judge Cassel has been widely recognized as a leader in the use of technology as a lawyer and judge, and has chaired the Nebraska Supreme Court's Committee on Technology since 2004.

will have on attorneys. Specifically, the article covers the new electronic requirements, formatting, appellate process, and filing deadlines. I emphasize that this article is addressed to experienced attorneys—not self-represented litigants or attorneys who are unfamiliar with the existing rules. Further, this article cannot cover every change made to the rules and it is prudent for attorneys, court staff, and judges to thoroughly review all of the changes, which touch 12 different articles of the rules. One article of the rules has been completely rewritten.[2] Others have been extensively changed.[3] A few of the rule articles received only a few changes.[4] All of them deserve attention.

II. Changes to the Rules

1. Electronic Requirements

By far the most significant change is the requirement of mandatory electronic filing by Nebraska attorneys.[5] While this rule is relatively short, the changes to implement it are extensive. And this rule makes it clear that if any of the new rules governing electronic filing, service, and notice in Nebraska trial and appellate courts[6] conflict with any other Nebraska or local court rules, the new rules prevail.[7]

The Nebraska court system has already had an electronic system that is widely used by attorneys, consisting of three interdependent components: the E-Filing portal of Nebraska.gov, the Judicial User System To Improve Court Efficiency (JUSTICE), and the Supreme Court and Court of Appeals Legal Entries System (SCCALES).[8] However, it has not been mandatory for attorneys to utilize the electronic system. Consequently, the court system still maintains an extensive paper system, resulting in undue delay and burden on the courts. The new rules will largely eliminate the paper system, with the exceptions for self-represented litigants who may submit paper filings.[9]

Four principal drivers underlie the move from a paper system to an electronic system.[10] First, an electronic system increases transparency and public access to the judicial system.[11] Second, an electronic system reduces administrative costs for courts and parties, including filing, processing, and storage costs.[12] Third, an electronic system makes it possible for judges, court staff, and parties to access briefs and supporting material on tablets and other highly portable electronic devices.[13] Fourth, judges, court staff, attorneys, and clients live in a world that is increasingly electronically based, and they expect the judicial system to evolve to fit into that world.[14]

The rules transitioning to an entirely electronic court system allow for a more efficient court system that can more effectively resolve parties' disputes in a timely manner and provide an easier system for users to utilize. This article will explain the mandatory electronic requirements.

(a) Mandatory Electronic Registration

Electronic filing, service, notice, and signatures will be mandatory for all Nebraska attorneys in all Nebraska trial and appellate courts unless specifically exempted.[15] An attorney may request an exemption, for a very limited time period, on a case-by-case basis for good cause or for a small number of cases annually if the attorney is only representing parties pro bono.[16] A lack of relevant technology is not good cause.[17] There is a provision for waiver of the annual Nebraska.gov registration fee for lawyers conducting *only* pro bono representations.[18]

Non-exempt Nebraska attorneys making any filing or appearance in a Nebraska trial or appellate court must register with Nebraska.gov.[19] If an attorney does not register on or before January 1, 2022, he or she shall be deemed to have withdrawn as an attorney of record in each case for which an appearance was previously entered.[20]

Non-attorney users are required to register for electronic notice prior to filing any document or within 10 days after receiving notice from the court providing an email registration form.[21] Self-represented litigants must also register to receive electronic notice, unless they prove they have no email capability *and* that it is unreasonable to require them to obtain it.[22]

(b) E-Filing

Attorneys must initiate all civil and criminal actions and proceedings in the trial courts and original actions in the appellate courts through electronic filings.[23] All filings in appeals must be electronic.[24] Further, all other case types must proceed through electronic filings.[25] Consequently, attorneys are required to electronically file trial and appellate documents with courts using the system-generated proof of service to opposing counsel.[26]

Trial and appellate courts will no longer be required to maintain fax machines and will not accept any fax filings unless the electronic system has not been available for longer than 24 hours and the court still maintains a fax machine.[27]

Electronic filing will not be available to self-represented litigants at this time, but the Court is working toward making this option available in the future.[28] Accordingly, self-represented litigants may still submit paper briefs.[29]

(c) E-Service

Electronic service will be mandatory and remains available through Nebraska.gov.[30] Electronic service allows an attorney who electronically files a document to select the attorneys or parties to be included in the certificate of service and will be electronically served the filing.[31] However, electronic service will not be available for initial pleadings (which must be served by summons), motions heard ex parte, and orders signed by a judge.[32]

(d) E-Notice

Electronic notice will also be mandatory and be available through JUSTICE.[33] Electronic notice works in tandem with the electronic service requirement.[34] Notice will be emailed to attorneys and parties who have an email address available in JUSTICE and who were added to the certificate of service.[35]

(e) E-Signature

Hand-written signatures are no longer necessary in this electronic system. Any filing made through Nebraska.gov with the user's typed name on the signature block will constitute the user's signature.[36] Instead of an affidavit, unless required by statute, an attorney shall provide a certificate or certify to the truth or accuracy of a statement or filing.[37] This eliminates the need for notarization for attorneys.[38]

2. Formatting

As a result of transitioning to a primarily electronic filing system, the new rules require filings to be formatted to be more accessible and readable on computer screens.[39] Our current rules are focused on formatting filings to look good on paper.[40] However, paper filings are not always easy to read on computer screens.[41] The new rules mandate that filings focus on screen reading, which will improve the readability of filings.[42]

The rules allow hyperlinking and will require any filing to be a text searchable PDF.[43] The rules also amend the preferred fonts, line spacing, margins, and other formatting requirements.[44] Finally, the Court has chosen to replace page limits with word limits.[45] Each formatting requirement will be discussed below.

(a) Accessibility

Electronic filings will be significantly more accessible than the paper filings. For instance, parties can utilize hyperlinking in their briefs to provide convenient access to evidence in the record and legal authorities.[46] Hyperlinking enables parties to embed a web link that allows readers to be directed to referenced materials with a mouse click.[47] Parties can either embed internal hyperlinks that direct the reader's attention to other portions of the filing or external hyperlinks which direct the reader's attention to an external document or website.[48] Having immediate access to court records, case law, and legislative history when reading filings will help parties and courts more quickly review the record, compare evidence, and analyze cited authorities.[49]

The new rules encourage parties to use both internal and external hyperlinks.[50] However, external hyperlinks may only be used to reference: the official transcript filed in the appellate court; the official bill of exceptions of the trial court or lower appellate court; case law published in the official Nebraska Reports or Nebraska Appellate Reports; laws, bills, and legislative history published on the Nebraska Legislature's website; and the official rules of the Nebraska Supreme Court.[51] Parties must use the official Nebraska websites in their hyperlinks.[52] Note that while the Court welcomes hyperlinks, they cannot be used to subvert word limits or detract from the content of filings.[53]

To ensure that hyperlinks are accessible, the new rules require that all filings must be converted PDFs—not scanned PDFs.[54] This will allow readers to access hyperlinks by a simple mouse click.[55] Additionally, a converted PDF is fully text searchable, allowing readers to quickly navigate filings.[56] Therefore, even if a party does not use hyperlinks in a document, it must be a converted PDF.[57]

Requiring filings be converted PDFs (instead of scanned PDFs) is not as burdensome on filers as it may seem at first glance.[58] To convert a Microsoft Word document to a PDF, the filer need only "save as PDF" in Microsoft Word.[59] The conversion process may also be done through software such as Adobe Acrobat Pro.[60]

(b) Readability

As mentioned earlier, the visual dynamics of reading on screen are different from reading on paper.[61] While certain fonts, line spacing, and other formatting requirements may look great on paper, they are ill-suited to screen reading.[62] Therefore, the electronic filing system mandates new formatting requirements.

The new rules require that all documents shall be on a page size measuring 8 ½ by 11 inches, in portrait mode.[63] Text shall be aligned to the left side and not justified.[64] Margins shall be set to 1.5 inches on all sides, and lines shall be spaced at 1.15 or 1.2.[65] Extra line spacing is allowed before headings and between paragraphs.[66] Footnotes are not permitted.[67] Preferred fonts shall be Century or Century Schoolbook.[68] Other allowed fonts are Times New Roman, Baskerville Old Face, Book Antigua, or Palatino, and shall be set no less than 12 nor more than 13 point.[69] Type shall not be underlined, but may be italicized or boldfaced for emphasis.[70] These formatting requirements apply to both appellate and trial court filings with one exception: pleadings may have 1-inch margins.[71]

The Court did not arbitrarily choose these new formatting requirements. The Court relied on expert recommendations as to what format requirements will improve readability on screens.[72] Left-aligned text is easier to read than justified text because the justification creates uneven spacing between letters and words, requiring constant visual adjustments and eye strain.[73] Serif fonts such as Century have flourishes on the letters that are easier to read than sans serif fonts like Arial, which are blockier.[74] Margins set to 1.5 inches and lines spaced at 1.15 or 1.2 are much easier to read on mobile devices than 1-inch margins and double line spacing.[75] Finally, underlining words disrupts letters that fall below the line such as g, j, and y, making them less legible and therefore more difficult to read.[76] Collectively, these formatting requirements should improve readability of filings on screens and mitigate eye strain.[77]

(c) Word Limits

The length of briefs and other filings may be drastically affected by the new formatting requirements.[78] Therefore, different limits were needed under the new rules.

Under the new word limit requirements, briefs will not exceed 15,000 words. This total includes the brief and reply brief. However, if an appellee asserts a cross-appeal, the word limit per party for all briefs shall be increased to 18,000 words to account for the cross-appeal and answer briefs.[79] All portions of a brief, including the cover page, table of contents, and table of authorities, as well as signature blocks, count toward the maximum word count.[80] Parties can rely on the word count displayed on their word processing software. The Court will still require page numbering, but the page numbering shall begin with the cover page as page one.[81] Thus, in a PDF document, the PDF page number will correspond exactly with the displayed page number.

The word limit for briefs in support for motions for rehearing, other briefs in support of motions, and briefs of amicus curiae will be 3,800 words.[82] A petition to bypass and subsequent response shall not exceed 1,800 words.[83] Petitions for further review and memorandum brief in support and subsequent response will not exceed 3,500 words.[84]

For those who may still submit paper briefs, those briefs shall comply with all formatting requirements unless typewritten.[85] If typewritten, paper briefs shall not exceed 50 pages total on original submission, and 15 pages on briefs in support of a motion for rehearing.[86] Typewritten briefs shall be in nothing smaller than 12-point type and lines shall be double spaced.[87]

Imposing a word limit instead of a page limit will ensure that filers will focus more on the visual appearance of their filings instead of sacrificing readability by cramming as much information into their briefs while remaining under the page limit. In reaching the word limit, the Court estimated how many words would approximate the current page limit. In other words, the word limits were not intended to reduce or enlarge the content permitted under page limits. However, the Court has recognized that if experience shows that the word limit is too low, it may need to be increased at a later date.

3. Appellate Process

The rules dynamically change the appellate process, expediting the system and allowing for a continuous flow of information through the courts. Traditionally, the appellate process was necessarily linear. Appellants would review the record and then pass the materials to the appellees to review. The new electronic system will have entirely electronic transcripts and bills of exceptions, allowing the court to speed up the appellate process by creating a parallel system where the parties simultaneously have electronic access to the record for use in the preparation of their briefs.[88] Additionally, it will allow the courts to pass records among themselves more easily.[89]

(a) Transcripts

In addition to transcripts becoming entirely electronic, transcripts will feature more specificity.[90] A request for a transcript must specifically designate the pleadings or documents to be included in the transcript by listing the name of the pleading or document and the date it was filed.[91] It is now explicitly clear that parties can no longer make generalized requests for all documents or attach a preprinted list from the register of actions in JUSTICE.[92] If there is no request made or if it lacks specificity, the transcript shall include: (1) the judgment, decree, or final order sought to be reversed, vacated, or modified and the court's memorandum, if any; (2) the pleadings in the case; (3) a copy of the supersedeas bond, if any, or the recital of the fact that a bond for costs was given and approved, or a deposit made; (4) the order granting or denying the request to proceed in forma pauperis, if any; and (5) where the appeal is taken from a district court acting as an intermediate appellate court, the transcript shall contain the transcript from the county court or other tribunal (it can no longer be attached as an exhibit), any statement of errors filed in the district court, and all orders of the district court.[93]

(b) Bill of Exceptions

While allowing parties to simultaneously review the bill of exceptions will allow parties to create briefs more quickly, it will not improve the speed of the appellate process if the bill of exceptions is not available in a timely manner. Traditionally, the court reporting personnel who created a bill of exceptions would not seek an extension for time to prepare the bill of exceptions from the court until a default notice was filed with the court by one of the parties. The new rules mandate that the court reporting personnel must request extensions no later than seven days prior to the expiration of the time originally prescribed or not later than seven days prior to the expiration of an extension previously granted.[94] While the new rules cannot physically improve the pace at which court reporting personnel create bills of exceptions, requiring court reporting personnel to be proactive should improve transparency and accountability to ensure that bills of exceptions are being created in an expedient manner.[95]

(c) Uniformity

The new rules bring the appeals from county courts proceedings in the district court into uniformity with the other appellate courts.[96] Appeals from the county court will be processed in the same manner as other appeals.[97] Bills of exceptions from county court appeals will be filed in the county courts and transmitted to the district court using JUSTICE procedures.[98] These bills of exceptions will no longer be introduced as exhibits in the district court. These changes will allow for bills of exceptions to vertically flow through the appellate system. Collectively, the changes to the appellate process should streamline the appellate system, allowing for more efficient and timely appeals.

4. Deadlines, Extensions, and Defaults

Because parties will receive immediate notice of advancements in the proceedings and service of documents, it is no longer necessary that filing deadlines account for the delay caused by mailing filings to other parties and the courts. Consequently, the new rules have shortened filing deadlines and limited extensions and defaults.

(a) Filing Deadlines and Extensions

Reponses for motions must be served and filed within 10 days of the filing of the motion—instead of the current 14-day deadline.[99] An appellant's reply brief must also be served and filed within 10 days after the appellee has served and filed its brief (three days are added if service of appellee's brief is by mail).[100] All other filing deadlines, including appellants' and appellees' briefs, remain the same. However, the new rules no longer allow parties to receive extensions for briefing dates by stipulation of the parties or mere conclusory statements of good cause, such as "the press of other business." The new rules explain that good cause includes, but is not limited to, (a) unavailability of required appellate records through no fault of the requestor; (b) a showing that a case involves complex and unusual facts or legal issues requiring additional research and preparation time; (c) recent change in appellate counsel and/or appointment or hiring of new counsel who is unfamiliar with the appeal; and/or (d) specifically listed conflicts with the schedule of another court.[101]

(b) Briefing Defaults

Finally, the rules are no longer forgiving of appellants who fail to file a timely brief.[102] If an appellant fails to file its brief within the time allowed and no extension of brief date has been given, the appellant will be notified that it must filed a brief within 10 days of receipt of such notice.[103] Appellant's failure to file a brief within the 10-day period subjects the appeal to dismissal.[104] The rule makes it clear that only one default notice will be required.[105] While, these new deadlines may seem harsh, the other modifications to the appellate process should negate any practical difficulties caused by these new deadlines.

Conclusion

The world is increasingly electronically based, and the new rules adjust the court system to fully embrace the use of electronic means to practice law. The new rules mandate that all case types shall be conducted through electronic means and that all attorneys register to receive electronic service and notice. New formatting requirements tailor filings to be more accessible and readable on screens. The new rules expedite the appellate practice by ensuring a timely electronic record is developed that can be accessed simultaneously by the parties, allowing for filings to be completed more quickly. Collectively, the new rules evolve our court system to fit into the modern electronic world and mitigate the burden on courts, counsel, and parties.

Endnotes

1 *See*, Neb. Ct. R. §§ 1-101 et seq., 1-201 et seq., 1-301 et seq., 2-201 et seq., 6-401 et seq., 6-601 et seq., 6-1401 et seq., 6-1501 et seq., and 6-1701 et seq. (effective Jan. 1, 2022); Neb. Ct. R. App. P. § 2-101 et seq. (effective Jan. 1, 2022); Neb. Ct. R. Disc. § 6-301 et seq. (effective Jan. 1, 2022); Neb. Ct. R. Pldg. § 6-1101 et seq. (effective Jan. 1, 2022).

[2] *See* § 2-201 et seq.

[3] *See* § 2-101 et seq.

[4] *See* § 6-326 et seq.

[5] *See* § 2-202.

[6] *See* § 2-201 et seq.

[7] § 2-202(D).

[8] *See, generally*, JUDICIAL USER SYSTEM TO IMPROVE COURT EFFICIENCY, NEBRASKA COURTS CASE SEARCH, https://www.nebraska.gov/justice/ (last visited Aug. 9, 2021); SUPREME COURT AND COURT OF APPEALS LEGAL ENTRIES SYSTEM, NEBRASKA APPELLATE COURT CASE SEARCH, https://www.nebraska.gov/courts/sccales/index.cgi (last visited Aug. 9, 2021).

[9] *See* § 2-204. See, also, § 2-216(f).

[10] *See* The Leap From E-Filing to E-Briefing: Recommendations and Options for Appellate Courts to Improve the Functionality and Readability of E-Briefs, Counsel of Appellate Lawyers, American Bar Association, 1 (2017).

[11] *See id*.

[12] *See id*.

[13] *See id*.

[14] *See id*.

[15] *See* § 2-202(A).

[16] *See* § 2-202(B)(1)&(2).

[17] *See* § 2-202(B)(1).

[18] *See* § 2-202(B)(3).

[19] *See* § 2-203(A).

[20] *See* § 2-203(B).

[21] *See* § 2-208(C)(1).

[22] *See id*.

[23] *See* § 2-204(A)-(C).

[24] *See* § 2-101(H).

[25] § 2-204.

[26] *See*, §§ 2-201(A) and 2-103(B)(1).

[27] *See*, § 6-601(C); § 2-213(C).

[28] *See* § 2-204. *See, also*, § 2-216(F).

[29] See § 2--103(C)(5).

[30] See § 2-205(A).

[31] *See id*.

[32] *See id*.

[33] *See* § 2-205(C).

[34] *See id*.

[35] *See id*.

[36] *See* § 2-202(M).

[37] *See* § 2-217(A).

[38] *See id*.

[39] The Leap From E-Filing to E-Briefing, supra note 10 at 2.

[40] *See id*. at 19.

[41] *See id*.

[42] *See, generally*, § 2-103(A).

[43] *See id*.

[44] *See id*.

[45] *See* § 2-103(C)(3).

[46] *See* The Leap From E-Filing to E-Briefing, supra note 10 at 31.

[47] *See id*.

[48] *See id*.

[49] *See id*.

[50] *See* § 2-103(A)(5).

[51] *See id*.

[52] *See id*.

[53] *See id*.

[54] *See* § 2-103(A)(1).

[55] *See* The Leap From E-Filing to E-Briefing, supra note 10 at 31.

[56] *See id*. at 12.

[57] *See* § 2-103(A)(1).

[58] *See* The Leap From E-Filing to E-Briefing, supra note 10 at 12.

[59] *See id*.

[60] *See id*.

[61] *See* The Leap From E-Filing to E-Briefing, supra note 10 at 19.

[62] *See id*.

[63] *See* § 2-103(A)(1).

[64] *See id*.

[65] *See id*.

[66] *See* § 2-103(A)(3).

[67] *See id*.

[68] *See id*.

[69] See § 2-103(A)(4).

[70] *See id*.

[71] *See* § 6-1503(A)(2).

[72] *See* The Leap From E-Filing to E-Briefing, supra note 10 at 19-25.

[73] *See id*. at 22.

[74] *See id*. at 23.

[75] *See id*. at 20-22

[76] *See id*. at 25.

[77] *See id*. at 22.

[78] *See generally*, § 2-103(A).

[79] See § 2-103(C)(3)(a).

[80] *See* § 2-103(C)(3)(c).

[81] *See id*.

[82] *See* § 2-103(C)(3)(b).

[83] *See* § 2-102(B)(1).

[84] *See* § 2-102(F)(2)&(4).

[85] *See* § 2-103(C)(5).

[86] *See id*.

[87] *See id*.

[88] *See*, § 2-104(B); § 2-105(F).

[89] *See* § 6-1542(B)(7).

[90] *See* § 2-104(A)(1).

[91] *See id*.

[92] *See id*.

[93] *See* § 2-104(A)(2).

[94] *See* § 2-105(C)(2).

[95] *See id*.

[96] *See* § 6-1452(C).

[97] *See* § 6-1452(C)(2).

[98] *See* § 6-1542(B)(7).

[99] *See* § 2-106(B)(2).

[100] *See* § 2-109(A)(3).

[101] *See* § 2-106(E)(2).

[102] *See* § 2-110(A).

[103] *See id*.

[104] *See id*.

[105] *See* § 2-110(A).

Nebraska State•Bar•Association | Young Lawyers Section

Submissions to the Young Lawyers Section Page from young attorneys across the state are always welcome. If you're interested in writing, please contact Allyson Felt, Editor, at afelt@nebar.com.

