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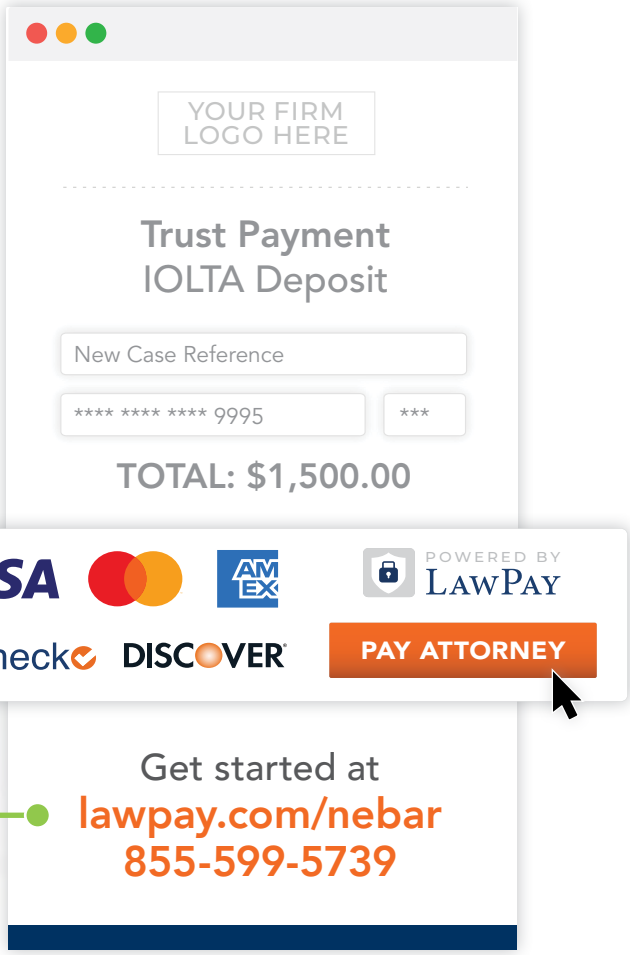

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Jill Robb Ackerman

Thank You for Being a Sustaining Member of the NSBA

We are pleased to announce that those of you who pay voluntary dues to the NSBA will soon be referred to as "Sustaining Members." This is exciting because we can now better recognize your support of the Association.

The Webster's Dictionary definition of *sustaining* is: "1) serving to sustain; and 2) aiding in support of an organization through a special fee // a sustaining member." That definition accurately describes all of you who pay voluntary dues—you sustain the mission of the NSBA, and the NSBA desires to recognize you as such.

The Association works for Nebraska lawyers to help them achieve the highest standards of competence, ethics, and professionalism and to protect and promote the administration of and access to justice. The NSBA effectuates this mission through its programs and services focused on professional development and expanding access to justice. Without your support, the NSBA could not carry out that mission.

On this page, you can see the new logo that will be available to recognize sustaining members of the Association. Moving forward, you are welcome to use this logo on your websites or printed material to show that you are a Sustaining Member of the Nebraska State Bar Association. The logo will be emailed out to all sustaining members for your use.

We are excited for the upcoming events that will provide the opportunity for us to again meet with each other face-to-face.

The Barristers' Ball will be held at the Embassy Suites-La Vista on August 7, 2021. Join us for an evening of dinner, dancing, raffles, and an exciting live auction in support of the Nebraska Lawyers Foundation. The theme is Galactic Gala—a fitting theme as we watch the real-world race for Mars!

The Annual Meeting will be live from October 13 – 15, 2021, at the Embassy Suites-La Vista and will include opportunities for you to reconnect with your colleagues and meet your annual CLE requirement, with more than 65 hours of different live CLE hours provided (including free ethics opportunities). The theme is "Shaping an Inclusive Profession." The 2021 General Session speaker is Elaine Weiss, author of *The Woman's Hour: The Great Fight to Win the Vote*.

A special thanks to everyone that contributed to this issue of *The Nebraska Lawyer* which is dedicated to family law. I believe that lawyers who practice in this area are heroes. Each day, they not only deal with increasingly complex areas of the law, but they must also cope with all the personalities and emotions that comprise a family—especially a family during times of crisis. The impression these practitioners make on their clients often becomes the lasting impression that the public has of all lawyers. It takes a lot of tact to help their clients maneuver over and through the legal hurdles that impact their clients' daily lives, including the lives of children.

Family law cases also take an emotional toll on our state court judges. Emotions run high. Facts can be unsettling. A judge's decision often impacts families forever. We are fortunate to have dedicated judges who understand the seriousness of each of the decisions they make in a family law case and act accordingly. I want to thank all of those judges who must make those difficult decisions on a daily basis. Again, we hope that you find the articles in this issue informative and useful.

In closing, thank you again for being a "Sustaining Member" of the NSBA. We look forward to seeing you in person at the Barristers' Ball and the 2021 Annual Meeting!

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Betting the Farm:

Common Disputes and Innovative Solutions in Nebraska Farm and Ranch Divorce

by Jane Langan Mach

One in four Nebraska jobs is related to agriculture, and cash receipts from agriculture contributed more than $21.4 billion to Nebraska's economy in 2019, accounting for 5.8% of the U.S. agriculture total.[1] Nebraska's farms and ranches utilize 92% of the state's land area.[2] Even small farms are big business.

During a marriage, farmers ("farmers" is intended to include all agriculture producers, including ranchers) and their advisors often plan for the intergenerational transfer of land and wealth. Sometimes these transfers are set up as gifts of land or corporate interests to a farmer's direct descendants (the "in-spouse") and the descendant's spouse (the "out-spouse"). With these intergenerational transfers, family dynamics come into play, emotions can run high, and family collusion may frustrate even the best of efforts.

Even though farming is big business, many farmers still handle deals on a handshake. They buy and sell equipment, lease land, and enter into significant financial transactions without documents, contracts, or legal advice.

The intention of family farmers to keep the farm in the family can be thwarted by these efforts in a later divorce. Lawyers get headaches trying to find assets and prove ownership or rights resulting from handshake deals. Entire articles have been written about the difficulty of treating growing crops as assets or income and the traceability of livestock. Here, we will look at a few common problems and some innovative solutions to consider in farm divorces, legal separations, or annulments.

Jane Langan Mach

Jane Langan Mach is a partner at Rembolt Ludtke, where she has been practicing since 1995. She focuses primarily on family law issues, particularly complex divorce, paternity, custody, child support, and adoption matters, including both trial and appellate work. Jane is a Certified Parenting Act Mediator. Jane teaches Pretrial Litigation Skills and Family Law at The University of Nebraska College of Law and has been a regular speaker at the NSBA Family Law Section's annual seminar.

Common Problems

Many farmers use revolving debt, such as an operating note, to finance operations throughout the year. Be sure to look at a farmer's most recent applications for credit and the balance sheet that the farmer provided to the lender. In many farm divorce cases, the tax returns show little income or asset value, while the credit applications are much more positive. However, even those credit applications do not always identify all sources of income or assets that could be considered in a divorce. Be sure to consult with a tax professional in working through the balance sheet and employing these strategies.

Spousal interest in family farm entity

More and more farmers are creating entities, both for liability and estate planning purposes. In fact, many farmers have multiple entities. For example, it is not uncommon to see one entity that owns farmland and a different entity that owns equipment.

When the family is intact, it makes perfect sense to transfer intergenerational wealth by gifting shares of an entity, such as an LLC. This allows a farmer to transfer interests to the next generation while avoiding gift tax by simply determining the

number of shares that can be transferred without hitting the gift tax limit. In an effort to divest more quickly, sometimes farmers will transfer those interests not only to the in-spouse but also directly to the out-spouse.

In a divorce situation, this creates significant complications. The out-spouse probably does not want to be involved in that family entity, and the family entity probably does not want the out-spouse to continue to be involved. However, often the parties have neglected to establish a buy/sell agreement or other obligation for the in-spouse to purchase the interest of the out-spouse. This can result in the out-spouse unwillingly remaining an owner of the family entity.

Futures or forward contracts

Grain is not always sold at the local co-op at harvest time. Grain farmers can market their product in advance with a futures contract or a hedge (forward) contract. Agricultural futures and options are used most often by larger corn and soybean farms as a means of hedging against potential fluctuations in price.[3] A 2016 study found that while just over 10% of corn and soybean farmers traded in futures contracts, those who did covered a substantial fraction (over 40%) of their production. Similarly, while only 20–25% of corn and soybean farmers used marketing contracts, those who did covered over 40% of their production with marketing contracts.[4] Few of them (6% of corn farms and 8% of soybean farms that used futures) hedged all their production through the futures market.[5]

These contracts typically provide that a commodity of a certain kind and quality will be delivered at a later date for a certain price. A forward or hedge contract typically settles at the end of the contract period, while a futures contract is traded on an exchange and may require an up-front fee or payment. Futures contracts also carry the risk of a margin call if the market price decreases. A present contract for a future income source may be speculative, but if it can be quantified, it could be appropriate to consider in a divorce proceeding.

Farm program payments and COVID relief

In pre-pandemic times, farmers had certain farm programs that provided income or price supports. These included programs like the Conservation Reserve Program ("CRP"), which provides funding to farmers who set aside ground without planting it to crop in a particular year or years. In a CRP agreement, the farmer may be able to expect a future stream of payments on certain ground. This may be an asset on the balance sheet (or, depending on grain prices, some farmers would consider it a debit against the earnings they would otherwise expect.)

In 2020 and 2021, in addition to several programs for farm-related nonprofits and technical assistance, several programs offered financial benefits for pandemic assistance.

1. The Paycheck Protection Program (PPP) was created in the CARES Act in 2020 to provide forgivable loans to small businesses, including farms. . . . PPP loans are also available to self-employed farmers based on gross income. This was one of several updates provided by the Consolidated Appropriations ACT (CAA) in December of 2020. The CAA re-opened applications for First Draw loans to farms that had not yet received a PPP loan and created a Second Draw loan for farms that had already received a First Draw loan. First Draw loans are open to most farms that experienced a negative economic impact due to COVID-19. Second Draw loans require that the business have experienced a 25% reduction in gross receipts in any quarter of 2020 as compared to the same quarter of 2019. For sole proprietors and sign-member LLCs, the owner compensation portion of new PPP loans is based on the farm's gross income. The owner compensation portion of the loan amount in 2.5 months of the farm's total annual gross income. Thus, the maximum amount of this portion of the PPP loan is $20,833. Farms with gross income under $100,000 may be eligible for a lower amount.[6]

2. The Consolidated Appropriations Act of 2021 allocated $13 billion for agriculture programs. The allocation included assistance specifically reserved for commodity producers. This assistance provided that:

> Producers of 2020 price trigger crops and flat-rate crops are eligible to receive a payment of $20 per eligible acre of the crop. Price trigger commodities, as defined in the second Coronavirus Food Assistance Program, are major commodities that meet a minimum 5% price decline over a specified period. These crops include barley, corn, sorghum, soybeans, sunflowers, upland cotton, and all classes of wheat.[7]

3. The American Rescue Plan Act (ARPA) Section 1005 includes provisions for [the] USDA to pay up to 120% of loan balances, as of January 1, 2021, for Farm Service Agency (FSA) Direct and Guaranteed Farm Loans and Farm Storage Facility Loans (FSFL) to any Socially Disadvantaged producer who has a qualifying loan with [the] FSA. This includes producers who are one or more of the following: Black/African American, American Indian, Alaskan Native, Hispanic/Latino, Asian American, or Pacific Islander.[8]

4. FSA's Coronavirus Food Assistance Program 2 (CFAP 2): CFAP 2 provides "financial assistance that gives [producers] the ability to absorb some of the increased marketing costs associated with the COVID-19 pandemic."[9] Eligible commodities include specialty crops, livestock, dairy, row crops, aquaculture, floriculture, and nursery crops.[10]

5. The Farm Service Agency is offering adverse weather programs that may allow emergency grazing; a Livestock Indemnity Program that financially assists producers when

they suffer loss of livestock, above normal mortality, due to adverse weather; an Emergency Conservation Program (ECP) to provide some cost-share assistance to rehabilitate farmland or repair fences damaged by natural disasters, and emergency loan programs for debt relief.[11]

6. CRP provides annual rental payments for land devoted to conservation purposes. This program isn't new, but the original deadline of February 12, 2021, has been extended due to the pandemic.[12] New ideas on the horizon, including the controversial "30 by 30" proposal, may increase conservation efforts to set aside farmland.

Options

A farmer may have an option or a right of first refusal to acquire land, typically family land, which may come into play in a divorce setting.

As a general rule, all property accumulated and acquired by either spouse during a marriage is part of the marital estate.[13] Property includes inchoate rights, such as unvested retirement benefits and stock options.[14] Since stock options acquired during the marriage are marital property, options to purchase farmland should be too.

An option such as this may be a standalone agreement or may be part of a lease agreement.

If a farmer has an option or a right to purchase land at less than market value, that should be considered equity and an asset on the marital balance sheet.[15] However, unlike stock options, if a farm option has not been exercised prior to the divorce, the court may require evidence that the parties tried to or at least financially could have exercised it before valuing and setting aside the asset to one party.[16]

Prepaid expenses

Prepaid farm supplies include fees, seed, fertilizer, and similar farm supplies purchased but not used or consumed in the farm business during the year of purchase. Prepaid expenses may be limited for tax purposes,[17] but that does not prevent a farmer from prepaying expenses to artificially decrease current assets or increase current debt.

Prepaid expenses can be added back to the year in which they were paid for to determine income for support purposes. This can also affect the balance sheet. If an account was depleted, or an operating note was used to prepay expenses, those amounts should be adjusted depending on the valuation date of the marital estate.[18]

Operating loss carryforward

A net operating loss (NOL) occurs when a company's allowable deductions exceed its taxable income within a tax

period. Often, farmers fit the classic definition of "substantial fluctuations in income" for support purposes because the farming business may have significant profits in one year, then incur a NOL in the next, followed by another profitable year. The loss carryforward provision allows the NOL in the second year to offset taxes due in the third year.

A NOL can be an asset because it serves to reduce the income subject to tax in future tax years. The Tax Cuts and Jobs Act made significant changes to NOL rules for tax years beginning in 2018; NOLs may now be carried forward indefinitely until the loss is fully recovered, but they are limited to 80% of the taxable income in any one tax period. However, the CARES Act removed the restrictions on tax loss carryback for tax years 2018, 2019, and 2020.[19] The CARES Act established a five-year carryback for all net operating losses including a farm NOL. To complicate matters further, the Consolidated Appropriations Act (CAA) passed late in 2020[20] has a provision strictly for farmers. This provision allows them to: (1) Carry back a farm net operating loss five years, (2) Elect to carry back a farm net operating loss two years, or (3) Elect to carryforward a 2018 - 2020 net operating loss.[21]

A taxpayer can choose not to carry back the NOL by attaching a statement to the original return filed by the due date (including extensions) for the NOL year. This statement must show the taxpayer is choosing to waive the carryback period. Then the NOL can carry forward indefinitely until it is fully absorbed.

The NOL should appear on the marital balance sheet not in the amount of the carried loss, but in the amount of the anticipated tax savings represented by the loss.

Shared assets and bartering

All that equipment you see in the machine shed? "Not mine." The cattle in the pasture? "Not mine." Not all vehicles have titles, and not all cattle have brands. Many farm cases include a claim, truthful or not, that certain assets belong to someone else in the family or are otherwise shared. In these circumstances, in addition to obtaining tax returns and depreciation schedules, the out-spouse may have to subpoena barn sale records, equipment dealer records, and/or bank records and depose in-spouse family members to determine true ownership.

Bartering is also commonplace. A farmer takes grain from his brother in payment for use of equipment; proceeds from livestock sales are split disproportionately to ownership because the family patriarch had a tax problem this year. In a family when everyone gets along, this can work quite nicely, but in a divorce, sorting out who is entitled to what can be much more complicated.

Farmhouse and vehicles for personal use

A farm entity may own a farmhouse or all of the family's vehicles, even if those vehicles are used in part or even entirely for personal use. The Nebraska Supreme Court has recognized the necessity of taking a flexible approach in determining a person's "income" for purposes of child support, because child support proceedings are, despite the child support guidelines, equitable in nature; the value of those in-kind benefits can be included as income to the in-spouse.[22] Also, keep in mind that the out-spouse will no longer have that benefit after the divorce, and if the vehicle used by the out-spouse is transferred from a farm entity, there may be tax issues as a result of a distribution to a shareholder if that spouse is a title owner of the entity.

Innovative Solutions

Early transfers

If the marital estate is large enough, and if the couple's children intend to farm, the parties may be willing to agree to keep the farm intact by transferring assets to the children directly or through a family trust. Both spouses can then be assured that property won't be sold or turned over to a potentially unacceptable new spouse, and the parties can avoid issues of valuation because the asset is neither being awarded to a party nor sold. A trust or a life estate gift could allow either or both parties to receive farm income for a period of time.

Early transfer could include an outright gift, with the excess value over the annual limit reducing the transferor's excludable assets at death. It could also include transfer of LLC interests, sale of machinery to a younger party who then trades the machinery for new machinery (thereby stretching out payments), or a sale on contract (which could still trigger depreciation recapture). Transfer of livestock could occur when inventory is lowest, i.e., before breeding.

Separate action or buyout

If the out-spouse is a named owner of shares in a family farm entity and the in-spouse does not agree to purchase that interest, a separate action may be necessary for an accounting, to dissolve the entity, or to obtain other relief as a dissenting shareholder. Dissolution is an equitable action but is considered "so drastic that it must be invoked with extreme caution."[23] Sometimes the original transferors, often the in-spouse's parents, may be willing to buy out the interest without a separate court action. If this is an issue, it is helpful for the out-spouse to do his or her best to maintain good relationships with that side of the family to enable the possibility of positive outcomes.

Depreciation and Capital Gain

If property a farmer acquires to use in the farm business is expected to last more than one year, he generally cannot deduct the entire cost in the year it is acquired. Instead, the farmer must recover the cost over more than one year and deduct part of it each year on Schedule F as depreciation or amortization. However, the farmer can choose to deduct part, or all, of the

cost of certain qualifying property, up to a limit, as a section 179 deduction in the year the item is placed in service.[24]

Depreciation of farm equipment can significantly reduce a farmer's taxable income. The Nebraska Child Support Guidelines provide:

> Depreciation calculated on the cost of ordinary and necessary assets may be allowed as a deduction from income of the business or farm to arrive at an annualized total monthly income. After an asset is shown to be ordinary and necessary, depreciation, if allowed by the trial court, shall be calculated by using the "straight-line" method, which allocates cost of an asset equally over its useful duration or life. An asset's life should be determined with reference to the Class-lives and Recovery Periods Table created pursuant to 26 CFR § 1.167(a)-11. A party claiming depreciation shall have the burden of establishing entitlement to its allowance as a deduction.[25]

Divorce lawyers often adjust income to account for accelerated depreciation for support purposes. Excess depreciation can also affect the balance sheet, though.

Assume a farmer owns a piece of equipment that has been fully depreciated. The equipment still has some value as an asset for divorce purposes. But a sale would result in some recapture of that depreciation for tax purposes, which ought to then affect the value of the piece of equipment.

Similarly, an asset may have latent capital gain. Land, machinery, tile, grain bins, buildings, and breeding livestock are generally all capital assets. As an example, if farm ground is purchased for $1,500/acre and later valued at $8,000/acre, realizing that price would result in a capital gains tax liability. These potential tax consequences cannot be considered unless the property is sold, or the taxes are reasonably likely to be incurred by an imminent sale.[26] This puts the in-spouse in a potentially untenable position of absorbing that latent liability with no credit on the marital balance sheet.

Adjusting asset values due to possible future tax consequences is allowed by Nebraska law and it is common practice to adjust retirement accounts by 25% to account for latent and unrealized tax liability sitting in such accounts.[27] A similar approach is warranted for latent capital gain and depreciation recapture. If agreements cannot be reached, consider actually selling the affected property during a marital tax year when a joint return is possible, or requiring that each party claim half of the gain for tax purposes. The proposed increase in federal capital gains tax may affect this analysis.

Sale with POA or novation

Farm ground may need to be sold as part of the dissolution. Unlike a house, which theoretically could be sold at any time, it is difficult to sell farmland while crops are growing. Farmland generally needs to be sold between harvest and planting. This may require the parties to hold the land for some period of time after the divorce before it can be sold.

Once a divorce is over, the trial court loses jurisdiction to modify its decree to address property disputes in the absence of fraud or gross inequity.[28] In circumstances where property may not sell until after a decree, consider providing in the decree that the property shall be sold and if there are any disputes as to price or sale terms, a third party is to be granted an irrevocable power of attorney to determine whether and on what terms the sales should take place. The parties may have an attorney, realtor friend, or other independent third party who could serve in that role. If the case has gone to mediation, consider using the mediator as the power of attorney for these purposes.

If the property settlement or decree provides for sale of property, and after the decree the in-spouse has an improved ability to buy the out-spouse's remaining interest, consider a novation agreement. A novation is the act of substituting a new obligation for an old obligation. The new one either replaces an existing obligation with a new obligation or replaces an original party with a new party.[29] Internal Revenue Code Section 1041 lays out the rules for property that is transferred between spouses who are divorcing or are divorced. It provides that a property transfer is incident to the divorce if it occurs within one year of the divorce or if it is related to the cessation of the marriage.[30]

If the transaction qualifies as a Section 1041 transfer, it is not subject to taxation and the basis of the asset carries over to the receiving spouse.[31] A transfer of property that occurs between the one-year and six-year anniversary of the decree entry must be made pursuant to a divorce or separation instrument to be presumed related to the cessation of the marriage and qualify for Section 1041 treatment. A divorce or separation instrument includes a decree of divorce or separate maintenance, a written separation agreement, or other court decree. It is also worth noting that a divorce instrument includes amendments or modifications to the instrument. A divorce instrument that does not provide for a transfer of property can be later modified to include one and will, therefore, ensure that no gain or loss will be recognized.

Young v. Young[32] provides an example of a transfer of property found to be related to the cessation of the marriage. Mr. and Ms. Young divorced in 1988. In 1989, they entered into a settlement agreement, which provided that Mr. Young deliver to Ms. Young a promissory note for $1.5 million, which was secured by 71 acres of land. In 1990, Mr. Young defaulted on this obligation and entered into a later settlement agreement to transfer 59 acres of land. In accordance with the later settlement agreement, Mr. Young retained an option to repurchase the land for $2.2 million on or before December 1992. Mr. Young assigned the option to a third party, who exercised the option and bought the land from Ms. Young for $2.2 million. No gain or loss was recognized on the transfer of the property from Mr. Young to his former spouse. Ms. Young took the marital basis of the land and recognized a gain on the subsequent sale to a third party.[33]

Similarly, *Belot v. Commissioner*[34] allowed Section 1041 treatment of an adjustment of rights after a divorce. The original decree awarded the divorcing parties continued joint ownership over multiple businesses. Sixteen months later, when the arrangement unsurprisingly failed to satisfy the parties, they entered into a settlement agreement whereby one transferred the businesses to the other in exchange for payment. The Tax Court found that although the original decree resolved all of the property disputes between the parties, "neither section 1041 nor the regulations limits application of section 1041 to one, or the first, division of marital property."[35] The transfers made in *Belot*, like *Young*, alleged shortcomings in the original decree addressed in a subsequent order to "effect the division of property owned by the former spouses at the time of the cessation of the marriage."[36]

Such an agreement allows the out-spouse to receive the same, or even higher, proceeds without paying the capital gain tax and allows the in-spouse to keep the property.

Any transfer that is not pursuant to a divorce or separation instrument and occurs more than six years after the divorce becomes final is presumed to be unrelated to the divorce, though it may be possible to still receive favorable tax treatment if the presumption can be rebutted.[37]

Lease with option

There may be no good way to divide the marital estate without awarding some farm ground to the out-spouse. If the out-spouse is not from a farming family, it may make sense to enter into a written farm lease so that the in-spouse can continue to farm the ground for a period of time. This will also have the effect of generating farm rent income for the out-spouse. Be sure the farm lease is written with as much detail and clarity as possible because this does require the former spouses to continue in a form of joint venture, and there should be little room for future

disagreement. The farm lease can also contain an option, as discussed above, that provides the in-spouse with an opportunity to purchase the ground back at market value at some future point in time. In the long run, the in-spouse can end up with the entirety of the farm ground but may be in a better position to finance it a few years into the future. In the interim, the out-spouse can receive rent while still owning an asset that could be used as security to borrow money for a home or other needs.

