



Should joining bar association be voluntary?

Arguing before the state's high court, a legislator says yes, equating the group to a union.

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LINCOLN — Lawyers should not be forced to join what amounts to a union — the Nebraska State Bar Association — to practice law, a state senator told the Nebraska Supreme Court on Monday.

Among the reasons, according to State Sen. Scott Lautenbaugh of Omaha, is that the organization takes political positions that conflict with his views and others in the organization. He also said the association strayed beyond regulating the legal profession and improving legal services, the mission established by a U.S. Supreme Court ruling.

"Should the bar weigh in on concealed (handgun) carry? Why should they?" the state senator asked the judges. "Is that really the purpose of the organization?"

Nebraska is among 32 states that require lawyers to join a state bar association.

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Lawyers: Bar association trumpets 'opt out' provision for its members

But Lautenbaugh, an attorney for two decades, has crusaded to change that, arguing that bar membership should be voluntary, as it is in Iowa, Kansas and Colorado.

The senator, after unsuccessfully seeking the change through the Legislature, petitioned the Nebraska Supreme Court to make state bar membership voluntary. Lautenbaugh has also filed a federal civil rights suit to force the change.

On Monday, the Supreme Court took oral arguments on the issue. The courtroom was filled to overflowing. Most of the spectators were former or current elected officials in the attorneys organization, which has 9,731 active and inactive members.

Two attorneys for the bar association said that the court may want to tweak some of the association's rules but that doing away with mandatory membership would dramatically reduce its membership and revenue. Programs would be cut, they said, shifting costs to taxpayers and the court system.

Currently, the bar association charges annual dues of \$335 per year for active attorneys, and \$220 for attorneys with experience of five years or less.

Omaha attorney Mike Kinney said that in some states with voluntary bar associations, less than 40 percent of attorneys join. He said voluntary associations provide fewer programs, such as those to improve legal representation for the poor and minorities, and to help lawyers with substance abuse problems.

While 90 percent of lawyers in Iowa join that state's voluntary bar association, Kinney said the Hawkeye State is an exception. Many lawyers there,

he said, join so they can get free

access to an expensive legal research computer program.

Michael Fenner, a Creighton University law professor, said that while some state bar associations have weighed in on social issues like concealed handguns and decriminalization of marijuana, Nebraska's bar has not.

The organization did consider whether to take a stand on a recent immigration bill but eventually decided, in a close vote, against taking a position, Fenner said.

"In the end, the process worked," he said.

A trio of committees within the state bar association review and decide which proposals before the Legislature will be lobbied and whether the organization will support or oppose them.

The association allows individual attorneys to "opt out" of financing its lobbying activities, redirecting their dues to other activities and reducing what is paid to lobbyists by that amount. About 1,100 lawyers have taken that option, which bar association officials say brings them in compliance with a 1990 U.S. Supreme Court ruling on free-speech rights of members of such associations.

But Lautenbaugh argued that the "opt out" provision doesn't go far enough and that the easiest solution would be to make the bar association a voluntary organization. That way, he said, lawyers can "vote with their feet" on whether they agree with the organization's viewpoints.

The voluntary American Bar Association, Lautenbaugh said, lost some members after it voted in 1992 to support abortion

rights.

"We don't speak with one voice," the senator said of Nebraska's lawyers. "Some of us passionately disagree."

On Monday, Lautenbaugh submitted a letter to the court from Hastings attorney Chris Johnson, who contended that the bar association had violated its own rules this past spring by lobbying against a controversial child custody bill after initially voting to take "no position."

Johnson, in the letter, asserted that it wasn't the first time the bar had overridden association policy to advance a "personal agenda" of its leadership.

State Bar President Marsha Fangmeyer of Kearney denied that contention in an interview after Monday's court hearing. She said that an amendment was proposed to Legislative Bill 22 after the "no position" vote was taken and that the bar's executive committee then voted to oppose the amendment. Fangmeyer said that followed the organization's procedures when amendments are proposed later.

Fangmeyer, whose law practice deals with custody issues, said she was not pushing a personal agenda. She said both she and the bar association are not opposed to joint custody by divorced parents but objected to the remedy proposed in the amendment.

During the hearing, Supreme Court judges asked several questions of the attorneys. Many appeared aimed at seeking changes that could be made in the bar association, short of making it a voluntary organization. It may be several months before the court rules on the matter.

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