My Time As A Young Lawyer

by Nathan Kinport

There have been many great quotes and movie scenes regarding the importance of experience. Robin Williams had, in my opinion, one of his most iconic monologues describing the importance of first-hand experience in "Good Will Hunting." Will Hunting, played by Matt Damon, is a genius 20-year old working as a janitor at Massachusetts Institute of Technology.[1] Sean Maguire, played by Robin Williams, eventually becomes Hunting's therapist after a deferred prosecution agreement. During their first meeting, Hunting criticizes Maguire for having certain books in his office, tells Maguire a painting which Maguire painted is 'crap', and insults Maguire's deceased wife. Maguire calmly takes off his glasses, then pushes Hunting against the wall by his throat, and tells Hunting he will end Hunting if he insults his wife one more time.

A couple of days after the altercation, Hunting meets Maguire on a park bench. Maguire tells Hunting their altercation bothered him until Maguire realized something. It occurred to Maguire that Hunting is someone who has never left Boston and does not have the faintest idea what he is talking about. Maguire tells Hunting there are many situations where Hunting can recite books, has read about important historical figures, or quote famous philosophers. However, Maguire proceeds to tell Hunting he has no first-hand experience regarding those situations. Maguire tells Hunting he could ask Hunting about love, and that Hunting would probably quote him a sonnet.

Maguire goes on to tell Hunting that Hunting has never looked at a woman, been totally vulnerable, or felt that God put an angel on Earth just for him. Maguire tells Hunting he has never been a woman's angel, who supported her through anything, including staying by her side at the hospital while she struggles for her life. Maguire goes on to tell Hunting that he does not know about real loss, because Hunting has never loved anything more than he loves himself.

For this article, I was asked to share my experiences as a new attorney and provide tips to new attorneys beginning their legal career. Before beginning your career as young attorney, I am sure you had some preconceived beliefs of what being an attorney is like. I was hired right out of law school and began working in a town where I had no relationships and would be practicing in multiple areas of law. I had some idea of what my career might be like. Since then, some of those notions came true, but most were exaggerated or simply untrue. The remainder of this article focuses on some of the things I have experienced in my young career as a practicing attorney. Hopefully, it will help newer attorneys as they begin their practice.

1) It is Not What You Know, but Rather, Who You Know.

Attorney-presenters that came to Creighton Law frequently told us that getting to know the bailiff and court staff is THE most important thing to do. THIS IS ABSOLUTELY TRUE! I cannot count the number of times I needed something on short notice, like a motion in front of a judge or to get a hearing scheduled. My relationship with the bailiffs has allowed me to accomplish things I could not have otherwise done. Especially during the height of the pandemic, permission for telephonic appearances or appearances over Zoom was always an issue. Bailiffs and court staff are truly the gatekeepers to the court. Establishing and maintaining a positive working relationship with them will save you a lot of time, headaches, and unnecessary troubles during your career.

2) "Beeee Preeepared![2]

There is no equivalent to experience. That said, the best substitute for experience is being prepared. I am sure you have heard the phrase, "failing to prepare is preparing to fail."[3] This quote, often credited to Benjamin Franklin, applies to every area of life, but most of all as a legal practitioner. Ensuring you spend the necessary time to prepare allows you to feel more comfortable with your case and the arguments you will be pre-

Nathan J. Kinport

Nathan Kinport practices with McGill Law, PC LLO in Omaha. He received his J.D. from Creighton University School of Law in 2019.

senting. Being prepared includes doing the small things such as printing off applicable statutes, highlighting and annotating notable sections, printing off and practicing your arguments and lines of questioning for witnesses in the mirror *before* trial, and making arrangements with the court to test various forms of technology. The more preparation you put in before trial, the more success you will have on the day of trial.

3) "To Know Your Enemy, You Must Become Your Enemy."[4]

Attorneys need to know their cases and be familiar with all relevant documents before trial. An attorney should also try to anticipate opposing counsel's arguments to find a way to counter them. The best way for me to discover opposing counsel's arguments is to prepare for trial as if I were the opposing attorney, essentially working against myself and finding weak spots in my own arguments. This allows me to uncover arguments that opposing counsel might have that I would not have otherwise thought about. The times I have done this in my own cases has helped me anticipate arguments I would not have thought about, and has been beneficial to myself and my clients when those arguments were presented.

4) "We Rise By Lifting Others."[5]

As a recent graduate, I thought no attorney outside my law firm would help me if I needed advice. I imagined other attorneys being cutthroat and leaving me to my own demise. I thought attorneys would not help because, someday, I might be the opposing counsel. I also felt that attorneys would want me to remain as inexperienced as possible so that they could take advantage of the "rookie" in the courtroom or during negotiations. However, this could not be further from my experience.

The practice of law is a constantly changing and evolving field, regardless of the specific area in which you practice. That said, the areas of law change at different paces. Some areas change at a glacial pace while other areas are altered quite frequently. This puts all attorneys in the same boat of trying to continuously keep up with the legislature and changes to statutes. However, it is that uncertainty that helps create an environment of willingness among experienced attorneys to help newer lawyers.

Moreover, I have found there are attorneys who genuinely just want to help other attorneys become successful. To that end, I can admit that one of the best choices I made when starting out was joining the Nebraska State Bar Association listservs. I joined the Family Law listserv and frequently saw attorneys using it, just to ask questions or receive help with an issue. Attorneys with bar numbers low and high would post questions and would always receive a response. The listserv showed me that no matter how experienced we are, every attorney needs help at times, and there so many good attorneys who will take the time to help. All you must do is ask.

5) "Being Selective Is Self-Protective."[6]

DO NOT take every case that comes your way. As a new attorney, I thought I needed to take every case, regardless of the circumstances that the case presented. I wanted to earn money for my firm and show them that they made the right choice by hiring me right out of law school. My thought was that, regardless of how many years an attorney has been practicing, every attorney needs new cases to keep their case load full.

That said, I believe that what differentiates an experienced attorney from a new attorney, is the ability to exercise the discretion necessary to not trap yourself in a bad case. Do not let your desire for a full case load dictate every decision you make. There are bad cases and unwinnable situations. Exercising this discretion will allow your firm to thank you for not taking a bad case that ties up your time in what is possibly a losing effort. However, be prepared for the result, insofar as the client may become unhappy, which might lead to your firm not receiving payments when the case is over, should they decide to retain you at all.

6) It it Not All About You.

Our law firm advertises that we provide free consultations, and we receive many phone calls to provide that service. Some people are simply seeking free legal advice, and some people truly want to hire an attorney to proceed with their case. As a new attorney, I believed the initial consultation was mainly the time to sell myself to the prospective client and to ensure they have me represent them in their case. As important as that might be, it is equally imperative that you take the time to evaluate whether you want to work with that potential client.

Most people will present their 'best self' the first time they meet someone. Keep this in mind for your consultations and how the prospective client's behavior may indicate their future behavior. People being late to the initial consultation may be a sign that the potential client has issues with being prompt. If true, they may be late to future meetings, depositions, or even late the day of trial.

Moreover, people forgetting to bring items you requested they bring to the consultation may be a sign of how they will react when you request documents in the future, particularly during the discovery process. Further, people who are combative and argumentative during the consultation may present as such in the future should you choose to represent them. Typically, that prospective client's behavior may only get worse from that point. All in all, to rectify this issue, you may want equally to balance your time with deciding whether you want to work with that client as you spend trying to "sell yourself" during the consultation.

7) "You Can't Handle The Truth!"[7]

It would be an ideal world if all our clients always told us the absolute truth during our representation. Unfortunately, that is the not world in which we live.

When I first began my legal career, I would take the client for their word about how things unfolded with their case. I learned very quickly in my representation that there is always more to the story and those missing pieces to the story are something you must worry about all stages of a case. I now end all initial meetings with my clients by asking if there is anything else that may come up during my representation that may influence the case. I also ask what the client thinks the opposing litigant might say during the case. Those questions usually lead to more details.

In closing, the things I have discussed are still not a substitute for experience. My hope is that every new attorney's career starts well and contains great success, but if your career does not begin the way you envisioned, do keep in mind that you are in the same situation as many other attorneys. Every attorney struggles, at times, and we all have issues as we begin our legal careers.

My hope is that the advice I have given in this article prevents someone else from making avoidable mistakes as they begin their legal career. As was said at my Creighton Law School graduation, go forth and set the world on fire!

Endnotes

1 *Good Will Hunting* (1997), Gus Van Sant.
2 *The Lion King* (1994), Rob Minkoff, et al.
3 Unknown author, (Unknown year).
4 *Art of War*, (5th Century B.C.E.). Sun Tzu.
5 Robert G. Ingersoll, (Unknown year).
6 David Posen, (Unknown year).
7 *A Few Good Men*, (1992). Rob Reiner.

Nebraska State Bar Foundation's Daniel J. Gross Fund

Daniel J. Gross was a prominent Omaha trial lawyer. Upon his death in 1958, he established a fund in his will "for the charitable and welfare purpose of active practicing Nebraska lawyers, their wives, widows, and children."

Over the years, the Daniel Gross Fund has assisted active lawyers and their families on numerous occasions. For example, the Fund has worked with the Nebraska Lawyers Assistance Program in providing funds for medical treatment on a confidential basis.

Any active lawyer, or his or her family member, in need of assistance may apply to the Daniel Gross Fund. Doris Huffman, Executive Director of the Nebraska State Bar Foundation, is the contact person. She can be reached at the Hruska Law Center, 635 South 14th Street, Suite 120, PO Box 95103, Lincoln, NE 68509-5103, or by telephone at (402) 475-1042. All inquiries are strictly confidential.

Tiffany S. Boutcher
Dvorak Law Group, LLC

Michael T. Brewer
Koenig|Dunne, PC, LLO

Joshua L. Christolear
Lincoln

Chawnta M. Durham
Lindemeier Law Office

Hannah Fischer Frey
Baird Holm LLP

Kari Fisk
Buffalo County Attorney's Office

Andrea V. Gosnold-Parker
Sarpy County Attorney's Office

Timothy G. Hruza
Mueller Robak LLC

Caitlin R. Lovell
Johnson & Mock, PC, LLO

Matthew A. Olson
Nebraska Attorney General's Office

Augustine Osuala
Nebraska Legal Group

Matthew W. Parker
Law Office of Matthew W. Parker

Erin E. Schroeder
Koley Jessen PC, LLO

Lindsey J. Stennis
Douglas County Attorney's Office

Ashley L. Strader
Omaha

Yvonnda A. Summers
Douglas County Public Defender's Office

Korey T. Taylor
Douglas County Public Defender's Office

Andrew J. Vinton
Nebraska Unicameral Legislature

Jacquelyn E. Warren
Astley, Putnam, PC, LLO

Lisa M. Wellendorf
Bridges Trust Company

Megan M. Zobel
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Cultivate the Right Demeanor for Effective Legal Writing

by Bryan A. Garner

Think of someone you know who's high-strung, excitable, overreactive, and often frazzled. Someone whose panic threshold is pretty low. Someone whose words you often have to discount because they're melodramatic and exaggerated. Someone with a tendency to fire off angry e-mails. You do know such a person, don't you? Don't we all?

That person has little credibility with others. The person may be in many ways lovable, but not believable, and hence unsuited to a profession in which credibility is the be-all and end-all. If you want to be a lawyer—an adviser and counselor whose words are supposed to carry weight—make sure you're not such a person.

So what does this have to do with legal writing? Everything. It has to do with managing the tone of your prose, with your emotional stance toward your reader, and ultimately with the degree to which anything you say or write is believable to others. Here, then, are five rules for cultivating the right demeanor for being taken seriously as a professional.

A good lawyer needs to be all but unflappable.

1. Develop a calm, temperate demeanor. A good lawyer needs to be all but unflappable. You'll seem more reliable. Seeming unflappable doesn't mean you should seem unconcerned or uncaring. It means staying relatively calm in the face of others' excitement.

Consider Walter Hagen, one of the greatest golfers in the history of the sport. He's the one, by the way, who popularized the phrase about "stopping and smelling the flowers." He approached each round of golf, even in the most important tournaments, with the idea that he would have some really bad luck on occasion and that he'd hit some truly lousy shots. He remained always unfazed. His opponents reported that he would hit his ball in the water and watch the shot as if it had gone exactly as planned. He'd walk to the appropriate spot, take his penalty, and continue as if everything were going as anticipated. Meanwhile, his attitude undid many of his competitors, who became convinced that he'd never crack under pressure.

Bryan A. Garner

Bryan Garner (lawprose.org) teaches legal-writing and drafting seminars for more than 6,000 lawyers and judges each year. He is editor in chief of *Black's Law Dictionary* and author of more than 20 books on writing, including *Making Your Case with Justice Antonin Scalia*, *Garner on Language and Writing*, and *Garner's Modern American Usage*.

As Thomas Jefferson said in an 1816 letter, "Nothing gives a person so much advantage over another as to remain always cool and unruffled under all circumstances."

2. Be prudent: know when to refrain from putting something in writing. Lawyers, of all people, should know that some thoughts are best left unrecorded. A famous example occurred recently when an associate at a major law firm wrote an e-mail saying, "I think we committed malpractice here!" In the ensuing malpractice lawsuit, you can be certain that the plaintiffs' lawyers, throughout the trial, displayed that quotation on a billboard in the courtroom. By the time of trial, naturally, that associate was no longer associated with the firm.

If you're dealing with matters that could be prejudicial to your client, your employer, or yourself, reconsider any urge to put your thoughts in writing. A phone call or face-to-face meeting might be more appropriate.

3. Whatever the provocation, write with a smile. The novelist Henry Miller wisely said, "Always write with a smile, even when it's horrible or tragic." Perhaps the best model is the writing of Charles Dickens, who never tells readers that certain characters in his novels are despicable. He shows us. And wrote about some of the seediest characters imaginable, always with an amiable smile.

Let's say you're in a pretrial dispute. You've just concluded a phone call with another lawyer in which you agreed to (1) a 15-day postponement for a document production and (2) a mediation with Leona Burgess, subject to a conflicts check, during the week of December 7. Ten minutes later, you receive a fax "confirming" that you've agreed to (1) a 30-day postponement for the document production and (2) a mediation with Ms. Burgess on December 10 at 2:30 p.m. Believe it or not, this type of occurrence is lamentably common.

These time-wasting shenanigans are potentially upsetting. But you fax off a nonchalant response: "Dear ----: Your faxed letter is at hand. I hasten to say that all we agreed to is (1) a 15-day postponement for the document production (until 5:00 p.m. on November 30) and (2) a mediation before Ms. Burgess, subject to a conflicts check, during the week of December 7—not December 10 at 2:30 p.m. (I'm afraid I can't do it then, as I have a longstanding commitment outside the office.) Please revise your calendar accordingly, and let me know whether December 7 at 9:00 a.m. or December 11 at 9:00 a.m. would be possible for you. I've scheduled a telephone call at 2 o'clock this afternoon with Ms. Burgess to discuss possible conflicts. Would you like to participate in the call? I'll be sure to take careful notes."

4. Realize the difference between expressing indignation and evoking it. Your job isn't to show the court how outraged you are, but (if possible) to make the court feel outraged at the injustices perpetrated by the other side. The minute you express anger or indignation, the judge feels like the only levelheaded person in a room full of hotheads. To the extent you show yourself to be a calm, deliberate thinker, you've aligned yourself with the judge.

5. Play fair with the evidence: cultivate a reputation for understatement. Sometimes your adversary will have a good point or two. Concede the power of those points having some undeniable strength. Then go on to show that strong as they may be, your own point is even stronger.

Let's say you're with a state attorney general's office. The father of a 14-year-old boy in foster care seeks to take the boy out of the foster-care system and take financial and parental responsibility for the boy. The father's lawyer says again and again that the state is spending needless resources on this boy, that the father wants to take responsibility, and that the state shouldn't be getting in the way. It's good public policy for fathers to take care of their sons.

You, on the other hand, know the story rather differently. The father was convicted of wife-battering when the boy was only eight—the year the boy was taken from his parents—and the father has had three DWIs in the past two years. But most tellingly, the father has sired three out-of-wedlock children by a 23-year-old mentally retarded woman who was formerly his ward. Meanwhile, the boy has been flourishing with his foster parents, achieving a B- average in school for the first time ever.

After acknowledging that everyone admires a parent who takes responsibility, you state those facts. With 999 out of 1,000 judges, that's all you need to say or write—and drawing further conclusions would be counterproductive.

[N]ever let a judge or jury see you upset: listeners and readers tend to conclude that you've gotten upset because you've realized you're losing.

A final thought: a theorizing rationale. Here's the ultimate reason that you should never let a judge or jury see you upset: listeners and readers tend to conclude that you've gotten upset because you've realized you're losing. And once a listener or reader—especially the decision maker in your case—concludes that you believe you're losing, that tends to become the foreordained result. You seem as if you should lose. Hence, you lose.

So master your best poker face—even in your writing.

Well-Being Task Force Report

By Chris Aupperle, NLAP Director

As I have previously discussed in this column, in 2019 NLAP organized The Nebraska Task Force on Lawyer, Judge and Law Student Well-being. Because the NTFLJLSW is not a very memorable acronym, I will just refer to it as the "Well-being Task Force." We recruited lawyers, judges, law school administrators, NSBA leadership, court regulators, and mental health professionals to participate on this task force.

This group was very committed to our mission to evaluate the current challenges to the well-being of our legal professionals, detail what we are doing to bring about positive change, and to identify gaps in our efforts. This review was conducted over the past two and a half years, with some disruption due to the pandemic. The product of this review is the recently released task force report "Examining Lawyer, Judge and Law Student Well-Being in Nebraska" (the "Task Force Report"). While I am providing highlights and key findings in this edition of the Wellness Brief, I highly encourage all members of our profession to read the full report and to find a way to contribute to the well-being movement.

So, lets back up for a second. What do we mean when we say "well-being"? Well-being is "a continual process of seeking to thrive in each dimension of one's life: Emotional, Occupational, Intellectual, Spiritual, Physical, and Social." It's not just about avoiding the bad but also fostering good mental and emotional health, career satisfaction, and relationships that positively impact our lives. It's also about balance. We shouldn't need to sacrifice certain dimensions (e.g., emotional, or social well-being) to excel at another (e.g., Occupational).

Why Focus on Well-Being?

It's about our people and our work. While lawyers and judges perform a critical function for their clients and our society, it doesn't necessarily require legal professionals to sacrifice their emotional health, physical health, relationships, or career satisfaction to meet professional demands. Studies have shown that people with a positive well-being experience health, work, family, and economically-related benefits. Strong personal well-being is associated with physical benefits, including decreased risk of disease and injury, better immune functioning, speedier recovery, and increased longevity.

Strong personal well-being experienced by our lawyers and judges provides very tangible benefits to the legal profession. Substance use and mental health disorders are associated with a higher risk of ethical violations, legal malpractice, a lack of communication, and delays. Conversely, lawyers experiencing positive well-being have a greater job satisfaction, are more productive, and are less likely to leave their jobs. Improvement in lawyer, judge, and law student well-being also benefits clients, the courts, and everyone who interacts with them within the legal system (e.g., staff, opposing counsel, and co-workers).

The Process

The Well-Being Task Force reviewed data about the challenges facing lawyer, judge, and law student well-being. If you have attended an NLAP CLE recently, you should be familiar with those challenges. The mental health, alcohol/drug use, chronic stress, and suicide risks experienced by legal professionals are well documented, nearly always at rates that exceed the rates within the general population. Next, the Well-Being Task Force reviewed what each stakeholder group within the legal profession was doing to improve well-being. Finally, the task force sought to identify gaps and areas in need of further improvement.

Identifying Well-Being Initiatives

The results were encouraging in several key areas. I would like to highlight a few key areas. I encourage you to read the Task Force Report to get a more detailed review.

The Task Force Report documents progress made by both Nebraska based law schools, including improved access to free mental health counseling, law school programs geared toward first year students on the need to develop healthy stress management, early identification of mental health and substance use disorders, and working to reduce the stigma associated with asking for help. It's not just law school administration imple-

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menting this programing, but professors who have greater day-to-day contact with students. The law schools are also providing more programing on proactive tools the law students can develop during their education.

Various policies and procedures implemented by legal regulators have been beneficial in the well-being movement. The Task Force Report discusses conditional admission, formalizing NLAP referrals, disability inactive status, inclusion of well-being related topics within CLE requirements, and participation by judicial leadership in this process. The fear that seeking professional help for a mental health or substance use disorder will lead to discipline by legal regulators is often cited as a reason not to seek help. In addition to rule changes, the willingness of legal regulators to listen, participate in well-being initiatives and to emphasize the value of this work is critical to changing our profession from help-reluctant to help-seeking.

In addition to the highlights above, the most impactful work has been done by the leaders within our profession. The open, positive discussions initiated by leadership within the NSBA and other legal associations, judges, and legal employers has been and will continue to be critical in our effort to create positive change in lawyer, judge and law student well-being. Good leaders will not ignore the problem nor judge those who may be struggling. Rather, they show the willingness and vulnerability to discuss these topics and to advocate for change.