Equalization payments

Often the in-spouse ends up with the vast majority of the farm assets and is then responsible to pay the out-spouse an equalization payment. Monthly payments, even if technically set up as property equalization, can sometimes "feel like" support for the out-spouse and allow some flexibility in negotiating spousal support amounts. But farmers generally earn the vast majority of their income over just a few months each year and prefer to make lump sum payments in November or December.

In the case of a significant equalization, payments over time are normally required. This raises the issue of interest. The judgment rate, which applies unless otherwise agreed, is relatively low as of this writing, around 2%. Interest can be a negotiated term. If payments are annual, say by December 31 each year, consider waiving interest for each timely payment. If any payment is not made timely, interest could then accrue at a higher rate and/or retroactively to the Decree or to the last timely payment. Another option is to provide that if any payment is not made timely, the default will trigger the remainder of the judgment to be immediately due and payable.

Normally, a property settlement judgment can be prepaid unless the judgment or agreement provides otherwise or provides for a penalty. A nice option when the payor wants to fund a single payment, but the recipient wants monthly income, is to consult with an investment advisor and invest a lump sum into a growth fund which automatically makes the payment to the out-spouse each month. The growth on the original investment can create a taxable gain, but the obligation is then partially funded with market growth.

Subordination, transcribing judgments and securing debt with deeds of trust

If most of the farm assets are awarded to the in-spouse and an equalization payment is required, the in-spouse may well have to refinance existing debt to obtain funding for all or part of the buyout. In Nebraska, any judgment will automatically operate as a lien on any real estate owned by the judgment debtor in the county in which the judgment is entered.[38]

The lender will likely require the out-spouse to subordinate that lien in favor of the lender to allow the refinancing and restructuring of debt. If the farmer has ground in more than one county, consider transcribing the judgment to all relevant counties. In addition, consider requiring the in-spouse debtor to sign a deed of trust in favor of the out-spouse creditor. Foreclosing a lien, while a nice bit of security in some cases, is a much more lengthy and difficult process than foreclosing a deed of trust, which could be accomplished in as little as 90 days from the default.

Conclusion

Farmers may have extremely complex marital estates, with any number of types and classes of assets and debts. Litigation can be complex and devastating to the family farm while also creating lasting hostility in the family. Thinking outside the box to address these unique issues can help preserve the farm in the family while protecting the interests of the nonfarm spouse.

Endnotes

1 *Nebraska Agriculture Fact Card*, NE Dep't of Agric., https://nda.nebraska.gov/facts.pdf (last visited June 14, 2021).

2 *Id.*

3 Daniel Prager et al., *Farm Use of Futures, Options, and Marketing Contracts*, U.S. Dep't of Agric. Econ. Info. Bulletin (Oct. 2020).

4 *Id.*

5 *Id.*

6 Corey Clark, *Farms With No Employees Can Still Benefit from the Paycheck Protection Program*, MSU Extension (Mar. 7, 2021), https://www.canr.msu.edu/news/farms-with-no-employees-can-still-benefit-from-the-paycheck-protection-program.

[7] John Newton et al., *What's in the New COVID-19 Relief Package for Agriculture*, Am. Farm Bureau Fed'n (Dec. 22, 2020), https://www.fb.org/market-intel/whats-in-the-new-covid-19-relief-package-for-agriculture.

[8] *American Rescue Plan Debt Payments*, U.S. Dep't of Agric., https://www.farmers.gov/americanrescueplan (last visited June 11, 2021).

[9] *Coronavirus Food Assistance Program 2*, U.S. Dep't of Agric., https://www.farmers.gov/sites/default/files/documents/CFAP2-StakeholderToolkit-10132020.pdf (last visited June 15, 2021).

[10] *Coronavirus Food Assistance Program*, U.S. Dep't of Agric., https://www.farmers.gov/pandemic-assistance/cfap (last visited June 11, 2021).

[11] *See generally USDA Pandemic Assistance for Producers*, U.S. Dep't of Agric., https://www.farmers.gov/pandemic-assistance (last visited June 11, 2021).

[12] *See generally Conservation Reserve Program*, U.S. Dep't of Agric., https://www.fsa.usda.gov/programs-and-services/conservation-programs/conservation-reserve-program/ (last visited June 11, 2021).

[13] *Coufal v. Coufal*, 866 N.W.2d 74 (Neb. 2015).

[14] Neb. Rev. Stat. § 42-366(8); *Davidson v. Davidson*, 578 N.W.2d 848 (Neb. 1998).

[15] *Holen v. Holen*, A-16-1201, 2017 WL 6334153 (Neb. Ct. App. Dec. 12, 2017) (selected for posting to court website) ("The option to purchase was acquired by the marital estate when the agreement was signed by both parties in April 2010, and the option remained part of the marital estate at the time of the court-ordered valuation date of December 31, 2014. Even according to Erik, in September 2014, the option was still in full force and effect, and as of December 31 of that year, he had not done anything to jeopardize his rights under the Agreement. The option to purchase was therefore a marital asset at the time of the valuation date. *See Schuman v. Schuman*, 265 Neb. 459, 665 N.W.2d 30 (2003) (as a general rule, all property accumulated and acquired by either party during the marriage is part of the marital estate, unless it falls within an exception to the general rule).").

[15] *See generally Holen*, 2017 WL 6334153. .

[17] *Farmer's Tax Guide*, Internal Revenue Serv., https://www.irs.gov/pub/irs-pdf/p225.pdf (last visited June 14, 2021).

[18] *See Osantowski v. Osantowski*, 904 N.W.2d 251 (Neb. 2017) (allowing credit for prepaid expenses but adjusting for equipment down payment); *But see Johnson v. Johnson*, 307 N.W.2d 783 (Neb. 1981) (disallowing credit as speculative when crop proceeds are unknown).

[19] CARES Act, Pub. L. No. 116-136, §§ 2303(a) and (b) (2021).

[20] Consolidated Appropriations Act,Pub. L. No. 116-260, Division N, § 281 (2021).

[21] *Id.*

[22] *See, Gangwish v. Gangwish*, 678 N.W.2d 503 (Neb. 2004); *Workman v. Workman*, 632 N.W.2d 286 (Neb. 2001); *Pickrel v. Pickrel,* 717 N.W.2d 479 (Neb. Ct. App. 2006). The court in *Workman* noted that "[i]t is well established that the provision of 'in-kind' benefits, from an employer or other third party, may be included in a party's income for child support purposes." 632 N.W.2d at 295 (citing *State on behalf of Hopkins v. Batt*, 573 N.W.2d 425 (Neb. 1998) (military housing benefit and subsistence allowance included as income); *Baratta v. Baratta,* 511 N.W.2d 104 (Neb. 1994) (free food and rent provided by employers, who were also petitioner's parents, included as income); *Morrill County v. Darsaklis*, 584 N.W.2d 36 (Neb. Ct. App. 1998) (use of home on farm included as income); and *Robbins v. Robbins*, 536 N.W.2d 77 (Neb. Ct. App. 1995) (value of food and drink provided by employer included in income).

[23] *Jones v. McDonald Farms, Inc.,* 896 N.W.2d 199 (Neb. Ct. App. 2017); *see generally* Neb. Rev. Stat. § 21-20,162.

[24] IRC § 179.

[25] Nebraska Child Support Guidelines, Neb. Ct. R. § 4-204(C).

[26] *Schuman v. Schuman*, 658 N.W.2d 30 (Neb. 2003) ("We conclude that in assigning a value to a business for purposes of dividing the property in an action for dissolution of marriage, a trial court should not consider the tax consequences of the sale of the business unless there is a finding by the court that the sale of the business is reasonably certain to occur in the near future. However, the court may consider such tax consequences if it finds that the property division award will, in effect, force a party to sell his or her business in order to meet the obligations imposed by the court.").

[27] *Buche v. Buche*, 423 N.W.2d 488 (Neb. 1988) (holding that income tax would eventually have be paid on an IRA and therefore it was proper consider the future tax consequences in determining the present value of the IRA in dividing marital property).

[28] *See. e.g., Carlson v. Carlson*, 909 N.W.2d 351 (Neb. 2018) ("Where parties to a divorce action voluntarily execute a [property settlement agreement] which is approved by the dissolution court and incorporated into a divorce decree from which no appeal is taken, its provisions as to real and personal property and maintenance will not thereafter be vacated or modified in the absence of fraud or gross inequity.").

[29] *Novation,* Black's Law Dictionary (11th ed. 2019).

[30] *Young v. Comm'r*, 240 F.3d 369, 373 (4th Cir. 2001) ("We first consider the Tax Court's ruling involving § 1041, which provides that no taxable gain or loss results from a transfer of property to a former spouse if the transfer is 'incident to the divorce.' 26 U.S.C. § 1041(a)(2). Section 1041 further provides that 'a transfer of property is incident to the divorce' if it is 'related to the cessation of the marriage.' 26 U.S.C. § 1041(c)(2). The statute does not further define the term 'related to the cessation of the marriage,' but temporary Treasury regulations provide some guidance. Those regulations extend a safe harbor to transfers made within six years of divorce if also 'pursuant to a divorce or separation instrument, as defined in § 71(b)(2).' Temp. Treas. Reg. § 1.1041-1T(b) (2000). Section 71(b)(2) defines a 'divorce or separation instrument' as a 'decree of divorce or separate maintenance or a written instrument incident to such a decree.' 26 U.S.C. § 71(b)(2) (1994). A property transfer not made pursuant to a divorce instrument 'is presumed to be not related to the cessation of the marriage.' Temp. Treas. Reg. § 1.1041-1T(b).").

[31] IRC § 1041.

[32] *Young*, 240 F.3d at 369.

[33] *Id.*

[34] *Belot v. Comm'r*, 111 T.C.M. (CCH) 1547 (T.C. 2016).

[35] *Id.* at *11.

[36] *Id.*

[37] *Id.*

[38] Neb. Rev. Stat. § 42-371 ("All judgments and orders for payment of money shall be liens, as in other actions, upon real property and any personal property registered with any county office and may be enforced or collected by execution and the means authorized for collection of money judgments."); Neb. Rev. Stat. § 25-1504 ("The lands and tenements of the debtor within the county where the judgment is entered shall be bound for the satisfaction thereof only from the day on which such judgments are rendered. All other lands, as well as goods and chattels of the debtor, shall be bound from the time they shall be seized in execution.").

Dealing with Student Loans in a Divorce

by Michael Brewer

At an estimated $1.71 trillion,[1] student loan debt in the United States is staggeringly high, and among Nebraskans, there are approximately 236,000 student loan borrowers with an average student loan debt of $32,000.[2] With these statistics in mind, and considering the recent increase in Nebraska appellate opinions involving the different aspects of student loans in divorce and the great likelihood of handling a divorce case that includes student loans, this article aims to provide a practical guide for Nebraska practitioners to better understand how to deal with student loans in a divorce.

There are three common scenarios where practitioners must navigate student loans during divorce proceedings: (1) student loans incurred during the marriage; (2) premarital student loans paid off or down during the marriage; and (3) student loan child support deductions.

Student Loans Incurred During the Marriage

The first scenario involving student loans in divorce is when student loans are incurred during the marriage.

Walker v. Walker is the first published case where the Nebraska Appellate Court examined whether student loans incurred during the marriage are part of the marital estate. In *Walker*, the Nebraska Court of Appeals found that student loans incurred during the marriage are not marital debt, and therefore not part of the marital estate.[3] Accordingly, the party incurring the student loan debt remained responsible for the debt, and the loans were not included in the equitable division of the marital estate.

In *Walker*, the parties were married for seven years, and the wife incurred student loan debt for law school over the last three years of the marriage, graduating from law school four months after the divorce was filed. Although there was a dispute over the portion of the student loans that exceeded the cost of her educational expenses,[4] the Court found that the wife's student loans were nonmarital because the wife takes all the benefits of her education with her, and therefore, equity requires she be responsible for the debt that goes along with the education.[5]

After *Walker*, the Nebraska Court of Appeals examined the issue of student loan debt incurred during the marriage in four unpublished opinions,[6] and in these cases, which are discussed next, the Court reached the opposite conclusion of *Walker*, finding that these debts can be marital and therefore included in the division of the marital estate.[7] These four unpublished opinions are discussed next.

In *Schmid v. Schmid*, the parties were married for twenty-five years, and the wife incurred student loan debt to obtain a bachelor's degree three years before the parties filed for divorce.[8] The Nebraska Court of Appeals held that the student

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loans that the wife incurred during the marriage were for the joint benefit of the parties because the education she received through incurring the debt financially benefitted the entire family.[9]

In *Lewis v. Lewis*, the parties were married for nineteen years, and the wife incurred student loan debt over a period of a few years at the beginning of the marriage, and again in the middle of the marriage.[10] Echoing its ruling in *Schmid*, the Nebraska Court of Appeals held that the student loans the wife incurred during the marriage were for the joint benefit of the parties because the loans allowed the wife to improve her career opportunities and therefore contribute more money to the family.[11]

In *Meelhuysen v. Meelhuysen*, the parties were married for four years, and both parties incurred student loans and obtained degrees during the marriage.[12] The Nebraska Court of Appeals found no abuse of discretion in the trial court's ruling that both parties' student loan debts were marital, and, without much discussion or analysis of the issue, found no abuse of discretion in ordering each party to pay their own student loan debt.[13]

In *Riegel v. Lemond*, the final unpublished opinion on this issue, the parties were married for approximately 20 years,[14] and the husband incurred $6,700 in student loan debt during the marriage.[15] The husband testified that some of the student loan debt was for his education and that some of it was for family expenses.[16] The Nebraska Court of Appeals found no abuse of discretion in the trial court's ruling that the loans should not be included in the marital estate, because the husband did not "present an adequate record establishing how a student loan incurred during the marriage was utilized."[17] The Court, in language it had not previously used when examining this issue, further stated that "[i]f the loan was utilized solely for educational expenses, then, arguably, the debt could be found to be nonmarital property. However, if part of the loan was utilized for the support of the obligor's family, then such loan could arguably be found to be marital."[18] However, since the husband "failed to provide an itemization to establish how any student loan acquired during the marriage was utilized", he did not meet his burden of proving his student loan debts were marital.[19]

Very recently, the Nebraska Court of Appeals revisited the division of student loans obtained during the marriage and issued a published opinion in *Wright v. Wright*.[20] In *Wright*, the parties were married for approximately six years, and the husband incurred approximately $124,000 in student loans during the marriage.[21] The husband also claimed that $41,000 of the student loan amount was in excess of the cost of his education and was used to support the family.[22] The trial court excluded the entirety of the husband's student loans from the marital estate and the Court of Appeals found no abuse of discretion on this issue.[23] Although the Court of Appeals did not explicitly state that the husband's student loans were not for the joint benefit of the parties, its ruling made it clear that the Court believed it did not have enough evidence before it to include any of the husband's student loans in the marital estate.[24]

Despite its holding, the *Wright* Court did offer insight into what it would consider helpful in analyzing student loans incurred during the marriage in the context of property division. *Wright* stressed the necessity of "presenting a sufficient record that establishes the distribution and utilization" of these loans,[25] which would include an "itemization of the student loan proceeds" and "records of tuition payments."[26] The *Wright* Court also suggested accounting for how funds deposited into bank account were used to benefit the family when making a marital claim.[27]

From these cases, it is clear that student loans incurred during a marriage may well be considered marital debts, and this issue is fact-driven. Further, the opinions that have been issued provide the framework for the arguments that can be made to best represent your client, no matter which side you represent.

If you wish to have student loan debt included in the marital estate, argue that the loans were for the joint benefit of the parties as the loans allowed the incurring party to progress in their career, contribute more money to the household, financially benefit the family, or that excess funds were used for family or household expenses. As these cases have noted, be prepared to prove all these items with precision and specificity.

On the other hand, if you wish to have the student loan debt that was incurred during the marriage excluded from the marital estate, argue that the loans were not for the joint benefit of the parties because the party that incurred the loans did not receive the benefit of their education until after the parties separated, and therefore the family or other spouse never received any benefit from the debt, or rely on the unpublished opinion in *Riegel* and argue that the amount of loans used for educational expenses are not marital. Another argument that can be made is that the party that incurred the loans did not prove what the loans were used for. This argument applies to loans that went directly to the school as well as any excess loans.

The bottom line is that if you want student loans to be included in the marital estate, be prepared to specifically prove, with appropriate documentation, why they should be.[28]

Premarital Student Loans Paid During the Marriage

The second situation where student loans arise in divorce is when student loans obtained prior to marriage are paid off or down during the marriage. Since these loans were obtained before the parties married, the loans themselves are premarital and therefore not included in the division of the marital estate. However, the Nebraska's appellate courts have examined this exact issue and have found that like other premarital debts

paid off or down during the marriage, payments made toward premarital student loans using marital assets may be taken into account in the division of the marital estate.

The first case to examine this issue was *Gangwish v. Gangwish*.[29] In *Gangwish*, approximately $12,000 of the wife's premarital student loans were paid off during the marriage.[30] However, the trial court only gave her a $7,000 credit in the division of the marital estate even though the entire amount of student loans were paid off during the marriage.[31] The husband appealed, arguing that since the entire amount was paid off during the marriage, the wife should be credited with the entire amount in the division of the marital estate.[32] The Nebraska Supreme Court agreed, stating the wife's "award should have been reduced by the total student loan debt that she brought into the marriage because that debt was paid off with marital assets."[33] However, the Court did not revise the student loan payment credit because "the marital estate totaled well over $1 million and the alleged mistake constitutes less than one-half of 1 percent of this total[,]" which was not an abuse of discretion.[34]

This issue was revisited in *Anderson v. Anderson*.[35] In *Anderson*, the wife brought premarital student loan debt into the marriage, and the husband sought to have her credited for the amount of her premarital student loans that were paid off during the marriage.[36] In disallowing the credit for the amount of the wife's student loans paid off during the marriage, *Anderson* found that the husband had failed to meet his burden of proving the amount paid toward the wife's student loans during the marriage (versus the amount paid prior to the marriage), and therefore the amount paid toward the wife's premarital student loans could not be included in the division of the marital estate.[37]

Finally, the Nebraska Court of Appeals reexamined this issue very recently in *Ramsey v. Ramsey*.[38] In *Ramsey*, the wife had approximately $42,000 of premarital student loans, and this entire amount was paid off during the marriage.[39] Referring to *Gangwish*, the Court stated that "[w]hen one party's nonmarital debt is paid off with marital funds, the value of the debt repayment ought to reduce that party's property award upon dissolution."[40] In an effort to clear up any confusion as to whether one-half or the entire amount of the student loan debt paid off during the marriage should be taken into account in dividing the marital estate, *Ramsey* found that the entire amount of the wife's premarital student loan debt that was paid off during the marriage should be characterized as an asset attributable to her—the party that benefitted from having their debt paid off.[41] The Court reasoned that if this asset was the parties' only asset, the wife would have to pay the husband half of this amount to equalize the marital estate.[42]

It is worth noting in *Ramsey* that the husband met his burden of proving the amount of the wife's student loans paid off during the marriage by stipulation.[43] It is also worth mentioning that because neither party appealed the trial court's incorrect method of calculating the marital estate and resulting equalization payment,[44] the *Ramsey* Court recalculated the value of marital estate, and the resulting equalization payment, under a plain error standard.[45] Under this standard, the Court found that even though the wife would have received approximately $13,000 more if a correct calculation was used, the difference between the wife receiving 50% of the marital estate under a correct calculation, and the 48% she received under the improper calculation, did not rise to the level of plain error.[46]

Like student loan debt incurred during the marriage, it is clear that premarital student loan debt paid off or down during the marriage may be included in the division of the marital estate, and this issue is also fact-driven. The above-mentioned appellate opinions provide the framework for the arguments that can be made to best represent your client, no matter which side you represent.

If you wish to have the student loan payments that were made during the marriage included in the marital estate, you will need to be able to prove what this amount is, with the most effective way being stipulating with the opposing party as to the amount. If an agreement cannot be reached, obtain statements from the loan provider(s) showing the balance at the time of the marriage and evidence the payments made during the marriage.

If instead you wish to have these student loan payments excluded from the marital estate, argue that the opposing party has not met their burden of proving the amount paid off during the marriage.

Student Loan Child Support Deduction

The third situation where student loans impact a divorce occurs when the party paying child support desires a deduction from their income in the child support calculation due to their monthly student loan payment.

As family law practitioners are well aware, child support is governed by the Nebraska Child Support Guidelines, with the principle behind the Guidelines being to recognize both parents' duty to contribute financially to their children in proportion to their respective incomes.[47] The Guidelines are a rebuttable presumption, and should be applied as defined unless a court finds that one or both parties have produced sufficient evidence to rebut the presumption, including showing that applying the Guidelines would be inappropriate or unjust.[48] Further, the Guidelines specify several instances when a deduction from a party's income can be taken into account in the child support calculation; however, payments toward student loan obligations are not in the enumerated list.[49] Finally, any deviations from the Guidelines must also take into account the best interests of the child.[50]

The Nebraska Appellate Courts have analyzed the issue of whether payments toward a student loan can be used as a deduction to income in the child support calculation in a trio of opinions about twenty years ago.[51] Those three rulings establish that student loan payments can be used as a deduction to income in the child support calculation, and they define what needs to be proven in order to accomplish this.

In *State ex rel Elsasser v. Fox*, the Nebraska Court of Appeals established that student loan payments can be taken as a deduction to a child support payor's income.[52] The court compared student loan payments to the allowed deductions contained in the Guidelines, and in finding student loan payments to be comparable, stated that student loan payments "are fixed, legally unavoidable monthly payments" that cannot, for most former students, be discharged in bankruptcy."[53] The Court further added that the child support payor was current in his child support payments, and the student loan he incurred will undoubtedly benefit his child now and in the future.[54]

A few years after *Elsasser*, the Nebraska Supreme Court analyzed this issue in *Sears v. Larson*.[55] *Sears* agreed with *Elsasser* to the extent that in appropriate cases, student loan payments can be allowed as a deduction from income for the purposes of child support.[56] *Sears* provided further guidance as to what a party requesting this deduction would need to prove, namely—the amount of the loans, the terms of the loans, the amount attributable to principal and interest, and the amount of the loans that were used for education, child support, or other expenditures—in order to receive this deduction.[57] In addition, the party seeking this deduction needs to prove that applying the Guidelines without allowing a deduction to their income for student loan payments would produce an unjust result.[58] Based on these factors, and the fact that the record did not provide any specific details as to the nature and amount of the loans, the *Spears* Court held that the party seeking the deduction did not meet the burden of proof and did so without defining what "an unjust result" means in this context.[59]

Shortly after *Sears*, this issue was analyzed in *Noonan v. Noonan*.[60] In *Noonan*, the trial court allowed for a deduction from the child support payor's monthly income for their student loan payment.[61] After confirming that its conclusion in *Sears* remains intact,[62] the Nebraska Supreme Court found that the trial court abused its discretion in allowing the deduction because the payor did not meet their burden of proving that disallowing the deduction would produce an unjust result.[63] *Noonan* added another aspect to consider when determining whether this deduction is available, stating that the record contained no evidence that "reveals whether the loan terms allow the [payor] to reduce the size of the monthly payment."[64]

From these cases, it is clear that payments toward student loans can be used as a deduction to income in the child support calculation, but whether a court chooses to allow such a deduction is discretionary. If you represent a party that wishes to get this deduction, prove your case through providing proof of the amount of the loans, the terms of the loans, the amount attributable to principal and interest, and the amount of the loans that were used for education, child support, or other expenditures. Additionally, show that the amount being paid toward the loan is under a repayment plan for the longest possible loan term. Further, if applicable, demonstrate the payor is current in their child support obligation. Finally, get it right the first time around as trying to relitigate this issue through a modification with the same set of facts will be unsuccessful.[65]

If you represent the party that does not want this deduction to be allowed, the best arguments are that the opposing party has not met their burden of proving a deviation from the Guidelines should be applied, either because they did not provide the appropriate proof or they did not prove that applying the Guidelines would produce an unjust result or would be in the child's best interests.

