



## Supreme Court Order Changes Everything State Bar Leaders Reinventing the Bar

By Lorraine Boyd  
 The Daily Record

There were two watershed dates in recent Nebraska history that forever changed the Nebraska State Bar Association.

*The first was February 29, Leap Day, 2012, when Omaha attorney and Nebraska State Senator Scott Lautenbaugh filed a petition with the Nebraska Supreme Court asking it to "remove any requirement that attorneys licensed in Nebraska be members of the Nebraska State Bar Association."*

*His position: The Bar was using mandatory dues money to fund lobbying efforts not within the scope of the Association's mandate.*

*The second date was December 6, 2013, when the Nebraska Supreme Court issued their ruling that, while it will remain a mandatory or "unified" bar, the Nebraska State Bar Association cannot use the members' mandatory dues to lobby issues other than those directly affecting the profession. To that end, the Court reduced the amount of a member's assessment to \$98 annually, to support the regulation of the profession. Any other programs and services are to be paid for by voluntary dues.*

G. Michael Fenner, a law professor at Creighton University, had assumed the position of president of the NSBA in October of 2013. A few weeks later, he faced the daunting task of reinventing the Bar.

"It wasn't the year anybody expected. When you are faced with potential changes, you give thought to the worst-case scenario. But it never occurred to us that we would be a voluntary Bar, but still anchored to the Court,"

Fenner said.

He couldn't resist a quote from Monty Python's Flying Circus: "It's like the Spanish Inquisition ... 'NOBODY' expected the Spanish Inquisition."

Many lawyers have probably read Fenner's "President's Page" in the March/April issue of *The Nebraska Lawyer*, which was his opening salvo to address the situation.

Fenner said it is too soon to see the overall impact of the Court's decision a few short months in.

"There's no clear picture yet. This year, as of March, 79 percent of the members have paid the dues as well as the assessment." The mandatory \$98 assessment goes directly to the Supreme Court for regulating the profession. Dues, paid to NSBA, (\$237 for regular members) are voluntary and pay for all of the Bar's benefits and services.

Fenner said many lawyers and law firms told him, "We'll pay the dues this year, because we know you have commitments. ... Then, during the next year, we'll figure out what we'll do going forward."

So, Fenner said, "what we need to do now is to convince everybody it's worth it."

He noted that the Bar, perhaps as a natural consequence of having a monopoly, wasn't doing a very good job of letting members know what it does for them.

"So, a big priority is trying to change that," he said.

For example, Fenner said, a number of the lawyers who have not paid dues are either corporate or government lawyers.

"The corporations and the governmental bodies will pay the as-

essment so their lawyers will be licensed, but won't pay the dues. And the lawyers don't want to pay the dues themselves. And yet, the corporations will pay for their lawyers to get their mandatory CLEs [continuing legal education hours]."

He noted that the state Bar offers ethics hours free to members and other CLEs at substantially reduced rates for dues-paying members. "The corporations could save money by paying the dues and have their lawyers take advantage of those benefits."

He acknowledged that "we may not offer enough CLE programs that are tailored to government lawyers. We need to improve that."

Fenner recalled, "Talking to a lawyer recently, he told me, 'We're paying the dues, because we sat down and looked at our Lexis and Westlaw bills, and then we looked at our Casemaker bill [which is free with their dues]. This is a large firm, we [use Casemaker and] can't afford not to pay dues.'"

Fenner said Mike Dunn, a Falls City attorney in a small firm, Halbert, Dunn & Halbert, L.L.C., made a good point in response to those who say their company should pay the dues. "Where do they get the idea that I don't pay my own dues? My firm writes the check, but it comes out of my pocket."

The change started when Sen. Scott Lautenbaugh objected to some of the Bar's lobbying efforts. There was a check-off on their dues statement, where members could "opt out" of lobbying, but Lautenbaugh said he didn't think that was sufficient.

Fenner thinks there was "a misconception about the Bar's lobbying," saying only once did they lobby about a bill not directly related to lawyers or judges (a parenting bill). "And we've never lobbied to oppose any other bill."