We Still Have Work To Do

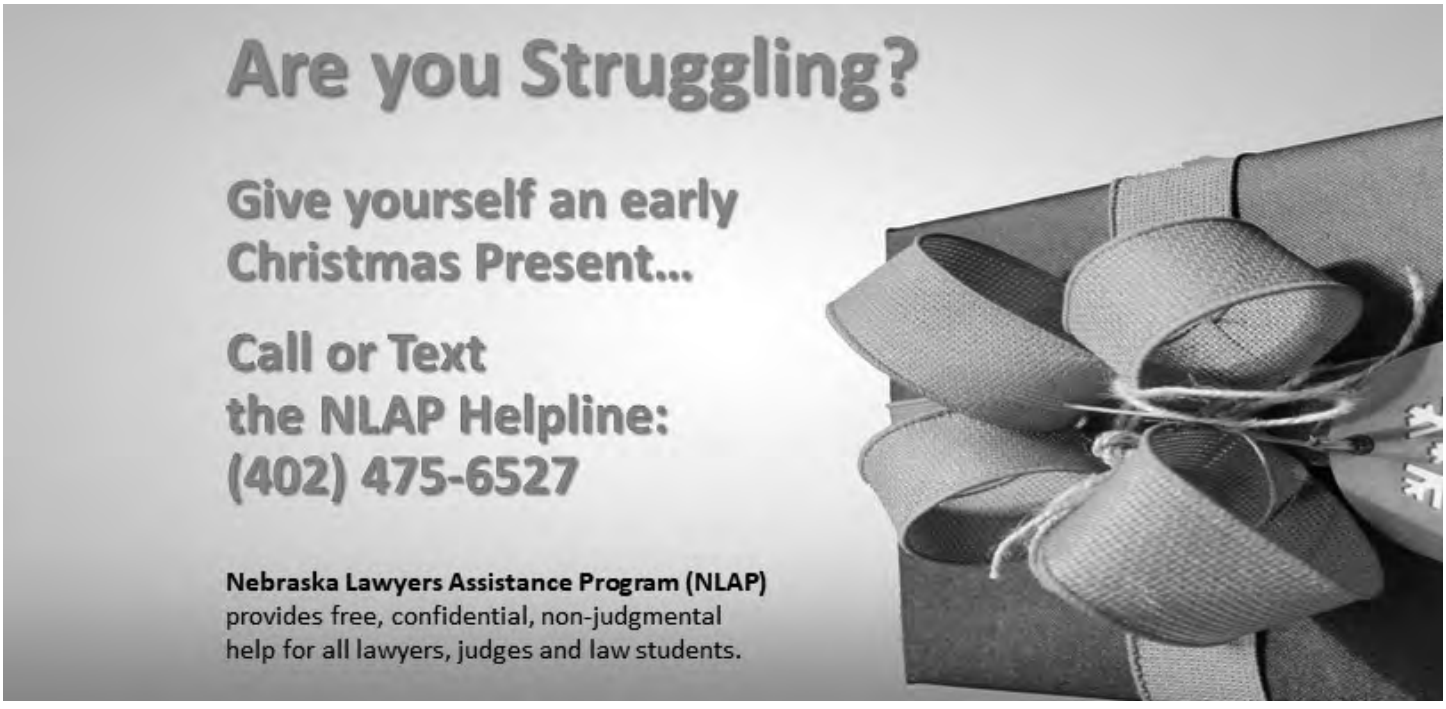
Publishing this report is not a finish line but a springboard for more progress. The Well-Being Task Force identified some areas of immediate need and ideas for improvement. One example was identifying the need for additional resources for lawyers, judges, and law students who are victims of domestic violence. While not a common call to NLAP, victims of domestic violence do contact NLAP. With the assistance of the Well-Being Task Force members, NLAP developed additional resources to serve NLAP clients facing this challenge.

Some of the impediments to creating positive change are more challenging. The Well-Being Task Force identified the need to provide resources to legal employers, especially small employers who have less internal resources. Planned work in this area includes sample policies, well-being resource kits and opportunity for legal employers to share ideas. Similarly, the Well-Being Task Force identified the unique challenges facing rural practice lawyers as an area that needs improvement. A planned rural practice working group will be asked to create resources specific to rural practice lawyers who want to improve lawyer well-being within their firms and local legal communities.

Continuing the Momentum

Neither NLAP nor the Well-Being Task Force can accomplish this work alone. If you would like to participate in the legal well-being movement, please contact the NLAP Director. We are forming working groups to provide additional resources and idea sharing, including legal employers, solo practitioners, and rural practice.

NLAP is available to any Nebraska lawyer, judge or law student who has questions or needs help. We are also available to anyone who wants to help a lawyer, judge or law student who may be struggling. It starts with a phone call to the NLAP Helpline (402) 475-6527.



Court of Appeals Hears Arguments at Wayne State College

The Court of Appeals heard three cases during each of their argument sessions at the Wayne State Student Center on September 16, 2021. Judges dedicate their September College Campus Initiative session to the celebration of Constitution Day each year. Constitution Day is September 17 and is celebrated throughout the month. Judges for the morning session were Chief Judge Michael Pirtle, Judge Frankie Moore, and Judge Larry Welch. The afternoon session was presided over by Judge Francie Riedmann, who was joined by Judge Dave Arterburn. Judge Riko Bishop participated on briefs.

In the audience were Rural Law Opportunity Program (RLOP) and political science students and from Wayne State. Visiting high schools included Hartington-Newcastle Public Schools, Plainview Public Schools, Laurel-Concord-Coleridge High School, Norfolk Public Schools, Lyons-Decatur Northeast, and South Sioux City High School.

Before each session, local retired judge Robert Ensz provided background information for each court session, and Associate Professor of Political Science Brian Hansen introduced the celebration of Constitution Day.

Retired Judge Robert Ensz provided background information for each court session.

Judge Michael Pirtle sat for private interviews with Wayne State College student journalists before and during the argument session. When asked about the most important element of the Court of Appeals presenting arguments in schools, Judge Pirtle replied: "My hope is those in attendance will leave with a better understanding of our court system and why the appellate courts are an important and integral part of our system of justice, ensuring that all parties are treated fairly and have the opportunity to be fully heard."

Judges for the morning session: Judge Frankie Moore, Chief Judge Michael Pirtle, and Judge Larry Welch.

Following tradition, the judges held an open question and answer period after each argument session. Additionally, the judges spent their lunch hour with RLOP students, introducing themselves and discussing their paths to the bench. This college campus initiative, designed by judges of the Court of Appeals, is intended to provide Nebraskans the opportunity to learn about the judicial branch. The Court has been holding arguments at colleges statewide since September 2012.

In a statement to the Wayne Stater newspaper, Judge Pirtle noted, "Our College Campus Initiative was designed to expose college and high school students to the Judicial Branch of government, often referred to as 'the forgotten branch of government.' After observing an appellate court in action and getting to ask the judges questions, I would hope the students would come away with a better understanding of, and appreciation for, how the courts operate in Nebraska."

The six judges on the Court of Appeals handle and dispose of just under 1,000 cases per year.

Judges for the afternoon session: Judge Francie Riedmann and Judge David Arterburn.

Office of Dispute Resolution Awarded $1M Grant for OJJDP Juvenile Justice System Reform Initiative

The Office of Dispute Resolution (Administrative Office of the Courts and Probation's Court Services Division) was awarded a $1 million, 3-year grant to implement the Juvenile Restorative Justice and Family Intervention Initiative, a statewide "upstream" program geared at diverting youth under the age of 18 from the court system. This initiative builds on the juvenile restorative justice work in Nebraska by expanding services to engage families. Including families is important for two reasons: 1) families can provide support to youth as they work to repair the harm they caused through completion of reparation plans, and 2) many families are dealing with issues that make it harder for the youth to succeed if the family issues are not addressed.

The Office of Dispute Resolution will work with approved mediation centers to provide: 1) Victim Youth Conferencing, 2) Juvenile Justice Family Conferencing, 3) Juvenile Justice Family Group Conferencing, and 4) Excessive Absenteeism Conferencing. Each of these services is structured differently and have different objectives. Referrals for these restorative processes come either pre-court/pre-diversion (e.g., school-based referral) or through a Diversion office.

While the processes themselves have different objectives, the overall goals of juvenile restorative justice through this initiative are the same – reducing recidivism; reducing disproportionate contact with the justice system for Black, Indigenous, and people of color; and having a positive impact on youth

OFFICE OF DISPUTE RESOLUTION

and their families leading to success in school (i.e., staying in school) and, therefore, breaking the school to prison pipeline.

In addition to providing juvenile restorative justice services to youth and their families, at no cost to them, the initiative will form a stakeholder engagement group. This group will review case and evaluation data and compare outcomes to goals. If goals are not being achieved, for example, referral numbers are lower than expected, the group will determine why and recommend changes in an effort to meet the stated goals. Focus groups and interviews will also be conducted to better understand perspectives related to restorative justice. The information from the focus groups and interviews will assist with the creation of educational material provided to schools, diversion offices, county attorneys, defense attorneys, and the general public.

An external evaluation will also be conducted to determine whether youth participating in a restorative justice diversion program are more likely to complete diversion than youth who complete standard diversion. Program design and outcomes will be shared regionally and nationally through presentations and written material to inform other states about juvenile restorative justice.

Nebraska Trial Judges Associations Elect New Presidents

Nebraska trial judges installed new association presidents during their annual meetings in mid-October. Presidential terms began October 15, 2021.

The associations and their newly appointed presidents are:

• Nebraska County Judges Association – Judge C. Jo Petersen, Seward

• Nebraska Separate Juvenile Judges Association – Judge Vernon Daniels, Omaha

• Nebraska District Judges Association – Judge Leigh Ann Retelsdorf, Omaha

Each will serve until October 2022.

Judges' associations allow courts to network, problem-solve and share innovations across the state. Their goal is to educate one another on national, state and local issues; and discuss ways to more efficiently function within the Judicial Branch of government. Judge association presidents work closely with the Chief Justice of the Nebraska Supreme Court and with the Administrative Office of the Courts and Probation.

Association presidents have the power to appoint specialized committees and operate with their elected executive committees.

Courts Provide Updates to the NSBA House of Delegates at 2021 Annual Meeting

Nebraska Court of Appeals

As a former member and Chair of the House of Delegates, it is an honor and a privilege for me to provide you this year's update on behalf of the Nebraska Court of Appeals, and I greatly appreciate the invitation to do so.

A few weeks ago, we celebrated the 30th anniversary of the Court of Appeals. In 1990, the Nebraska Legislature proposed a constitutional amendment that would create an intermediate Court of Appeals. In November 1990, the voters of the State of Nebraska approved the amendment, and the Court of Appeals was established on September 6, 1991.

Notwithstanding that we are still dealing with the adverse effects of a global pandemic, our court has continued to function in an efficient manner in an effort to decide appeals fairly, and in a timely manner. Technology continues to assist us so that we are able to meet this goal, and we have been able to hold oral arguments both live and by WebEx this past year. More on that later in this report.

As I reported to you last year at this time, prior to COVID-19, we were averaging close to 100 new cases being docketed each month. As you would expect, that has been somewhat affected by the pandemic. In calendar year 2020, 960 new cases were docketed, and our court disposed of 957 of those cases. This year, through the end of September, 740 new cases were docketed and thus far, we have disposed of 594 cases.

Last month, both panels from our court heard cases at Wayne St. College, as part of our ongoing College Campus Initiative. Both sessions were well attended by not only college students but, also, several area high schools. Following oral arguments, the students were allowed to ask the judges questions and I will tell you, most of the questions asked were not the usual "softballs" you might expect from students. The well-attended sessions and the quality of the questions following oral arguments were very impressive. Next September, we plan to return to Midland University in Fremont, and then in 2023, our plan is to hear cases at the University of Nebraska at Omaha.

Again, notwithstanding the ongoing pandemic, in 2021, in addition to our courtroom at the State Capitol in Lincoln, we were able to travel to and hear live oral arguments in Norfolk, North Platte, Papillion, Wayne, Omaha, and Kearney. In the first half of 2022, we plan to hear cases in Norfolk, Papillion, Omaha, North Platte, and Lincoln. Obviously, this is all subject to change given the current situation.

The good news for the practicing bar is that remote oral arguments will be allowed going forward on the motion of one or more of the parties or counsel of record. It will be discretionary with each panel whether to grant or deny such motions based upon the circumstances then and there existing. My expectation is these motions will be routinely granted as long as we are sitting in our courtroom in the Capitol, as we currently do not have the capability to utilize WebEx when we are sitting outside the Capitol.

I would remind you that effective January 1, some of our appellate practice rules are going to be changing. I would encourage you to read those new rules (see page 47, *Nebraska Court Rules Modernized* by Justice William Cassel) and become familiar with them. We do not enjoy dismissing appeals because the parties or their learned counsel failed to follow our rules of practice. Do yourselves, your clients, and your malpractice carriers a favor, and read the new rules before January 1, 2020.

Additional information about our court is available on the Supreme Court website. Go to https://supremecourt.nebraska.gov/courts/court-appeals. There you will find our calendar, calls, proposed calls, case summaries, opinions, and oral argument archives. We are always open to your questions or suggestions for improvement. You can email me at mike.pirtle@nebraska.gov.

Thank you for this opportunity to report to you on the status of our court, and thank you for your service to your fellow lawyers and the citizens of our State!

Respectfully submitted,
Mike Pirtle

Chief Judge, Nebraska Court of Appeals

Nebraska District Judges Association

Thank you for the invitation to submit a report on behalf of the District Judges. In this report, I will take a look back at the last 18 months, then review where we are today, and finally discuss issues which will be confronting both you and the trial courts in the near future.

COVID Crisis

The pandemic forced the judiciary and counsel to utilize video technology to keep the court dockets moving despite restricted public access to courthouses. I would venture a guess that, during the first eight to ten months of the pandemic, 30%-40% of court staff time was spent scheduling hearings, rescheduling hearings, and setting up the video or audio connections with all participants.

However, on the positive side, both the courts and the practicing bar have become more adept at holding video and audio hearings and, during the process, gained valuable insight into the strengths and weaknesses of video technology. There is no doubt that, for certain types of hearings, video conferencing is here to stay.

In that regard, the Nebraska Administrative Office of the Courts ("AOC") recently notified judges that additional state funding had become available to enhance video and audio technology in courtrooms across the state. Upon request, a technology team from the AOC will perform an onsite inspection and provide a written assessment of the courtroom technology needs, including equipment, bandwidth, etc. The state will then perform the necessary updates. In years past, the cost of such technology inspections and updates would have been borne by local county boards—as you might expect, the approval of those requests varied widely across the state.

Present State of In-Court Litigation

A recent informal survey across the State showed that jury trials began to resume in January 2021 and became more commonplace throughout the year.

Social distancing is generally practiced and masks are recommended. To accommodate social distancing, voir dire examination is typically performed in large public facilities (e.g., the legislative chambers in Douglas County, high school gymnasium in Burt County, public auditoriums, etc.) across the state. Jury trials are then typically conducted in the courtroom. Social distancing is usually accomplished by the placement of a barricade down the middle of the gallery area. The jurors are then allowed to spread out between the gallery and the jury box. Lawyers have learned that effective presentations will be directed not only at the jurors in the box but also to the jurors in the back of the courtroom as well.

Unfortunately, due to the glut of postponed criminal jury trials, civil jury trials have had to be postponed. The good news is that several civil jury trials have been scheduled to resume across the state for later this year and even more scheduled to commence in 2022.

Upcoming Issues

The Supreme Court Modernization Committee, chaired by Justice William Cassel, was not deterred by the COVID crisis. The Committee was busy over the last couple years and as a result, on June 9, 2021, the Supreme Court adopted rule amendments which created significant changes for practicing trial lawyers. Justice Cassel indicated to me that there was a "complete rewrite" of the electronic filing, service, and notice system in Nebraska trial and appellate courts. The changes go into effect on January 1, 2022.

Fortunately, your Executive Director, Elizabeth Neeley, and the NSBA Practice and Procedure Committee have been in front of these changes. I understand the NSBA will be presenting a webinar from Justice Cassel explaining the intricacies of the new changes. I also understand they are working on accreditation of these webinars to qualify for CLE credits.

As if that were not enough, the Supreme Court, on June 16, 2021 adopted comprehensive changes to the court reporting personnel rules and regulations. These regulations include significant changes for all court reporters throughout the State and are also effective as of January 1, 2022.

As many of you may have noticed, it has become increasingly more difficult to recruit stenographic court reporters to Nebraska. Justice Jeffrey Funke told me that AOC personnel are currently sponsoring a pay study and they anticipate having the results of this study by the end of 2021. They will then analyze the data and possibly submit a court reporter pay bill to the legislature to seek competitive wages. He also told me that the AOC is now advertising official court reporter openings on the State Employment website and is reaching out to the Iowa court reporting school (none are located in Nebraska) to establish a relationship. These efforts hopefully will enhance the recruitment process for stenographic court reporters. Justice Funke further mentioned that the University of Nebraska/Omaha and Butler Community College in Kansas have created electronic court reporting educational programs in their respective institutions.

Conclusion

There have been many challenges for both the judiciary and the bar to overcome over the last couple years but as the saying goes, "Every challenge is an opportunity, a chance to grow, a lesson to learn, a part of life."

John E. Samson,

District Judge, Sixth Judicial District of Nebraska
President, Nebraska District Judges Association

Nebraska County Judges Association

Since last October, 2020, there have been three new county judges appointed and sworn in: Edward H. Matney, January 7, 2021, 6th District, Dakota City; Lynelle D. Homolka, March 19, 2021, 5th District, Aurora; and Jeffrey A. Gaertig, May 3, 2021 1st District, Beatrice.

As in the past, county judges continued to serve in extra-judicial capacity this past year on other statewide commissions and committees, as well as staying involved as lead judges for the Through the Eyes of a Child Initiative and providing leadership of local law-related events, activities and ongoing endeavors (i.e. County Government Days, Law Days, Adoption Days, local non-profit/charitable boards and committees).

County judges have also recognized the ongoing difficulty in recruiting and retaining skilled court staff and have participated in programs and initiatives to assist in providing staff that is well suited to assist not only the court but also attorneys and the public.

Last, and certainly not least, like so many of the judges and support staff around Nebraska, as well as around the country, for the past year the vast majority of our county judges have provided leadership and consistent flexibility (and creativity) for handling the volatility and unpredictability of the COVID-19 pandemic impact on the court system. The pandemic has accelerated the installation of broadband to courthouses, especially in rural areas together with technology improvements and additions within the courtrooms, and training on those technologies, to assist in keeping the courts open and safe. While each judicial district (at times, even separate counties) was/were allowed latitude for its interpretation and implementation of modified accessibility and services to local courts (in recognition of local health department directives, as well as statewide administrative orders and executive orders), the common feature of all of the county courts around the State of Nebraska has been continuous efforts—by judges and county court staff—to provide continued safe operation of the county courts. So, while the pandemic has changed some of the ongoing features of how county courts are operating, it has not halted, nor will it halt, the availability and productivity needed for those who are served by the county courts.

The COVID-19 experience is also leading to some of the changes made during the pandemic to become permanent with the goal of providing safe and expanded access to the court. Expanded use of the technology additions and improvement to courtrooms across the State has had positive results which can be used even after the pandemic has subsided. Those positive results include increased availability of interpreters in a variety of languages being available to most areas of the state; increased participation of parents, youth and Native American Tribes in juvenile court cases where in the past distance, work or school schedules, transportation issues or other barriers would have prevented that participation; costs saving both by parties and their attorneys which may lead to better access to the court. Also, counties have been able to save money on the cost of transporting defendants and have increased the safety of law enforcement officers when hearings can be held by video technology.

As the pandemic hopefully continues to lessen its impact on all aspects of society, including the courts, the county judges of the state will continue to use the lessons learned and the innovation and creativity they bring to their position to provide continued operation and improvement of court services to the public and the attorneys of the state.

Thank you for the opportunity to provide this information to the Nebraska State Bar Association.

Respectfully submitted,
Ross A. Stoffer,
County Judge, Seventh Judicial District of Nebraska
President, Nebraska County Judges Association

Nebraska Separate Juvenile Judges Association

On behalf of the Separate Juvenile Courts of Sarpy, Lancaster, and Douglas Counties, I am pleased to report that individually and collectively our courts remain strong.

Since my last report to the House of Delegates, there have been many changes in our membership as we witnessed the retirements of Judges Toni Thorson and Linda Porter in Lancaster County; Judges Wadie Thomas, Douglas Johnson, Elizabeth Crnkovich, and Christopher Kelly in Douglas County; and most recently, Judge Larry Gendler in Sarpy County.

We have welcomed Judges Elise White and Shelly Sabata in Lancaster; Matthew Kahler, Chad Brown, Mary Stevens, Amy Schuman, and Candice Novak in Douglas, and very recently, Jonathan Crosby in Sarpy. Each are great additions and bring a wealth of experience to our respective counties, all of which will benefit families subject to the jurisdiction of the Juvenile Courts.

Our Association has had an active year notwithstanding the challenges presented by the pandemic environment. Under the leadership of Chief Justice Michael Heavican and our presiding judges during this time (Judges Heideman, Brown, Stevens, and O'Neal), our courts have remained open. We have benefited greatly from the use technology and as a result, we have not experienced a backlog of cases. For the most part, we have been able to provide timely hearings consistent with due process and community safety.