Conclusion

As this article shows, student loans in divorce are ripe for litigation in three common scenarios, and through examining Nebraska's caselaw on point, practitioners have a roadmap for successfully navigating clients through student loan issues in a divorce.

Endnotes

[1] Jaleesa Bustamonte, *Student Loan Debt Statistics*, Educationdata.Org (Mar. 12, 2020) https://educationdata.org/student-loan-debt-statistics(last visited Apr. 25, 2021).

[2] Mel Hanson, *Student Loan Debt By State*, Educationdata.Org (Sept. 29, 2020) https://educationdata.org/student-loan-debt-by-state#nebraska(last visited Apr. 25, 2021).

[3] *Walker v. Walker*, 9 Neb. App. 694, 700, 618 N.W.2d 465, 471 (2000).

[4] According to the Court of Appeals, the record from trial showed approximately $20,000 of the wife's student loans were in excess of her direct educational expenses. *Id.* at 696, 619 N.W.2d at 468.

[5] One unpublished opinion that predates *Walker* reached the same conclusion—that student loan debt incurred during the marriage is not marital debt because the party that incurs the student loan debt takes the benefit of the education along with them after the divorce, and therefore they should be responsible for the debt. *Wick v. Wick*, No. A-94-477, 1995 WL 711536 (Neb. Ct. App. Dec. 5, 1995).

[6] Unpublished opinions of the Court do not carry precedential weight, but that does not mean the Court will not rely on them. *See State v. James*, 6 Neb. App. 444, 450, 573 N.W.2d 816, 820–21 (1998). Further, unpublished opinions can only come before the Court when the case cited is related by identify or cause of action to the current case before the court. Neb. Ct. R. § 2-102(E)(4).

[7] It is this author's opinion that the Court reached a different conclusion in these three cases for two reasons: (1) each case presented a different set of facts than *Walker*; and (2) when reviewing trial court property division rulings, the Court follows the abuse of discretion standard, *Weidel v. Weidel*, 300 Neb. 13, 20, 911 N.W.2d 582, 588 (2018), which is a difficult standard to prove.

[8] *Schmid v. Schmid*, No. A-01-1396, 2003 WL 21397862, at *1 (Neb. Ct. App. June 17, 2003).

[9] *Id.* at *5.

[10] *Lewis v. Lewis*, No. A-16-248, 2017 WL 1456955, at *3 (Neb. Ct. App. Apr. 25, 2017).

[11] *Id.* at *6–7.

[12] *Meelhuysen v. Meelhuysen*, No. A-17-866, 2018 WL 4340118, at *2 (Neb. Ct. App. Sept. 11, 2018).

[13] *Id.* at *13. The Court of Appeals found an abuse of discretion in the trial court's overall division of the marital estate as its division gave the wife approximately 22% of the estate; therefore, the Court amended the overall division of the estate to give the wife approximately 34% of the marital estate. *Id.* at *15.

[14] *Riegel v. Lemond*, No. A-18-607, 2019 WL 2932786, at *1 (Neb. Ct. App. July 9, 2019).

[15] *Id.* at *13.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Wright v. Wright*, 29 Neb. App. 787 (Neb. Ct. App. 2021).

[21] *Id.* at 805–06.

[22] *Id.*

[23] *Id.* at 808.

[24] *Id.*

[25] *Id.* at 807.

[26] *Id.*

[27] *Id.*

[28] These suggestions are not meant to be an exhaustive list.

[29] *Gangwish v. Gangwish*, 267 Neb. 901, 678 N.W.2d 503 (2004).

[30] *Id.* at 905, 678 N.W.2d at 509.

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.* at 905–06, 678 N.W.2d at 510. The holding in *Gangwish* was relied on in *Wiech v. Wiech*, which did not deal with the payment of premarital student loans during the marriage. 23 Neb. App 370, 678 N.W.2d 503 (2015). In *Wiech*, since the amount of premarital debt paid off during the marriage was substantial in comparison to the overall marital estate, the Court found that each parties' premarital debt should be included in the division of the marital estate, with each party receiving a 100% credit for the amount of their premarital debt that was paid off during the marriage. *Id.* at 381, 678 N.W.2d at 579.

[35] *Anderson v. Anderson*, 27 Neb. App. 547, 934 N.W.2d 497 (2019).

[36] *Id.* at 564, 934 N.W.2d at 511–12.

[37] *Id.*

[38] *Ramsey v. Ramsey*, 29 Neb. App. 688 (Neb. Ct. App. 2021).

[39] *Id.* at 699.

[40] *Id.*

[41] *Id.* at 702.

[42] *Id.* at 700.

[43] *Id.* at 698–99.

[44] *Id.* at 701.

[45] *Id.* at 702.

[46] *Id.* at 702–03. The $13,000 was only approximately 2.5% of the total net marital estate.

[47] Neb. Ct. R. § 4-201.

[48] *Id.* § 4-203.

[49] *Id.* § 4-205.

[50] *Brooks v. Brooks*, 261 Neb. 289, 622 N.W.2d 670 (2001).

[51] A fourth unpublished opinion found that the trial court did not abuse its discretion in allowing a deduction to a child support payor's income due to his student loan payments. *Johnson v. Johnson*, No. A-99-1434, 2001 WL 436200 (Neb. Ct. App. May 1, 2001).

[52] *State ex rel Elsasser v. Fox*, 7 Neb. App. 667, 674, 584 N.W.2d 832, 836 (1998).

[53] *Id.*

[54] *Id.*

[55] *Sears v. Larson*, 259 Neb. 760, 612 N.W.2d 474 (2000).

[56] *Id.* at 763, 612 N.W.2d at 477.

[57] *Id.* at 764, 612 N.W.2d at 477.

[58] *Id.*

[59] *Id.*

[60] *Noonan v. Noonan*, 261 Neb. 552, 624 N.W.2d 314 (2001).

[61] *Id.* at 563, 624 N.W.2d at 324.

[62] *Id.* at 564, 624 N.W.2d at 324.

[63] "[W]e note that there is nothing in the record to indicate the total amount of the father's loans, the terms of the loans, the amounts attributable to principal and interest, or what amounts were used for education, child support, or other expenses." *Id.* at 564–65, 624 N.W.2d at 324–25.

[64] *Id.* at 564, 624 N.W.2d at 325.

[65] *See Wilkins v. Wilkins*, 269 Neb. 937, 697 N.W.2d 280 (2005) (holding that attempting to relitigate a deduction to income for child support due to student loan payments in a modification action that is based upon the exact same set of facts is improper, as such is not a material change in circumstances).

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Exhibits, Exhibits, Exhibits!

by Hon. Christina M. Marroquin

In deciding what insight I could share from the bench about the practice of family law, I chose an area that I find is handled in a variety of ways by practitioners, namely, exhibits. First, I will forewarn you that this discussion will not be "a revelation" to most practitioners but will hopefully be some food for thought in your practice. Second, I also must confess that I did not follow these suggestions, at times, when I was practicing law, so this is also a formal apology to those judges who patiently waded through my presentation of evidence.

There are three common stages of a family law case that deal with offering exhibits:

- First, at temporary hearings, where affidavits are offered as exhibits in lieu of live testimony.

- Second, property statements are filed by requirement in a number of districts throughout the state, and while these statements are not initially an exhibit, I think the confusion on that point is worth a brief discussion.

- Finally, exhibits are prepared and organized for trial.

Temporary Affidavits

Many family law cases start out with motions by parents for temporary custody, parenting time, and child support. The majority of Nebraska district courts conduct these hearings by affidavit evidence only. This is the judge's first impression of the case and the contentions of the parties. Just as in life, first impressions are important. I would encourage counsel to ask yourself two things when preparing for a temporary hearing: (1) Is parental fitness at issue in the temporary hearing, and (2) What information does the judge need to make an informed decision?

As it relates to the first inquiry, one major blunder I often observe in legal strategy is that the affidavits relate to fitness, but parental "unfitness" is not pleaded. We have all participated in those temporary hearings where counsel offers ten, twenty, or even more affidavits from family, friends, and co-workers, with observations of a loving and affectionate parent. Each affidavit says a similar version of the same thing in that they have observed the parent with the child, and the parent is attentive and appropriate and there are no parenting concerns. When neither party is claiming the other is unfit, such a presentation of evidence is superfluous and does not do your client any favors. It takes away from the relevant information that the court needs in order to determine the real issues of the day. Just as an editor does with a transcript, edit. You are not required to offer every letter and note that your client brings to you. To

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the contrary, you are required to offer relevant evidence only. Rather than offer affidavits in volume, consider offering salient affidavits that help the judge determine a day-to-day plan for the child(ren).

To this end, we reach the second question to consider in preparing temporary custody affidavits: what information does the judge need? Please don't leave out the details. Here is a list of questions to capture just some information that is often not in the evidence:

- How far apart do the parents reside from each other?
- What are the actual workdays and work hours of each parent?
- What is/are the child(ren)'s daily schedule(s)?
- Who provides childcare? Where is it located?

It is understandable that the big picture is to obtain primary physical custody for your client, but you don't want to win on that issue and be left with an order that is not a practicable parenting time plan. This is inevitable if the judge doesn't know what the daily routine of each parent and the children are. Some parents work nights or weekends, some work a four-day, ten-hour shift and have three days off. The inclusion of such information allows the court to give each parent practical and quality parenting time from the start of the case.

It is always a good idea to offer a proposed temporary order to the court. This ensures that the court is clear as to what each party is requesting. If the oral argument was not clear or a portion of the requested relief was not stated, the proposed order will inform the court as to what is being sought in full. This is especially important if your client is requesting non-standard parenting time or provisions that are case specific. Additionally, if there are any portions of the temporary order that the parties both agree to, such stipulations should be prepared in advance in the form of an order for the court.

The judiciary as a whole and within individual districts has discussed revisions to local court rules to address the issues regarding voluminous affidavits and lack of essential information at temporary hearings. Several districts already have in place rules that limit the number of affidavits, the length of affidavits, or both. Consideration is ongoing regarding uniformity in both limiting the number of affidavits a party can offer

at a hearing and requiring a standard form affidavit to ensure necessary information is entered as evidence. Since it is not yet consistent throughout the state, you should consult the local rule in each district to ensure compliance.

Property Statements

The second phase of family law cases relating to exhibits is filing the often-mandated property statement. Perhaps I should not include property statements in an article about exhibits, but I think it is important for practitioners to recognize the distinction between a filing and an exhibit. The property statement is a filing required by several jurisdictions. It should not be confused with exhibits, such as proposed property settlements, that are prepared as evidence for trial and should not be filed in the permanent record. While most recognize this distinction, it is far too often that the property statements are never filed, but only offered as exhibits, and even more frequent that exhibits are filed rather than brought to the evidentiary hearing and marked.

Several districts have standard form property statements that are located in their local rules. Both the format of the property statement and the time for completion varies from district to district. Some districts do not require a property statement at all. For example, the First District requires a plaintiff to file a property statement within 60 days from the filing of the complaint, whereas the Fifth District requires the plaintiff to file within 30 days. The property statement format is also different amongst districts. You should always review the local rule for your district and, when practicing outside of your district, observe any variations.

I personally find that the property statement is a useful tool to assist the court and parties in identifying where the parties agree on valuation and where there is a dispute. I would suggest that the best practice would be to offer a proposed property distribution that references the numbers provided on the joint property statement. The exhibit offered in conjunction with this reference makes clear to the court what each party is requesting and the value placed on that property.

Trial Exhibits

The final phase is the actual preparation and offering of trial exhibits. As I mentioned in the introduction, there will not be any earth-shattering information here, just suggestions as to trial efficiency. It is helpful to the court and to the official reporters for attorneys to organize the presentation of exhibits in advance of trial. When possible, agree on the order of exhibits to be offered. Inquire as to your court's preference regarding the pre-marking of exhibits. Some courts prefer that the attorneys come with marked exhibits. Others may prefer that the court reporter mark the exhibits the day of trial. Either way, to the extent possible, have the majority of exhibits in order prior to the commencement of trial.

One thing that I greatly appreciate is a bench copy of exhibits. I would encourage you to ask your judge if he or she prefers a bench copy. My advice would be, when in doubt, print one out! Attorneys have lived and breathed their case by the time it gets to trial, but the judge has not. Many exhibits are number intensive. From property valuations to child support calculations, the assignment of numerical value arises throughout a dissolution proceeding. It is very helpful to me to walk through the exhibit while the witness is testifying to it rather than to view it after the case is submitted. Remember, the judge has likely not seen the W-2, the tax return, the appraisal, or any other document that is offered until the moment it is being presented.

In summary, revisit the content within temporary affidavits to ensure it is relevant and that essential information is not lacking. Review your local rules regarding property statements and reference the line items in your proposed property distribution. Finally, make your evidence easier to follow by organizing exhibits in advance of trial and providing bench copies of exhibits to the court when allowed.

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Avoiding Perils and Pitfalls in Nebraska Appeals

by Michael W. Milone and Adam E. Astley

1. Introduction

Appellate practice can be challenging and rewarding, provided that you are aware of the potential roadblocks that will prevent your appeal from being decided on the merits. For years, Nebraska's appellate courts have reminded us: parties requesting appellate review of their claims must abide by the rules of the Nebraska Supreme Court.[1] Any party who fails to properly identify and present its claim does so at its own peril.[2] We hope this article will help you reduce your exposure to that peril, even if only a little bit.

2. Specifically Assign and Argue Each Error or Get Ready to Be Ignored

Before perfecting your appeal, think about the issues which may be ripe for reversal. Outline those issues, and transform them into concise, separately numbered and paragraphed assignments of error for use in your briefing.[3] These assignments of error will frame the issues before your appellate court. Include them in your Brief before you begin to write anything else.

Every error you wish to raise must be both assigned and argued. If you fail to assign errors or argue errors you assigned on appeal, the appellate court, at its discretion, can choose to ignore the error, review for plain error only, or decline to conduct any review at all.[4] Most frequently, when a party fails to assign errors (and this happens frighteningly too often), Nebraska's appellate courts will review the record for plain error.

Plain error is error plainly evident from the record and of such a nature that to leave it uncorrected would result in damage to the integrity, reputation, or fairness of the judicial process.[5] But where an issue is raised and complained of at trial, it cannot be the basis of a finding of plain error on appeal.[6] This severely limits the things that can be considered under a plain error standard of review. And Nebraska's appellate courts find

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plain error only when a *miscarriage of justice* would otherwise occur.[7] Because Nebraska's limited plain error review is often a death sentence to a prospective appeal, properly assigning and arguing each error is perhaps the most important part of Nebraska appellate practice.

The Nebraska Supreme Court has said a party's assignment of errors section is the most critical part of an appellant's or cross-appellant's brief.[8] This section of a brief frames the appeal, gives the opposing party notice of what alleged errors to respond to, and advises the appellate court of what allegations of error by the trial court it has been called upon to address.[9] They are required not only by Nebraska's court rules but also by statute—Neb. Rev. Stat. § 25-1919.[10]

The assignments of error must be in their own section, under a hearing, separately numbered, and concisely stated.[11] Many parties have argued headings within a brief's argument section should be enough to serve as assignments of error. But these arguments always lose. Nebraska's appellate courts have repeatedly stated headings in the argument section do not meet the requirement for assignments of error contained in the proper place and properly designated.[12] Assignments of error consisting of headings or subparts of argument do not comply with the mandate of Neb. Ct. R. App. P. § 2-109(D)(1)(e).[13] That's because neither the appellate court nor the opposing party should have to sift through a party's brief to discern the errors alleged.[14]

Assigning the error is only half of the battle; to be considered by an appellate court, each error that is assigned must also be specifically argued.[15] This requirement is not designed to impede appellate review, but to facilitate it by preventing parties from shifting to appellate courts the critical tasks of searching the record for relevant facts, identifying possible error, and articulating a legal rationale that supports the assigned error.[16] Errors argued but not assigned will not be considered on appeal.[17] And errors assigned but not argued will not be addressed on appeal either.[18]

When analyzing assigned errors, Nebraska's appellate courts will assess how thoughtfully each error is assigned and argued in a party's brief. Appellants are required to point out the factual and legal bases that support their assignments of error.[19] A generalized and vague assignment of error does not advise the appellate court of the issue submitted for decision and will not be considered.[20] An argument that does little more than restate an assignment of error does not support the assignment, and Nebraska's appellate courts will not address it.[21] A short statement contained in a party's brief which cites to no law, and which makes no arguments in support of it, is insufficient to constitute discussion of the assigned error.[22] A brief citation to case law which includes no supporting argument is also insufficient to constitute discussion of the assigned error.[23] Nebraska's appellate courts will decline to consider an appellant's conclusory arguments that have no supporting explanation.[24] So don't waste time on cursory appellate arguments—put real time and effort into it, or don't do it at all.

3. The Bill of Exceptions – Prepare the Right Record for the Appellate Court or Lose Your Appeal

An accurate bill of exceptions is essential to meaningful appellate review.[25] It is each appellant's responsibility to supply a record which supports the issues to be raised on his or her appeal.[26] This burden also requires that the record establish the appellate court's basis for jurisdiction over the appeal.[27] Without an appropriate record, an appellate court will affirm the lower court's decision regarding the assigned errors.[28] As the only proper vehicle for bringing evidence before an appellate court, a bill of exceptions "imports absolute verity" once it has been submitted on appeal.[29] Evidence not made a part of the bill of exceptions will not be considered.[30] Appellate courts cannot rely upon information in the transcript before the trial court to establish facts, even a stipulation of facts.[31] Neither a party's oral arguments nor a party's brief may expand the evidentiary record.[32] And Nebraska's appellate courts will routinely decline to reassess witness credibility or resolve conflicts in the evidence received at trial—that role is given to the trial court.[33]

The Appellant is responsible for filing a bill of exceptions for appellate review.[34] On an appeal from a district court, this is accomplished by filing a Request for Bill of Exceptions simultaneous with the filing of a notice of appeal.[35] The procedure for preparation, settlement, signature, allowance, certification, filing, and amendment of the bill of exceptions is regulated and governed by court rules prescribed by the Nebraska Supreme Court.[36] Once an adequate request has been made by an appellant, the preparation of the bill of exceptions becomes an internal court matter, and it's the duty of the court reporter to properly fulfill the request.[37]

Though preparation of a bill of exceptions is technically *optional* in Nebraska appeals, you'd be a fool not to ask for one. That's because in the absence of a bill of exceptions, an appellate court will consider only the pleadings filed in the case in conjunction with the judgment reviewed.[38] When a transcript containing the pleadings and order in question is sufficient to present the issue for appellate disposition, a bill of exceptions is unnecessary to preserve an alleged error of law regarding the proceedings under review.[39] But if the pleadings are sufficient to support the judgment, it will be presumed on appeal that the evidence supports the trial court's orders and judgment.[40] That standard of review won't leave you much room to win your appeal.

Once the appellate record is prepared and submitted, Nebraska's rules of appellate practice require factual recitations to be annotated to the record, whether they appear in the statement of facts or argument section of a brief.[41] The failure to do so may result in an appellate court's overlooking a fact or otherwise treating the matter under review as if the represented fact does not exist.[42] The Nebraska Supreme Court has cautioned that "failure to properly document the brief with appropriate references to the record carries substantial risks and may have grave consequences."[43] For example, where an appellant's brief does not make sufficient references to the record as required by the Nebraska Rules of Appellate Practice, the judgment of the lower court may be affirmed absent any plain error the appellate court may note.[44] This rule is not for the purpose of relieving the court of the duty of examining the entire record, but to enable a better understanding of appellant's argument and to make more certain that "essential matters" are not overlooked in determining the questions presented in the appeal.[45]

4. Appellate Jurisdiction Requires Timely Appealing from Final Orders, and Those Can be Tricky to Identify under Nebraska Law

Because the right of appeal in Nebraska is statutory, the requirements of a particular appeal statute are mandatory, and they must be complied with before an appellate court acquires jurisdiction of the subject matter of an action.[46] Generally, there are three steps required to vest a Nebraska appellate court with jurisdiction: (1) there must be an appealable judgment or final order entered by the court from which the appeal is taken; (2) a party must timely file a notice of appeal;[47] and (3) the appealing party must pay the docket fee to the clerk of the court or file in forma pauperis.[48] In very limited cases involving challenging the damages awarded in a jury trial, a motion for new trial may also be required.[49]

There is no more fundamental jurisdictional precept than the doctrine that appeals can only be taken from final orders.[50] The final orders that may be appealed are: (1) an order affecting a substantial right in an action, when such order in effect determines the action and prevents a judgment; (2) an order affecting a substantial right made during a special proceeding; (3) an order affecting a substantial right made on summary application in an action after a judgment is entered; and (4) an order denying a motion for summary judgment when such motion is based on the assertion of sovereign immunity or the immunity of a government official.[51] Most practitioners—family lawyers included—will spend their time on appeal dealing with the second category of final orders under this statute because they are by far the most common. So, what are final orders that affect substantial rights in special proceedings? Nebraska law can be somewhat mystifying on these points.[52]

Whether an order affects a substantial right depends on whether it affects with finality the rights of the parties in the subject matter.[53] It also depends on whether the right could otherwise effectively be vindicated.[54] An order affects a substantial right when the right would be significantly undermined or irrevocably lost by postponing appellate review.[55] And it is not enough that the right itself be substantial; the effect of the order on that right must also be substantial.[56]

Special proceedings include every special civil statutory remedy not encompassed in chapter 25 of the Nebraska Revised Statutes which is not in itself an action.[57] An action is any proceeding in a court by which a party prosecutes another for enforcement, protection, or determination of a right or the redress or prevention of a wrong involving and requiring the pleadings, process, and procedure provided by the statute and ending in a final judgment.[58] Every other legal proceeding by which a remedy is sought by original application to a court is a special proceeding.[59] Where the law confers a right, and authorizes a special application to a court to enforce it, the proceeding is special, within the ordinary meaning of the term special proceeding.[60] Examples of special proceedings include juvenile court proceedings, probate actions, and workers' compensation cases.[61]

To be final, an order must dispose of the whole merits of the case, which usually means it fully resolves all of the causes of action between all of the parties. When no further action of the court is required to dispose of a pending cause, the order is final. If the cause is retained for further action, the order is interlocutory and can only be appealed as allowed by statute.[62] Where an order is clearly intended to serve as a final adjudication of the rights and liabilities of the parties, yet it is silent on one or more requests for relief, that silence can be construed as a denial of those requests under the circumstances.[63] If any substantial rights of the parties remain undetermined and the cause is retained for further action, the order is interlocutory and not final.[64] When multiple issues are presented to a trial court for simultaneous disposition in the same proceeding and the court decides some, but not all, of the issues, the court's determination of those issues is an interlocutory order and is not a final order for the purpose of an appeal.[65] For example, an order merely preserving the status quo pending a further order is not final.[66] And an order cannot be final when a trial court specifically requires further action by the court, and the further action is then incorporated into the court's ultimate order.[67]

So, what kinds of orders are not usually "final?" Discovery orders are not generally subject to interlocutory appeal because the underlying litigation is ongoing and the discovery order is not considered final.[68] Denial of a motion for summary judgment is an interlocutory order, not a final order.[69] Denial of a motion to dismiss is not a final order.[70] And in the context of family law, the grant of a temporary order is not a final, appealable order as it does not affect a substantial right.[71] But a temporary order in a family law case essentially becomes final and appealable[72] upon entry of a final decree because the decree ultimately replaces the temporary order.[73]

5. Trial Courts Usually Lose Jurisdiction Once an Appeal is Perfected, but that Doesn't Stay Enforcement of the Judgment without a Supersedeas Bond

Generally, after an appeal has been properly perfected in a civil case, a lower court loses jurisdiction to hear the same matter between the same parties.[74] However, this is only the case when a party appeals from a final, appealable order. A notice of appeal from a non-appealable order does *not* deprive the trial court of jurisdiction, and as a result, it does not void acts of the trial court taken after the notice of appeal is filed, and before the appeal is dismissed by the appellate court.[75]