What they do lobby about are things like support for judges, for their pensions and raises. "These are things that the judges can't do. We do an awful lot for the judiciary in the legislative services part of our program ... and lobbying is part of that."

Ironically, Fenner said, "What the Supreme Court has done is free us from constitutional restrictions. Whatever lobbying we provide will be supported solely by voluntary dues ... so we are freed up from restrictions the Supreme Court put on the expenditures of the mandatory bar. Theoretically we could lobby on anything [but] we are still bound by what the market will bear; what do our dues-paying members want us to do? It's really a market restriction now, as opposed to a constitutional restriction."

That check-off? It's still in place this year (and some used it), and may be there in the future, something Fenner supports.

### Extra Effort

It's been a lot of work for the officers and the members of the ad hoc committees formed to deal with pressing issues, Fenner said. "I am so pleased at how hard they all have been working," Fenner said.

To form those ad hoc committees, Fenner asked for volunteers from the House of Delegates, but also reached out to others he knew who were interested in the Bar. "I tried to get diverse viewpoints on

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these committees. People who are dues-payers and non-dues-payers. People who supported Sen. Lautenbaugh's views and those who didn't.

One plus of the committees is that the Bar is "expanding its pool of leadership."

"We also have a brand new executive director - Liz Neeley. Lucky for us it's someone who knows the players already and someone I think the justices [of the Supreme Court] respect," he said.

"I am very appreciative of the opportunities that I've had to work with the Nebraska Supreme Court in my previous position," Neeley said. "However, I think my familiarity with the operations and programs of the NSBA has helped me the most with this process. It would have been difficult for someone less familiar with the operations of the NSBA to assist with the transition."

Fenner said, "I had a set of goals that I was about to announce and then, they all changed. The goal now is to work through this transition, and come out of this with a better bar association than we went in with. ... And I don't want to discount what [longtime Associate Executive Director] Sam Clinch has done. We could not do this without Sam," he said.

"We're having to make some decisions on how the budget is going to affect benefits and services. It was difficult to make some of those decisions until we had a better idea of how many people were going to pay dues."

He said they had to lay off a few people and there were a couple of programs that were initially

cut back.

Those decisions were difficult, but they prioritized. "Self Help Desks are so important and so important to judges; the Nebraska Lawyers Assistance Program, ... is open to all lawyers and in my opinion, all lawyers ought to support that." These and many more benefits to members are explained on the website at nebar.com.

Benefits (services and programs) may be changed, improved, jettisoned, or created in the future, Fenner said. "I don't really have an agenda. If I have one, it's doing what we can to support lawyers."

Nebraska Supreme Court Chief Justice Michael Heavican said this about the future:

"The Supreme Court and Nebraska State Bar Association will continue to move forward as interrelated entities. Membership in the NSBA remains mandatory, not voluntary.

"Mandatory assessments will be collected by the Court and the NSBA will provide services to Bar members who choose to pay voluntary dues. ... The Supreme Court is very supportive of the good work done by the NSBA."

Although the NSBA collected the Supreme Court's assessment for them this year, in the future

the Court will collect theirs and hope to be able to collect both assessments and dues in the same place, simplifying it for members, and displaying additional support for the Bar.

Neeley commented on the Order's impact on her and the staff. "The initial challenge was simply handling the timing of the decision, which was released during the middle of the dues cycle," and communicating those changes. "Coupled with the fact that we were also making significant budget cuts, operating with less staff, and transitioning the NSBA to a See FENNER, page 4



Michael Fenner became president of the Nebraska State Bar Association at the Annual Meeting on Friday, October 4, 2013, never dreaming how the job would change in a few weeks.