The past year has also provided an opportunity to work more closely with the county courts with whom we share juvenile jurisdiction. Each month, I have met with Judge Stoffer, President of the County Judges' Association, to discuss matters of mutual concern. Together, we have had monthly meetings with the leadership of Health and Human Services as it is materially involved in juvenile court proceedings. Matters discussed included the need for quality information in court reports, efficiency in communicating policy changes within HHS, and communication about deficiencies throughout the state related to service delivery and professionals.

As of late, privatization of case management in Sarpy and Douglas Counties has been an area of concern. Social workers, who give their best and oftentimes under difficult situations and uncertain conditions, are material for successful outcomes for families and efficiency for our courts. Concurrently, we remain optimistic regarding changes underway at the Youth Rehabilitation and Treatment Centers at Lincoln, Kearney, and Hastings. CEO Dannette Smith has recognized the need for change and has moved these facilities toward better outcomes. While very much a "work in progress", our Association is optimistic. We also continue to witness Health and Human Services working collaboratively with Probation. If these agencies are successful, juveniles, their families, and our communities benefit.

We still have challenges that start before petitions are filed in the juvenile court. Crimes by juveniles continue to be serious to the point where community safety is compromised. Flight from placements (home and otherwise) remains concerning. Most troubling is that many juveniles are quite young and it is difficult to imagine that they can be absent for so long without some adult involvement. Our state has yet to effectively address this issue.

Our courts thrive to keep children in their homes and local communities whenever their rehabilitation needs can be met in these environments. Unfortunately, this is not always possible as some present with rehabilitation needs that far exceed that which is available locally. Over the years we have seen facility after facility close in our state, and they have not been replaced. Many local facilities decline admittance for a variety of reasons—to-wit, a juvenile's presenting treatment needs are too extreme for the placement, concerns for safety of other youth and staff at a placement, failed treatment at other placements, run risk, and concerns regarding the cognitive abilities of a youth. It must be remembered that other than the YRTC and temporary detention, the court does not have jurisdiction to order a placement to accept a juvenile. The court can only order that applications be made. Potential placements review the juvenile's treatment needs and history of compliance when determining whether to accept and admit.

We also starve for timely psychiatric evaluations remain problematic due to limited professionals.

As you can surmise, there remains many challenges on the road to rehabilitation and there are also holes in the safety net. Be it abuse/neglect and/or delinquency/status matters, the juvenile judges have been a reliable safety net for those under the court's jurisdiction.

Our Association continues in its appreciation of the Bar's continued support to ensure that our courts are properly resourced.

Sincerely,
Vernon C. Daniels,
Douglas County Separate Juvenile Court
President, Nebraska Juvenile Judges Association

Nebraska Legal Community Forms New Nonprofit: The Nebraska Legal Diversity Council

Women and racial and ethnic minorities are underrepresented in the legal profession. In fact, according to 2018 Bureau of Labor statistics, the legal profession is one of the least diverse professions when compared to most other professions including accountants, physicians and surgeons, and college and university professors. Disparities abound as we consider other areas of diversity including gender, religion, nationality, age, disability, and sexual orientation.

Over the years, Nebraska law firms, law schools, corporations, and bar associations have introduced a number of initiatives meant to improve diversity and inclusion in Nebraska's legal profession. Several of these programs have been successful in their own right. However, we have not moved the needle as we would have hoped, and we've come to the conclusion that we cannot achieve significant progress operating in silos. Achieving a diverse and inclusive legal profession can't happen overnight or be achieved with one new program or policy—it requires a long-term commitment and collective action from all sectors of the legal community: law schools, bar associations, firms, and other legal employers. Currently, Nebraska's legal community has some great diversity and inclusion initiatives in place, but none of them are coordinated and leveraged in a way to build upon each other and to maximize impact.

In early 2019, a group of committed members of the legal community agreed to work collectively toward the goal of creating a more diverse and inclusive legal profession. A Collective Impact Model is based on the belief that no single policy, governmental department, or organization can solve a complex problem. However, when we bring together multiple organizations and sectors and ask them to abandon their own agenda in favor of a common agenda, shared values, and shared measures and build a plan of mutually reinforcing activities, we can make a bigger difference. Unlike collaboration or partnership, Collective Impact Models have centralized infrastructure—known as a backbone organization—with dedicated staff whose role is to help participating organizations shift from acting alone to acting in concert. This group of stakeholders seeks to apply the collective impact model to improving diversity and inclusion in Nebraska's legal profession and to that end, has created a 501(c)3 organization, the Nebraska Legal Diversity Council, to serve as the backbone of those efforts.

NLDC Board of Directors

To date, 19 organizations have agreed to be founding members of the Nebraska Legal Diversity Council, committing to active participation in the organization and a financial commitment of $10,000 a year for the next three years. The organizations include law firms, corporations, law schools, and the state bar association. Each founding member organization has designated one individual to serve on NLDC's Board of Directors.

Additionally, in an effort to include a diversity of backgrounds, skillsets and experiences, NLDC has recruited a number of additional Advisory Council members to serve on its Board of Directors. Advisory Council members have the same voting rights as founding members and will be involved in all levels of the organization including the highest levels of leadership. Yvonne Sosa, from the Office of the Federal Public Defender has agreed to serve as Interim President of the organization.

While other places in the United States have undertaken collaborative initiatives to improve diversity and inclusion within their legal communities, to our knowledge, this is the first-statewide model ever to be implemented with the collective involvement of law schools, firms, corporations, and bar associations.

NLDC Board of Directors

1. Baird Holm LLP, Jeremy Christensen, Founding Member
2. Baylor Evnen, LLP, Kate Martz, Founding Member
3. Big Fire Law & Policy Group, LLP, Jennifer Bear Eagle, Advisory Council Member
4. Cline Williams Wright Johnson & Oldfather, LLP, Susan Sapp, Founding Member
5. Creighton University School of Law, Dean Josh Fershee, Founding Member
6. Dvorak Law Group, LLC, Gretchen McGill, Founding Member
7. Father Flanagan's Boys Home Adrian Randolph, Advisory Council Member
8. Fraser Stryker PC LLO, Stephen Bruckner, Founding Member
9. Husch Blackwell LLP, Marnie Jensen, Founding Member
10. Jackson Lewis, P.C., Kenneth Wentz, Founding Member

11. Koley Jessen PC LLO Chastin Bailey, Founding Member

12. Kutak Rock LLP, Patricia Peterson, Founding Member

13. Lamson Dugan & Murray, LLP, Nichole Bogen, Founding member

14. McGrath North Mullin & Kratz, PC LLO Abigail Moland, Founding Member

15. Mutual of Omaha, Susan Lewis, Founding Member

16. Nebraska Public Service Commission, Jamie Reyes, Advisory Council Member

17. Nebraska State Bar Association, Liz Neeley, Founding Member

18. Nelnet, Bill Munn, Founding Member

19. Office of the Federal Public Defender, Yvonne Sosa, Advisory Council Member

20. Omaha Public Power District, Michaela Valentin, Founding Member

21. Rembolt Ludtke LLP, Dan Klaus, Founding Member

22. Sarpy County District Court, Hon. Stefanie Martinez, Advisory Council Member

23. State Farm Insurance, Sherman Willis, Advisory Council Member

24. University of Nebraska College of Law, Dean Richard Moberly, Founding Member

25. Woods Aitken, LLP, Pamela Bourne, Founding Member

Mission

On May 4, 2021, the Nebraska Legal Diversity Council was incorporated with the mission of fostering the creation of a more culturally diverse and inclusive legal community by:

- Enhancing the demand for and ability of Nebraska law firms and employers to recruit, develop, advance, and retain diverse lawyers by communicating the business case for establishing diversity and inclusion into the practice of law in Nebraska.
- Increasing the pipeline of diverse law school candidates to and graduates from Creighton University School of Law and the University of Nebraska College of Law.
- Providing expertise, programs, incentives, and support to the Nebraska legal community, including law firms, employers who hire law students and/or lawyers, law schools, bar associations, courts, and relevant community organizations and trade associations on how to create and sustain a diverse and inclusive culture.
- Ensuring diverse law students and lawyers in Nebraska are provided professional development opportunities, including training, networks, mentoring, substantive work projects, leadership and ultimately internships, clerkships, and sustainable full-time employment opportunities.

With the assistance of Husch Blackwell, NLDC has drafted and adopted bylaws and applied for 501(c)3 status with the Internal Revenue Service. The organization will soon begin a strategic planning process to obtain stakeholder input and develop a collective strategic plan.

Shawntal Mallory selected as NLDC Executive Director

After an extensive search process, the Nebraska Legal Diversity Council selected Nebraska lawyer, Shawntal Mallory (formerly Smith), to serve as NLDC's Executive Director. Prior to joining NLDC, Shawntal Mallory served as the Chief Professional Development Officer & General Counsel for Omaha Home for Boys and has practiced juvenile, family, and employment law for the past 15 years. Shawntal has served as a coach, trainer, and facilitator on human resources and diversity and inclusion topics for organizations and individuals across the nation. She serves on the Douglas County Sheriff's Office Merit Commission, Creighton University National Black Alumni Advisory Board, and the Board of Directors for Inclusive Communities. Shawntal is also a LeadDIVERSITY Advocate from the inaugural cohort. Shawntal is certified in Leading Equity and Inclusion in Organization (LEIO) from Northwestern University and holds a certification in Nonprofit Executive Leadership, also from Northwestern. Shawntal is a proud lifetime member of Delta Sigma Theta Sorority, Incorporated. When asked about her new role with the Nebraska Legal Diversity Council, Shawntal stated, "I am optimistic and excited about this timely opportunity to partner with so many entities within the Nebraska legal community to formalize and flourish our efforts toward greater diversity, equity, inclusion, justice and access in our beloved profession. I am so thankful for the confidence of the Board and I look forward to leading this new organization in this important work."

Get Involved

In the coming months, NLDC will continue recruiting individuals and organizations (including those outside of the legal profession) to assist with their work, identify current programs and initiatives that NLDC could partner with and obtain stakeholder feedback to inform its plan. If you are interested in learning more or getting involved, please reach out to NLDC Executive Director, Shawntal Mallory at shawntalsmithlaw@gmail.com.

New Bar Leaders Step Up at 2021 Annual Meeting

William J. Mueller
President

Jason W. Grams
President-Elect

Michael J. McCarthy
President-Elect Designate

Jason S. Doele
House of Delegates Chair

Yvonne D. Sosa
Executive Council Fourth District

Pierce D. Fiala
Executive Council Young Lawyers Section

Leadership changes took place at the NSBA Annual Meeting October 13-15, 2021. We are pleased to introduce the NSBA Leadership for the 2021-2022 year.

President

William Mueller accepted the gavel from outgoing NSBA President Jill Robb Ackerman.

WILLIAM J. MUELLER is senior partner and co-founder of Mueller Robak LLC. Mr. Mueller is a recognized lawyer, community leader and philanthropist. He has succeeded in combining a strong legal and political background to become one of the state's leading lobbyists. He advises clients on a broad range of legislative and government relations matters. Mr. Mueller is a graduate of the University of Nebraska-Lincoln and the University of Nebraska College of Law. He was elected Chair of the Young Lawyers Section of the Nebraska State Bar Association and has served as Legislative Counsel to the NSBA since 1984. Mueller has been selected by his peers for inclusion in the Best Lawyers in America and a Great Plains Super Lawyer in Government Relations Law since 2009. He has been selected for Lifetime Membership in America's Top 100 Attorneys. In 2013, 2016, 2019 and 2021, Mueller was selected as the Best Lawyers Lawyer of the Year in Government Relations Practice in Nebraska. He is a Fellow of the Nebraska State Bar Foundation and is a Patron Fellow of the American Bar Foundation. Mr. Mueller is a past President of the University of Nebraska Alumni Association and the Board of Directors of the United Way of Lincoln and Lancaster County. He and his spouse, fellow Mueller Robak partner, Kim M. Robak, chaired the Nebraska Lawyer's Foundation Barristers' Ball and the campaign of the United Way of Lincoln and Lancaster County.

Mueller's father, the late William P. "Rocky" Mueller of Ogallala, served as President of the Nebraska State Bar Association in 1983-1984.

President-Elect

Jason W. Grams assumed his post as President-Elect and will serve as President from October 2022 to October 2023.

JASON GRAMS is a partner of Lamson, Dugan & Murray, LLP. Grams advises businesses and individuals in complex litigation matters. Prior to joining the firm, he served as a law clerk to Chief Judge William Jay Riley of the United States

Court of Appeals for the Eighth Circuit and to Senior Judge Lyle E. Strom of the United States District Court for the District of Nebraska.

Grams has served the NSBA as a House of Delegates member since 2013, is a graduate of the NSBA leadership academy, and a member of the practice and procedure committee and the appellate practice section. He is also the President-Elect of the Eighth Circuit Bar Association and the Nebraska delegate to the Eighth Circuit Advisory Committee. Mr. Grams is also a fellow of the American Bar Foundation, a member of the Omaha Bar Association, the American Bar Association, and the Federal Bar Association. He has been a member of the Robert M. Spire (Omaha) American Inn of Court for many years and served as its treasurer from 2010-2014 and its president from 2014-2015.

Jason is rated AV-Preeminent by Martindale-Hubble and is listed in *Best Lawyers* and *Great Plains Super Lawyers* for commercial litigation. He graduated with high distinction from the University of Nebraska College of Law (order of the coif, order of the barristers). In law school, Jason was an executive editor of the Nebraska Law Review, a member of the national moot court team, and winner of numerous scholarships and awards. Jason and his wife, UNO philosopher Dr. Laura W. Grams, have three children, Elizabeth, Alexis, and Patton.

President-Elect Designate

MICHAEL J. McCARTHY, of North Platte, assumed his post as President-Elect Designate and will serve as NSBA President from October 2023 to October 2024.

Mike is Of Counsel at Dvorak Law Group, LLC in North Platte. McCarthy's practice focuses on estate planning, probate, real estate, and corporate and business planning. He advises individuals in the structuring of their estate plans and assists in preparation of their wills, trusts, powers of attorney, and advance directives/living wills. He also represents clients in probate and trust administration matters. Mike has over 40 years experience assisting clients with all of their estate/wealth planning needs.

McCarthy has served the NSBA as a House of Delegates member representing the eleventh judicial district and served as Chair of the House of Delegates in 2019. McCarthy also represented the 6th Supreme Court Judicial District on the NSBA's Executive Council from 2013-2016 and chaired the Nebraska Commission on the Unauthorized Practice of Law from 2008-2012. On a local level, McCarthy served on the North Platte Board of Education and the Great Plains Health Board of Directors as both a Board member and Board Chair. McCarthy also served on the North Platte Area Chamber of Commerce and Development Corporation Board of Directors from 2008-2012.

McCarthy graduated from the University of Nebraska College of Law in 1975. McCarthy and his wife Janie, have four sons, Matthew, Marcus, Mitchel and Jacob, and nine grandchildren.

House of Delegates

JASON S. DOELE took over as Nebraska State Bar Association House of Delegates Chair.

Jason Doele is a Partner with Stratton, DeLay, Doele, Carlson, Buettner & Stover, P.C., L.L.O, in Norfolk practicing primarily in the areas of personal injury, criminal defense, family law, and civil litigation. Doele has served as the President of the Madison County/7th Judicial District Bar Association and currently serves on the Nebraska Lawyers Assistance Program Advisory Committee. He is a member of the Nebraska State Bar Association, Nebraska Association of Trial Attorneys, American Association for Justice, Nebraska Criminal Defense Attorneys Association and the National Association of Criminal Defense Lawyers. Doele is also licensed in South Dakota.

Executive Council

YVONNE SOSA began her term on the NSBA Executive Council representing the Fourth Judicial District.

Yvonne is a life-long resident of South Omaha Nebraska and is currently an Assistant U.S. Federal Defender in the District of Nebraska, with offices in Omaha and Lincoln. She is an Adjunct Professor of Trial Advocacy at the University of Nebraska at Lincoln, College of Law. Ms. Sosa is the Chair and Interim Executive Director of the newly formed Legal Diversity Council. She has been an active member of the Nebraska State Bar Association since 2010, including serving on the Practice and Procedure Committee, Committee on Equity and Fairness, and Legal Services Committee. Ms. Sosa is a member of the Diversity, Women and the Law, Indian Law, Immigration Law, and Federal Law Sections. She graduated with the Fourteenth Class of the NSBA Leadership Academy. Ms. Sosa also serves the Nebraska Supreme Court as a member of the Access to Justice Commission. She received the 2019 NSBA Diversity Award.

PIERCE D. FIALA began his term on the NSBA Executive Council representing the Young Lawyers Section.

Pierce is an Associate Attorney at Skalka & Baack Law Firm, L.L.C. in Hastings, Nebraska and he assists clients across Central Nebraska with estate planning, business planning, probate, and real estate related matters. Pierce actively devotes his spare time to his community as he is a member of the Nebraska State Bar Association Young Lawyers Section Executive Committee, as well as several nonprofits within Central Nebraska. Mr. Fiala enjoys golfing, fishing, and traveling with friends and family.

Eight teams participated in trivia at OctoBARfest on Thursday night. The winning team, pictured L-R: Rob Schroeder and Liz Neeley, Kate and Shawn Flint, Hon. Andrew Lange, Korey and Regina Taylor, Scott Daniel. Not pictured: Kim Robak.

2021 NSBA Annual Meeting a Success

The 2021 Annual Meeting was held October 12-14 at the Embassy Suites in La Vista. 1,700 people registered to attend CLE seminars, section events, and social events.

Jill Robb Ackerman passed the gavel to William J. Mueller at the President's Dinner held Wednesday evening.

Gail Perry received the Outstanding Contributor to Women in the Law Award.

John H. Kellogg, Jr. received the George H. Turner Award.

Susan Sapp passed the House of Delegates gavel to Jason Doele at the conclusion of the House of Delegates Meeting.

Denise Kracl received the Award of Appreciation.

Judge Susan Bazis accepted the President's Professionalism Award, awarded to Hon. Laurie Smith Camp, posthumously.

Shawntal Mallory received the NSBA Diversity Award.

About 40 people participated in the Rise Against Hunger Food Drive on Friday morning as part of the Seventh Annual Public Service Project. In two hours, 10,000 meals were packaged to help feed some of the 842 million people across the globe suffering from hunger.

NSBA Member SPOTLIGHTS

Quinn Eaton

Employment Litigation Associate, Jackson Lewis P.C., Omaha

Where did you attend law school?
Creighton University School of Law, 2017.

What is the best career advice you have ever received?
Argue like you're arguing with your grandpa—not your sibling.

What do you do for fun?
I have several dogs and cats, and my wife and I foster dogs for a local rescue group.

What is your favorite law school memory?
The first few weeks/months, which felt like being dropped into a new world.

What is your least favorite law school memory?
Reading until ten o'clock at night.

What advice would you give a new lawyer?
Trying to impress someone assigning you work by acting like you know exactly what you're doing is just more likely to result in unimpressive work. Don't be afraid to ask questions.

Hannah Schmidt

Lead Attorney, Ameritas Life Insurance Corp., Lincoln

Where did you attend law school?
University of Nebraska College of Law, 2015.

What is the best career advice you have ever received?
Professor Medill from UNL College of Law always used to repeat the saying, "You don't get what you don't ask for." I have repeated that saying, or a derivative of it, to myself hundreds of times in my career. It has been a great guidepost on things both small and large.

What do you do for fun?
Running—sometimes for exercise and sometimes because I'm trying to keep up with my two kids!

What is your favorite law school memory?
Meeting my husband.

What is your least favorite law school memory?
Once, during a late night study session, I decided to make some hardboiled eggs for an easy, healthy snack during the week. I then fell asleep. The smell of those burnt hardboiled eggs is probably my least favorite memory in law school.

What do you like best about your practice area and why?
Oh, so many things! Employment law is endlessly fascinating. It's people and stories at it's core. And the law in this area is constantly evolving which makes it particularly interesting and exciting.

What is your favorite quote?
"The more you know, the more you realize you don't know."

What advice would you give a new lawyer?
Channel those nerves into energy and embrace the journey.

What have you enjoyed about being a member of the NSBA?
NSBA has helped me stay connected and engaged in the Nebraska legal community even though I don't, and never have, worked in private practice.

NSBA Member SPOTLIGHTS

R.J. (Randy) Stevenson

Partner and Chair of the Labor, Employment & Employee Benefits Practice Group at Baird Holm LLP, Omaha

Where did you attend law school?
University of Nebraska College of Law, 1985.

What is the best career advice you have ever received?
Specialize. Be civil and cordial with everyone at all times. Never compromise on quality. Be responsive. Work as a team. Use the term "Firm clients" and not "my clients." Be proud of your profession.

What kind of legal matter do you find most rewarding or personally satisfying and why?
One in which I help the client reach a fair compromise in a difficult situation and avoids litigation.

What is an unconventional lesson you've learned about the practice of law?
Don't assume what clients want. Ask them.

What do you do for fun?
Home improvement projects, watch movies, waterfowl hunt, play golf.

If you weren't a lawyer, what would you be and why?
An economist or fund manager. I have always enjoyed forecasting and investments.

What is your favorite law school memory?
Good friends, law school parties, and learning to think like a lawyer.

What is your least favorite law school memory?
First year property law class.

What do you like best about your practice area and why?
The human element. Employees do some crazy things. Employers do sometimes as well!