In most circumstances, an appellate court and the tribunal appealed from do not have jurisdiction over the same case at the same time.[76] Once an appeal is perfected, the trial court usually loses jurisdiction.[77] But there are a few things Nebraska trial courts can do while an appeal is pending. For example, they may: (1) consider and rule on a motion *nunc pro tunc* to correct a scrivener's error in the judgment being appealed;[78] and (2) in family law cases, they can enter orders regarding child support, child custody, parenting time, preservation of property, and other orders in aid of appeal.[79]

All that said, an appeal does not operate as a stay of judgment enforcement proceedings unless an appellant supersedes the judgment or final order in the manner provided by law.[80] This is done by obtaining a supersedeas bond, which is an appellant's bond to stay execution on a judgment during the pendency of the appeal.[81] The trial court determines the amount of the bond, and the bond must be both determined and posted within 30 days of the date of the judgment sought to be appealed in order to be effective.[82] Generally, supersedeas is a statutory remedy and is only obtained by strict compliance with all required conditions, none of which can be dispensed with.[83] But that's not true for family law cases; there, a trial court may grant a supersedeas bond in its discretion on the conditions and in the amount it chooses.[84]

A supersedeas order or bond is not a prerequisite to appellate review, except in limited circumstances.[85] A supersedeas does not operate against the judgment itself but rather against its enforcement.[86] A supersedeas does not reverse or annul the judgment, it just preserves the status as of the time of the judgment.[87] If a judgment is not superseded, it is effective notwithstanding appeal and may be collected or enforced.[88] The trial court sets the initial amount and conditions of a supersedeas bond, though they can be adjusted by an appellate court.[89] The proper procedure to challenge the trial court's determination of the amount or terms of the bond is to file a *motion* in the appellate court, rather than filing a separate appeal.[90]

6. Cross-Appeals - Handle Them with Care, Just Like Original Appeals

An appellee may cross-appeal and assign error in their brief.[91] The right of cross-appeal exists notwithstanding an ultimately favorable outcome for the cross-appellant in the trial court.[92] Nebraska's appellate courts have repeatedly indicated that a cross-appeal must be properly designated if affirmative relief is to be obtained.[93] Affirmative relief, for purposes of appeal, is a reversal, vacation, or modification of a lower court's judgment, decree, or final order. And an appellee's argument that a lower court's decision should be upheld on grounds specifically rejected below also constitutes a request for affirmative relief, so the appellee must cross-appeal in order for that argument to be considered.[94] An appellee may not raise arguments independent of or not responsive to an appellant's assignments of error without cross-appealing because they will fall beyond the scope of the case as presented in the appellant's brief.[95]

In recent cases, there's been a bit of a kerfuffle about what a cross-appeal must look like in its form and substance. To be safe, practitioners should structure and argue a cross-appeal as if it were an original appeal, following all applicable briefing rules along the way. The cross-appeal section of an appellate brief must set forth a heading indicating "Brief on Cross Appeal," then a *separate* title page (even after the heading), a table of contents, a statement of the case, assigned errors, propositions of law, and a statement of the facts.[96] A cross-appellant's failure to include a *separate* section for assigned errors, or failure to follow other brief formatting rules, will result in an appellate court proceeding as though the party failed to file a brief or, alternatively, examining the arguments on cross-appeal for plain error.[97] Even the slightest errors in formatting a cross-appeal can be fatal or leave you at the grace and mercy of the appellate courts.[98]

7. Constitutional Challenges – Give Notice Early under Rule 2-109(E)

An appellant challenging the constitutionality of a statute must strictly comply with Neb. Ct. R. App. P. § 2-109(E). Section 2-109(E) requires that a party presenting a case involving the federal or state constitutionality of a statute must file and serve notice thereof with the Supreme Court Clerk in a separate written notice or in a petition to bypass at the time of filing the party's brief. The party must also provide the Nebraska Attorney General with a copy of its brief. Without strict compliance with § 2-109(E), the Nebraska Supreme Court will not address a constitutional challenge to a statute.[99] Section 2-109(E) ensures that the Nebraska Supreme Court has notice of a constitutional challenge.[100] As the Nebraska Constitution empowers that court to declare a legislative act unconstitutional only by a supermajority of at least five judges, it must secure a full court to hear an appeal regarding the constitutionality of a statute.[101] Section 2-109(E) assists the court to do so.[102] Section 2-109(E) also guarantees that notice of a constitutional challenge to a statute is provided to the Attorney General.[103]

Nebraska's statutes may not precisely articulate the Attorney General's duty to defend the constitutionality of state statutes.[104] But the Attorney General has some duties which are not purely statutory and are sometimes referred to as the "common-law duties of the office."[105] The common-law duties of the Attorney General include that he or she must defend duly adopted statutory enactments that are not unconstitutional.[106] Because the Attorney General cannot defend the constitutionality of a statute if the Attorney General has not been notified of the challenge, strict compliance with § 2-109(E) is necessary to ensure that the appeal may be staffed and handled accordingly.[107] Because notice is needed, strict compliance with

§ 2-109(E) is necessary whenever a litigant challenges the constitutionality of a statute, regardless of how that constitutional challenge may be characterized.[108] It does not matter if the litigant explicitly challenges a statute, as the Nebraska Supreme Court remains bound to the requirements of article V of the Nebraska Constitution.[109] Therefore, as long as the Nebraska Supreme Court must determine the constitutionality of a statute in deciding an appeal, § 2-109(E) applies.[110]

8. Conclusion

The authors of this article really enjoy working on Nebraska appeals. We want appellate practice to be better and easier for every Nebraska lawyer considering an appeal. And we want you to have the best chance of having your appeal heard on the merits, so your client can have their day in court, rather than missing the opportunity to do so because of a preventable mistake. So if you ever have questions, need someone to brainstorm with you, or if you're just looking for some advice on a novel appellate issue, please ask us. Maybe even consider hiring us as consultants or experts on your next appeal. Because we're here to help raise the bar for Nebraska's appellate practitioners and make sure Nebraska appeals are done right.

Endnotes

1 *In re Guardianship & Conservatorship of Larson*, 270 Neb. 837, 708 N.W.2d 262 (2006).

2 *In re Guardianship & Conservatorship of Larson*, 270 Neb. 837, 708 N.W.2d 262 (2006).

3 *See* Neb. Ct. R. App. P. § 2-109(D)(1)(e).

4 *Great Northern Ins. Co. v. Transit Auth. of Omaha*, 308 Neb. 916, 922 (2021) (citing: *In re Interest of Steven S. et al.*, 27 Neb. App. 831, 936 N.W.2d 762 (2019); *Knaub v. Knaub*, 245 Neb. 172, 512 N.W.2d 124 (1994); *Harrison v. Harrison*, 28 Neb. App. 837, 949 N.W.2d 369 (2020)).

5 *Steffy v. Steffy*, 287 Neb. 529 (2014).

6 *Wilson v. Wilson*, 23 Neb. App. 63, 72, 867 N.W.2d 651, 657-58 (2015).

7 *State v. Mrza*, 302 Neb. 931, 942 (2019).

8 *Great Northern Ins. Co. v. Transit Auth. of Omaha*, 308 Neb. 916, 923-25 (2021).

9 *Great Northern Ins. Co. v. Transit Auth. of Omaha*, 308 Neb. 916, 923-25 (2021).

10 *Great Northern Ins. Co. v. Transit Auth. of Omaha*, 308 Neb. 916, 923-25 (2021).

11 Neb. Ct. R. App. P. §§ 2-109(D)(1) and 2-109(D)(1)(e).

12 *Great Northern Ins. Co. v. Transit Auth. of Omaha*, 308 Neb. 916, 923-25 (2021); *In re Interest of Samantha L. & Jasmine L.*, 286 Neb. 778, 783, 839 N.W.2d 265, 269-70 (2013); *Steffy v. Steffy*, 287 Neb. 529, 843 N.W.2d 655 (2014).

13 *Great Northern Ins. Co. v. Transit Auth. of Omaha*, 308 Neb. 916, 923-25 (2021).

14 *Great Northern Ins. Co. v. Transit Auth. of Omaha*, 308 Neb. 916, 923-25 (2021).

15 *State v. Cook*, 290 Neb. 381, 860 N.W.2d 408 (2015).

16 *State v. Ash*, 293 Neb. 583, 594 (2016).

17 *Forgét v. State ex rel. State Bd. of Public Accountancy*, 265 Neb. 488, 658 N.W.2d 271 (2003).

18 *Shipferling v. Cook*, 266 Neb. 430, 665 N.W.2d 648, 652 (2003).

19 *Marcuzzo v. Bank of the West*, 290 Neb. 809, 817, 862 N.W.2d 281, 288 (2015).

20 See, e.g., *McLain v. Ortmeier*, 259 Neb. 750, 612 N.W.2d 217 (2000); *State v. Filholm*, 287 Neb. 763, 848 N.W.2d 571 (2014); *State v. Wagner*, 295 Neb. 132, 149 (2016).

21 *Marcuzzo v. Bank of the West*, 290 Neb. 809, 817, 862 N.W.2d 281, 288 (2015); *State v. Mata*, 275 Neb. 1, 745 N.W.2d 229 (2008); *State ex rel. City of Alma v. Furnas Cty. Farms*, 266 Neb. 558, 667 N.W.2d 512 (2003).

22 See *State v. Reyes*, 18 Neb. App. 897, 794 N.W.2d 886 (2011).

23 See *State v. Reyes*, 18 Neb. App. 897, 794 N.W.2d 886 (2011).

24 *Courtney v. Jiminez*, 25 Neb. App. 75, 84 (2017) (citing *State v. Cook*, 290 Neb. 381, 860 N.W.2d 408 (2015)); *State v. Gray*, 307 Neb. 418, 423 (2020).

25 See *In re Estate of Radford*, 297 Neb. 748, 753 (2017).

26 *State v. Custer*, 292 Neb. 88, 100 (2015); Neb. Ct. R. App. P. § 2-105(B)(1)(a) to (B)(1)(c).

27 *Clarke v. First Nat. Bank of Omaha*, 632, 645 (2017).

28 *In re Interest of Hope L. et al*, 278 Neb. 869, 775 N.W.2d 384 (2009).

29 *State v. Malone*, 308 Neb. 929, 940 (2021).

30 *In re Guardianship of Forster*, 22 Neb. App. 478, 856 N.W.2d 134 (2014); *Howard v. Howard*, 234 Neb. 661, 452 N.W.2d 283 (1990).

31 *In re Guardianship of Forster*, 22 Neb. App. 478, 856 N.W.2d 134 (2014).

32 See *Clarke v. First Nat. Bank of Omaha*, 296 Neb. 632, 895 N.W.2d 284 (2017); see also *Galaxy Telecom, L.L.C. v. SRS, Inc.*, 13 Neb. App. 178, 186, 689 N.W.2d 866, 873 (2004).

33 See, e.g., *State v. Robinson*, 271 Neb. 698, 731, 715 N.W.2d 531, 560 (2006) (citing *State v. Faust*, 269 Neb. 749, 696 N.W.2d 420 (2005)); *State v. Ferrin*, 305 Neb. 762, 942 N.W.2d 404 (2020).

34 *Buda on behalf of Buda v. Humble*, 2 Neb. App. 872, 873, 517 N.W.2d 622, 623 (1994); *State v. Blue*, 223 Neb. 379, 391 N.W.2d 102 (1986).

35 Neb. Rev. Stat. § 25-1140; Neb. Ct. R. App. P. § 2-105(A) and (B).

36 Neb. Rev. Stat. §§ 25-1140, 25-1140.08, and 25-114-.09; Neb. Ct. R. App. P. § 2-105.

37 *Sindelar v. Hanel Oil, Inc.*, 254 Neb. 975, 581 N.W.2d 405 (1998); *Shuck v. Jacob*, 250 Neb. 126, 548 N.W.2d 332 (1996); *State v. Slezak*, 230 Neb. 197, 430 N.W.2d 533 (1988).

38 See *Rosberg v. Rosberg*, 25 Neb. App. 856, 916 N.W.2d 62 (2018).

39 See *Rosberg v. Rosberg*, 25 Neb. App. 856, 916 N.W.2d 62 (2018).

40 See *Rosberg v. Rosberg*, 25 Neb. App. 856, 916 N.W.2d 62 (2018); see also *Stewart v. Heineman*, 296 Neb. 262, 300 (2017).

41 Neb. Ct. R. App. P. §§ 2-109(D)(1)(g) and (i).

42 *Sturzenegger v. Father Flanagan's Boy's Home*, 276 Neb. 327, 342, 754 N.W.2d 406, 423-24 (2008) (citing *Smith v. Colorado Organ Recovery Sys.*, 269 Neb. 578, 694 N.W.2d 610 (2005)).

43 *City of Gordon v. Montana Feeders, Corp.*, 273 Neb. 402, 404, 730 N.W.2d 387, 390 (2007).

44 *In re Interest of P.W.*, 224 Neb. 197, 397 N.W.2d 36 (1986).

45 *City of Gordon v. Montana Feeders, Corp.*, 273 Neb. 402, 404, 730 N.W.2d 387, 390 (2007).

46 *Whitehouse Energy Savers v. Hanlon*, 214 Neb. 572, 334 N.W.2d 802 (1983).

47 Typically, within 30 days of the final order at issue, or within 30 days of a timely filed motion for new trial or motion to alter or amend the judgment entered.

48 *Great Northern Ins. Co. v. Transit Auth. of Omaha*, 305 Neb. 609, 612-13 (2020); Neb. Rev. Stat. § 25-1912(1).

49 *See* Neb. Rev. Stat. § 25-1912.01(2).

[50] *Belitz v. Belitz*, 17 Neb. App. 53, 58, 756 N.W.2d 172, 176 (2008).

[51] Neb. Rev. Stat. § 25-1902.

[52] John P. Lenich, *What's So Special About Special Proceedings? Making Sense of Nebraska's Final Order Statute*, 80 Neb. L. Rev. 239 (2001).

[53] *State v. Fredrickson*, 305 Neb. 165, 172 (2020).

[54] *State v. Fredrickson*, 305 Neb. 165, 172 (2020).

[55] *State v. Fredrickson*, 305 Neb. 165, 172 (2020).

[56] *In re Interest of Michael N.*, 302 Neb. 652, 663 (2019).

[57] *In re Grand Jury of Douglas Cty.*, 302 Neb. 128, 133-34 (2019).

[58] *In re Grand Jury of Douglas Cty.*, 302 Neb. 128, 133-34 (2019).

[59] *In re Grand Jury of Douglas Cty.*, 302 Neb. 128, 133-34 (2019).

[60] *In re Grand Jury of Douglas Cty.*, 302 Neb. 128, 133-34 (2019).

[61] *In re Grand Jury of Douglas Cty.*, 302 Neb. 128, 133-34 (2019).

[62] *Blue Cross and Blue Shield of Nebraska, Inc. v. Dailey*, 268 Neb. 733, 738, 687 N.W.2d 689, 695 (2004); *Olsen v. Olsen*, 248 Neb. 393, 397, 534 N.W.2d 762, 765 (1995); Neb. Rev. Stat. § 25-1315.

[63] *Model Interiors v. 2566 Leavenworth, LLC*, 19 Neb. App. 56, 68, 809 N.W.2d 775, 785 (2011); *D'Quaix v. Chadron State College*, 272 Neb. 859, 725 N.W.2d 558 (2007).

[64] *Kimball v. Kimball*, 228 Neb. 702, 705-06, 424 N.W.2d 122, 125 (1988); *Lewis v. Craig*, 236 Neb. 602, 463 N.W.2d 318 (1990).

[65] See *McCaul v. McCaul*, 17 Neb. App. 801, 805, 771 N.W.2d 222, 226 (2009) (citing *Wagner v. Wagner*, 275 Neb. 693, 749 N.W.2d 137 (2008)); see also *Carr v. Ganz*, 26 Neb. App. 14, 22 (2018) and *Tilson v. Tilson*, 299 Neb. 71-2 (2018).

[66] *Tilson v. Tilson*, 299 Neb. 64, 75 (2018).

[67] See *Huffman v. Huffman*, 236 Neb. 101, 459 N.W.2d 215 (1990).

[68] *Wilczewski v. Charter West Nat. Bank*, 295 Neb. 254, 268 (2016); *Ginger Cover Common Area Co. v. Wiekhorst*, 296 Neb. 416 (2017).

[69] *Jill B. & Travis B. v. State*, 297 Neb. 57, 64 (2017).

[70] *D.M. v. State,* 25 Neb. App. 596, 603 (2018).

[71] See *Carmichael v. Rollins*, 280 Neb. 59, 783 N.W.2d 763 (2010); see also *Fitzgerald v. Fitzgerald*, 286 Neb. 96, 835 N.W.2d 44 (2013).

[72] See, e.g., *Kosiske v. Kosiske*, 8 Neb. App. 694 (1999).

[73] See *Hall v. Hall*, 176 Neb. 555, 560, 126 N.W.2d 839, 843 (1964); *Rickus v. Rickus*, 184 Neb. 833, 835, 172 N.W.2d 628, 630 (1969); *Mann v. Rich*, 18 Neb. App. 849, 794 N.W.2d 183 (2011).

[74] *In re Woltemath*, 268 Neb. 33, 680 N.W.2d 142, 147 (2004).

[75] *In re Woltemath*, 268 Neb. 33, 680 N.W.2d 142, 147 (2004).

[76] *Butler Cty. Landfill v. Butler Cty. Bd. of Supervisors*, 299 Neb. 422, 431 (2018).

[77] *Flora v. Escudero*, 247 Neb. 260, 526 N.W.2d 643 (1995).

[78] See *Samardick of Grand Island-Hastings, Inc. v. B.D.C. Corp*., 183 Neb. 229, 159 N.W.2d 310 (1968).

[79] Neb. Rev. Stat. § 42-351(2).

[80] *I.P. Homeowners, Inc. v. Radtke*, 5 Neb. App. 271, 290–91, 558 N.W.2d 582, 593–94 (1997) (quoting *Prod. Credit Ass'n of the Midlands v. Schmer*, 233 Neb. 785, 448 N.W.2d 141 (1989)).

[81] *In re Estate of Sehi*, 17 Neb. App. 697, 699–700, 772 N.W.2d 103, 105 (2009) (quoting Black's Law Dictionary 190 (8th ed. 2004)).

[82] Neb. Rev. Stat. § 25-1916 (1).

[83] *Prod. Credit Assn. of the Midlands v. Schmer*, 233 Neb. 785, 448 N.W.2d 141 (1989).

[84] *Hall v. Hall*, 176 Neb. 555, 558-59, 126 N.W.2d 839, 842-43 (1964).

[85] *See*, *e.g.*, Neb. Rev. Stat. § 30-1601(3) to (4) (requiring supersedeas bonds for probate and trust appeals).

[86] *Marksbury v. Board of Ed. Of School Dist. of Winnebago*, 199 Neb. 283, 286, 258 N.W.2d 242, 244 (1977).

[87] *First Nat'l Bank and Trust Co. of Fremont v. Miller*, 233 Neb. 434, 446 N.W.2d 11 (1989).

[88] *Travelers Ins. Co. v. Nelson*, 4 Neb. App. 551, 546 N.W.2d 333 (1996); *Lincoln Lumber Co. v. Elston*, 1 Neb. App. 741, 511 N.W.2d 162 (1993).

[89] *Baker v. Baxter*, 4 Neb. Unof. 869, 96 N.W. 647 (1903); Neb. Rev. Stat. § 25-1916(1).

[90] *McCullough v. McCullough*, 299 Neb. 719 (2018).

[91] Neb. Ct. R. App. P. § 2-109D(4); *Bastian v. Weber*, 150 Neb. 709, 35 N.W.2d 791 (1949).

[92] *Eccleston v. Chait*, 241 Neb. 961, 492 N.W.2d 860 (1992).

[93] See *Schindler v. Walker*, 256 Neb. 767, 592 N.W.2d 912 (1999); *Osborn v. Kellogg*, 4 Neb. App. 594, 547 N.W.2d 504 (1996); *Ainslie v. Ainslie*, 4 Neb. App. 70, 538 N.W.2d 175 (1995), aff'd 249 Neb. 656, 545 N.W.2d 90 (1996); see also Neb. Ct. R. App. P. § 2-109(D)(4).

[94] *Pennfield Oil Co. v. Winstrom*, 272 Neb. 219, 720 N.W.2d 886 (2006).

[95] *Wasikowski v. Nebraska Quality Jobs Bd.*, 264 Neb. 403, 648 N.W.2d 756 (2002).

[96] *Friedman v. Friedman*, 290 Neb. 973, 984, 863 N.W.2d 153, 162 (2015); Neb. Ct. R. App. P. 2-109(D)(4) and 2-109(D)(1).

[97] See e.g. *Logan v. Logan*, 22 Neb. App. 667, 859 N.W.2d 886 (2015); *Krejci v. Krejci*, 304 Neb. 302, 306 (2019).

[98] See *In re Estate of Graham*, 301 Neb. 594, 602 (2018); *In re Interest of Steven S. et al.*, 27 Neb. App. 831, 852-57 (2019); *Harrison v. Harrison*, 28 Neb. App. 837, 845 (2020).

[99] *State v. Denton*, 307 Neb. 400, 404-05 (2020).

[100] *State v. Denton*, 307 Neb. 400, 404-05 (2020).

[101] *State v. Denton*, 307 Neb. 400, 404-05 (2020).

[102] *State v. Denton*, 307 Neb. 400, 404-05 (2020).

[103] *State v. Denton*, 307 Neb. 400, 404-05 (2020).

[104] *State v. Denton*, 307 Neb. 400, 404-05 (2020).

[105] *State v. Denton*, 307 Neb. 400, 404-05 (2020).

[106] *State v. Denton*, 307 Neb. 400, 404-05 (2020).

[107] *State v. Denton*, 307 Neb. 400, 404-05 (2020).

[108] *State v. Denton*, 307 Neb. 400, 404-05 (2020).

[109] *State v. Denton*, 307 Neb. 400, 404-05 (2020).

[110] *State v. Denton*, 307 Neb. 400, 404-05 (2020).

Shaping an Inclusive Profession

People may be said to resemble not the bricks of which a house is built, but the pieces of a picture puzzle, each differing in shape, but matching the rest, and thus bringing out the picture.
- Felix Adler

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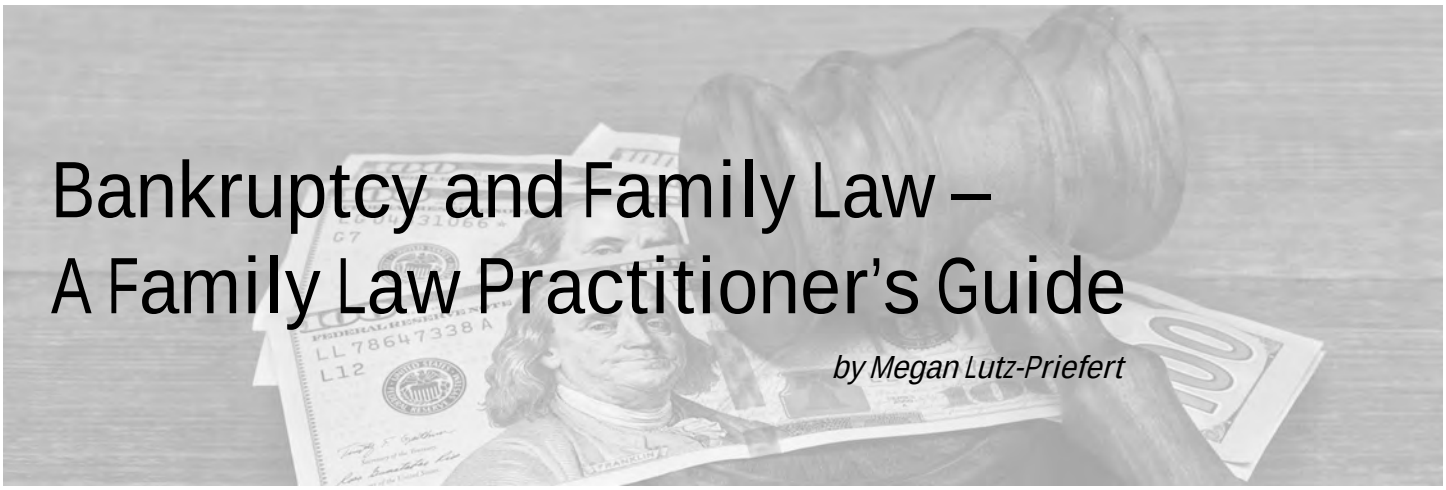


Bankruptcy and Family Law – A Family Law Practitioner's Guide

by Megan Lutz-Priefert

Family law is not just about dividing up assets and debts; rather, a household is having its monthly income divided into two households with bills. Often one party is paying a child support obligation or a domestic support obligation.