## NSBA'S MANDATE

“The purposes of this Association are to assist in the collection and distribution of Nebraska Supreme Court mandatory membership assessments used to pay all costs associated with the Court’s regulation of the practice of law; improve the administration of justice; to foster and maintain high standards of conduct, integrity, confidence, and public service on the part of those engaged in the practice of law; to safeguard and promote the proper professional interests of the members of the Bar; to provide improvements in the education and qualifications required for admission to the Bar, the study of the science of jurisprudence and law reform, and the continuing legal education of the members of the Bar; to improve the relations of the Bar with the public; to carry on a continuing program of legal research; and to encourage cordial relations among the members of the Bar. All of these purposes are to the end that the public responsibilities of the legal profession may be more effectively discharged.”

## Legal Aid

us all. When one person cannot meaningfully access the justice system, our system of democracy is impeded. An attorney can help ensure meaningful access to the justice system for those unable to afford an attorney, and fairness under the law,” Gaughan said.

“Everyone has a duty to perform public service; at one point or another, we will all experience a time of need so it is important to give back when we are able. For attorneys, public service is also important because the specialized legal training allows access to countless avenues to protect and defend those in need,” Dendy said.

### Service Areas

“Many of our clients have cases that overlap several of our service areas. We exist to help those with low incomes, including seniors, immigrants and victims of domestic violence,” the organization’s website says.

Stories of clients served abound on Legal Aid’s website’s *In the Trenches* page. Named for one of their most dedicated staff attor-

neys, the late Pat Ford, Executive Director Dave Pantos also writes a column of that name in *The Daily Record*.

We talked to one of their satisfied clients.

Ashley was in a panic. She’d been to the YWCA, the police and the courthouse looking for help in getting her two girls back from their dad. The situation was dire and she was scared and frustrated. Then she said she saw Legal Aid across the street from the courthouse and hurried over there, right at closing time.

“Something told me to go there. The moment I stepped in the door, I was immediately taken to a conference room where they listened to my situation. From that moment, I went from my world crumbling at my feet to finally being able to sleep at night,” Ashley said.

“My attorney, Elaine D’Amato, and her team never slept. They stayed on top of my case, and got my girls back in less than a week. They were always there for me.

They went above and beyond all my expectations. I didn’t expect all the hard work they put into my case. I’ll be forever grateful to them.”

Ashley’s story is just one of the many success stories.

From custody cases to IRS woes, from evictions to disability denials, the breadth of Legal Aid’s expertise is put to work daily to solve clients’ problems.

### Public Service

“Public service work is important because justice should be available to everyone, regardless of income or status. When we share our time, talents and resources to help the less fortunate, we become grateful for what we have. ... It also breaks down stereotypes and prejudices by getting to know people who are different than us and finding out their problems are more complicated than we could have imagined,” Peng said.

Board President and retired Federal Magistrate Judge David Piester of Lincoln, agreed. “This is a great country, and I believe

we all have an ethical duty to our country, and ourselves, to pay back to society for all the benefits we’ve enjoyed. This applies doubly to attorneys because we are a pillar in maintaining the fabric of our society, the Rule of Law.

“Whether it’s advocacy for the poor or providing some other public service, we as a society grow more civilized the more we appreciate the problems facing others and become personally and intimately involved in solving those problems.

“It’s not good enough to pontificate from ‘on high’ about one’s views to solve problems; unless you’ve actually been there side-by-side with the people experiencing those problems, you don’t know what you’re talking about.”

He knows what he’s talking about.

“When I was a law student back in the ’70s, I interned at Legal Aid and for the first time, the law became alive for me. Helping poor people with real problems gave me inspiration to go into legal aid work as a ‘first career.’

“I recognized that the sometimes desperate situations confronting them cried out for dedicated lawyers committed to equal access to justice. Poor people’s lives intersect with the government in a myriad of complicated ways – actually, probably even more than middle- and higher-income people – and sorting through those regulations to insure those programs work as they were designed to work requires lawyers and paralegals who have the time and persistence to serve an otherwise unserved population. My experience as a Legal Aid lawyer and program director gave me great pride in standing up for people who desperately needed advocacy,” Piester said.

“The most satisfying element of all of that was knowing that my clients had been heard when they would not otherwise have been heard.”