What is one thing you know now that you wish you would have known in your first year of practice?
The best way to attract clients is to meet people and get them to open up about what keeps them up at night.

Who is your hero and why?
I have four "heroes" who mentored my interest in the law throughout most of my life:
• (Age 5 - 15) Edward T. Hayes, a neighbor and former Douglas County Public Defender who was like a grandfather to me;
• (Age 15 - 18) Ivory Griggs, a Douglas County Public Defender I came to know through Explorer Scouts;
• (Age 18 - 22) Dr. Philip E. Secret, a political scientist at UNO who knew more about the Constitution than anyone I have ever met; and
• (Age 21 - present) the Hon. D Nick Caporale. He taught me business law at UNO and I then married his daughter 37 years ago!

What is your favorite quote?
"Pressure is a Privilege" - Billie Jean King

What is the most rewarding moment of your practice?
a. Leading and helping build the largest labor, employment and employee benefits practice in the region.
b. Being inducted as a Fellow in the College of Labor and Employment Lawyers.

What is your proudest moment?
Marrying my beautiful wife Laura and raising our two great children, Libby and Sam, who have become great young adults.

What advice would you give a new lawyer?
Make our profession proud!

What have you enjoyed about being a member of the NSBA?
Support throughout the years for things that matter to our profession, including many great CLE opportunities.

NSBA Member SPOTLIGHTS

Drew Graham

Associate Attorney, Svehla Law Offices, Aurora

Where did you attend law school?
University of Nebraska College of Law, 2012.

What is the best career advice you have ever received?
Work hard everyday controlling the things that you can control. Eventually others will recognize your hardwork and recognize your value as a result.

What kind of legal matter do you find most rewarding or personally satisfying and why?
The most rewarding matters are often those that are the most burdensome for the client. When I am able to resolve an issue that seems so overwhelming to the client, it feels good. They are often not the easiest, or the most profitable matters, but they definitely come with the greatest sense of accomplishment.

What is an unconventional lesson you've learned about the practice of law?
Being a lawyer (especially in private practice) is ultimately about selling yourself. Not in an advertising manner directly, but everyone you interact with is a potential client. You should always be selling others your value.

What do you do for fun?
I enjoy spending time with my wife and two daughters. On the odd occasion that I actually have some free time, I enjoy running.

If you weren't a lawyer, what would you be and why?
For as long as I can remember, I have never had any other career in mind. If I really had to do something, I am sure that it would be related to the renovation of houses. I enjoy working with my hands.

What is your favorite law school memory?
Graduation day!

What is your least favorite law school memory?
Any day that we had to take a test.

What do you like best about your practice area and why?
I really enjoy the variety of work. I am definitely not specialized in any one area, so it is always an unknown what will walk through the door. It is exciting not knowing what is next.

What is one thing you know now that you wish you would have known in your first year of practice?
Ask more questions. There are never enough questions. And to not care about what anyone else thinks of your questions, because we were all new lawyers at one point.

Who is your hero and why?
My dad is my hero. He worked tirelessly throughout my entire life, and accomplished a great deal both personally and professionally. Someday I hope to look back at my life and know that I have worked as hard as he did.

What is your favorite quote?
"Any intelligent fool can make things bigger, more complex, and more violent. It takes a touch of genius—and a lot of courage—to move in the opposite direction." Albert Einstein

What is your proudest moment?
The birth of my daughters.

What advice would you give a new lawyer?
Get involved with everything you can. Join bar associations and sections. Serve on committees and boards. Involvement is the key to integration in the community, and that is really the goal.

What have you enjoyed about being a member of the NSBA?
I enjoy the support that is available. Not everyone understands what it means to be a lawyer, but everyone at the NSBA does.

NSBA Member SPOTLIGHTS

Sue Loerts

Of Counsel, Jackson Lewis P.C., Omaha

Where did you attend law school?
University of Iowa College of Law, 1991.

What is the best career advice you have ever received?
Never stop learning.

What kind of legal matter do you find most rewarding or personally satisfying and why?
Advising employers on employment law matters allowing them to proactively comply with the law thus preventing a legal dispute or violation of the law.

What is an unconventional lesson you've learned about the practice of law?
It is always important to remember that you can advise your client but it is up to your client to decide whether and when to accept and follow your guidance. In life there may be compelling reasons not to follow your lawyers advice.

What do you do for fun?
Read mystery novels, see theater movies, enjoy long walks with my children.

If you weren't a lawyer, what would you be and why?
I was a corporate executive for many years before I entered private practice. If I did neither of these, I would love to own my own clothing boutique.

What is your favorite law school memory?
Discovering the fun of oral argument in moot court.

What is your least favorite law school memory?
Standing up to be grilled by my Contracts professor in 1L (Paper Chase-style).

What do you like best about your practice area and why?
I like being able to help employers to comply with the law and avoid problems before they happen.

What is one thing you know now that you wish you would have known in your first year of practice?
Your colleagues all have the same challenges as you do and you are equipped to handle every challenge that you will face.

What is the most rewarding moment of your practice?
The most rewarding moments are each time a client expresses gratitude for my services.

What is your proudest moment?
Seeing my son sworn into the Nebraska State Bar in May.

What advice would you give a new lawyer?
Do the best work that you can do for your client and treat yourself with kindness. Don't burn yourself out, because that doesn't help anyone.

What have you enjoyed about being a member of the NSBA?
I have enjoyed the opportunity to learn from and with my colleagues across the state.

NSBA Member SPOTLIGHTS

Mark Fahleson

Partner, Rembolt Ludtke LLP, Lincoln

Where did you attend law school?
University of Nebraska College of Law, 1992.

What kind of legal matter do you find most rewarding or personally satisfying and why?
On nearly a daily basis, I counsel employers in the decision to separate an employee from employment. It sounds horrible, but more often than not the termination occurs because the employee is not in a position that aligns with the employee's strengths, talents and interests. By separating the employee in a manner that protects the dignity of the employee and perhaps provides a soft landing, I'm helping the employee find a position that is better aligned with what they were called to do and helping the employer find an employee whose strengths, talents, and interest are better aligned with the position.

What do you do for fun?
I was an ag major in undergrad. The ag economy was in the dumps in the late 1980s, and I only took the LSAT and went to law school because my undergrad roommate did. But once I got to law school I loved it. There are still days I wish I could just be a law student forever. I've now reached a point in my career where I own a small farm near Lincoln and manage a ranch in western Nebraska for some clients. Now that I'm an empty-nester, that's where I spend my free time, and the manual labor is a great release from the mental stress associated with the practice of law.

If you weren't a lawyer, what would you be and why?
Owner/operator of a diversified agriculture operation.

What is your favorite law school memory?
I didn't do well my first semester in law school. I decided over that winter break I was either going to drop out or give it my all, so I decided to give it my all. I was living on our family farm outside of Lincoln at the time so I would get up at 4 a.m. every weekday, drive to the convenience store at 56th & Holdrege and study until class time (unlimited beverages). I would then go back there after class until evening. It was actually a productive place to study, my own version of a coffee shop before coffee shops became trendy.

What is your least favorite law school memory?
Fellow law students wanting to discuss final exams right after the exam concluded.

What do you like best about your practice area and why?
Employment law is always evolving and never boring. Almost every year there is a new law or theory that we must understand and counsel our employer clients about. It often involves sex, drugs and, occasionally, rock 'n roll.

What is one thing you know now that you wish you would have known in your first year of practice?
It's a marathon, not a sprint.

Who is your hero and why?
I've worked with lots of great attorneys, but one who particularly stands out is Judge D. Nick Caporale, for whom I served as a law clerk when he was on the Nebraska Supreme Court. Hard-working. Brilliant. Principled. And still working today in private practice at Baird Holm at the age of 93. It was an honor to work for him and to learn from him.

What is your favorite quote?
"Whatever you do, work heartily, as for the Lord and not for men . . . ." Colossians 3:23

What is the most rewarding moment of your practice?
On one occasion, I was retained by an employer to assist in separating an employee from employment. The client asked me to handle it. During the termination I explained to the employee my philosophy on terminations and how this was opportunity for the employee to find a vocation more in line with the employee's strengths, talents, and interests. Years later I ran into that same employee and he told me that my advice was spot on, that he couldn't be happier in his new position and he literally thanked me for firing him.

What advice would you give a new lawyer?
You will make mistakes. Any attorney who claims they haven't is deceiving themselves. Don't let the fear of making mistakes inhibit you from trying something you haven't done before, and learn from the mistakes you make so you don't make them again.

What have you enjoyed about being a member of the NSBA?
Nebraska attorneys are fortunate to have the NSBA. The benefits it provides are immeasurable.

NSBA Member SPOTLIGHTS

Ken Wentz

Principal, Jackson Lewis P.C., Omaha

Where did you attend law school?
Creighton University School of Law.

What do you do for fun?
Run with family, friends, and coach cross-country.

If you weren't a lawyer, what would you be and why?
Author. Because sometimes the best stories have not yet been written.

What is your least favorite law school memory?
First semester final exams. Test begins. One guy stands up a few minutes in, breaks his pencil in half and walks out. Never saw him again.

What do you like best about your practice area and why?
The clients. We practice management-side labor and employment law. Everyday clients call with stories about employee conduct. You can't predict it. But you can bond with clients over the good, the bad, and the ugly.

What is one thing you know now that you wish you would have known in your first year of practice?
Never go to court or to a partner's office unarmed (i.e. without a pen and paper)—and have them next to your bed for those late-night revelations.

Who is your hero and why?
My grandpa. He's family driven, quick witted, and a sounding board for all of life's problems.

What advice would you give a new lawyer?
Proofread (A LOT). First impressions of you are formed by your colleagues, judges and opposing counsel based upon your work product.

What have you enjoyed about being a member of the NSBA?
The connections. When you go to your first NSBA event or meeting, don't plan to know many people. But keep going. You will form lifelong connections with lawyers from your area, and way outside your area.

If you are aware of anyone within the Nebraska legal community (lawyers, law office personnel, judges, courthouse employees or law students) who suffers a sudden, catastrophic loss due to an unexpected event, illness or injury, the NSBA's SOLACE Program can likely assist that person in some meaningful way.

Contact Mike Kinney at mkinney@ctagd.com and/or Liz Neeley at lneeley@nebar.com for more information.

We have a statewide-and-beyond network of generous Nebraska attorneys willing to get involved. We do not solicit cash, but can assist with contributions of clothing, housing, transportation, medical community contacts, and a myriad of other possible solutions through the thousands of contacts available to us through the NSBA and its membership.

Meet the New Volunteer Lawyers Project Team Members!

August and September have been busy for the Volunteer Lawyers Project (VLP). VLP has onboarded three new staff members: Lia Bies, Sarah O'Neill and Deanna Hobbs.

John Rogers who had served as Program Attorney left VLP to go back to private practice with Kasaby Schmoke. Lia Bies is the new VLP Program Attorney.

Lia attended the University of Nebraska at Lincoln and the University of Nebraska College of Law. Prior to joining VLP, Lia had worked at Legal Aid of North Carolina's Centralized Intake Line.

At the same time, VLP received funding to hire attorneys to facilitate the Tenant Assistance Project (TAP).

Sarah O'Neill joined VLP to work with the Douglas County TAP. Sarah grew up in Lincoln and attended the University of Nebraska Lincoln for undergrad, served as an AmeriCorps Member in Omaha for two years, and then attended the University of Nebraska College of Law. She graduated in the Spring and was admitted to the Bar this September.

Deanna Hobbs also joined VLP and will be an essential force in facilitating TAP in Lancaster and Douglas Counties. Deanna grew up in Omaha and graduated from the University of Nebraska College of Law. Like Sarah, she participated in TAP during law school and was offered a position due to her excellence performance as a law student volunteer.

Lia and Sarah answered some questions so that NSBA members can get to know them better.

Question: Why did you want to come work with VLP?

Lia Bies: I believe very strongly that all people, regardless of income, deserve access to an attorney to help them navigate the legal system. However, the resources for legal services organizations that serve low-income people are limited. By harnessing the talent and skills of the private bar, we can work towards providing better access to the legal system and representation to everyone in our community. I think that VLP plays a very important role in matching up private attorneys who want to provide pro bono services with the people in our community who need that assistance. I wanted to be a part of helping to make that happen.

Lia Bies

Sarah O'Neill

(Not pictured: Deanna Hobbs)

Sarah O'Neill: My passion for public interest work is what drove me to attend law school and is what brought me to VLP. Specifically, I knew I wanted to be a part of launching TAP in Douglas County because I spent my entire 3L year helping with TAP in Lancaster County and loved being a part of this important project that was addressing a critical need in the community to help keep folks housed.

Question: Why does pro bono work matter to you?

Sarah O'Neill: Pro bono work matters to me because access to justice should not be limited to those with means and resources. In law school I engaged in a number of pro bono opportunities, including TAP, and I am excited to continue to provide pro bono services through my work, facilitating TAP in Douglas County.

Lia Bies: Pro bono matters for lots of reasons! Here are my top two: 1. There is such incredible need for pro bono services; each and every pro bono case that attorney takes is an actual person, usually facing difficult circumstances, who would otherwise be unrepresented. 2. Pro bono work benefits attorneys. Knowing that you are using your skills to help someone in need is really meaningful and it can be a welcome respite from your day-to-day practice.

Question: What are your Halloween plans?

Sarah O'Neill: I might dress up as Greg from Over the Garden Wall, but I plan to stay home and watch scary movies while eating copious amounts of chocolate.

Lia Bies: I will be trick or treating with my kids (aka Optimus Prime and Scooby Doo!) and trying to keep them from eating ALL of the candy that night!

VLP Current Events

Tenant Assistance Project in Douglas County

After operating successfully in Lancaster County for over a year, the Tenant Assistance Project (TAP) has launched in Douglas County. If you are interested in volunteering at either Tenant Assistance Project, please sign up on the VLP website at nevlp.org/volunteer or email Sarah O'Neill at soneill@nevlp.org.

The Pro Bono Summit

Each October, the Nebraska Pro Bono Collaborative works together to host a Pro Bono Summit. The Nebraska Pro Bono Collaborative is a group of nonprofit legal service providers that utilize pro bono volunteers across the state. Members include: The Legal Clinics at the Creighton University School of Law and at the University of Nebraska College of Law, Legal Aid of Nebraska, The Immigrant Legal Center, Nebraska Appleseed, Education Rights Counsel, The Nebraska Coalition to End Sexual and Domestic Violence, the Women's Center for Advancement, and the NSBA Volunteer Lawyers Project.

October is the ideal month for the Summit because the event can be incorporated into NSBA's Annual Meeting, where attorneys from across the state are already present, and because the American Bar Association asks all attorneys to celebrate pro bono work in October.

This year the Pro Bono Summit featured a panel of attorneys from different sized firms on how they incorporate pro bono into their practice. Nonprofit legal service providers shared how attorneys doing pro bono work is critical to bridging the Civil Justice Gap. Chief Justice Heavican, Justice Stacy, and Judge Frankie Moore thanked attorneys in Nebraska who do pro bono work.

Heart Ministry Center Clinic

VLP facilitated clinics at the Heart Ministry Center in August, September and October. The Heart Ministry Center is located in the heart of North Omaha and strives to meet the needs of community members who are experiencing financial hardships. While people walk in with a wide range of legal issues, the most common issue for which help has been sought is immigration. Each month more people attend the clinic and attorneys help dozens of people and families indirectly in just the two-hour period.

Pro Bono and Reduced Fee Case Placement

While all other programs are blossoming, the core program of VLP remains finding pro bono and reduced fee ("low bono") counsel for Nebraskans. Case placement is the essential function of VLP both because it is one of the most meaningful ways for attorneys to serve Nebraskans living in poverty and because it helps courts run less encumbered by technical issues that pro se litigants may not know how to navigate. If you are interested in accepting pro bono or reduced fee cases please email sseim@nevlp.org.

#ThankfulThursdays

An important part of the Volunteer Lawyers Project's mission is recognizing and rewarding individuals who give back to their communities through pro bono work. While volunteers are motivated by the work and not the praise, we want to celebrate you! If you are doing pro bono work, or know an attorney who is going above and beyond to use their legal skills to give back to low income individuals, please let the VLP team know by emailing nevlp@nevlp.org.

VLP facilitated clinics at the Heart Ministry Center in August, September and October. Each month more people attend the clinic and attorneys help dozens of people and families indirectly in just the two-hour period.

Pro Bono Partners

Volunteers make access to justice a reality for those of limited means. VLP extends it gratitude to the following pro bono partners who have provided pro bono services through September 2021.

No Fee Pro Bono Cases

Jill M. Abrahamson
Mark D. Albin
Roxanne M. Alhejaj
Jamie L. Arango
Dwyer Arce
Amber D. Aryes
Joel A. Bacon
Charles J. Bentjen
Claude E. Berreckman Jr.
Mark S. Bertolini
James T. Blazek
Arielle M. Bloemer
Amy K. Bonn
Kimberly A. Booth Chicoine
Elizabeth S. Borchers
Donald H. Bowman
Bradley A. Boyum
D.C. "Woody" Bradford III
Timothy E. Brogan
Kara E. Brostrom
Lucrece H. Bundy
Angela Burmeister
James A. Cada
Tom O. Campbell
Joel Carlson
Sarah L. Centineo
Bill Chapin
Katelyn Cherney
Joshua L. Christolear
Stephanie L. Clark
Taylor Cochrane
Rachel N. Collins
Jeffrey M. Cox
James W. Crampton
David J. Cripe
Jaclyn N. Daake
Mark J. Daly
Michael J. Decker
Richard A. Dewitt
Megan A. Dockery
Brett E. Ebert
John C. "Jack" Ehrich
John F. Eker III
Timothy R. Engler
Allan J. Eurek
Bradley A. Ewalt
Elizabeth Eynon-Kokrda
Michael R. Faz
David H. Fisher
Jennifer M. Fleischer
Stefanie S. Flodman
Rhonda R. Flower
Anna S. Forman
Leta F. Fornoff
Julie Fowler
David E. Fuxa
Tana M. Fye
William D. Gilner
Lucinda C. Glen
Francisco J. Gomez-Mancillas
Daniel J. Gutman
Nicholas E. Halbur
Michael J. Haller Jr.
Katheryn L. Harouff
David G. Hartmann
Edward W. Hasenjager
Patrick M. Heng
Taylor Herbert
Keelan P. Holloway
John L. Holtz
James H. Hoppe
Pamela L. Hopkins
Jeffrey B. Hubka
Kathleen J. Hutchinson
Jeffrey C. Jarecki
Larry N. Jarvis
Sandra L. Jarvis
Karisa D. Johnson
C.G. (Dooley) Jolly
Jessica Kallstrom-Schreckengost
Howard N. Kaplan
Colin M. Kastrick
Melanie A. Kirk
Luke J. Klinker
Susan M. Koenig
James R. Korth
Justin J. Kuntz
Craig H. Lane
Jane F. Langan Mach
Mary J. Livingston
Barbara C. Lohr Van Sant
Dana M. London
Christin P. Lovegrove
Lisa F. Lozano
Verlyn Luebbe
Kate M. Manuel
Tyler A. Masterson
Brett T. McArthur
Richard P. McGowan
Daniel D. McMahon
Aimee S. Melton
Michael J. Merrick
Christopher A. Mihalo
Michael W. Milone
Seth J. Moen
Roger D. Moore
John V. Morgan
Stacy L. Morris
David J. Myers
Katie Navratil
Leslie J. Nordhausen
Nicholas W. O'Brien
Kevin J. O'Connell
Oluseyi (Seyi) O. Olowolafe
Scott D. Pauley
David W. Pederson
Ralph E. Peppard
Trev E. Peterson
Carol Pinard-Cronin
James Polack
Andrew R. Portis
Trevin H. Preble
Chad D. Primmer
Sally A. Rasmussen
Daniel S. Reeker
Eric M. Rees
Sean P. Rensch
Teresa S. Richards
Wendy J. Ridder
Nicholas J. Ridgeway
Samantha M. Robb
Eddy M. Rodell
Lawrence Roland
John D. Rouse
Jasen J. Rudolph
Mindy M. Rush Chipman
Patrick J. Ryan
Susan K. Sapp
Robert M. Schartz
Angela F. Schmit
Alan C. Schroeder
Van A. Schroeder
Katherine E. Sharp
Lawrence K. Sheehan
Thomas J. Shomaker
Megan E. Shupe
Bradley A. Sipp
Jackson L. Slechta
Shaylene M. Smith
Desirae M. Solomon
Amanda M. Speichert
Mark A. Steele
Scott W. Steele
Mitchell C. Stehlik
Paul R. Stultz
Susan K. Suh
Audrey R. Svane
Brian R. Symington
Jason R. Thomas
Sovida I. Tran
Thomas W. Tye II
Erin M. Urbom
Andrew J. Van Velson
Elaine A. Waggoner
Jeffrey A. Wagner
Joan (Joni) W. Watke
David R. Webb
Amanda M. Weber
Jeffrey P. Welch
Joshua W. Weir
Melissa A. Wentling
Kelle J. Westland
Spencer B. Wilson
LaShawn D. Young