As an example, you may have a case involving two individuals who make $80,000 combined. When these individuals divorce, their income splits. They now have separate expenses and debts rather than shared. If the couple has children, one of the parties is likely paying child support, and the other party is likely paying for the children's day-to-day care. This all adds up to two people living a radically different lifestyle than they used to, and without proper financial planning, this situation could easily end up in bankruptcy for either party.

Family law involves nearly every other area of the law, including bankruptcy. When planning a divorce case, a family law attorney must plan for the possibility of the client's bankruptcy or the client's ex-spouse's bankruptcy.

Megan Lutz-Priefert

Megan Lutz-Priefert has been with Anderson, Bressman, Hoffman & Jacobs, P.C., L.L.O., since August 2016. Her practice includes all areas of civil litigation, including family law, juvenile law, business law, personal injury, and wills and estate planning, as well as criminal defense. She also does criminal defense work on the Winnebago Reservation. She graduated from Creighton University School of Law in 2015 and Creighton University Heider College of Business in 2013.

QDROs and Bankruptcy

In a divorce case, Qualified Domestic Relations Orders or "QDROs" are often filed. As family law practitioners know, a QDRO is a way to transfer interest in a retirement account from one party to another. QDROs are allowed under the Employee Retirement Income Security Act to create an alternate payee or a beneficiary under the plan.[1] When discussing QDROs, some courts have determined that the interest of the alternate payee (former spouse) is separate from that of the plan participant, which means it is more than just a claim against the plan.[2] In fact, in some courts have determined that a QDRO is a way to disburse funds from a pension or retirement account without tax consequences.[3]

All things considered, because the alternate payee/former spouse may have a separate interest in plan participant's retirement account, it is reasonable to believe the separate interest may be implicated in the bankruptcy of the alternate payee/former spouse. Yet, in reality, the retirement account is not part of former spouse's bankruptcy estate.[4] The idea behind this is that the "treatment of plan benefits" should not be different because of the beneficiary's bankruptcy status, and therefore courts should give full effect to ERISA's purpose of protecting pension benefits.[5]

The former spouse or alternate payee's interests do not vest in the retirement account until all parties and the judge have signed the requisite documents. Until that time, there is a chance that under Chapter 13, the ex-spouse's right to payment in the pension may be dischargeable.[6] Whether the ex-spouse's right to payment is discharged varies from court to court depending on how they qualify the ex-spouse. If the ex-spouse is considered a creditor, the claim is likely to be discharged; but,

if the ex-spouse is considered a beneficiary, it is unlikely that the claim can be discharged.[7] If instead the ex-spouse whose retirement account has been executed against files for bankruptcy, the ex-spouse is unable to discharge the other's interest in the retirement plan.[8] The filing of a bankruptcy case does not discharge or eliminate QDRO obligations.[9]

What does all of this mean when practicing family law? It means that when working on a negotiation, you should try to get a QDRO set up rather than having your client receive payments over time.[10] This protects your client against having the payments discharged in bankruptcy.[11] Another good idea is to include language that eliminates doubt that the debtor's interest is being transferred to the other spouse.[12]

IRAs and Bankruptcy

If a debtor has an IRA that meets all the requirements of 11 U.S.C. § 541(c)(2), the Court must hold that the IRA is excluded from the bankruptcy estate.[13] The five requirements are: (1) the IRA is considered a trust within 11 U.S.C. § 541(c)(2); (2) the money "in the IRA must represent the debtor's 'beneficial interest' in that trust"; (3) the IRA falls under § 408 of the Internal Revenue Code; (4) when applying N.S.J.A. § 25:2-1, for the property held in the IRA to be "exempt from all claims of creditors," there must be a "restriction on the transfer" of the money in the IRA; and, (5) the restriction on transfer must be enforceable in nonbankruptcy law.[14] In the Bankruptcy Code, a transfer is any way someone disposes or parts with property or an interest in property.[15] By preserving the pension plan, and allowing it to remain outside of the bankruptcy estate, the debtor can have a fresh start and has the ability to retire.[16]

If the party in bankruptcy has government retirement benefits that are not due yet, but are payable to the former spouse, they are not due to the former spouse until the debtor receives the benefit.[17] This is not a mature obligation; therefore, it is nondischargeable.[18]

Support Obligations and Bankruptcy

After a divorce has been finalized, one party may be receiving monthly child or spousal support from their ex-spouse when the ex-spouse files for bankruptcy. When the other party finds out about their ex-spouse's bankruptcy, they may want to know what it means in terms of the support they have been receiving. Section 507 discusses the priority of unsecured claims such as taxes or domestic support obligations ("DSOs").[19] Under 11 U.S.C. § 507 (a)(1), past due DSOs that are owed to "a spouse, former spouse or child of the debtor, or such child's parent, legal guardian or responsible relative" are a first priority.[20] Second priority is given to domestic support obligations that are assigned to a governmental unit.[21] However, there is an exception to the priority rule for domestic support obligations.[22] If a trustee is appointed or elected in the case, then the trustee's administrative expenses in administering or liquidating the assets to pay the DSO creditor will take priority over the domestic support obligations.[23]

DSOs are nondischargeable in bankruptcy. However, for spousal support or child support to be exempt from discharge, said obligations have to, in fact, be in the nature of support and not simply labeled as support.[24] There are many factors that may be considered in determining whether something is in the nature of support or simply labeled as support; however, the focus is the intent of the parties and the intent of the state court.[25] While the court's primary focus is on the intent of the parties and the state court, the court should also consider: (1) "the age and health of the parties," (2) "the work skills of the parties," (3) if the obligation terminates at death or remarriage, (4) the financial resources that each party has, (5) how long the parties were married, and (5) what the standard of living was during the marriage.[26]

Additionally, the duration of a child support obligation beyond the time frame of the minor child's 18th birthday does not mean that the child support obligation has then shifted into something else.[27] Therefore, the debtor's obligation to pay post-majority support is nondischarable, even if the support goes beyond the requirements of state law.[28]

Property Settlements and Bankruptcy

In bankruptcy, debts owed "to a spouse, former spouse, or child of the debtor" for the purposes of supporting the spouse or child are not dischargeable, including those in connection with property settlements.[29] Regardless of what state law says regarding supporting a spouse or child, it is up to the bankruptcy court to determine what is nondischargeable.[30]

When looking at a property settlement agreement, the decree must be read as a contract and must be construed as it is written.[31] Further, when examining a decree, and more specifically a decree obtained by agreement, the court must determine "what a reasonable person in the position of the parties would have thought the language meant."[32] This becomes important when determining whether certain payments detailed in a decree are considered alimony or support payments which are nondischargeable in bankruptcy, or whether they are considered a property interest.

For example, in *Richardson v. Edwards*, a husband assumed a second mortgage on the family home which was detailed in the decree.[33] On appeal, the wife argued that the second mortgage payments were in the form of support or alimony, which are nondischargeable in bankruptcy.[34] However, looking at the payments, the court determined that they were not similar to alimony or support payments at all.[35] Generally, if mortgage payments are alimony or support, then the mortgage would be contingent upon changes in financial condition,

death, remarriage, or continued occupation by the mother and children; however, none of these factors were present in this case.[36] Further, the second mortgage payments were located in the property section of the decree, which implies that it was property, not support.[37] Therefore, the second mortgage was not alimony or support because it was unconditional and was located "in the Marital Property section of the Agreement."[38]

Practice Pointers

When a client comes to you and says his or her spouse has filed bankruptcy, you need to examine whether there is a need to file a claim. A Chapter 7 bankruptcy is a liquidation of all assets which are not exempt. It is unlikely that the individual filing for bankruptcy will have enough assets to cover the secured creditors and pay the priority unsecured creditors. A Chapter 13 bankruptcy is a three-to-five-year repayment plan utilizing future income to pay past debts. If an individual has child support or alimony arrears, these debts are nondischargeable. However, it is still a best practice to file a proof of claim with the bankruptcy court to alert the Trustee to the debt.

When one wishes to join a bankruptcy action of an ex-spouse, the spouse must do so within 60 days or request an extension of that period to do so.[39] The creditor has the burden under 11 U.S.C. § 523(a) to prove that the debt is not dischargeable and was incurred as part of a divorce or separation for the debt to be nondischargeable.[40]

While a debtor may be required to satisfy a property settlement agreement out of their non-exempt assets in bankruptcy, if the debtor can show that by discharging this obligation he or she would have a greater benefit than the creditor would have if paid, the bankruptcy court may choose to discharge the debt.[41] The best way to do this is to use the balancing test to review the financial statuses of the creditor and debtor and then compare their financial statuses.[42] Then the court looks to see what hardship, if any, would occur for the creditor party and/or the children.[43]

Conclusion

As Gene Meyer of the *Kansas City Star* said, "Let's be blunt: If you hire a divorce lawyer today, there is a good chance you will hire a bankruptcy lawyer within two or three years." Based on this quote, and the above article, to be a family law attorney, it is your duty to prepare your clients for bankruptcy by proper divorce planning.

Endnotes

1 *In re Carter-Bland*, 382 B.R. 743, 749 (Bankr. S.D. Ohio 2008) (quoting 29 U.S.C. § 1056(d)(3)(J)).

2 *Id.* (citing *In re Wilson*, 158 B.R. 709 (Bankr. S.D Ohio 1993)); *In re Debolt*, 177 B.R. 31, 36 (Bankr. W.D. Pa.1994); *In re Brown*, 168 B.R. 331, 334-35 (Bankr. N.D. Ill. 1994); *Brown v. Pitzer*, 249 B.R. 303, 308-10 (S.D. Ind. 2000).

3 *In re Gaetaniello*, 496 B.R. 238, 242 (Bankr. M.D. Fla. 2013) (citing *In re Carson*, 211 B.R. 72, 73 (Bankr. N.D. Fla. 1997)); *In re Boudreau*, No. 93-9491-8G3, 1995 WL 152395 (Bankr. M.D. Fla. Jan. 9, 1995).

4 *In re Carter-Bland*, at 749 (citing *In re Nelson*, 322 F.3d 541, 544-45 (9th Cir. 2003)); *In re Lalchandani*, 279 B.R. 880, 885-86 (B.A.P. 1st Cir. 2002); *In re Farmer*, 295 B.R. 322, 324-25 (Bankr. W.D. Wis. 2003); *In re Hthiy*, 283 B.R. 447, 450-51 (Bankr. Ed. Mich. 2002).

5 *In re Carter-Bland*, at 751 (quoting *Patterson v. Shumate*, 504 U.S. 753, 757 (1992)).

6 L. Jed Berliner, *Bankruptcy Discharges and QDROS*, Bankruptcy Law Network (Mar. 19, 2010, 8:36 PM), http://www.bankruptcylawnetwork.com/discharges-and-qdros.

7 *Id.*

8 8 West. Fed. Admin. Prac. § 10212.

9 *Id.*

10 Shayna M. Steinfeld & Bruce R. Steinfeld, The Family Lawyer's Guide to Bankruptcy: Forms, Tips, and Strategies 96 (2nd ed. 2009).

11 *Id.*

12 *Id.*

13 *In re Yuhas*, 104 F.3d 612, 614 (1997).

14 *Id.*

15 *Id.*

16 *Id.* at 615.

17 *In re Albert*, 194 B.R. 907, 910 (D. Kan. 1996).

18 *Id.*

19 11 U.S.C.A. § 507 (West 2012).

20 § 507(a)(1).

21 *Id.*

22 *Id.*

23 *Id.*

24 *Vaudreuil v. Busconi*, 182 B.R. 618, 619 (D. Mass. 1995).

25 *Id.* (citing *Yeates v. Yeats*, 807 F.2d 874, 878 (10th Cir. 1986); *Stone v. Stone*, 79 B.R. 633 (Bankr. D. Md. 1987).

26 *Id.* (citing *Stone v. Stone*, 79 B.R. 633 (Bankr. D. Md. 1987).

27 *Id.*

28 *Id.*

29 *Richardson v. Edwards*, 127 F.3d 97, 100 (D.C. Cir. 1997).

30 *Id.*

31 *Id.* at 101.

32 *Id.*

33 *Id.*

34 *Id.*

35 *Id.* at 102.

36 *Id.*

37 *Id.*

38 *Id.*

39 *In re Smither,* 194 B.R. 102, 106 (Bankr. W.D. Ky. 1996).

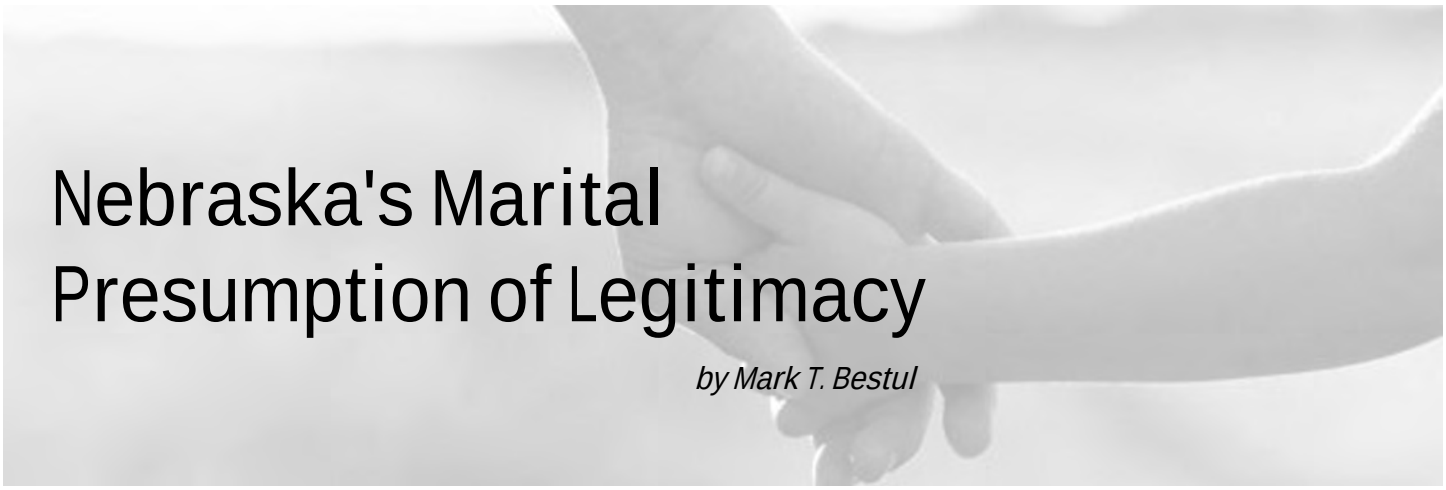
40 *Id.* at 107.

41 *Id.* at 110.

42 *Id.* at 111.

43 *Id.*

44 Gene Meyer, *In Too Many Cases the Road from Divorce Leads to Bankruptcy*, Pittsburgh Post-Gazette, Sept. 28, 1998, at B1.



Nebraska's Marital Presumption of Legitimacy

by Mark T. Bestul

I have spent the better part of my legal career working as an attorney for Legal Aid of Nebraska. As most of you know, Legal Aid provides free legal representation to income-qualified Nebraskans in a variety of arenas. Some of our biggest practice areas include Social Security; state benefits; landlord tenant disputes; bankruptcies; and, of course, family law. In reflecting on what cases stand out to me over the years, it's the complex, novel, unusual cases that have crept up from time to time in my domestic case load that stand out as both challenging and rewarding as a Legal Aid attorney because often, without a free Legal Aid lawyer, these clients would have nowhere else to turn for help and their legal problems would remain unresolved. One particular case stood out to me to share, because it dealt with an issue—the presumption of legitimacy—which may not be as straightforward as one would hope.

Presumptions, in the context of law and evidence, are a means of conveniently allowing a trier of fact to make a determination that something is true without direct evidence that it is true. Syllogistic logic is, basically, when a "conclusion is drawn (whether validly or not) from two given [premises]."[1] Thus, evidentiary presumptions are a form of syllogism that are, "a rule of law, statutory or judicial, by which finding of a basic [predicate] fact gives rise to existence of presumed fact, until such fact is rebutted."[2] The validity of the presumed fact does not matter. If the predicate facts are met, the trier of fact may make the appropriate presumption, unless it is rebutted.

The presumption of legitimacy is a commonly relied upon device in family law. Under the presumption of legitimacy, if the parties are married and a child is born during the marriage, the child is presumed to be the husband's child. The presumption of legitimacy has very profound consequences affecting the rights of married couples and any children born during the marriage. As many family law practitioners know, sometimes these consequences not only manifest themselves as procedurally difficult legal issues, but also as painful and emotional personal reactions experienced by the parties involved.

Nebraska, like most everywhere else in the United States, presumes the legitimacy of children born during the duration of the marriage.[3] In the context of paternity, children born during marriage are presumptively the children of the husband. And while this presumption was codified in Nebraska in 1972 and relied on in Nebraska's common law prior to the enactment, the presumption of legitimacy has been around for centuries.

The historic beginnings of the presumption of legitimacy relied upon today can be found at least as far back as Third Century Rome. In Book 19 of his *Responsa*, Paulus[4] set forth the legal concept that a child born during or after seven months of marriage is legitimate: "The father is declared by the marriage." The seven-month timeframe was apparently based upon Hippocrates' assertion that a child is able to be born fully formed in the seventh month.

Mark T. Bestul

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NEBRASKA'S MARITAL PRESUMPTION OF LEGITIMACY

The presumption of legitimacy is also found in early English common law. Beginning in the late thirteenth century, the common law of the era was recorded in what has become known as Year Books.[5] A case dealing with the issue of legitimacy appeared in Year Book 32-33 Edward I.[6] In 1305, a woman brought what in today's legal world would be an action to quiet title to land.[7] The woman claimed to have inherited land from her father and claimed title to it.[8] The tenants of that land stated that her father was at sea for three years and that she was born less than one month before his return and that she was, therefore, not the property owner's daughter.[9] The justices awarded the land to the daughter and held, "the privities of husband and wife are not to be known, and he may have come by night and engendered the plaintiff."[10] Clear from this case is that courts have a longstanding reluctance to peer into the privacy of the marital home.

The English common law presumption is often referred to as Lord Mansfield's[11] Rule. This rule, created in 1777, actually established the idea that the mere testimony of the husband and wife is insufficient to delegitimize children born during the marriage or, to put it bluntly, the declarations of a parent are insufficient to "prove a child born during wedlock is a bastard."[12] Ultimately, the modern presumption of legitimacy in English law was set forth in *Hargrave v. Hargrave*,[13] which clarified that a child born of a married woman is presumed legitimate and set forth a list of means to rebut the presumption that consisted of various methods of proving that intercourse did not take place.[14] This became known as Lord Langdale's rule.[15]

The presumption of legitimacy also appears in early U.S. case law. In a 1790 case (published in the Virginia reports in 1811), the Virginia Supreme Court held, "With respect to procreations born *during* marriage, the presumption is, that all persons born during marriage are legitimate."[16] The court stated that the presumption is so strong with adherence to such strict exceptions that,

> [W]here a man was divorced from his wife, *propter perpetuam generandi impotentiam*,[17] and then married another woman, who had issue during the marriage, that issue was holden to be his, on the ground that a man may be *habilis et inhabilis diversis*.[18, 19]

The court determined that a child born during marriage shall be legitimate unless conclusively proven that a person other than the husband must "necessarily and unavoidably" have been the father.[20]

Well into the latter part of the twentieth century, in several U.S. states, the presumption of legitimacy was conclusive: once the presumption was recognized without any evidence to the contrary, the determination could not be undone. As science progressed, the stringencies of the presumption of legitimacy abated to some degree.[21]

In Nebraska, the presumption of legitimacy is rebuttable.[22] Two early cases in Nebraska present the competing dynamics of the presumption: One where the presumption was rebutted and one where it was not.

The presumption of legitimacy, as to a child born during a marriage, seems to have been first addressed by the Nebraska Supreme Court in *Craig v. Shea*.[23] In this case, a law suit for support and maintenance was brought on behalf of a child by her mother Belle Craig.[24] The suit named John Shea as the father of the child and Shea filed a demurrer to dispose of the suit,[25] meaning that, even if the facts were true, they were insufficient to proceed and the defendant should not answer to them.[26] Ms. Craig was married to Mr. Craig at the time of the child's birth but she had been separated from him for a long time, did not have access to him, and did not engage in sexual intercourse with him.[27] Ms. Craig was a housekeeper for Shea.[28] Nine months prior to the birth of the child, Shea, "unlawfully had carnal knowledge by force with Belle Craig and begot [the child]".[29] Shea abandoned the child and did not support her.[30] Shea tried to rely upon the presumption of legitimacy, but the court determined the presumption was rebuttable and that the plaintiff sufficiently rebutted the presumption and remanded the matter to the lower court for further proceedings.[31]

Another early Nebraska case that addresses the presumption of legitimacy is the probate matter *In re Estate of McDermott*.[32] In that case, Martha Griffiths married Stephen McDermott and 41 days later gave birth to John McDermott, the appellant.[33] No other children were born to Martha and Stephen, and they divorced a few years later.[34] Martha died prior to the law suit.[35] Stephen McDermott was the son of Martin McDermott.[36] Martin McDermott died intestate.[37] Although John historically held himself out as the son of Stephen, upon the death of Martin, he claimed he was the illegitimate child of Martin and Martha.[38] After Martin suffered a stroke and 24 days before his death, John brought a paper for Martin to sign to his bedside that read, "I hereby acknowledge myself to be the father of John F. McDermott."[39] John and several witnesses propped Martin in bed and lifted his hand to the paper and allowed some marks to be made by Martin.[40] The paper was signed by three witnesses one of whom later testified that Martin, "didn't know what he was doing," and that Martin "wasn't capable or able to [sign]."[41] The estate argued that John failed to put on any evidence that Stephen did not have access to Martha prior to the marriage or that Stephen was impotent.[42] The court held that "no one should be allowed by incompetent evidence to malign the character of his mother" and determined that "clear, satisfactory, convincing, and competent evidence is necessary to rebut the presumption of legitimacy."[43] Although mentioned in the opinion, the court seemed to reject a then commonly held legal principle

that, as to a child conceived prior to wedlock but born during the marriage, slighter proof should be required to break the presumption of legitimacy.[44]

The Nebraska Supreme Court has adopted a position quite akin to Lord Mansfield's Rule. In *Perkins v. Perkins*,[45] the court held that the presumption of marital legitimacy may only be rebutted by clear and convincing evidence beyond the testimony of the husband or the wife. Thus, something more is necessary to break the presumption, such as genetic testing or the testimony of the biological father.

The Case of the Biological Father, the Deceased Mother, and the Estranged Husband

A few years ago, I was assigned a new client as to whom, for this article, I will refer to as George Truman. George needed help establishing paternity of two of his children. George began an intimate relationship with "Jane Doe." Prior to meeting George, Jane married "John Doe," and they never divorced. George sired three children with Jane and he lived with her for several years in Oregon. George and Jane's oldest child was born in Oregon, and George's paternity was legally established there as to that child. George and Jane then moved to Nebraska and had two more children. While in Nebraska, Jane was killed in an accident. George was unable to obtain Medicaid or other state benefits because the State of Nebraska did not recognize that he was the father. He was also unable to obtain the social security benefits to which the children were entitled. At that point, George contacted Legal Aid of Nebraska seeking help, and I was assigned his case.