Pro Bono Partners

Tenant Assistance Project *(Lincoln)*

Austin Artz, *student*
Alejandra Ayotitla, *student*
Terry K. Barber
Jayden Barth, *student*
Robert F. Bartle
Shayna Bartow, *student*
Sam Baue, *student*
Ann Bauerle, *student*
Taylor Christopher, *student*
Patrick M. Driver
Alan Dugger, *student*
Amzie Dunekacke, *student*
Christopher L. "Spike" Eickholt
Grant Friedman, *student*
Meaghan A. Geraghty
Zachary Hadenfelt, *student*
Cal Harman, *student*
Max Hjermstad, *student*
Katherine Hoatson, *student*
Deanna Hobbs, *student*
Austin Hoffman
James H. Hoppe
Wilson Hupp, *student*
Haley Huson, *student*
Miranda Hussey, *student*
Nick Larkin, student
Cyrus Jarrett, *student*
Bobby Larson, *student*
Tessa Lengeling, *student*
Alex M. Lierz
Emma Lindemeier, *student*
Ivy Lutz, *student*
Courtney Lyons Breitkreutz, *volunteer*
Kait Madsen, *student*
Lydia Mann, *student*
Jordan Mason, *student*
Ryan Maxfield, student
Kaitlyn Moore, *student*
Mauricio Murga Rios, *student*
Sarah O'Neill, *student*
Bailey Petty, *student*
Stephany P. Pleasant Maness
Sean M. Reagan
Kevin L. Ruser
Mindy Rush Chipman
Stephen A. Sael
Margaret E. Schiefen
Christopher Schmidt, *student*
John Schmidt, *student*
Jackson L. Slechta
Amy Sonnenfeld, *student*
Scott Smith, *student*
Charles T. Steenson
Jennifer L. Sturm
Ryan P. Sullivan
Ryan M. Sump
Audrey R. Svane
Will Taylor, *student*
David P. Thompson
Rachel Tomlinson Dick, *student*
Monzeratt Valentin, *student*
Bri Wagner, *student*
Madison Whitney, *student*
Emily Witzenburg, *student*

Tenant Assistance Project *(Douglas)*

Hugh I. Abrahamson
Wesley H. Bain Jr.
Alexa B Barton
Angela Burmeister
John J. Cavanaugh
David J. Cripe
Michelle M. "Micky" Devitt
Wesley S. Dodge
Alan Dugger, *student*
David D. Ernst
Meaghan A. Geraghty
Charles J. "Jan" Headley
Christine D. Henningsen
Jacob R. Huju
Joy M. Kathurima
Nicholas J. Knihnisky
Danny C. Leavitt
Tessa Lengeling, *student*
Peng Li, student
Catherine M. Mahern
Matt Mandolfo, *student*
Tyler A. Masterson
Aimee S. Melton
Michael W. Milone
Andrea A. Montoya
David M. Pantos
Carol Pinard Cronin
Mary Sederstrom
Scott Smith, student
Ryan P. Sullivan
Rachel Tomlinson Dick, *student*
Andy Vuorela
Joshua A. Waltjer
Judith A. Wells
Matthew J Wurstner

Self-Help Centers

Buffalo
Melodie T. Bellamy, *Coordinator*
Brandon D. Brinegar
Coy T. Clark
Brandon J. Dugan
Lucas J. Elsbernd
Marsha E. Fangmeyer
John D. Icenogle
Jeffrey C. Knapp
Nicole J. Luhm
Jerad A. Murphy
Nicholas J. Ridgeway
Luke E. Zinnell

Douglas, Hall and Lancaster
Remain closed at this time due to COVID-19.

Madison
Ryan J. Stover, *Coordinator*

Scotts Bluff
Stacy C. Bach, *Coordinator*

Lawyers in the City *(Heart Ministry Center, Omaha, May 2021)*

Amy S. Bones
Roxana Cortes-Mills
Dearra R. Godinez
Peng Li
Ellen P. Prochaska
Susan Reff
Emily M. Sands
Matthew J. Wurstner

Lawyers in the City *(Heart Ministry Center, Omaha, September 2021)*

Linda F. Allen
Anna D. Deal
Bassel F. El-Kasaby
Susan. Reff
Emily M. Sands
Lauren A. Schmoke

Pro Bono Partners

Reduced Fee Pro Bono Cases

Lisa A. Adams
Claire K. Bazata
Audrey A. Bellew
Diane L. Berger
Claude E. Berreckman Jr.
Andrew T. Braun
Michelle L. Bremer
Burke C. Brown III
Mary C. Byrd
Katherine R. Chadek
April D. Cover
Brian J. Davis
Jeffrey P. Ensz
William J. Erickson
Kyle J. Flentje
Leta F. Fornoff
Elizabeth N. Flynn
Stephanie N. Flynn
Leah J. Gleason
Patrick M. Heng
Emilee L. Higgins
Alexandra J. Hubbard
Margaret R. Jackson
Kenneth F. Jacobs
Mark F. Jacobs
Karisa D. Johnson
Jessica Kallstrom-Schreckengost
Jennifer D. Kearney
Jeanelle S. Kleveland
John A. Lentz
Michele Lewon
Alex M. Lierz
Nicole J. Luhm
Brett T. McArthur
James K. McGough
Ceci N. Menjivar
Samantha F. Miller
David J. Myers
Melissa M. Oestmann
James A. Owen
Patrick M. Patino
Kyle A. Petersen
Wendy J. Ridder
Gregory A. Rosen
Jasen J. Rudolph
Courtney R. Ruwe
Katie M. Samples Dean
Audrey L. Sautter
Van A. Schroeder
Megan E. Shupe
Jackson L. Slechta
Keith Smith
Morgan L. Smith
Ashley K. Spahn
Bruce E. Stephens
Ryan M. Swaroff
Derek A. Terwey
Christina Thornton
Joanna M. Uden
Andy Vuorela
Jamel J. Walker
Amanda M. Weber
Melissa A. Wentling
Lyle E. Wheeler Jr.
Leigha E. Wichelt
Timothy J. Wollmer
Tara A. Wrighton
Brandi J. Yosten

Nebraska Free Legal Answers

Alexa B. Barton
Claude E. Berreckman Jr.
Joshua L. Christolear
Carol A. Cleaver
John T. Densberger
Carla J. DeVelder
Quinn R. Eaton
Daniel J. Esquivel
Michael R. Faz
Mattea Fosbender
Drew A. Graham
Brenna M. Grasz
Mason W. Gregory
John T. Haarala
Michael J. Haller
Katheryn L. Harouff
Kamron T. Hasan
Sydney L. Hayes
John L. Holtz
Sara P. Hulac
Ashley M. Inbau
Kalissa H. Kleine
Brian J. Koenig
Susan M. Koenig
Jane F. Langan Mach
Jeffrey B. Lapin
Alex M. Lierz
Joshua M. Livingston
Catherine M. Mahern
Ann C. Mangiameli
Cody B. Nickel
Patrice D. Ott
Katherine H. Owen
Sarah E. Preisinger
Gregory A. Rosen
Kevin L. Ruser
Andrew T. Schlosser
Lyndi A. Skinner
Rachael A. Smith
Brett C. Stohs
Ryan P. Sullivan
Richard W. Tast Jr.
Jessica L. Weborg
Abbie J. Widger
Matthew J. Wurstner
Michele E. Young

Law Students

The following Creighton University School of Law and University of Nebraska College of Law students provided free legal assistance for low-income individuals in 2021. We are grateful for students' commitment to improving access to justice through contributions to law-related pro bono services.

Creighton University School of Law
Allison Adachi
Dallas Alfaro
Sapphire Andersen
Haley Cannon
Jodee Dixon
Eric Hagen
Caroline Hansen
Taylor Hite
Alexis Homme
Callie Kanthack
Taylor Loy
Christopher McMahon
Jessica Patach
Sydney Pontius-Maynes
Jon-Thomas Roemmick
Ashley Xiques

University of Nebraska College of Law
Claudia Brock
Katie Curtiss
Deanna Hobbs
Tessa Lengeling
Mauricio Murga Rios
Sarah O'Neill
Allison Seiler
Amy Sonnenfeld
Cheng (Kevin) Zhang

Landlord-Tenant "Know your Rights" Seminar *(Heart Ministry Center, Omaha, April 2021)*

John P. Farrell, *Speaker*

Meet Ami Johnson, NSBA's New Section Facilitator

I want to start by thanking Jennifer Hiatt for all her hard work with the Nebraska State Bar Association. I am humbled and excited to continue her efforts as your new Section Facilitator. A former high school social sciences teacher, I spent the last 10 years coordinating civic education programming for the Nebraska Legislature in addition to my duties as a writer with the Unicameral Update. I look forward to meeting everyone and finding creative ways to engage meaningfully with each Section in the coming year.

Reminder: NSBA Communities

If you are part of an NSBA Section, make sure you are receiving your section messages by whitelisting the listerv domain (@connectedcommunity.org).

Agricultural Law
NEBAR-agriculturallawsection@ConnectedCommunity.org

Alternative Dispute Resolution
NEBAR-alternativedisputeresolution@ConnectedCommunity.org

Appellate Practice Section
NEBAR-appellatepractice@ConnectedCommunity.org

Bank Attorneys Section
NEBAR-bankattorneys@ConnectedCommunity.org

Bankruptcy Section
NEBAR-bankruptcy@ConnectedCommunity.org

Business Law Section
NEBAR-businesslawsection@ConnectedCommunity.org

Corporate Counsel Section
NEBAR-corporatecounsel@ConnectedCommunity.org

Diversity Section
NEBAR-diversitysection@ConnectedCommunity.org

Elder Law Section
NEBAR-elderlaw@ConnectedCommunity.org

Family Law Section
NEBAR-familylawsection@ConnectedCommunity.org

Federal Law Section
NEBAR-federallaw@ConnectedCommunity.org

General Practice Section
NEBAR-generalpractice@ConnectedCommunity.org

Government & Administrative Practice Section
NEBARgovernmentandadministrativepractice@ConnectedCommunity.org

Health Law Section
NEBAR-healthlaw@ConnectedCommunity.org

Immigration Law Section
NEBAR-immigrationlaw@ConnectedCommunity.org

Indian Law Section
NEBAR-indianlaw@ConnectedCommunity.org

Intellectual Property Section
NEBAR-intellectualproperty@ConnectedCommunity.org

Juvenile Law Section
NEBAR-juvenilelaw@ConnectedCommunity.org

Labor Relations & Employment Law Section
NEBAR-laborrelationsandemploymentlaw@ConnectedCommunity.org

Law Practice Management Section
NEBAR-lawpracticemanagement@ConnectedCommunity.org

Limited Scope Representation Section
NEBAR-limitedscoperepresentation@ConnectedCommunity.org

Military &Veterans Law Section
NEBAR-militaryveteranslaw@ConnectedCommunity.org

Natural Resources and Environmental Law Section
NEBAR-naturalresourcesandenvironmentallaw@ConnectedCommunity.org

Public Interest Law Section
NEBAR-publicinterestlaw@ConnectedCommunity.org

Real Estate, Probate & Trust Section
NEBAR-realestateprobateandtrustlaw@ConnectedCommunity.org

Securities Law Section
NEBAR-securitieslaw@ConnectedCommunity.org

Senior Lawyers Section
NEBAR-seniorlawyers@ConnectedCommunity.org

Taxation Section
NEBAR-taxation@ConnectedCommunity.org

Women & the Law Section
NEBAR-womenandthelaw@ConnectedCommunity.org

Workers' Compensation Section
NEBAR-workerscompensation@ConnectedCommunity.org

Young Lawyers Section
NEBAR-younglawyerssection@ConnectedCommunity.org

The NSBA would like to thank the 2020-2021 Section Chairs for all their hard work and dedication in furthering the goals of their sections and promoting the mission of the NSBA.

Agricultural: **JAMES NYGREN**, Omaha

Alternative Dispute Resolution: **AMY VAN HORNE**, Omaha

Appellate Practice: **HON. RIKO BISHOP**, Lincoln and **MICHAEL J. WILSON**, Lincoln

Bank Attorneys: **MARLON LOFGREN**, Omaha

Bankruptcy: **DAVID KOUKOL**, Omaha

Business: **BRADLEY HOLBROOK**, Kearney

Corporate Counsel: **MIKE LYONS**, Omaha

Diversity:
JOAN WATKE, Omaha and **HAZELL RODRIGUEZ**, Lincoln

Elder Law and Special Needs: **DAVID M. THOMPSON**, Omaha

Family: **LINDSAY BELMONT**, Omaha

Federal: **KRISTA ECKHOFF**, Omaha

General Practice: **LEAH GLEASON**, Holdrege

Government and Administrative Practice: **THOMAS A. GREEN**, Lincoln

Health: **TORRI CRIGER**, Omaha

Immigration: **HEIDI OLIGMUELLER**, South Sioux City

Indian: **ANDREA HUNTER SNOWBALL**, Winnebago

Intellectual Property: **CHERYL HORST**, Lincoln

Juvenile: **AMANDA SPEICHERT**, North Platte

Labor Relations & Employment: **PAMELA BOURNE**, Omaha

Law Practice Management: **SUSAN REFF**, Omaha

Limited Scope Representation: **JAMIE HERMANSON**, Omaha

Military and Veterans Law: **STEPHANI BENNETT**, Lincoln

Natural Resources & Environmental: **BENJAMIN BUSBOOM**, Omaha

Public Interest: **SARAH PREISINGER**, Papillion

Real Estate, Probate and Trust: **TOSHA RAE HEAVICAN**, Omaha

Securities: **JUSTIN YATES**, Waverly

Senior Lawyers: **WILLIAM BIGGS**, Omaha

Taxation: **WINIFRED HAWKINS**, Omaha

Women and the Law: **GRETCHEN McGILL**, Omaha

Workers' Compensation: **ELLEN DEAVER**, Lincoln

Young Lawyers: **ALEX LIERZ**, Lincoln

Upcoming Section Events/Seminar

• **December 16** - Young Lawyers Professional Development Series: Maximizing Your NSBA Member Benefits

If you're interested in any of the NSBA Sections or have questions, contact NSBA Section Facilitator, Ami Johnson, at 402-742-8126 or ajohnson@nebar.com.

Join NetWORKS!

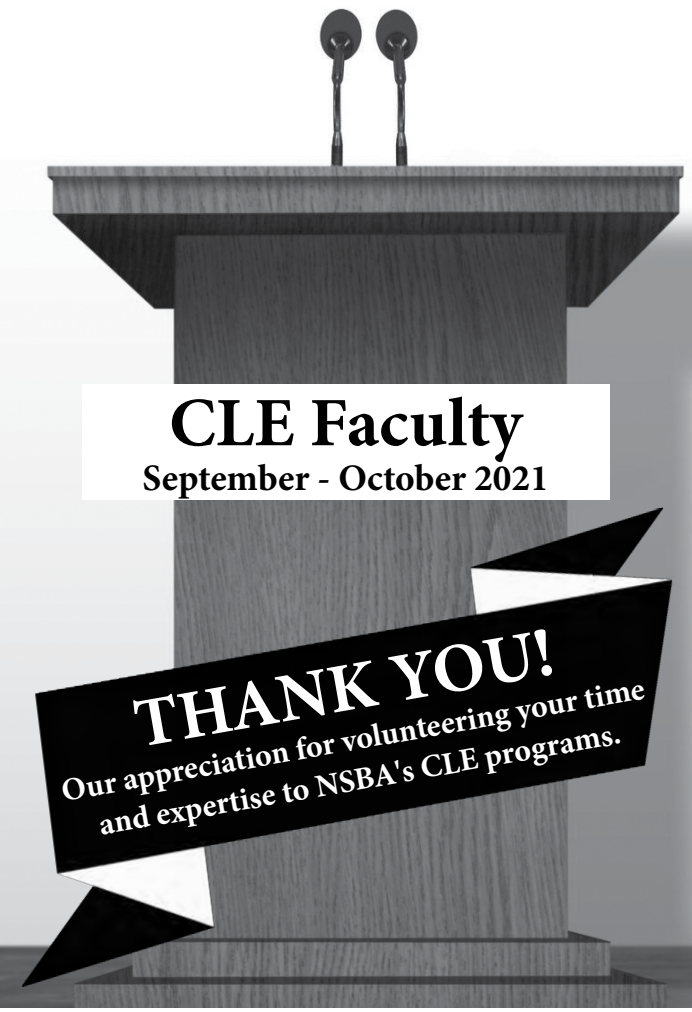
NSBA's Professional Networking Group

• Two groups – Omaha and Lincoln

• Be matched for a virtual meeting or in-person coffee or lunch, depending on your location and preference, 6 times during the year

• An enjoyable way to build your professional network and hone your networking skills

More details at www.nebar.com/NetWORKS



CLE Faculty

September - October 2021

THANK YOU!

Our appreciation for volunteering your time and expertise to NSBA's CLE programs.

Thomas F. Ackley
Koley Jessen, PC, LLO

Anthony M. Aerts
Rembolt Ludtke LLP

Kaylen K. Akert
Woods Aiken LLP

Andrew J. Almodova
Koley Jessen, PC, LLO

Adam Astley
Astley Putnam, PC, LLO

Chris Aupperle
Nebraska Lawyers Assistance Program

Jason G. Ausman
Ausman Law Firm PC LLO

Stacy C. Bach
Nossaman Petitt Law Firm, P.C.

Michael L. Bacon
Bacon, Vinton & Venteicher, L.L.C

Jennifer Bear Eagle
Big Fire Law & Policy Group, LLP

Audrey A. Bellew
Brouillette Dugan Troshynski Bellew PC LLO

Colin J. Bernard
McGill Gotsdiner Workman & Lepp, PC LLO

Prof. Patrick J. Borchers
Creighton University School of Law

Benjamin E. Busboom
Husch Blackwell LLP

James A. Campbell
Nebraska Attorney General's Office

Sean A. Carter
Mesa CLE

Michael W. Chase
Baird Holm LLP

David V. Chipman
Monzón, Guerra & Associates

Prof. Steven T. Collis
University of Texas at Austin School of Law

Danielle Conrad
ACLU of Nebraska

Sheila D. Corbine
Big Fire Law & Policy Group LLP

Logan Cornett
Institute for the Advancement of the American Legal System

Roxana Cortes-Mills
Immigrant Legal Center

Zachariah DeMeola
Institute for the Advancement of the American Legal System

Prof. Richard F. Duncan
University of Nebraska College of Law

Gene M. Eckel
Goosmann Law Firm, PLC

Daniel J. Epstein
Goosmann Law Firm

Frank J. Falen
Budd Falen Law Offices L.L.C.

Matthew Farrell
KCoe Isom

Brenda Fauber
United States District Court for the District of Nebraska

Laura Garcia-Hein
United States District Court for the District of Nebraska

Tara L. Gardner-Williams
Keating, O'Gara, Nedved & Peter, PC, LLO

Jennifer L. Gaughan
Legal Aid of Nebraska

Stephen S. Gealy
Baylor Evnen, LLP

Prof. Rachel Goedken
Creighton University School of Law

Lauren R. Goodman
McGrath North Mullin & Kratz, PC LLO

Brandon Gordon
Run Networks

Kevin Gustafson
Fastcase

Scott Hahn
Koenig|Dunne, P.C., L.L.O.

Nicholas E. Halbur
Elder Law of Omaha, PC LLO

Robert J. Hallstrom
Brandt Horan Hallstrom & Stilmock

Kenneth W. Hartman
Baird Holm LLP

Hon. Michael Heavican
Nebraska Supreme Court

Laurel Heer Dale
Volunteer Lawyers Project, NSBA

Emilee L. Higgins
Law Offices of E. Higgins

Timothy G. Hruza
Mueller Robak LLC

Jon L. Jabenis
Schaefer Shapiro, LLP

Anne Jenrette-Thomas
Stinson, LLP

Jerry L. Jensen
Office of The United States Trustee

Karisa D. Johnson
Koukol & Johnson, LLC

Dallas D. Jones
Baylor Evnen, LLP

Robert L. Kardell
Baird Holm LLP

Daniel E. Klaus
Rembolt Ludtke LLP

David J. Koukol
Koukol & Johnson, LLC

Hon. Brian S. Kruse
United States Bankruptcy Court - District of Nebraska

Mark C. Laughlin
Fraser Stryker PC LLO

Olivia Lehman
Student, Creighton University School of Law

Prof. Emeritus John P. Lenich
University of Nebraska College of Law

John Lentz
Lentz Law, PC, LLO

William J. Lindsay, Jr.
Gross & Welch, PC, LLO

David A. Lopez
Husch Blackwell LLP

Elsbeth Magilton
University of Nebraska College of Law

Ryan P. Maloley
Koley Jessen, PC, LLO

Tyler A. Masterson
Koukol & Johnson, LLC

Michael D. Matejka
Woods & Aitken LLP

Calandra S. McCool
Big Fire Law & Policy Group LLP

Gretchen L. McGill
Dvorak Law Group, LLC

Ryan K. McIntosh
Brandt, Horan, Hallstrom and Stilmock

Mark E. McQueen
Baird Holm LLP

Scott M. Mertz
Legal Aid of Nebraska

Amy A. Miller
Disability Rights Nebraska

Michael W. Milone
Koukol & Johnson, LLC

Hon. Frankie Moore
Nebraska Court of Appeals

Scott P. Moore
Baird Holm LLP

Stephen D. Mossman
Mattson Ricketts Law Firm

William J. Mueller
Mueller Robak LLC

Nichole U. Mulcahy
Nebraska Public Service Commission

Liz Neeley
Nebraska State Bar Association

David M. Newman
Union Pacific Railroad Co.