Initially, to allow George to maintain Medicaid insurance for the children as to whom his paternity had not been established, I filed an emergency guardianship under the probate code and obtained Orders of Temporary Guardianship from the county court. At the onset of the case, due to the fact that my client had only a vague notion as to where in Oregon the mother's husband lived, I advised that a guardianship may be the only avenue available.

With Jane being deceased and unable to be sued in a paternity matter, I was faced with a puzzle. In the end, I do not know if I correctly solved the puzzle procedurally, but I saw no other way to try to reach the desired result than how I ventured into solving this problem: Whom does George sue for paternity?

In Nebraska, a paternity action may be initiated by either parent, the guardian or next friend of the minor child, or the state.[46] As discussed above, under Nebraska law, because Jane was still married to John when the children were born, John was presumptively the father of the two children born in Nebraska. Having established guardianships as to the two children born in Nebraska, George had standing to initiate a civil proceeding to establish paternity.

Normally, a putative father wanting to establish his paternity would file the action against the mother. In this matter, the mother was deceased and, thus, likely unable to be sued. In Nebraska, a pending paternity action does not survive the death of the father.[47] Thus, although this action may have been brought against the mother, the matter was not pending at the time of her death, so a suit against the mother seemed barred from the get-go. So, I decided to have George, as guardian and next friend of the minor children and on their behalf, file the cause of action against himself as the alleged father.

Because John Doe was the presumptive father of George's two Nebraska-born minor children, John was an interested party and thus, he needed to be served with summons and a copy of the complaint to establish paternity. My client knew very little about John. He only knew of his first name, middle initial, last name, birthday, and the name of the city in Oregon where Jane and John lived together prior to the commencement of Jane and George's relationship. Thank goodness for Google! With that little information in hand, I was able to find an address. I contacted the sheriff of the county in Oregon where John lived and arranged for personal service, and John was successfully served and provided notice of the lawsuit.

The court set the matter for hearing and notice of the hearing was sent to John at the address where he was served. At the hearing, I presented as evidence certified copies of the guardianship papers, the death certificate of the mother, and the genetic testing results with documentation as to the proper chain of custody. George testified and relayed the tragic story under oath to the court. The court entered a decree determining George to be the biological and legal father of each minor child. I tell this story not in opposition to the presumption of legitimacy, as there is longstanding public policy for its use, but rather to illustrate how intricate our work can be at times—how we as practitioners are given our clients' most important issues and are trusted to resolve these issues in their favor. Normally, obtaining an order of paternity is a fairly routine matter legally and procedurally. However, at times, it can be more challenging. George's case, at least for me, was one of those instances. As an attorney at Legal Aid of Nebraska, this is one of those cases where I know that without our services, my client would not have accomplished what needed to be done—and I was happy I could help. I hope for all of us who practice family law, despite the prevalent stresses that come with the territory, there is often that same sense.

Endnotes

1 *Syllogism*, New Oxford American Dictionary (2001).

2 *Evidentiary Presumption*, Black's Law Dictionary 618 (5th ed. abr. 1983).

3 Neb. Rev. Stat. § 42-377.

4 Julius Paulus Prudentissimus was a prolific Third-Century jurist publishing over 300 works about Roman law and is attributed with creating the presumption of innocence.

5 Published from 1268 to 1535, the Year Books constitute the law reports of Medieval England.

6 This volume contains legal matters that occurred during the 32nd and 33rd year of the Reign of King Edward I.

7 Sir Frederick Pollock & Frederic William Maitland, History of English Law Before the Time of Edward I 396 (2d ed. 1898).

8 *Id.*

9 *Id.*

10 *Id.* (citing YB 3233 Edw. I 63 (1304) (Eng.)).

11 William Murray, 1st Earl of Mansfield (1705 – 1793), as Lord Chief Justice of the King's Bench, is best known for his holding in the *Somerset* case where he held that slavery had no basis in common law or legislative law. *See Somerset v. Stewart* (1772) 98 Eng. Rep. 499 (KB).

12 *See Goodright v. Moss* (1777) 2 Cowp. 591, 592, 98 Eng. Rep. 1257.

13 *Hargrave v. Hargrave* (1846) 50 Eng. Rep. 457 (HL).

14 *Id.* at 458.

15 Frank A. Iwama, Case Note, *The Conclusive Presumption of Legitimacy:* Jackson v. Jackson (Cal. 1967); Hess v. Whitsitt (Cal. App. 1967), 8 Santa Clara L. Rev. . 248 (1968).

16 *Bowles v. Bingham*, 17 Va. 599, 601 (1811) (emphasis added).

17 Lifelong inability to generate.

18 Capable and incapable at different times.

19 *Bowles*, 17 Va. at 602.

20 *Id.*

21 *See Jackson v. Jackson*, 430 P.2d 289 (Cal. 1967).

22 *See Craig v. Shea*, 168 N.W. 135, 136 (Neb. 1918) (citing *Gaffery v. Austin*, 8 Vt. 70 (1836)).

23 *Id.*

24 *Id.*

25 *Id.*

26 *See demurrer*, Black's Law Dictionary (5th ed. abr. 1983)

27 *Craig,* 168 N.W. at 575.

28 *Id.*

29 *Id.*

30 *Id.* at 575-76.

31 *Id.*

32 *In re Estate of McDermott*, 249 N.W. 555 (Neb. 1933).

33 *Id.* at 555-56.

34 *Id.* at 556.

35 *Id.*

36 *Id.* at 555.

37 *Id.*

38 *Id.*

39 *Id.* at 556.

40 *Id.*

41 *Id.*

42 *Id.*

43 *Id.* at 557.

44 *Id.*

45 *Perkins v. Perkins*, 253 N.W.2d 42 (Neb. 1977).

46 *See* Neb. Rev. Stat. § 43-1411.

47 *See Bullock v. J.B.*, 725 N.W.2d 401 (Neb. 2006).

The Odd Couple:

The Protective Trust Meets the SECURE Act

by Andrew C. Sigerson and Ross M. Berg

**The authors acknowledge and thank Curt W. Ferguson, President of the Estate Planning Center in Salem, Illinois, and a fellow colleague with the National Network of Estate Planning Attorneys, for educating us on many of these ideas.*

We've long been a proponent of leaving estates to beneficiaries in what many in our industry call "spendthrift" trusts, but which we refer to as "protective" trusts. Not every client has a beneficiary who is a spendthrift, but we find that most clients would like to protect their beneficiaries' assets from creditors and predators if possible.

The beauty of protective trusts is the wide range of options available to the client. There's no question that minor and special needs beneficiaries need protection, but why the other beneficiaries? Sometimes it's because of lifestyle choices or addictions that would cause the beneficiary to hurt himself with unlimited access to funds. Sometimes the beneficiary already has substantial assets of her own and needs to keep the inheritance out of her estate for tax reasons. Many times, a beneficiary has limited experience in managing large sums of money, some may be easily taken advantage of, and some may be so irresponsible that a direct access to a substantial sum may do more harm than good.

Every beneficiary is unique, and protective trusts are invaluable tools to help each particular beneficiary from either themselves or third party creditors and predators. In addition, a beneficiary's life does remain stagnant once the initial estate plan has been executed or even upon the death of the client. A beneficiary's situation in life is an ever-evolving challenge for the estate plans we create. However, with in-depth listening and counseling, and thoughtful drafting, a protective trust can anticipate various life stages, adapting over time for the minor child who grows into either a problem child or responsible adult or an older beneficiary who becomes disabled.

Our clients' beneficiaries only occasionally fit the extreme circumstances. The majority are just mature and productive adults who have been brought up with strong values. However, even those "Great Kids" face lives that could include run-of-the-mill risks like accidents (catastrophic creditors), divorce (catastrophic marriage), and nursing home expenses (catastrophic illness). For the Great Kid, we often design a protective trust that gives her practical control as one of the trustees, permits distributions of income and principal subject to ascertainable standards and co-trustee approval, and grants

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her a limited or general power to appoint assets that might remain at her death: a beneficiary-controlled, third-party, asset protection trust.

After designing such a trust (within the terms of the client's own revocable trust) we've never had a client say, "However, I want some of the largest assets my child will inherit to remain outside of that trust, fully exposed to all catastrophes." So, we advise unmarried clients who create such protective trusts to also name those trusts as beneficiaries of their qualified retirement accounts (IRAs). For married couples, we typically advise to name the spouse first, and the trust as a contingent beneficiary so that retirement plans will get to the protective trusts after the second death. *This importance of this advice was amplified by the U.S. Supreme Court in Clark v. Rameker in which it ruled that inherited IRAs funds are not "retirement funds" and therefore not exempt from bankruptcy.*[1]

However, the passing of the Setting Every Community Up for Retirement Enhancement Act of 2019 (the "SECURE Act")[2] seems to be shaking up the estate planning world, and many are now questioning the designation of a trust as the beneficiary of an IRA. So, let's discuss the pros and cons.

Changes brought about by the SECURE Act

Under the former law, a typical "Designated Beneficiary" (whether an individual or a trust) was required to withdraw only a small "Required Minimum Distribution" (RMD) each year from the IRA.[3] Tax-deferred growth could continue for many years on the balance of the account. A beneficiary at age 51, for example, could take taxable withdrawals spread over 34 years. In that case, a $500,000 inherited IRA would require the first annual withdrawal (RMD) to be less than $15,000, and those mandatory taxable withdrawals would grow only gradually for the next three decades. Any beneficiary that does not qualify as a Designated Beneficiary is limited to merely a five-year stretch on the inherited IRA.

The SECURE Act has, for the typical Great Kid, eliminated the concept of RMDs and replaced it with a simple 10-Year Rule for Non-Eligible Designated Beneficiaries: no particular amount has to be withdrawn each year, but by the 10th calendar year after the client (IRA owner) dies all of the IRA funds must be withdrawn. You could say the required withdrawal (RMD) is 100% in or before year 10. Whether the Designated Beneficiary is an individual or a trust, this requirement drastically increases the amount of income that is going to be taxed in the 10-year period following the client's death. The SECURE Act did not change the five-year rule for those beneficiaries that do not qualify as Designated Beneficiaries.

In general, Designated Beneficiaries must be a living, breathing human being, but protective trusts can also qualify to be treated as Designated Beneficiaries, provided that they meet certain rules outlined by the IRS. Such trusts, known as See-Through Trusts, must be (i) valid under state law; (ii) irrevocable upon the retirement account owner's death; (iii) contain identifiable beneficiaries; and (iv) submitted to the IRA custodian or plan administrator by October 31st following the year of death (or in the alternate, a certified list of trust beneficiaries can be provided by the same date).

NOTE: Some variation of the life expectancy RMDs are still available for those classified as "Eligible Designated Beneficiaries" (EDB) by the SECURE Act, but that is not the focus of this article. EDBs include client's spouse, client's minor children, chronically ill beneficiaries, disabled beneficiaries, and beneficiaries no more than 10 years younger than the client.[4]

So, for the Great Kid, the IRA could be withdrawn entirely in year one, and all taxes paid on $500,000. Or, withdrawals could be postponed until the last year, and the entire sum, plus 10 years of investment growth, would be taxed in one year. Absent mitigating factors, we would typically recommend that withdrawals be spread about evenly in order to prevent a spike into higher tax brackets. Since the rule allows 10 calendar years after the client's death, if the client doesn't die on the last day of a calendar year, it will be advisable to withdraw a portion of the IRA before the end of the year of death then withdraw the rest in 10 equal installments. This way one can pay the income taxes over 11 tax years.

Given the general impact of marginal tax brackets, it's not only important to spread the withdrawals out for maximum period allowable but also to allocate the withdrawals to the lowest income tax brackets possible. Withdrawals to an individual beneficiary are relatively straightforward and will be taxed at the beneficiary's tax brackets, but what about a protective trust as the designated beneficiary?

Protective Trust Variations: Conduit vs. Accumulation

There are two basic variations of protective trusts: "conduit" or "accumulation." The conduit trust requires that all IRA withdrawals to the trust be distributed from the trust to the beneficiary; the trustee can never accumulate those funds in the trust. This type of trust was commonly used not so much for Great Kid as for a beneficiary who needed someone else to control his access to the IRA. Under the life expectancy stretch-out, the Trustee could choose to withdraw only the RMD (or more if the beneficiary had a greater need), but only the withdrawn amount would be distributed through to the beneficiary.

A less common variation of a conduit trust limits the Trustee from withdrawing from the IRA any more than the RMD. Under SECURE Act, it is essential to update these trusts, because with the 10-Year Rule and no RMDs, the

Trustee will have to leave all funds in the IRA until year 10 and then immediately withdraw and distribute it all to the beneficiary. Both the spike in taxable income and in funds handed to the beneficiary likely violate the client's intentions.

The beneficiary receiving the distribution from the trust would pay the income taxes, so the income tax result would be essentially the same as if he had been named directly as the outright beneficiary of the IRA. But asset protection is lost once distributed, whether for the beneficiary who needed control over distributions, or the Great Kid who just needed protection against unpredictable bad life events.

For the Great Kid, an accumulation trust is going to be preferable. The point is not to protect the inheritance from the beneficiary, but to protect it from external threats to the beneficiary – what we refer to as "creditors and predators." The trust would give the trustee power to distribute or retain income (including the IRA withdrawals) so that even after funds are withdrawn from the IRA they may be accumulated within the protection of the trust. If the beneficiary is going to be one of the trustees, the income distributions should be limited by ascertainable standards. As previously noted, in order for the accumulation trust to be a Designated Beneficiary and qualify for the 10 years of tax deferral, all potential beneficiaries must be individuals, but age is not a factor.

All income (including IRA withdrawals) could be distributed from the trust to Great Kid, and, if so, would be taxed to her just as if she received the IRA individually. The trust caused no more taxes, and, at worst, if a catastrophe appears in her life the trust could accumulate and protect the funds instead of distributing them.

But "no worse off" is a low bar. In reality, the existence of the protective trust can result in tax savings as compared to receiving the IRA outright and free of trust, as a result of one or more of these four strategies: 1) Bracket Management Strategy; 2) Trust Tax Deductions Strategy; 3) Deemed Income Strategy; or 4) Sprinkling Strategy.

Bracket Management Strategy: When Great Kid doesn't want (or need) the income, the Trustee will retain some or all of the IRA withdrawals, the trust will pay the tax on whatever is not distributed, and the undistributed amount remains protected by the trust. The current tax brackets for trusts and estates are 10% on the first $2,600, 24% between $2,601 and 9,450, 35% between $9,451 and $12,950, and 37% on income beyond $12,950. State income taxes on trust and beneficiary income[5] will need to be considered as well when comparing the individual beneficiary's tax bracket to that of the trust. To minimize income taxes, the Trustees can simply compare Great Kid's tax bracket each year with the taxes payable on income left in the trust and distribute enough of the income to the

beneficiary to minimize the overall tax due.[6] State income taxes on trust and beneficiary income will need to be considered as well when comparing the individual beneficiary's tax bracket to that of the trust.

Let's look at some examples of the tax savings for the Great Kid with effective bracket management on an inherited IRA with a value of $300,000. For simplicity, let us also assume that the IRA will be distributed in 10 equal annual withdrawals of $30,000. If the Great Kid is in the 22% bracket, retaining the first $2,600 in the trust and distributing the rest will save $312. The savings jump to $364 if the Great Kid is in the 24% bracket. The withdrawal amounts retained in the trust will increase as the Great Kid's income get higher. In the 32% bracket, retaining the first $9,450 in the trust and distributing the rest will save $1,120. The savings jump to around $1,403 if the Great Kid's tax bracket is 35%. If the Great Kid is in the top tax bracket, everything over $12,950 will need to be distributed and will save a total of $1,662.

If asset protection is more important than income tax savings (such as for those in the top income tax bracket), the entire amount of the withdrawal could be left in trust. Depending on their life risks, the taxes paid might be a small price to pay for keeping the money in trust. The tax savings available by simply playing the marginal brackets of the trust is just one consideration.

Trust Tax Deductions Strategy: If the IRA is payable to a trust, the trust has some opportunities to take tax deductions that an individual beneficiary would not. Consider a beneficiary who inherits the IRA outright and free of trust, who pays investment advisory fees that are not deductible, versus the trust which pays a full-service trustee to manage the assets. The trustee fee, along with accountant and attorney fees,[7] would be deductible, whereas the non-trust investment advisory fees would not.

Plus, given a fiduciary's duty to balance the interests of current and remainder beneficiaries, the trust instrument might even mandate professional investment advice, so it is incurred or justified because the IRA is in trust and is thus deductible. The outright beneficiary might incur similar expenses to pay for investment advice, but without deductibility.

Deemed Income Strategy (Limited Power To Vest): Internal Revenue Code Section 678(a) states: "A person other than the grantor shall be treated as the owner of any portion of a trust with respect to which...such person has a power exercisable solely by himself to vest the corpus or the income therefrom in himself…"[8]

The general rule is that income distributed from a complex trust carries tax liability to the beneficiary who receives it. But the Limited Power To Vest ("678 Power") is a whole different concept. Giving Great Kid a right to withdraw as the beneficiary (independent of any authority of any trustee, and not subject to any standards) a defined portion of the income of the trust, causes that defined portion to be taxed to the Great Kid as if it is her own income, even though the income is not withdrawn or distributed.

One approach is to give Great Kid the right to withdraw that portion of income which, if it were not subject to the right, would be taxed at the top federal tax bracket. Then, considering Code Sections 2514 and 2041, limit the withdrawal right so it cannot exceed ***$5,000 or*** 5% of the value of the trust. The functional result is that the first $12,950 of trust income would be taxed under normal complex trust rules; the next income, but not to exceed 5% of the value of the trust, is reported on Great Kid's 1040 and not shown on the trust 1041 at all ("deemed" to be his or hers); and if there is income in excess of those two figures, it is taxed on complex trust principles just like the first $12,950.

Let's go back to our example of the Great Kid with effective bracket management on an inherited IRA with a value of $300,000 and a $30,000 annual withdrawal. The Great Kid's withdrawal right under the 678 Power will be $15,000 (5% of the trust) if the IRA is the trust's only asset. Therefore, the first $12,950 will be either retained or distributed to the Great Kid under the bracket management strategy described upon. The next $15,000, which will remain in the trust, will be deemed to belong to the Great Kid and will be reported as income to him or her. The last $2,050 will be taxed according to the complex trust principles and either retained in the trust and taxed at the highest bracket or distributed to Great Kid. Most likely, the $2,050 will be distributed to help Great Kid pay his or her income tax responsibilities because he or she would be responsible for $17,050 of income ($15,000 + $2,050) even if none of the $12,950 was distributed out of the trust. Therefore, only $2,050 of the $30,000 IRA was actually distributed from the trust and it was used, in its entirety, to pay income tax. In addition, none of the $30,000 was taxed at the highest income tax bracket.

However, the Great Kid's tax bracket will usually be lower than the top tax bracket. For the Great Kid in the 22% tax bracket, the Trustee would first retain the first $2,600, which would be taxed at the trust's lowest bracket of 10%. The Trustee would then distribute the next $10,350 to Great Kid, which would be taxed at his or her 22% rate. The next $15,000 would be retained in the trust but reported as Great Kid's income and taxed at 22% because of the 678 Power. The final $2,050 would be distributed to Great Kid and taxed at his or her 22% rate. Overall, the trust was able to retain $17,600 of the $30,000 withdrawal while only paying the trust tax rates on $2,600. Of the $12,400 distributed to Great Kid, almost half ($6,028) will be used to pay the tax on income distributed to Great Kid and allocated to him or her under the 678 Power.

The effectiveness of the 678 Power quickly grows if there are other assets, especially assets that won't be generating much taxable income, in the trust with the IRA. As a rule of thumb, if the growth assets in the trust approach or exceed the value of the IRA in the trust, the 678 Power automatically effectively shifts tax liability on all of the top-bracket income out to Great Kid, and the net of the IRA withdrawals can accumulate in the trust.

In the typical case the trust should distribute $10,350 ($12,950 plus the $100 standard deduction) to the beneficiary to move income out of the trust's 24% bracket, or $3,500 to move it out of the 35% bracket. To the extent the 678 Power applies to the income above that, no further income-tax-motivated distributions will need to be made, and Great Kid can grow the trust by paying taxes on behalf of the trust.

Sprinkling Strategy: What if the IRA account is so large, or the income of the trust, including IRA withdrawals, is likely to exceed the amount that can be taxed to Great Kid or managed via other strategies? If this is likely, then consider drafting the trust to give the trustee discretionary power to distribute at least some of the income to children of the Great Kid, commonly called "income sprinkling." This has always been a design option for protective trusts and another way to "bracket manage" income taxation: each year the trustee can distribute more of the income to beneficiaries who are in lower tax brackets, and less to beneficiaries in higher brackets. Within a family, after taxes, gifts could even be made to "equalize the net" that each of them received.

However, many clients express that they really want her to be the only beneficiary, want her to have the broadest possible control, and don't want her to have to be accountable to her own children for what she is doing with her trust each year. They don't want their grandchildren to be demanding accounting of trust assets during the beneficiary child's life. But perhaps it is time to reconsider.

We might ask the client if Great Kid currently gives some of her own money to her children, and if they think she will continue to do so after she inherits the client's IRA. If the answer is yes, why not include sprinkling provisions in Great Kid's trust share? Then any funds she might have given her children as gifts could instead be made as distributions of income from the trust. Chances are her children are in lower tax brackets than she.

If the client wants to reduce Great Kid's ongoing accountability to her children, the sprinkling power does not have to be permanent. For instance, it might be limited to a period of eleven years after client's death, or it might apply only to the portion of income of the trust that is not subject to the 678 Power.

In summary, an IRA left to the individual beneficiary requires one taxpayer to pay all the taxes. When an IRA is left to a trust, however, there are no less than two taxpayers, additional tax deductions, and the opportunity to include additional taxpayers in lower brackets.

Contrary to popular opinion, the SECURE Act is not forcing us to choose between asset protection planning and income tax planning. Perhaps the Act and the trusts are not such an "odd couple" but are instead a perfect match.

Endnotes

1 *Clark v. Rameker*, 134 S. Ct. 2242, 189 L. Ed. 2d 157, 573 U.S. 122 (2014).

2 Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94.

3 26 USC § 401(a)(B)(iii).

4 26 USC § 401(a)(9)(H). See §401(a)(9)(E)(ii) for definition of "Eligible Designated Beneficiary."

5 NE Code § 77-2715.02 (2019).

6 26 USC § 663(b) election gives the trustee an additional 65 days in the next year to distribute the income to the beneficiary.

7 26 USC § 67(e).

8 26 USC § 678(a)(1).

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Keep It Conversational:
Use Active Voice

A note from the editors: *Support for the "plain language" movement in legal writing takes many forms and comes from many allies. For instance, PLAIN (the Plain Language Action and Information Network) is an unfunded working group of federal employees that curates the website plainlanguage.gov.*

While focused on government communications, the site contains a wealth of tips, instructional examples, and references to outside resources to aid those attorneys interested in improving their written work product. Moving forward, we will occasionally republish guidelines from this website, in addition to our usual original and republished articles, all in the interest of bringing you more on the subject of "plain language."

Active voice makes it clear who is supposed to do what. It eliminates ambiguity about responsibilities. Not "It must be done," but "You must do it." Passive voice obscures who is responsible for what and is one of the biggest problems with government writing. Don't confuse passive voice with past tense.

More than any other writing technique, using active voice and specifying who is performing an action will change the character of your writing.

Identifying passive sentences

Passive sentences have two basic features, although both may not appear in every passive sentence.

- A form of the verb "to be," such as "are," "was," "were," "could be," or "have been")
- A past participle (generally with "-ed" on the end)

☒ Passive voice	☑ Active voice
The lake was polluted by the company.	The company polluted the lake.
New regulations were proposed.	We proposed new regulations.
The following information must be included in the application for it to be considered complete.	You must include the following information in your application.
Bonds will be withheld in cases of non-compliance with all permits and conditions.	We will withhold your bond if you don't comply with all permit terms and conditions.

Use passive voice when the law is the actor

In a few instances, passive voice may be appropriate. For example, when one action follows another as a matter of law, and there is no actor (besides the law itself) for the second action, a passive sentence may be the best method of expression.

You might also use passive when it doesn't matter who is doing an action. For example:

- "If you do not pay the royalty on your mineral production, your lease will be terminated."

Editors:
BRANDY R. JOHNSON, attorney, Governmental Law, LLC, Lincoln
P. BRIAN BARTELS, partner, Kutak Rock LLP, Omaha
If you are interested in submitting an article for the "Plain Language" column, please e-mail Allyson Felt at afelt@nebar.com.

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Virtual Deposition Testimony:

Practical Tips for Lawyers and Testifying Expert Witnesses

by Hollie M. Mason

As the world passes a year of restrictions and lockdowns due to the pandemic, nearly all of us have participated in some type of virtual meeting or social event. While COVID-19 vaccinations are well underway in the U.S., a number of courts, regulatory authorities, and financial institutions have projected a continuation of virtual business environments for most of 2021.

This article explores practical tips for attorneys and expert witnesses in preparing for and participating in virtual depositions, including technological, procedural, and practical considerations.

Get to know the technology

Those of us that have participated virtually in any aspect of litigation know that one of the most important steps in preparing is to familiarize ourselves with the supporting technology. Not all virtual platforms are the same, so it is important to acquaint yourself with the platform you will be using (e.g., Zoom, Skype). Most virtual platforms have training videos on their websites to help users become more familiar with various features and functionality, such as Zoom's video tutorials.

Hollie M. Mason

Hollie Mason is a Senior Consultant with The Brattle Group[1] in Washington DC. With more than 14 years of financial industry experience, she provides expert testimony and analysis as well as consulting services concerning securities trading and markets, customary practice, regulatory compliance, and risk management.

Attorneys should talk with their court reporter to find out which platforms are available, and choose the one with the functionality needed for your deposition. Attorneys and testifying witnesses should allocate time in advance to go over the relevant platform to ensure that they are comfortable with, for example, how best to review documents or create breakout rooms for team consultations. Also, remember to have a backup plan if the platform or technology fails. To prepare for the possibility of a platform outage, parties to the litigation can agree in advance whether they will move forward via phone or if they will resume proceedings at another time. Discussing and agreeing to those plans ahead of time preserves the flow of the deposition and the record.

Other platform-related tips include:

- Always use mute whenever you are not speaking.
- No virtual backgrounds or filters, please. Using a virtual background limits transparency as to who may be attending the deposition.
- Always ensure that any filters are turned off before virtually joining a depostition to preserve professionalism. As you may recall, a lawyer in Texas had an awkward few minutes during a virtual hearing when he virtually joined a hearing without realizing that a filter was causing him to appear like a cat, the video of which was posted on the internet and has been viewed more than 10 million times.
- Take note of what is in the background in the location where you will be sitting (e.g., book titles, pictures). Is it distracting, or does it inadvertently reveal something about you?

- Close all other applications on your computer, especially communication platforms like Teams or Jabber, as they can be an unnecessary distraction (more on that, next).

In addition, in the absence of traditional organizational and documentation tools, consider ways technology can further assist. For example, consider arranging for colleagues or team members to follow the deposition via a live transcript platform. These programs allow invitees to view a live feed of the "unofficial" transcript of the deposition (as the court reporter creates it in real-time), allowing them to identify items for follow-up. Typically, those viewing a live virtual transcript do not need to be announced on the record as attending the deposition.

Be prepared for procedural and tactical differences

Using a virtual platform to facilitate deposition testimony can often mean more time is spent shuffling between exhibits and directing witnesses to passages within documents being reviewed on a screen, resulting in extended silences. It is important to expect and prepare for these administrative silences.

For example, attorneys can prepare witnesses to:

- Allow more time for objections before answering questions.
- Avoid unnecessary conversation; it could be misconstrued as coaching, resulting in an objection or the need for clarification on the record—both of which can be problematic.
- Focus on the person asking the questions on their screen and avoid using any type of chat program—whether it is part of the video platform or an external application—to communicate with others when testifying. If concerns about such conduct are raised, be sure to put issues on the record and respond to accusations of improper behavior.

In a virtual setting, examination styles or tactics can also be different. Though the pressures that exist as part of attending an in-person deposition may be absent, attorneys can use short, continuous questioning to try and mimic the pressures associated with in-person examinations in order to unmask deceptions or get a reactionary response.

Attorneys may start the deposition with their most important questions, as opposed to later on, as virtual testimony can result in witnesses being more easily distracted and become tired, complacent, or dramatic as the day goes on.

Whether you are a testifying expert or attorney, be sure you have a plan in place to combat "virtual" fatigue, such as taking more scheduled breaks to keep focused.

Set expectations and get organized ahead of time

Stipulations can also help to ensure that virtual depositions are administratively successful. For example, in most instances, parties must consent to a court reporter swearing in a witness virtually and to the deposition being recorded. Other potentially helpful stipulations include:

- No documents or notes will be allowed to be taken during the deposition.
- No other parties will be allowed to be in the room with the person testifying.
- No off-screen communications while the deposition is in progress.

The parties can also stipulate as to when and how far in advance documents are to be exchanged.

Other exhibit-related tips include:

- Create specific digital folders that describe each document along with pre-marked exhibit numbers to send to the court reporter in advance.
- Be sure you know how to share and review documents during deposition.
- Avoid asking opposing parties or testifying experts to bring documents to a virtual deposition. Instead, set your document production deadline for a few days before the deposition date.

If you did not receive all requested documents, or if a testifying witness mentions documents during their testimony that you have not yet received, consider leaving the record open and/or requesting on the record the documents to be provided.

Verify logistical details in advance

Finally, a few days before the scheduled deposition, attorneys should talk with the court reporter to double-check platform functionality and pricing, exchange/mark exhibits, and go over the agreed-upon ground rules for the deposition, including whether or not the deposition will be recorded. If you plan to record a virtual deposition, attorneys should check their local rules, as some states require all parties to stipulate and/or consent to the recording in order for it to be admissible.

Attorneys and testifying experts should also consider coming up with a list of names or technical terms in advance to provide to the court reporter on the record, since the spelling and pronunciation of terms, names, and acronyms can be more difficult to understand in a virtual environment. This can assist in reducing the need for errata corrections.

Preparation is the key to success

It is clear that virtual testimony will be a common reality in litigation for the foreseeable future. Attorneys and expert witnesses should expect to increase their planning and preparation to help ensure virtual depositions go smoothly. Set yourself up for success by familiarizing yourself with the technology in advance, staying virtually organized, setting clear expectations, and verifying and/or stipulating to the final details with all participants.

Endnote

[1] The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm or its clients. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

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.

Compassion Fatigue – Helping the Helper

By Chris Aupperle, NLAP Director

Often clients coming to us for help have experienced traumatic, emotional situations and life altering circumstances–serious injuries, dealing with the breakdown of a marriage, bankruptcy, the threat of deportation, or a loss of freedom to name just a few. While these circumstances have a profound impact on our clients, the impact is not limited to them. There is a recognized mental health condition called compassion fatigue that can affect our lawyers, which is the result of the cumulative physical, emotional, and psychological effect of exposure to the traumatic events communicated by their clients, combined with the everyday stress of trying to meet the demands of helping those clients. When going to battle for clients, the lawyer may start to internalize and personalize the client stories.

Who is at Risk?

Compassion fatigue can affect anyone in the law practice, but it is most prevalent among attorneys who practice in family law, juvenile law, criminal law, and immigration law. In these practice areas, it is more likely that lawyers are exposed to not only the emotionally charged difficulties of their clients, but also witness statements, photographs, video or audio recordings, and other evidence of traumatic events. A particularly difficult case can have an impact, as well as the cumulative exposure day after day, client after client over an extended period. It is not limited to just lawyers as it also can affect their staff. Similarly, judges are at risk from the effects of compassion fatigue, as they are exposed to the same traumatic, violent, or emotionally charged evidence on a repeated basis.

Compassion fatigue may also be referred to as vicarious trauma, secondary trauma, or empathy fatigue. Compassion fatigue is not limited to the legal profession and can affect anyone working in a helping capacity–social workers, therapists, medical professionals, and first responders. The causes and effects of compassion fatigue are differentiated from what we commonly call burnout, which shares some of the same symptoms. Burnout comes from physical and mental exhaustion. Compassion fatigue occurs as the result of exposure to trauma on a secondary level.

What are the Symptoms?

While compassion fatigue may affect people in different ways, it typically results in intrusive thoughts and a change in world view. Long after a case is over, the lawyer's thoughts may continue to return to a particular case. Each time the lawyer thinks of that case or client, he or she will re-experience some of the trauma. For example, a prosecutor who relives the horrific events of a murder or rape, an immigration lawyer whose thoughts continue to return to the separation of a child from her parents as part of a deportation, or the family law attorney who handles bitter custody battles and the accompanying emotional responses of their clients on a reoccurring basis.

The Commission on Lawyers Assistance Programs identified the following symptoms that accompany compassion fatigue:

- Perceiving the resources and support available for work as chronically outweighed by the demands.
- Having client/work demands regularly encroach on personal time.
- Feeling overwhelmed and physically and emotionally exhausted.
- Having disturbing images from cases intrude into thoughts and dreams.
- Becoming pessimistic, cynical, irritable, and prone to anger.
- Viewing the world as inherently dangerous and becoming increasingly vigilant about personal and family safety.
- Becoming emotionally detached and numb in professional and personal life; experiencing increased problems in personal relationships.
- Withdrawing socially and becoming emotionally disconnected from others.

Nebraska Lawyers Assistance Program **(888) 584-6527**

Confidential Help for all Nebraska Lawyers, Judges and Law Students

- Becoming demoralized and questioning one's professional competence and effectiveness.
- Secretive self-medication/addiction (alcohol, drugs, work, sex, food, gambling, etc.) to cope with life.

Compassion fatigue can also result in physical responses by the body in the form of sleep disturbance, frequent headaches, and gastrointestinal difficulties. The American Psychological Association also notes that compassion fatigue often results in a loss of productivity, can lead to other mental health disorders like depression, and produces the inability to separate our personal from professional lives.

Prevention and Treatment

There are things we can do to prevent compassion fatigue, and if it is already present, to treat it. It begins with recognizing we are at risk and knowing the warning signs. When you experience some of the symptoms, do not ignore them and hope they go away. Talk about them with someone you trust and ideally someone who has the experience to understand what you are going through. If a co-worker or employee is exhibiting some of the symptoms, start a conversation with them and express your concern as well as your willingness to help. To be clear, compassion fatigue is not about being mentally weak, caring too much about your clients, or just needing to be more positive. Trying to just power through it or ignore the symptoms is usually ineffective. It takes recognition that something is not right and the willingness to make changes in how you practice law.

Some basic self-care is a good start. Lawyers who get adequate sleep, eat an adequate diet, set healthy boundaries, and carve out time for their non-work interests are better equipped to deal with the pitfalls of the law practice. Learn to celebrate the wins instead of lingering in the losses. Understand your role in your client's life is limited to their legal affairs and you cannot fix everything. Encourage your clients to seek outside help in areas beyond legal matters, rather than trying to play the role of parent, therapist, financial advisor, or friend to them.

Debriefing is a practice that can have benefits for lawyers. Talk regularly with another practitioner who understands and is supportive. This involves talking about the traumatic material, how you think and feel about it, and how you are personally affected by it. This may be particularly helpful after a long trial or especially traumatic case. Include support staff in this conversation if they are open to the idea.

You may also need to consider a change in your practice area. A long-time public defender once told me that while he has worked with some excellent public defenders, not all lawyers are equipped to be a public defender for their entire careers. Many served the office well for a period of time, but then felt a need for a change as the job started to adversely affect their mental health. The key is to make a change before the job has a negative impact on your personal and professional outlook.

Professional help may be necessary if the symptoms persist. Therapists can utilize techniques that can allow a lawyer to process the trauma and move forward. Self-reflection often benefits from the guidance of a therapist. You can also learn specific skills to help prevent compassion fatigue from reoccurring. If you are looking for a mental health practitioner who has experience treating compassion fatigue, give NLAP a call and we will assist you in that search.

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.

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Lancaster County Celebrates Creation of DUI Court

Darla Ideus, Judge of the Lancaster County District Court, hosted a court ceremony to celebrate the establishment of the DUI (Driving Under the Influence of Drugs or Alcohol) Court in Lincoln, NE.

Speakers during the inaugural ceremony included Governor Pete Ricketts, Chief Justice Michael Heavican, County Attorney Pat Condon, National Center for DUI Courts Project Director Julie Seitz, Nebraska Highway Safety Office Administrator Bill Kovarik, and Mothers Against Drunk Driving Program Manager Andrea Frazier.

Adult Drug and DUI Courts are designed to reduce recidivism and substance abuse among high-risk and high-need individuals with substance use disorders. The court's goal is to protect public safety and increase the participant's likelihood of successful rehabilitation. According to organizers, "The court will strive to truly make a difference, addressing the root problem of repeat impaired drivers: addiction." Participants will be providing personalized treatment and held to strict standards of accountability.

Chief Justice Mike Heavican celebrates the establishment of Lancaster County's new DUI Court. Also shown are DUI Court Judges Darla Ideus and Retired Judge John Colborn. Court Reporter Amber Martin records the ceremony.

The Lancaster County DUI Court is a multiagency collaborative court, with judges from the Lancaster County District Court, Lancaster County Attorney's Office, Lancaster County Public Defender's Office, the District 3A Probation Office, Lancaster County Community Corrections, and the Lancaster County Sheriff's Office.

Judge Ideus and Retired Judge John Colborn will serve as presiding judges for the Lancaster County DUI Court.

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.

Members and leaders from the Sarpy County Bar and Nebraska State Bar Association met with members of the Nebraska Supreme Court and representatives of the Administrative Office of the Court and Probation on June 29, 2021 as part of the Chief Justice's Summer Tour.

NSBA Seeking Applications and Nominations for the 15th Annual Leadership Academy

The Nebraska State Bar Association is pleased to announce the 15th Annual Leadership Academy, designed to develop and nurture future leaders of the association and profession. Class size is limited to 25 participants in order to ensure a high quality of participation and instruction.

The academy is offered once a year beginning with a day and a half retreat in the fall and continuing with five one-day sessions through April. Most sessions will be held at the Roman L. Hruska Law Center in Lincoln. Sessions are scheduled from 9:00 a.m. until 4:00 p.m., and lunch will be provided. Participants are required to attend the retreat and are not to miss more than one session.

The academy invites active, sustaining members of the NSBA that will be in their third to fifteenth year of practice to apply. The committee will review applications and notify participants by August 25, 2021. Class size is limited to 25.

Participants will be selected to ensure diversity in geography, practice type, employment setting, gender, and ethnicity.

Tuition is $500, which covers the cost of programs, meals, receptions, graduation dinner, and printed materials. Many of the sessions receive CLE credit and will likely cover your 10-hour annual requirement. Individual participants are responsible for their own travel and personal expenses. However, mileage and hotel reimbursement will be provided if you are required to travel more than 150 miles to attend a program session. Several sections offer scholarships for their members. Contact Sam Clinch to receive a scholarship application.

For more information contact Sam Clinch, Associate Executive Director, at (402) 742-8125 or sclinch@nebar.com.

Important Dates to Remember

Application Process

- July 30, 2021 - Nomination form due
- August 16, 2021 - Application form due
- August 25, 2021 - Notice sent to successful applicants
- September 8, 2021 - Deadline to pay fee and submit photo

Mandatory Retreat

- August 31 - September 1, 2021 - Get to know fellow Academy members with a day and a half overnight mandatory retreat at Carol Joy Holling Camp.

Monthly Workshops

- November 12, 2021 - *Governance/Community Service*
- January 14, 2022 - *Business/Leadership/Professional Development*
- February 11, 2022 - *Legislative Session*
- March 11, 2022 - *Interacting with the Media*
- April 8, 2022 - *Issues in the Court*

Per CDC guidelines, if you have not been fully vaccinated for the COVID-19 virus, we request that you wear a mask when attending live events hosted by the Nebraska State Bar Association. Even if you have been vaccinated, you are welcome to wear a mask if it makes you more comfortable.

Nebraska State Bar Association
Leadership Academy
Nomination Form

Due July 30, 2021

The following attorneys are, in my opinion, current or potential leaders in our profession, the Nebraska State Bar Association and the community, with a demonstrated interest and ability to make additional contributions. (The Academy is open to sustaining members of the NSBA who will be in their third to fifteenth year of practice.)

(1)

Name: _____

Address:_____

Phone: _____ E-mail:_____

(2)

Name: _____

Address:_____

Phone: _____ E-mail:_____

(3)

Name: _____

Address:_____

Phone: _____ E-mail:_____

We will send your nominee(s) a formal application to apply for the Academy. We appreciate your discretion in keeping the names of those you have nominated confidential.

Nominator Name:_____

Address:_____

Phone: _____ E-mail:_____

Please return this form on or before July 30, 2021 to: Sam Clinch, NSBA, 635 S 14th St. #200, Lincoln, NE 68508 or sclinch@nebar.com.

Nebraska State Bar Association Leadership Academy Application

Due August 16, 2021

Name: _____

Address: _____

Phone: _____ E-mail: _____

Firm/Employer: _____

Position: _____ Number of Years in Practice: _____

Practice Area(s): _____

_____

Optional information to assist in achieving a representative class:

Age: _____ Race/Ethnicity: _____ Gender: _____

(1) Please attach a written statement (100 words or less) describing why you want to be a member of the Leadership Academy.

(2) Participants are expected to attend an overnight mandatory retreat, each of the sessions, and the graduation dinner. Are you willing and able to make this commitment? Yes _____ No _____

(3) (a) If accepted, I will find it necessary to seek scholarship assistance. Yes _____ No _____
(b) If accepted and I do not receive a scholarship, I will still be able to participate. Yes _____ No _____

(4) Please attach your resume for review. (Include any community or Bar Association activities.) List below any additional information you would like the Committee to consider when reviewing your application.

_____

_____

(5) List two personal references, providing full names, addresses and phone numbers:

_____

_____

I have completed this application and understand that in order to graduate from the Leadership Academy, I must attend the mandatory retreat and miss no more than one of the five monthly sessions.

Signature: _____ Date: _____

APPROVED: Managing Partner or Supervisor: _____

Please return this form on or before August 16, 2021 to: Sam Clinch, NSBA, 635 S 14th St. #200, Lincoln, NE 68508 or sclinch@nebar.com.

Per CDC guidelines, if you have not been fully vaccinated for the COVID-19 virus, we request that you wear a mask when attending live events hosted by the Nebraska State Bar Association. Even if you have been vaccinated, you are welcome to wear a mask if it makes you more comfortable.

NEBRASKA STATE BAR ASSOCIATION AND NEBRASKA LAWYERS FOUNDATION
CONSOLIDATED STATEMENTS OF FINANCIAL POSITION
DECEMBER 31, 2020 AND 2019

ASSETS

	2020	2019
CURRENT ASSETS		
Cash and cash equivalents	1,526,968	1,338,803
Accounts receivable	171,340	180,078
Promises to give	89,856	90,208
Grants receivable	183,600	175,835
Prepaid expenses	65,138	30,783
Certificates of deposit	209,224	407,099
Total current assets	2,246,126	2,222,806
LONG-TERM INVESTMENTS, mutual funds	1,099,723	984,905
PROPERTY AND EQUIPMENT, net	186,229	154,433
TOTAL ASSETS	3,532,078	3,362,144

LIABILITIES AND NET ASSETS

CURRENT LIABILITIES		
Accounts payable	114,804	181,595
Accounts payable to related organizations		
Accrued liabilities	244,282	195,864
Deferred revenue	815,200	946,764
Total current liabilities	1,174,286	1,324,223
NET ASSETS		
Net assets without donor restrictions		
Board-designated - House of Delegates		
Reserve	950,610	824,861
Undesignated	158,559	103,785
Time and purpose restrictions		
Client Assistance Fund	509,133	371,828
Other time and purpose restrictions	739,490	737,447
Total net assets	2,357,792	2,037,921
TOTAL LIABILITIES AND NET ASSETS	3,532,078	3,362,144

See complete Consolidated Financial Statements and Independent Auditors' Report at nebar.com/about.

NEBRASKA STATE BAR ASSOCIATION AND NEBRASKA LAWYERS FOUNDATION
CONSOLIDATED STATEMENTS OF FINANCIAL POSITION
DECEMBER 31, 2020 AND 2019

	2020	2019
CHANGES IN NET ASSETS WITHOUT DONOR RESTRICTIONS		
Revenues and support		
Membership dues	1,076,727	1,084,011
Contributions	22,250	12,722
Special events revenue	134,086	228,154
Direct benefits to donors	(17,648)	(64,251)
Net special events revenue	116,438	163,903
Program income	52,740	75,705
Publications and label sales	91,293	113,934
Registration fees	454,851	632,168
Advertising	55,472	59,936
Recovery of costs	105,710	119,091
Grants	62,000	10,550
Investment income	53,441	66,697
Royalties and rebates	143,529	89,605
Other income	798	598
	2,235,249	2,428,920
Net assets released from restrictions	502,748	552,344
Total revenues and support	2,737,997	2,981,264
Expenses		
Program services		
Administration of Justice	650,139	531,806
Professional and practice development	937,436	1,319,034
Grants	11,315	19,755
Supporting activities		
General and administrative	912,606	951,451
Fundraising	45,978	40,848
Total expenses	2,557,474	2,862,894
Change in net assets without donor restrictions	180,523	118,370
CHANGES IN NET ASSETS WITH DONOR RESTRICTIONS		
Revenues and support		
Registration fees	12,515	12,503
Section dues	71,265	71,870
Client Assistance Fund investment income	19,327	28,418
Client Assistance Fund other income	130,191	
Promises to give	2,825	6,282
LSAT Scholarship Fund contributions	6,205	1,755
Grants	399,768	265,819
Total revenues and support	642,096	386,647
Net assets released from restrictions	(502,748)	(552,344)
Change in net assets with donor restrictions	139,348	(165,697)
CHANGE IN NET ASSETS	319,871	(47,327)
NET ASSETS, beginning of year	2,037,921	2,085,248
NET ASSETS, end of year	2,357,792	2,037,921

See complete Consolidated Financial Statements and Independent Auditors' Report at nebar.com/about.

18th Annual Greater Nebraska Golf Scramble a Success

On June 18, 2021, the 18th Annual Greater Nebraska Golf Scramble took place at Tatanka Golf Club in Niobrara.

Sixty-seven golfers ate lunch, warmed up on the range, and played the course as a scramble to raise money for the Nebraska Lawyers Foundation. Programs supported include the Volunteer Lawyers Project, the Rural Practice Initiative, the Nebraska Lawyers Assistance Program, the LSAT Prep Scholarship Program, and the NSBA Leadership Academy.

After the tournament, the golfers met in the clubhouse to thank the 41 law firms and companies that sponsored the tournament. We'd like to thank all the sponsors and golfers for their generous support!

The winners of the Championship flight, L-R: Doug Ailes, John Voelker, Steve Diehm, and Brent Travis.

1st flight winners, L-R: Ellen Geisler, Seth McCauley, Cam Jacobs, and Andrew Wilkinson.

L-R: Bob Parker, Seyi Olowolafe, Mike McCarthy, and Bill Mueller.

L-R: Mark Eurek, Pat Eurek, Alan Eurek, and Sean Kammer.

NSBA Member SPOTLIGHTS

Julie Fowler

Solo Attorney, Law Office of Julie Fowler, PC, LLO, Omaha, NE

Where did you attend law school?
Creighton University School of Law, 2007.

What kind of legal matter do you find most rewarding or personally satisfying and why?
I always have one pro bono case from the Volunteer Lawyers Project. These are often my most rewarding cases.

What do you do for fun?
Trails v. Trials. During the pandemic, my family got into mountain biking. This is something that I hope to continue to do now that life has returned to some normalcy. I've seen other attorneys on the trails, so I know I'm not the only attorney enjoying this past time. My favorite nearby trail is Oxbow in Ashland, NE.

What is one thing you know now that you wish you would have known in your first year of practice?
Less is often more.

What is the most rewarding moment of your practice?
Taking and winning the long-shot cases.