Conner G. Nicklas
Budd Falen Law Offices L.L.C.

Gigi G. O'Hara
Kutak Rock LLP

James A. Overcash

Prof. Olu Oyinlade
University of Nebraska-Omaha Woods Aitken LLP

Patrick M. Patino
Patino Law Office LLC

David M. Pontier
Koenig|Dunne, P.C., L.L.O.

Hon. Ryan S. Post
Lancaster County District Court

Larry Pozner
trial lawyer, lecturer, and author

Amber N. Preston
Baird Holm LLP

Kathryn D. Putnam
Astley Putnam, PC, LLO

Prof. Dan Real
Creighton University School of Law

Jim Rein
KCoe Isom

Tricia Rojo Bushnell
Midwest Innocence Project

David Rudolf, Esq.

Hon. Thomas L. Saladino
United States Bankruptcy Court - District of Nebraska

J. Scott Searl
Baird Holm LLP

Jesse D. Sitz
Baird Holm LLP

Kenneth M. Smith
Nebraska Appleseed Center

Meagan K. Spomer
Nebraska Legal Group

Hon. Stephanie Stacy
Nebraska Supreme Court

Robert A. Stark
United States District Court for the District of Nebraska

Hon. Mary M. Z. Stevens
Douglas County Separate Juvenile Court

Lawrence W. Stunkel
Department of Veterans Affairs

Audrey R. Svane
Woods Aitken LLP

Donald L. Swanson
Koley Jessen PC, LLO

Catherine Swiniarski
Elder Law of Omaha, PC LLO

David M. Thompson
Burnett Wilson Law, LLP

Katie S. Thurber
Nebraska Department of Labor

Prof. Rachel Timm
University of Connecticut School of Law

Cathy Trent-Vilim
Lamson Dugan & Murray LLP

Samuel J. Turco Jr.
Sam Turco Law Offices PC

Jennifer Turco Meyer
Dyer Law PC, LLO

Patrick R. Turner
Turner Legal Group, LLC

Rachel Truhlsen
Rachel A. Truhlsen Law Office, PC, LLO

Janece Valentine
Valentine Law Office, PC

Mary E. Vandenack
Vandenack Weaver LLC

Joni Watke
Watke, Polk & Sena, LLP

Elaine Weiss
journalist and writer

Hon. Lawrence E. Welch Jr.
Nebraska Court of Appeals

T. Randall Wright
Baird Holm LLP

Career Changes.....and Relocations

Sam King

Patrick Patino

Attorneys **SAM KING** and **PATRICK PATINO** are pleased to announce the creation of **PATINO KING, L.L.C.** which is a law firm specializing in the practice of bankruptcy law and business litigation both in Nebraska and Iowa. Sam and Patrick have over thirty five years of experience in representing both debtors and creditors in bankruptcy cases. They have successfully represented businesses and individuals both in bankruptcy reorganizations, and liquidation proceedings. Sam also has extensive training and experience in the area of business litigation. Together, Sam and Patrick are uniquely qualified to provide efficient and effective legal representation to clients in need of assistance on bankruptcy and business litigation matters. Patino King, L.L.C. invites you to visit its website at PatinoKing.com for more information and to contact the firm for any legal assistance needed in these areas.

Quinn R. Eaton

Nationwide employment law firm **JACKSON LEWIS P.C.** is pleased to announce **QUINN R. EATON** has joined the firm as an Associate in Omaha. Quinn represents employers in a broad range of employment-related disputes and litigation. Quinn is experienced in all stages of state and federal court litigation and appellate work. He frequently assists employers with a variety of matters including discrimination and retaliation claims, as well as non-compete issues. Outside of his litigation practice, Quinn is passionate about pro bono work and enjoys utilizing his legal skills to ensure quality legal services are available to those who might not otherwise have access to them. Quinn earned his J.D. from the Creighton University School of Law and B.S. from the University of Nebraska-Omaha.

To submit a career change, relocation, or recognition to the Transitions section of *The Nebraska Lawyer*, email your announcement to: Allyson Felt, Editor, afelt@nebar.com.

SPENCER FANE LLP is pleased to announce **ELIZABETH LALLY** has joined the Bankruptcy, Restructuring, and Creditors' Rights Practice Group as a partner in the firm's Omaha office. Lally works closely with clients to understand and solve their complex banking and bankruptcy matters. Regularly working with businesses and financial institutions through proactive counsel, litigation, and alternative dispute resolution methods as necessary. She brings a thorough understanding of how to navigate the difficult world of corporate insolvency and restructuring, and her experience includes representing borrowers and lenders in complex financing transactions, debt restructuring, and out-of-court workouts as well as Chapter 7, Chapter 12, and Chapter 11 reorganizations and liquidations. Lally also works with debtors-in-possession and unsecured creditor committees in complex Chapter 11 reorganizations and liquidations, and is a Subchapter V Trustee for Region 12 covering Iowa and South Dakota. In addition to traditional financial services and bankruptcy matters, Lally represents bankruptcy trustees and other creditors in suspected bankruptcy fraud investigations and all resulting litigation. She has also worked with the FBI and the United States Trustee Program's Bankruptcy Fraud Program to recover funds for the victims of bankruptcy and wire fraud. Lally completed her undergraduate studies at Bradley University and later earned her Juris Doctor from DePaul University College of Law.

Sara J. Tonjes

SARA J. TONJES has joined the Lincoln law firm of **PERRY, GUTHERY, HAASE & GESSFORD, P.C., L.L.O.** as an Associate Attorney. Ms. Tonjes received her Bachelor's degree with high distinction in 2011 from the University of Nebraska where she studied Art History & Criticism and minored in Art. She received her law degree with high distinction in 2021 from the University of Nebraska College of Law. While in law school, she was an Executive Editor of the Nebraska Law Review, a member of the Equal Justice Society, and a recipient of the William H. Smith Academic Excellence Scholarship. Ms. Tonjes is admitted to practice in Nebraska and is a member of the Nebraska State Bar Association.

TRANSITIONS

BAIRD HOLM LLP is pleased to welcome attorneys **SAPPHIRE M. ANDERSEN**, **ERIN E. BUSCH**, **JENNIFER L. HIATT**, **KRISTIN N. LINDGREN**, **THOMAS R. NORVELL**, **TRISTIN S. TAYLOR**, **EMILY S. TOSONI** and **HANNES D. ZETZSCHE** to the firm.

Sapphire M. Andersen

Sapphire M. Andersen is a member of the firm's Labor, Employment and Employee Benefits Group. Sapphire graduated from Creighton University School of Law, magna cum laude, and with pro bono service distinction. She received the 2021 Outstanding Service to the Law School Award and the 2021 Donald P. Lay Award for her contributions to Creighton Law Review. Sapphire graduated from Creighton University with a M.S. degree in Government Organization & Leadership, and earned Bachelor's degrees in English and Political Science from the University of Nebraska Omaha, summa cum laude, in 2016.

Erin E. Busch

Erin E. Busch is a member of Baird Holm's Health Care section, where she focuses on regulatory compliance and contracting matters, including HIPAA, medical staff and allied health professionals issues, Medicare, Medicaid, and 340B. Prior to joining the firm, she worked in the General Counsel's office of a public higher education institution and her practice focused on data privacy and security, regulatory compliance, and governance issues. Erin received her Juris Doctor from the University of Minnesota Law School, magna cum laude, Order of the Coif, in 2005. Prior to law school she received her Bachelor of Arts in History and Computer Applications, cum laude, from the University of Notre Dame.

Jennifer L. Hiatt

Jennifer L. Hiatt focuses her practice on zoning, land use, renewable energy and general real estate matters. Prior to joining the firm, Jennifer worked with an engineering firm in Kearney, Nebraska. She also spent two years with the Nebraska State Bar Association as Director of Section Facilitation and Publications. Jennifer received her Juris Doctor from the University of Nebraska College of Law in 2017, with a concentration in land use and natural resource development, and her Bachelor of Arts with a major in American History from the University of Nebraska-Lincoln.

Kristin N. Lindgren

Kristin N. Lindgren is a member of the firm's Health Care practice group. She assists health care entities with all aspects of health care law, including regulatory, compliance, transaction, and HIPAA matters. Prior to joining the firm, she worked in health care administration and became familiar with the inner workings of large health care systems. Kristin graduated from Creighton University School of Law in 2021, cum laude. While there, she served as vice president of the Health Law Student Association. Prior to law school, she graduated with a Master's degree in Health Care Administration and Policy from Bellevue University in 2017, and earned a Bachelor's degree in Health Care Administration and Policy from Creighton University in 2015.

Thomas R. Norvell

Thomas R. Norvell is a member of the firm's Finance and Creditors' Rights section, where he concentrates his practice on public finance and commercial financing transactions. Thomas graduated from Creighton University School of Law in 2021, summa cum laude. While there, he served as an executive editor of the Creighton Law Review and completed an externship with Judge L. Steven Grasz of the United States Court of Appeals for the Eighth Circuit. Prior to law school, he graduated from Peru State College, summa cum laude, in 2018, earning a Bachelor's degree in Business Administration.

Tristin S. Taylor

Tristin S. Taylor's practice focuses on corporate transactions and general corporate matters. He counsels businesses of all sizes on a variety of matters, including entity formation, corporate governance, strategic transactions, and regulatory compliance. Tristin graduated from University of Nebraska College of Law in 2021, where he participated in the Business Transactions Program of Concentrated Study. While in law school, he served as Executive Editor for the Nebraska Law Review. Tristin received his Bachelor of Arts in Economics from Creighton University in 2018.

Emily S. Tosoni

Emily S. Tosoni focuses her practice on estate planning, estate and trust administration, and corporate transactions. She graduated from the University of Iowa College of Law in 2021, magna cum laude. While in law school, she became a member of the Order of the Coif, a distinction awarded to the top 10 percent of the Class of 2021. Emily received the Judge William Stuart Award, as well as the Dean's Award for Academic Excellence for Property and

Trusts & Estates, and the Jurisprudence Award for Academic Excellence in Contract Drafting. Emily received her Bachelor of Arts from Iowa State University in Political Science, summa cum laude, in 2017.

Hannes D. Zetzsche

Hannes D. Zetzsche focuses his practice on real estate development. That practice encompasses administrative law, real- property law, water, energy, and natural-resources law. Before joining the firm, Hannes worked as a judicial clerk to the Hon. Michael G. Heavican, Chief Justice of the Nebraska Supreme Court. He graduated from the University of Nebraska College of Law, with high distinction, and with a concentration in Real Estate and Water Law in 2020. While earning his Juris Doctor, Hannes received the CALI Excellence for the Future Award in five subjects and was named the Civil Clinic Student of the Year. He received his Bachelor of Arts from the University of Portland in Rhetoric and German, cum laude, in 2016.

Awards and Recognition

Robert R. Veach Jr.

Marquis Who's Who, the world's premier publisher of biographical profiles, is proud to present **ROBERT R. VEACH JR.** with the Albert Nelson Marquis Lifetime Achievement Award. An accomplished listee, Mr. Veach celebrates many years' experience in his professional network, and has been noted for achievements, leadership qualities, and the credentials and successes he has accrued in his field. As in all Marquis Who's Who biographical volumes, individuals profiled are selected on the basis of current reference value. Factors such as position, noteworthy accomplishments, visibility, and prominence in a field are all taken into account during the selection process.

In his last semester of law school, Bob began clerking for the Honorable Joe E. Estes, Judge, U.S. District Court for the Northern District of Texas and Judge, Temporary Emergency Court of Appeals of the U.S. Following his clerkship, Bob began his legal career in 1976 with Locke, Purnell, Boren, Laney and Neely in Dallas in 1976. Focusing his practice on corporate securities and tax-exempt mortgage finance, he later joined The Lomas & Nettleton Company as a vice president of the firm's new business, product development and bond administration division. At Lomas he continued to build on his expertise in tax-exempt housing bonds, structured private residential and commercial mortgage-backed securities offerings and was a member of the pension and institutional real estate advisory group at Lomas. Following this period, Mr. Veach served as a vice president of Rauscher Pierce Refsnes Inc., a premier investment banking firm in Dallas where he was manager of the mortgage and asset-backed securities group and was President of RPR's conduit finance subsidiary. At RPR he was responsible for the development of collateralized debt products and the growth of RPR's mortgage finance investment banking capabilities. He was a Registered Representative of the National Association of Securities Dealers and an Allied Member of the New York Stock Exchange. Ultimately, he rejoined Locke Purnell (now Locke Lord LLP) in 1987, where he spent the next 10 years as a senior shareholder of the corporate section specializing in securitization and structured finance before going into practice for himself.

During his career, Bob became a recognized expert in various aspects of financial transactions including tax-exempt mortgage revenue bond issues and taxable residential and commercial mortgage-backed and asset-backed securities issues totaling in the billions. Bob has testified as an expert witness to state and federal legislative bodies on housing finance, participated in the drafting of housing, mortgage finance and tax legislation, and has been a speaker at a variety of professional legal, accounting and real estate programs regarding structured finance. Bob was instrumental in the passage of enabling legislation for the state housing agency and local housing finance programs in Texas and served as the Washington State Mortgage Bankers' representative on Governor Spellman's Housing Task Force leading to passage of legislation which created the Washington Housing Finance Commission. He also was involved in the establishment and initial operational startup and bond issuance of state housing agencies in Texas, Alabama, Mississippi, Ohio and Washington and numerous local housing finance entities. Bob has participated in the drafting and standardization of program documents for various multi-lender/servicer and master servicer mortgage programs and spoken at lender programs across the country to explain the documentation and special tax and program rules for mortgages to be made to low and moderate income borrowers.

In 1998, having accrued more than 20 years of expertise, Mr. Veach formed his own private practice law firm in Dallas specializing in start-up businesses, capital raising, structured finance, securitization and general business issues. He has represented lessors in structured operating lease and sale lease back transactions involving gas stations, office buildings, oil field equipment and other assets in transactions totaling in the billions, including acting as Issuer's counsel in publicly registered collateralized debt offerings. Bob has participated in the creation of national credit card banks for a large national retailer and a national energy company and in the securitization of credit card receivables and wholesale trade accounts for these clients. Bob also served as special counsel to a national mortgage lender in connection with the purchase and sale of mortgage servicing and master servicing portfolios and sale of delinquent and defaulted mortgage loans under various secu-

ritization structures. In addition, Bob assisted the National Community Stabilization Trust, organized in 2008 to deal with the national housing and foreclosure crisis, in the development of its lender, property and mortgage purchase and master servicing documentation.

In addition to his law practice, from 1998 and its initial public offering, Bob served as an independent Trustee of CentraCore Properties Trust, a NYSE-listed real estate investment trust. Bob also served as the Audit Committee Financial Expert, Chairman of the Audit and Corporate Governance Committees, a member of the Compensation, Independent and Investment Committees and as Chairman of the Board of Trustees from 2002 through January 2007 when CentraCore completed its merger with another NYSE-listed firm. Bob has also served as an executive vice president and general counsel for Precision Document Solutions Inc., a private firm headquartered in Dallas, since 1996. The company notably offers managed print services and health care software solutions to U.S. health care institutions across the country.

Robert R. Veach, Jr. was born in Charleston, South Carolina to Robert and Evelyn Veach and grew up in Omaha, Nebraska. Bob is married to Lori Sue (Erickson) Veach and has resided in Dallas, Texas since law school. Bob's serious childhood asthma and allergies limited his sports involvement in his younger years but Bob went on to set his junior high school record for the mile. In his first year in high school, he was on the State best times list for the mile run and won the regional junior Olympics mile run. In high school, Bob was a three year letterman on the cross-country and track teams and was a member of two state champion track teams. Bob's two mile relay teams set school and state records.

Bob's community efforts date back to the late 1970s, when he served as a director of the North Texas affiliate of the American Diabetes Association in Dallas. Following in his parent's footsteps with respect to giving, he continues to serve as a Trustee of the Bob and Evelyn Veach Foundation. The nonprofit foundation notably benefits the Evelyn A. Veach Atrium Garden at the Joslyn Art Museum in Omaha and local Omaha students and families seeking to attend the Rose Theater productions.

Bob studied at Saint Olaf College in Minnesota before earning a Bachelor of Science in accounting at Arizona State University in 1972. At Arizona State, he was an officer of the Chi Triton Chapter of the Phi Sigma Kappa Fraternity and was a member of the University Student Senate. Three years later, he graduated from Southern Methodist University (SMU) in Texas with a Doctor of Jurisprudence in 1975. While active at SMU, Mr. Veach served as an editor of the Southwester Law Journal, as a moot court instructor and as an adjunct instructor of accounting in the SMU College of Business. Mr. Veach is an elected fellow of the Nebraska State Bar Foundation, and is a member of the American Bar Association, the State Bar of Texas, the Nebraska State Bar Association, the Federal Bar Association and the Dallas Bar Association. He has been admitted to practice law by the U.S. District Courts of Nebraska and Texas and the Temporary Emergency Court of Appeals.

Below is the oath of admission, which is read aloud and repeated by attorneys when they are being sworn in.

Though the oath is short in length, it carries with it the tremendous responsibility that we as attorneys share. The NSBA reprints this oath as a reminder of the importance it carries and of the promises made by all Nebraska attorneys, starting with their first day in practice.

"I do solemnly swear that I will support the Constitution of the United States, and the Constitution of this state, and that I will faithfully discharge the duties of an attorney and counselor, according to the best of my ability."

Michael D. Boyle

MICHAEL D. BOYLE passed away September 13, 2021. Preceded in death by wife, Anne C. Boyle; brother, Jim Boyle. Survived by children: Maureen Boyle-Manganaro (Michael), Michael Boyle (Dana), Patrick Boyle (Lee Ann), James Boyle (Mary), and Maggie Aliabadi (Mani); eighteen grandchildren; sister, Debbie Rickerl (Dave); nieces, nephews, other loving family members and many friends. Memorials are suggested to Holy Name Housing in Omaha.

John P. Grant

JOHN P. GRANT, of Omaha, passed away October 3, 2021. John served as NSBA President 2003-2004 and on the NSBA House of Delegates from 1989 - 2021. He is survived by wife, Shari Grant; children, Sean (Anna) Grant, Paul (Cassie) Grant; Kailey (Aaron) Grant, Jeni (Andrew) Reck; grandchildren, Kellan, Amelia and Stella Grant; siblings, Martha Bruckner, Sue (Carolyn) Grant, Joe (Mary) Grant, sister in law, Teresa Grant; nieces, nephews and cousins. He was preceded in death by parents, Hon. John T. and Marian Grant; brother, Tim Grant and brother-in-law, Bob Bruckner.

Michael G. Helms

MICHAEL G. HELMS, of Queen Creek, AZ, passed away after a year long battle with cancer, in Mesa, AZ, on May 20, 2021. Michael Helms was born November 25, 1947 to Ivan and Leila Helms, in North Platte, NE. He attended North Platte public schools where he excelled in academics and played the alto saxophone in the honors band. He earned his J.D. from the University of Nebraska College of Law. After graduating, he served as a Captain in the JAG Division of the U.S. Army. He practiced law privately until his retirement in December of 2020. In his free time, he loved playing golf. He was married to his best friend, Diane Helms, for almost 20 years. Mike was preceded in death by his parents. His is survived by two brothers, James Helms and Richard Helms (Jo). His wife, Diane (Annie) Helms, of Queen Creek, his favorite child, Miss Sophia Maria (the cat), four children, Kristine Kraft (Chris), Eric Helms (Erin), Allen Helms and Zachary Helms (Leslie). Two step children, Sarah Golightly (Cole) and Jon Barnes (Nicole). 12 grandchildren and one great grandchild. Memorials to the Nebraska Humane Society.

Anthony "Tony" Liakos

ANTHONY "TONY" W. LIAKOS passed away October 16, 2021. Tony was a partner in the firm of Smith Slusky Pohren & Rogers. He is survived by his wife Jodie Liakos; Children: Leah Liakos, Alicia Crawford, Derek Crawford; Grand Daughter Ava; Parents Tom & Dayleen Liakos; Sister Misty Liakos; Many other relatives and friends.

Alan J. Mackiewicz

ALAN J. MACKIEWICZ passed away November 1, 2021. Al Mackiewicz was a man who loved his Illinois roots, but always called Nebraska home. After moving to Omaha during high school, he immediately became involved at Westside High School ('61) and chose to attend Creighton all the way through law school ('67). He married the love of his life, Sue Bremser, in 1966 and they began to build a life together. Al was drafted into the Army in the late 1960s and spent most of four years working as an attorney for the JAG Office at Ft. McCoy, Wisconsin. He would share funny stories about being on the base and really developed his love of fishing during that time. At the end of his service, Sue became pregnant with Douglas, and they were ready to start a family. Sadly, Douglas died just days after his birth, and Sue was unable to have children afterwards. The couple decided adoption was going to be their road to parenthood and brought James home in 1973 and Beth in 1976. Once Al and Sue returned to Omaha, Al followed two parallel paths: one as an attorney, eventually going out on his own and practicing until 2018, and the other, as a member of the broadcast team for Husker football. Al attended the 1971 Orange Bowl and was involved in the radio broadcasts through the 1997 season. He would do sideline reporting, spotting the opposition for the play-by-play announcers, interviews, and whatever else was necessary to help the broadcast team. He also co-hosted a pregame call-in show for 28 years for an affiliate station in Las Vegas. Al was an avid Husker fan and continued attending games in Lincoln until his mobility kept him home where he cheered the Huskers on from the comfort of his recliner. Al was a hard-working man, and he devoted that time to family, work, and football. He did make sure to get one great fishing trip in each year. When the kids were young, it was at Lake Okoboji, and when they were older, he began going to the Ozarks with his close friends Kent and Dave. He loved those trips and seemed to have as much fun planning and talking about them as he did experiencing them. He frequently shared stories about the travel, the fishing, and the camaraderie. Al's devotion to his family was evident in the way he cared for Sue as her health declined. He was dedicated to ensuring she was happy and comfortable in their home for the years preceding

her death. He was a loving caregiver and set up an in-home care space for her when she was confined to bed. Al did anything to give her the best life possible. Al was quick-witted and funny, worked hard at everything he did, and loved his family as much as any man could. His cheesy grin and friendship will be missed. Oh, Al. Preceded in death by parents, Mary and John Mackiewicz; wife, Sue (Bremser) Mackiewicz; son, Douglas Mackiewicz. Survived by son, James Mackiewicz; daughter, Beth Morissette (Jeff); grandson, Eddie Morrissette; brother, Dennis Mackiewicz; and niece, Chris Mackiewicz.

Joseph K. Meusey

JOSEPH K. "JOE" MEUSEY passed away peacefully on November 15, 2021 in Omaha, surrounded by his loving family. He was predeceased by parents, Kenneth and Veronica Meusey; daughters, Molly Petty and Mary Ann Meusey; and brother, Jim Meusey. After completing law school at the University of Iowa, Joe joined the Fraser Stryker Law Firm in 1965 and retired in 2019. He served as a member of the United States Army JAG Reserve. He is survived by his wife of 36 years, Sue (Mack) Meusey; children: Katherine Meusey (Richard Baguley), Mike Meusey (Kristin), Jennifer Brosseau (John), and Matt Meusey (Faith); step-sons, Rich Stemm (Maddie) and Rob Stemm (Ali); brother, Jack Meusey (Dawn); and 12 grandchildren.

William E. Peters

WILLIAM E. (BILL) PETERS, 82, of Lincoln passed away November 5, 2021. Born October 10, 1939, in Thedford, NE to Roy F. (Doc) and Martha (Noel) Peters.Bill attended Thomas County High School, Doane University, and the University of Nebraska College of Law, where he was Editor in Chief of the Nebraska Law Review. Bill married Susan Luddington in 1964. Upon obtaining his law degree, he became the first full time attorney for the State Tax Commissioner and an Assistant Attorney General. His subsequent employment was Assistant Tax Commissioner, Supreme Court Reporter State Tax Commissioner, and partner in law firm of Peters & Chunka, focusing on state and local taxes and lobbying, 50+ year member of Nebraska Bar Association. Bill's non-law interests and activities included State President of Congregational Youth Group, Izzak Walton League of Lincoln, Board of Directors Nebraska State Employees Credit Union, Director of Board on Polysomnographic Technologists, and local sleep apnea support groups. Bill is survived by his wife, Susan; niece Sherry; nephew Bryan and their families. Preceded in death by his parents and brother Doug.

Hon. Darvid Quist

HON. DARVID QUIST, age 85 of Blair, NE, passed away September 27, 2021. The youngest of four children, Darvid was born on June 20, 1936, on the family farm in rural Blair, Nebraska, the son of Alfred and Clara Quist. He was a graduate of Blair High School and then attended Dana College, graduating in 1958 and then attended the University of Nebraska College of Law graduating in 1961. After law school, Darvid enlisted in the United States Army. Following his honorable discharge, he began practicing law with Haessler and Sullivan law firm in Wahoo in 1965. Darvid became a full time Congressional Staff member in both Lincoln and Washington DC. He was then appointed as a US Secretary of Agriculture Special Assistant. He continued in that position until leaving Washington DC in 1973. In January 1974, Darvid opened a solo practice in Blair, NE and was elected Washington County Attorney that same year. He was appointed District Judge of the Sixth Judicial District in December of 1980 and served in that capacity until June of 2010. He served on various committees for the District Judges Association. The Nebraska Supreme Court also named him to the Judicial Ethics Advisory Committee, which he chaired for eight years. Darvid was one of two nominees for Chief Justice in 1987, and was honored to be invited to hear cases with the Supreme Court on several occasions. On April 21, 1981, he was united in marriage to JoAnn Jacobson and to this union he accepted the role of father to Joel. Darvid enjoyed going to Joel's sporting events, especially baseball and basketball, and prided himself on never missing a game. Later in life, he enjoyed attending Emma and Tanner's activities. Darvid is survived by his wife JoAnn, son Joel, grandchildren: Emma and Tanner, along with several nieces, nephews, and a host of friends. He was preceded in death by his parents, and three siblings. Memorials may be directed to First Lutheran Church, Blair Fire and Rescue, or the Jeanette Hunt Animal Shelter in Blair.

John F. Recknor

JOHN F. RECKNOR, 75, of Bennet, passed away on November 22, 2021. He was born August 19, 1946, in York, Nebraska to Clarence Edward & Eveline Dorothy (Hildebrandt) Recknor. John grew up on the family farm near Polk, Nebraska. He graduated from the University of Nebraska-Lincoln and became a high school teacher and coach in Campbell and St. Paul, Nebraska. He later earned his Juris Doctor degree from the UNL College of Law. He practiced law for more than 40 years. John was a member at Trinity Lutheran church in Walton, and served on the Rural Bennet Fire Board. He enjoyed farming, playing the pedal steel guitar, singing in the men's choir, spoiling his dogs, and watching his grandkids and great-grandkids grow up. John shared his love of music

with his family and friends. John is survived by his daughters, Kristin (Todd) Tabor of Walton, Jennifer (Jeff) Brehm of Walton; grandchildren, Ashley (Justin) Carter, Stephanie Tabor, Zach (Cora) Tabor, Madison Tabor, Jackson Brehm, Olivia Brehm, and Ava Brehm; great-grandchildren, Camden and Amelia Carter; brother, Lance (Charlotte) Recknor; sister, Lorraine Bauer; sister-in-law, Vicky Recknor; several nieces & nephews; former spouse, Bonnie Tharp. John was preceded in death by his parents, Clarence and Eveline (Hildebrand) Recknor; brother, Norm Recknor; brother-in-law, Dick Bauer; and former spouse, Rifka Keilson.

Robert F. Vacek

ROBERT F. (BOB) VACEK passed away September 29, 2021 at the age of 68. He was born in Omaha to a loving family—the 5th of 9 kids. Bob went on to grow his own family (3 kids) with his loving wife Mary of 42 years. He built a successful legal career, working for Sodoro Daly and Sodoro for 30 years. Bob was always smiling, sincere and kind to everyone he met, and was willing to help anyone without expecting anything in return. Bob worked hard his entire life, but also knew how to enjoy life. He loved music, sweets, golf, Creighton basketball, mentoring his kids, and most of all spending time with his grandchildren. Bob was preceded in death by his parents, Victor and Helen Vacek. He is survived by his wife Mary; children: Jennay Vacek O'Kief (husband Greg), Kathryn McMillan (husband John), and Robbie Vacek; grandchildren: Mackenzie McMillan, Gabe O'Kief, and Maizie McMillan; brothers: Ed Vacek S.J. and Bill Vacek; sisters: Joanne Kolell (Denny), Jan Collins, Sue Smith (Chuck), Mary Williamson (Marty), Kathy Vacek-Renter, and Vicki Andersen (Tim); and multiple nieces and nephews.

William "Bill" Wieland

WILLIAM "BILL" WIELAND passed away on October 21, 2021 at his home in Castle Pines, Colorado. He lived in Colorado with his wife Kim, since 2001. Bill was born on July 1, 1938 in the Sidney, Nebraska hospital to Agnes and Carl Wieland of Chapell, Nebraska. Bill attended school in Chappell, worked in his dad's drug store and was an Eagle Scout. He graduated from Deuel County High School in 1956 and enrolled in University of Nebraska where he was a member of Sigma Phi Epsilon fraternity. He graduated in February of 1961 with a degree in business administration and a commission as a 2nd Lieutenant in the U.S. Army. During his college years he was employed in the wheat fields as a truck driver and a combine operator. He sold men's clothing at Magee's, he was a bartender, a warehouse guard, a supervisor of pari-mutuel betting at the horse track, he sold life insurance and was a yellow cab driver. Bill graduated from the University of Nebraska College of Law in 1964. He serve din the U.S. Army from 1965-1967 attaining the rank of Captain wile serving in Thailand. Upon his discharge from the army, Bill practiced Law in Lincoln, Nebraska for 40 years. He specialized as a plaintiff trial lawyer in personal injury, wrongful death as well as negligence cases. He was admitted to the practice of law in Nebraska and in Colorado. Bill was a member of the Nebraska State Bar Association where he served in the House of Delegates for 20 years. He was also a member of the Lincoln Bar Association of Trial Lawyers where he served as president. He was a member of the Nebraska Association of Trial Lawyers where he served as President , and a member of the Association of Trial Lawyers of America where he served on the Board of Governors. Bill was listed in "Best Lawyers in America. He was a member of the Masonic Lodge, the Scottish Rite and Sesostris Shrine where he rode with the motor corps. Bill was a skit writer and director with the Lincoln Barristers' Club and with University Club Gridiron shows. He was an accomplished hunter, expert marksmen, master angler, saltwater fly fisherman and was a licensed Belize boat captain. He enjoyed spending time with his family and friends at his Lake McConaughy cabin and the Belize beach house he and Kim owned for many years. Bill and Kim were world travelers. He once bungee jumped off a bridge on the north island of New Zealand. He is preceded in death by his parents Carl and Agnes. Bill is survived by his wife Kim, and his children Hollie (Lance), Craig (Cassi), Annie (Geoff). He also leave six grandchildren, Nicole Ziegler, Katie Rancucci, Brenin Hughes, Bowen Hughes , Caden and Callum. Memorial contributions may be made to ACLU, Planned Parenthood or Morris Animal Foundation.

The memory of your colleagues may be honored with a memorial to NSBA's Nebraska Lawyers Foundation, 635 S 14th St. #200, Lincoln, NE 68508.

Note: If you hear of the death of a bar member, please contact Sarah Ludvik at sludvik@nebar.com, and staff will follow up to obtain information. Your assistance is appreciated in sharing this important information with your colleagues.

LEASE SPACE IN KEARNEY: Prime lease space available on 25th Street / Highway 30 in Kearney, built to suit to your exact needs, including the floor and all interior walls. This is a condominiumized portion of brand-new building with lease rate dependent on build-out options and specifications. Call Brandon at C21 Midlands. 308-224-9527.

NORTHERN PLAINS WEATHER SERVICES
Dr. Matthew Bunkers of Northern Plains Weather Services, LLC is a certified consulting meteorologist (CCM) with over 27 years of weather analysis and forecasting experience. He can provide consulting, reports, depositions, and testimony in the areas of weather and forecasting, radar, satellite, severe storms, rainfall and flooding, winter weather, fire weather, applied climate and meteorology, and ag weather. More information is provided at https://npweather.com. Contact Matt at nrnplnsweather@gmail.com or 605.390.7243.

CHEYENNE COUNTY DEPUTY COUNTY ATTORNEY: The Cheyenne County Attorney's Office in Sidney, Nebraska is accepting applications for a deputy county attorney. Salary is up to $6,000/month. Must be licensed to practice law in the State of Nebraska. Primary duties include prosecuting traffic and misdemeanor cases. Benefits include family health insurance coverage, life insurance, retirement, sick leave and vacation leave.

Please send (by regular mail or email) a cover letter, resume, and writing sample to the following:
Paul B. Schaub
Cheyenne County Attorney
P.O. Box 217
Sidney, Nebraska 69162
paul@39cty.com

ASSOCIATE ATTORNEY

Larson, Kuper & Wenninghoff, P.C., L.L.O. (LKW) is seeking an Associate attorney with 0-5 years of experience defending workers' compensation in Nebraska and/or Iowa.

Essential Job Functions

- Handling of workers' compensation litigation.
- Taking depositions of claimants, physicians, medical experts, and other parties.
- Conducting discovery.
- Performing legal research.
- Remaining current with developments in the law.
- Drafting pleadings, findings of fact, motions, briefs, opinions, and other legal documents.
- Represent the interests of the employer or insurer at hearings, trials, depositions, oral arguments, mediations, arbitrations, and other proceedings.
- Communicate with claims representatives.
- Coordinate and attend claims reviews.
- Negotiate settlements.

Additional Information

Benefits include: Medical and 401(k)/Roth retirement plan with company match. Inquire about further benefits.

All your information will be kept confidential according to EEO guidelines.

- J.D. and licensed to practice law in Nebraska and/or Iowa.
- Experience handling workers' compensation cases is preferred, but we are willing train talented attorneys interested in workers' compensation law and litigation.
- Strong research and communication skills.
- Experience with Microsoft Office and legal billing software.
- Must be self-motivated and able to meet deadlines under pressure.
- Must have the ability to work as part of a team, as well as independently.
- Organization, planning, attention to detail, and dependability.

For more information and to apply online: https://careers.nebar.com/jobs/15749953/associate-attorney

OFFICE SHARING ARRANGEMENT FOR UP TO THREE ATTORNEYS: Well established visible and accessible location in the south central Omaha area. Convenient to Douglas and Sarpy County Courthouses. Private offices, multiple conference rooms, telephone, internet and all other amenities provided. Contact Mark Klinker or Barbara Van Sant, (402)331-3330 or email mklinkcr@ralstonlaw.net.

SMALL TOWN, OFFICE SHARING/PARTNER/ SHAREHOLDER

Northeast Nebraska law practice (Plainview, in north-west Pierce County, 35 miles from Norfolk.) Active as this law firm 45 years and counting; looking for one or more lawyers to establish a home, open up shop and eventually buy out law practice. Northern Pierce County is clearly "underserved" by active attorneys. Plenty of work for any active community minded lawyer, up to three lawyers have been busy here. Currently just one. Two nearby communities also have work available. General practice, significant estate and estate planning work; business setup and transfers to heirs, corporations, LLCs, all aspects of real estate work, municipal law and city attorney; Income tax and tax planning also available if interested. Operating out of owned building which has been a law firm for over 80 years, ideally located in business district, beside post office. Experienced staff handling office administration and paralegal assistance. Excellent community support, including local doctor and hospital, school, swimming pool, local newspaper, two large parks, fiber optic internet, nine hole golf course and small fishing lake at Plainview County Club. Contact Bruce Curtiss at 402.582.3838 (office) or 402.649.5978 (cell), or email to bdc2@hotmail.com.

DEPUTY COUNTY ATTORNEY: Hall County Attorney's Office is seeking an attorney to fill the full-time position of Deputy County Attorney. Duties will include various levels of criminal prosecution, child support enforcement including establishment of paternity and establishment, modification and enforcement of support orders, juvenile court, civil litigation and mental health board proceedings. Motivated individuals with a strong interest in criminal and civil litigation are encouraged to apply. Candidates with zero to three years' experience and/ or newly admitted attorneys with strong credentials will be considered. Admission to Nebraska Bar is required. Send cover letter, references and resume to: Martin R. Klein, Hall County Attorney, martink@hallcountyne.gov. Position is opened until filled. Hall County is an EOE.

ASSOCIATE ATTORNEY: Croker Huck Law Firm in Omaha, Nebraska is seeking an associate attorney to join our practice. The candidate will be exposed to the various practices areas of the firm and be encouraged and allowed to develop his or her desired practice over time. Three years or more of experience is preferred but not required.

The candidate should possess the following:

- Excellent academic and professional credentials;
- Excellent research and writing skills;
- An interest in a career involving business and real estate law;
- Good interpersonal skills; and
- An active Nebraska bar license.

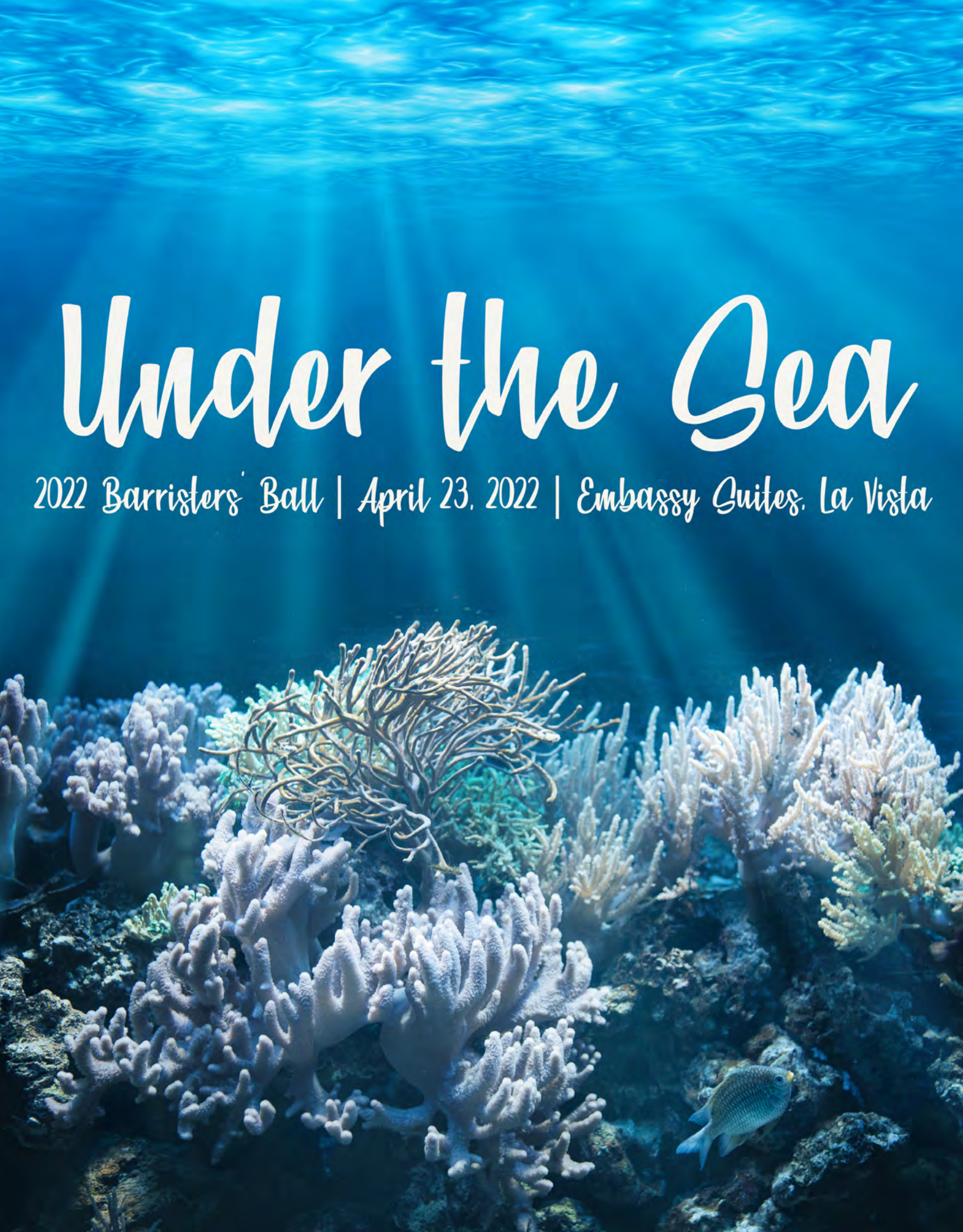
Croker Huck Law Firm offers a competitive salary, excellent benefits including 401(k), and the opportunity for professional development. Send resume and cover letter in confidence to: Steve Ranum, Croker Huck Law Firm, 2120 South 72nd Street, Suite 1200, Omaha, Nebraska 68124; or email to resume@crokerlaw.com. For more information about our law firm visit www.crokerlaw.com.

OFFICE SHARE - DOWNTOWN OMAHA:

Large office and space for administrative staff available in first floor suite in historic Burlington Building, 10th and Farnam right next to the new Gene Leahy Mall park and RiverFront Development. One attorney currently in the suite. Current rent $1,050/month, includes high-speed Internet, kitchenette, watercooler service, 2 furnished conference rooms and storage room. Office furniture available for purchase if needed. A second office may also be available. Call (402) 933-4256 for photos or tour.

Under the Sea

2022 Barristers' Ball | April 23, 2022 | Embassy Suites, La Vista



The Tenant Assistance Project Needs YOUR Help

in Douglas and Lancaster Counties to keep families housed.

Through the Tenant Assistance Project walk-in clinic, volunteer attorneys provide limited scope representation to tenants in eviction hearings.

Please join us in this meaningful pro bono opportunity!

Douglas County

Lancaster County

Contact us if you are interested in volunteering:
volunteerlawyersproject@nevlp.org

MAKE A DIFFERENCE