What advice would you give a new lawyer?
Some of my closest friends are my adversarial attorneys. You will never regret being friendly, or at least civil, to the attorney on the other side.

Samantha M. Robb

Associate, Kinney Mason, PC, LLO, Omaha, NE

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

What kind of legal matter do you find most rewarding or personally satisfying and why?
Representing pro bono clients is both rewarding and personally satisfying because I believe everyone deserves great legal representation, regardless of their socioeconomic status.

What do you do for fun?
I enjoy reading (for fun!), spending time with friends and family, and trying new restaurants around town.

If you weren't a lawyer, what would you be and why?
If I wasn't a lawyer, I would be a professional organizer, because I love turning chaotic messes into neat and tidy solutions.

What do you like best about your practice area and why?
I enjoy family law because I get to meet so many new people, connect with them on a personal level, and support them during a difficult time in their lives.

What is your favorite quote?
"Our prime purpose in this life is to help others. And if you can't help them at least don't hurt them." - Dalai Lama

What advice would you give a new lawyer?
It's okay not to know how to do things. Ask lots of questions. That's okay, too.

What have you enjoyed about being a member of the NSBA?
I've appreciated all of the connections I've been able to make with local attorneys.

NSBA Member SPOTLIGHTS

Susan Reff

Partner, Hightower Reff Law, Omaha, NE

Where did you attend law school?
Creighton University School of Law, 2001.

What is the best career advice you have ever received?
Treat every case as if it was the biggest case you ever had, because that case is the biggest case your client ever had.

What kind of legal matter do you find most rewarding or personally satisfying and why?
I am most rewarded when clients feel the relief of their case being finished.

What is an unconventional lesson you've learned about the practice of law?
Get to know everyone you see at the courthouse. You never know when you may need their help.

If you weren't a lawyer, what would you be and why?
I would probably be a high school french teacher. I love the language and culture, and teaching has always been a passion of mine.

What is your favorite law school memory?
Working in the Creighton Legal Clinic. It was the most real life experience I got in law school.

What is your least favorite law school memory?
Being called on in Trusts and Estates on the first day of future interests.

What do you like best about your practice area and why?
I like mentoring newer lawyers. I never had a true mentor, so I know how important it is to have someone to ask all the little questions to.

What is one thing you know now that you wish you would have known in your first year of practice?
Prepare all cases as if they will go to trial.

Who is your hero and why?
Anyone who is willing to speak out for someone else.

What is your favorite quote?
"Regret is a wasted emotion."

What is the most rewarding moment of your practice?
At the end of the trial when I feel I did the best job I could have for my client.

What is your proudest moment?
When my husband and I became parents through adoption.

What advice would you give a new lawyer?
Do not be afraid to ask questions.

What have you enjoyed about being a member of the NSBA?
Meeting lawyers from all over Nebraska.

NSBA Member SPOTLIGHTS

Alexander McAtee

Associate Attorney, VandenBosch Law, LLC, Omaha, NE

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

What is the best career advice you have ever received?
Show up early and prepare more than you think you should.

What kind of legal matter do you find most rewarding or personally satisfying and why?
Family law matters with immigration components are by far the most rewarding. Not only do you help a client obtain their desired custody arrangements, but you can often use the underlying Order as a vehicle for lawful status.

What do you do for fun?
I spend my free time with my three young children and my wife. You'll most often see me at the Children's Museum, Vala's Pumpkin Patch, the Durham Museum, or the Zoo. Apart from that, I tend to unwind with some video games, golf, or billiards.

If you weren't a lawyer, what would you be and why?
I would likely be a counselor or a mediator. I enjoy helping people overcome conflict. Unfortunately, that isn't always possible in our profession.

What is your favorite law school memory?
The drive back from taking the bar exam and feeling confident that I would pass.

What is your least favorite law school memory?
Commuting to Lincoln from Omaha my first year of law school. Who knew that 8 a.m. contracts could be so hellish on the heels of a one-hour drive?

What do you like best about your practice area and why?
Our office specializes in immigration law, and our clientele are almost exclusively Spanish speakers. I frequently have cases where I will represent a client in a criminal matter, family law matter, and in immigration court simultaneously. Resolving those multi-layered and contentious cases for our clients is my favorite.

What is one thing you know now that you wish you would have known in your first year of practice?
It is far better to err on the side of more notes than less notes.

What is your favorite quote?
The defect of equality is that we only desire it with our superiors. - Henry Becque

What is the most rewarding moment of your practice?
After two years of work, we took a client from being detained on a felony charge and bonding out from immigration custody to being a lawful permanent resident without a conviction.

What is your proudest moment?
I was hit with a Hague Convention abduction claim in what was supposed to be a simple dissolution. After researching, briefing, and arguing my point, we were able to proceed and ultimately were successful. It was an issue that went from being entirely foreign to being something I could explain to my child.

What advice would you give a new lawyer?
Don't pretend to know more than you do, be honest, and ask for help if you need it.

What have you enjoyed about being a member of the NSBA?
I love the open dialogue and the helpful responses by everyone on the listserv.

NSBA Member SPOTLIGHTS

Jane Langan Mach

Partner, Rembolt Ludtke LLP, Lincoln, NE

Where did you attend law school?
University of Nebraska College of Law, 1995.

What is the best career advice you have ever received?
Always respond to people even if you don't have any news to share.

What kind of legal matter do you find most rewarding or personally satisfying and why?
Mediations, because it allows people to control their own outcomes and engage in creative solutions.

What is an unconventional lesson you've learned about the practice of law?
Most lawyers will be up front with you and give you the information you need without an ambush.

If you weren't a lawyer, what would you be and why?
I'd have a wedding store. Because it's the opposite of what I do now.

What do you like best about your practice area and why?
The personal relationships and feeling like I'm helping.

What is one thing you know now that you wish you would have known in your first year of practice?
It's okay to say no.

Who is your hero and why?
My mom. Because she put up with such an argumentative kid.

What is your favorite quote?
"I hope my achievements in life shall be these stash that I will have fought for what was right and fair, that I will have risked for that which mattered, but I will have given help to those who were in need… That I will have left the earth a better place for what I've done and who I've been." - C. Hoppe

What is the most rewarding moment of your practice?
When I get thank you cards or graduation announcements or wedding invitations for families of clients I have helped.

What advice would you give a new lawyer?
Don't go out of your way to be difficult. Domestic practice is taxing and hard and emotional and draining and there's no reason to make it any harder than it already is.

Deanna Piña

Associate Attorney, Hightower Reff Law, Omaha, NE

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

What do you like best about your practice area and why?
I really enjoy the unique intersection of family law and immigration law. These areas intersect fairly frequently, and it is rewarding to be able to help the same family with multiple types of legal issues.

Who is your hero and why?
My hero is Supreme Court Justice Sonia Sotomayor. She is a living example of Latin/Hispanic excellence, and her personal story reminds me of my mother's. Tía Sonia is a beacon of light for all of us in the Puerto Rican diaspora.

What advice would you give a new lawyer?
Always remember to check the local rules!

NSBA Member SPOTLIGHTS

John A. Kinney

Founder/Managing Partner - Kinney Mason, PC, LLO; Founder - Nebraska Divorce Mediation, Omaha, NE

Where did you attend law school?
DePaul University College of Law.

What is an unconventional lesson you've learned about the practice of law?
"No good deed goes unpunished."

The roots of the phrase go back to the 12th Century. While it may seem a pretty dark and jaded piece of wisdom, it has bubbled to the surface of so many conversations with clients I cannot help but think that it has a unique resonance.

It comes up for people who try hard to amicably resolve matters, only to learn that their generosity is viewed as weakness and leverage. Part of the job of a litigator is to assist non-lawyers with the grim reality that by the time a dispute gets to the courtroom, trust and charity may be gone and the evidence just needs to be vetted.

What is your least favorite law school memory?
I remember being in the elevator with a group of students after a particularly difficult final exam. Someone started to talk about the test in detail, giving an excellent recitation of comprehensive and intelligent answer to an issue presented by the exam which I completely missed. My law school classes were on the 9th floor of a tall inner-city building. It was a long ride.

What do you like best about your practice area and why?
I help people with one of the most difficult things that they will ever go through. They leave my office after the first meeting with a better sense of positive potential outcomes and a plan. A lot of lawyers think that being a family law attorney must make for a difficult professional life. It can be stressful. But by the time folks get to you they have already decided to get divorced; if you have compassion and care about client outcomes, and you know you are capable of changing their trajectory for the better, that is rewarding.

What is one thing you know now that you wish you would have known in your first year of practice?
A lot of people's aggression comes from vulnerability and pain. The way you react to people often controls the outcome of the interaction, even when things look and feel very dramatic and emotional. I got caught up too much in rising up to a higher pitch if the energy was already there, instead of trying to bring light to the heat.

What advice would you give a new lawyer?
Run your own race. Where you start is not where you end. You can think you want your career to look like something very specific and not see that there are lots and lots of options and possibilities. Time has a way of revealing to you what will make you happy in your professional life. Breathe. Give yourself time and a bit of grace.

Joy Kathurima

Associate Attorney, Hightower Reff Law, Omaha, NE

Where did you attend law school?
University of Nebraska College of Law, 2019.

What do you do for fun?
Going shopping, hiking, caring for my plants, and brunching with my friends.

If you weren't a lawyer, what would you be and why?
A horticultural therapist. It would combine my love of plants and helping people.

What is your favorite law school memory?
Friendsgiving 2018: we ate good food and shared lots of laughter.

What is your least favorite law school memory?
Bombing a cold call my 1L year.

Who is your hero and why?
My parents. They embody integrity, honesty, kindness, and love. Plus they are super funny, and I love to spend time with them.

What is your favorite quote?
"Caring for myself is not self-indulgence, it is self-preservation, and that is an act of political warfare." - Audre Lorde

Volunteer Lawyers Project


For this Family Law Edition of *The Nebraska Lawyer* magazine, the Volunteer Lawyers Project asked some of the attorneys across Nebraska who accept divorce and custody cases on a pro bono basis, "Why is pro bono work especially important in family law?" Here are their responses:

Katherine E. Sharp
Jarecki, Lay, & Sharp PC, LLO, Albion & Columbus

Certain issues in family law may require immediate attention and action. Pro bono family law work can provide prompt assistance to those families who do not have access to legal services due to financial constraints. This is particularly true in rural Nebraska where individuals may have difficulties accessing legal services in their area.

Shaylene Smith
Kalkwarf & Smith Law Offices, LLC, Crete & Fremont

Lilo and Stitch was a favorite Disney movie at my house for many years. The premise is that Ohana, which means family in Hawaiian, is something that is more than a blood relationship. It is something that is felt. Family is one of the primary foundations of our society and our way of life in Nebraska. When a family has to appear in court, most often something has been broken. How the court system responds to that brokeness will help define the future for all of those family members—the ones in court and the ones who are not. I volunteer to help make sure we are preserving some sense of Ohana for the people who truly need it most.

Joel Carlson
Stratton, DeLay, Doele, Carlson, Buettner & Stover, PC, LLO, Norfolk

I choose to take on some pro bono family law cases because there are some pro se litigants that feel lost in the mayhem of disrupted family. In those cases, I have found clients that need direction after having tried to navigate the legal system on their own. Such a person is often overwhelmed and needs a lawyer to guide them through the process. Our profession needs to look out for those litigants that cannot afford an attorney on their own.

Amanda M. Speichert
Lindemeier Law Office, North Platte

Pro bono work is important in family law for a variety of reasons. Some of the more important reasons, in my opinion, to facilitate visitation so children can have a relationship with both parents. It can also add protection to a client or child in cases where domestic violence or abuse has occurred. Overall, I believe that by dedicating time to pro bono work in family law we can help families achieve better outcomes. We can also prevent larger problems from developing by not being able to address issues just due to finances.

Spencer Wilson
Yost, Lamme, Hillis, Mitchell, Schulz, Hartmann & Wilson, PC, Fremont

Pro bono work is important in family law to build stability for families, especially children. As the family structure is undergoing a major change, it is important that children see both of their parents still love and care for them. If you ask any child who they want to live with, they'll often say all of them wants to live with dad and all of them wants to live with mom. Protecting the parent-child relationship and putting children first is why I am involved in the Volunteer Lawyers Project working on pro bono family law.

Access to Justice Association:
A New Nebraska Nonprofit Working to Bridge the Justice Gap

It is impossible to discuss the civil legal justice gap without discussing family law cases. People living near or below the poverty line are more likely to divorce or need civil legal assistance with custody matters. Furthermore, usually in family law cases and unlike other general poverty law areas, both parties in a case often qualify based on income for nonprofit legal services. Most communities have only one nonprofit civil legal service provider, and that service provider quickly accrues conflicts of interest and cannot offer representation to all parties. The Volunteer Lawyers Project prioritizes finding pro bono counsel for family law cases because the need is so high; however, some cases are too demanding to place on a pro bono basis. A group of Nebraska College of Law students was uniquely aware of these complexities leading to hardship and decided to do something about it by starting their own legal nonprofit, the Access to Justice Association.

SAMANTHA LOWERY, **JACKSON SLECHTA**, and **JARED HOLZ** were in the same first year law student class in the Fall of 2017. They quickly bonded over shared experiences of seeing how income levels impact access to justice for many Nebraskans. Due in large part to their personal experiences growing up in homes of limited means and varied professional experiences including working abroad and as a private investigator, the trio wanted to build a legal nonprofit that could fulfill an unmet legal need.

Lowery, Slechta and Holz hope the Access to Justice Association will not only serve people who other larger nonprofits are conflicted out of, but also provide extensive resource education and case management services to people in need. Lowery stated, "The purpose of the non-profit is to create a full access place for individuals to get help—not only low or no-cost legal help, but we provide and locate resources for individuals who need extra help, like with their rent or their bills." As an example of this, when discussing how her co-founder, Slechta, volunteers regularly at the Tenant Assistance Project, Lowery explained she would want to go further than that by making people aware of additional housing support opportunities. For an example, she offered, "Most individuals are unaware there is a program run by the USDA that will help low-income individuals purchase a home with no down payment and a very low interest rate."

The notion of a continuum of services and partnering with nonprofit human services providers was a significant theme of the 2021 Equal Justice Conference, which spotlighted many legal service providers who work together with social service agencies. Legal Aid of Nebraska's UPLIFT Project has embraced this model by working out of three Lincoln community centers: the Good Neighbor Center, the Asian Community and Cultural Center, and El Centro de las Americas. UPLIFT focuses primarily on economic legal factors that can be addressed to "uplift" Lincoln families who struggle with economic barriers that systemically keep them in the poverty cycle: housing, income and benefits, and debt. Yet, any one program is just a piece of the puzzle in bridging Nebraska's civil legal justice gap.

Before the pandemic, it was estimated that 57 million Americans lived at or below 125% of the federal poverty guidelines, therefore qualifying for Legal Aid services. Unfortunately, this group of people—those unable to afford civil legal representation—is more likely to need it. People living with intellectual, psychological, or physical disabilities are more likely to need administrative law help with governmental agencies. Women in low-income households are 3.5 times more likely to experience domestic violence. People who cannot read are more likely to have low wage jobs and struggle with creditor issues. Poverty and civil legal issues are thoroughly intertwined in such a way that the civil legal justice gap is much wider than if middle-income people just couldn't hire attorneys. The civil legal justice gap thus becomes a huge cause and effect of cyclical and generational poverty. Further innovation, like Legal Aid of Nebraska's UPLIFT Project and the creation of the Access to Justice Association, is needed to ensure access to justice for all Nebraskans.

#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. No matter where attorneys are in their careers, practice areas, or passions, VLP wants to celebrate all attorneys reaching their pro bono goals.

VLP Current Events

VLP Welcomes Summer Interns and Volunteers

Miranda Hussey

Joshua Gromowsky

Ashton Koch

Miranda Hussey, University of Nebraska College of Law Student

Miranda is a rising 2L from Lincoln, NE and is so glad to be back in her hometown for law school after a few years of gaining life experience in Denver as a paralegal. When not drowning in classwork, she loves to cook, hang out with her husband and pets, and do home improvement projects.

Miranda has always been passionate about landlord-tenant law and knew it was something she wanted to pursue further after some difficult personal experiences with leases. Miranda chose a position with VLP because, "I was hoping as a law student I would get clerk experience working in public interest so I could see first-hand the difference between it and the work in larger corporate firms. I am thrilled to be with VLP this summer, and it has opened my eyes a lot in regards to public interest work."

Joshua Gromowsky, University of Nebraska Undergraduate Student

Joshua is a lifelong Nebraskan, born and raised in Omaha. This fall, he will be starting his third-year at UNL. He is pursuing majors in political science and math and then hopes to attend law school after graduation. Joshua is in the Phi Kappa Theta fraternity and is involved in the Newman Center. He has worked as a Learning Assistant at the Math Resource Center, as a part of the ASUN Student Conduct Board, and as an intern for congressional campaigns and a law firm.

Josh was excited to intern with the Volunteer Lawyers Project this summer because, "it will give me an opportunity to learn from experienced lawyers while helping people in our community that really need someone to advocate on their behalf. My hope is to someday practice law in a courtroom, and this is a great way to get exposure to that environment."

Ashton Koch, University of Nebraska Undergraduate Student

Ashton is a rising senior at the University of Nebraska-Lincoln. She will complete her degree at UNL in May of 2022 with a Bachelor of Arts with majors in Political Science, Global Studies, and French, plus a minor in Human Rights and Humanitarian Affairs. On campus, she is the Outreach Coordinator at the Women's Center, is part of the Honors Program, and is on the Political Science Student Advisory Board. She also volunteers in the Lincoln community through Lincoln Literacy. After completing her undergraduate career, she plans to pursue a J.D. and a Master's of Public Policy.

Ashton chose to spend her summer with VLP because, "the pandemic has brought to light many issues with our justice system and how it fails to help people who need the help the most, especially during the pandemic. VLP helps to bridge a gap that is increasingly widening and necessary to be filled. Even when we are not in a pandemic, there are people who need the help that VLP provides, and it is necessary to have programs like VLP that serve the people that sometimes the justice system neglects to serve adequately."

VLP is incredibly grateful for the opportunity to work so closely with students as they are preparing for their careers and the assistance these students provide during a very busy time. They truly help fill a void in providing pro bono services to low-income Nebraskans.

VLP Current Events

Lawyers in the City, Friday, May 7, 2021 - Heart Ministry Center, Omaha

A Lawyers in the City legal clinic, co-hosted by Legal Aid of Nebraska, the Nebraska State Bar Association Volunteer Lawyers Project, Immigrant Legal Center and Heart Ministry Center was held on Friday, May 7 in Omaha. This event was a two-hour legal clinic where volunteers met with walk-in visitors to provide brief advice; referrals to a legal aid service provider; and give self-help forms, brochures and other helpful resources. Volunteer attorneys saw visitors from 10:00 a.m. – 12:00 p.m. Volunteers included 8 attorneys and 1 paralegal.

Thirty area residents, 14 of which spoke a language other than English, attended the event and received legal assistance in family, debtor, housing, guardianship, employment, disability, estate planning, insurance and immigration legal issues. Several of them had multiple legal issues and required more in-depth consultations. More than 100 persons were directly impacted by the pro bono services received.

VLP will be hosting more of these events at Heart Ministry Center on August 6, September 10 and October 1. Please contact Laurie Heer Dale at volunteerlawyersproject@nevlp.org.

VLP Needs Your Help!

Pro Bono Cases

The past year had been incredibly difficult. Nebraska families and communities remain devastated by the COVID-19 outbreak. Access to legal services and resources is critical to recovery.

Many thanks to those who have worked diligently to ensure access to justice for some of our most vulnerable neighbors! Of course, continued assistance is needed. If you are interested in volunteering your valuable time and expertise to provide legal help during this crucial time, please contact Laurie Heer Dale, Director of the Volunteer Lawyers Project, at vlp@nevlp.org.

Case lists are available on the VLP website at www.nevlp.org/pro-bono-cases. Cases are listed by county and practice area and updated regularly. A COVID-19 category is included to aid in identifying victims who need your help. Simply click the case number to email your interest to VLP and to receive information to check for conflicts. Many cases can be resolved through telephone consultation and limited scope representation.

In 2020, thanks to your committed assistance to low-income persons, including those most affected by COVID-19, VLP referred nearly 400 cases for legal services, including direct representation in court. Please help VLP surpass this number of cases in 2021.

University of Nebraska College of Law Pro Bono Research Fellow Program

The University of Nebraska College of Law's Pro Bono Research Fellows Program is a free service to private attorneys in need of research assistance on pro bono legal matters. The program matches interested law students with pro bono attorneys on research projects that range from small assignments taking only a few hours, to larger projects that may last an entire semester. Research fellows work directly with the pro bono attorney and may assist beyond research in some circumstances. For new assignments, a member of the College of Law Library Faculty will provide one-on-one research guidance at the beginning of the assignment, as well as on-going support as needed. Attorneys may apply for research assistance by completing an online application located at: https://law.unl.edu/ProBonoResearch/

VLP Current Events

VLP is Hiring - VLP Program Attorney

The Volunteer Lawyers Project (VLP) is the pro bono program of the Nebraska State Bar Association (NSBA). Created in the early 1980s, VLP furthers the NSBA mission, "Helping Lawyers Help People." The VLP Program Attorney helps plan, implement and maintain VLP pro bono activities across Nebraska, with an emphasis on case referrals.

This is a full-time, exempt position. Generally, duties are performed Monday-Friday between the hours 8:00 a.m.–5:00 p.m., with some evening, weekend, and extended work days. This position requires travel outside of Omaha and Lincoln to facilitate and attend program activities and events.

Salary and Benefits

Salary is commensurate with non-profit public interest work, skills and experience considered. This position offers paid individual healthcare and dental insurance, health savings account, 401K retirement plan, life insurance, disability plan, paid NSBA membership, NSBA CLE credit opportunities, remote work policy, vacation and sick leave.

Primary Duties and Responsibilities

• Recruit, volunteers for VLP programs through telephone, written and in-person communication.

• Schedule volunteers for VLP programs.

• Conduct case placement activities and assist with case management.

• Assist with operating VLP programs in venues such as courthouses, partner organizations, etc., which may include travel between Omaha and Lincoln.

• Administer NE Free Legal Answers online.

• Create and conduct trainings, events, CLE, and presentations to train and sustain an active volunteer network.

• Create and update training materials and volunteer resources, in print and online.

• Draft correspondence, reports, articles and other documents for VLP programs and activities.

• Maintain databases to track volunteer information, pro bono activities and events.

• Perform quality assessment of the pro bono program through surveys and other tools.

• May supervise VLP staff.

• Perform other duties assigned by the VLP Director or NSBA Executive Director.

Skills Needed to Support the NSBA/VLP Mission

• Be able to make frequent, regular cold calls to attorneys statewide and interact at various events to recruit volunteers for VLP programs.

• Have excellent professional communication skills, oral and written.

• Maintain a high level of attention to detail, high standards for accuracy and quality.

Education, Experience, Requirements

• Juris Doctorate. If admitted to practice, must be a member in good standing.

• Three years practice experience in civil litigation with experience in family, landlord/tenant, debtor, guardianship, probate, and general civil law preferred.

• Demonstrated commitment to public service and pro bono representation.

• Previous experience working with low-income and underserved communities is highly desired.

• Experience managing or supervising volunteers is highly desired.

• Fluency in Spanish is highly desired.

Note

The statements in this job description reflect general details necessary to describe the principal functions of this position, the level of knowledge, the scope of responsibility, and the skills typically required for this position. The statements should not be considered an all-inclusive list of the work requirements. This position may perform other duties as assigned, including work in other NSBA areas to cover absences or relief, or to further the responsibilities of the VLP or the NSBA. Every effort will be made to update job descriptions as changes are made.

To Apply

Send resume, cover letter, and three professional references to Laurie Heer Dale, Director of the Volunteer Lawyers Project, 635 S. 14th Street, Suite 200, Lincoln, NE 68508 or volunteerlawyersproject@nevlp.org.

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 May 2021.

Reduced Fee Pro Bono Cases

Lisa A. Adams
Claire K. Bazata
Audrey A. Bellew
Diane L. Berger
Andrew T. Braun
Michelle L. Bremer
Burke C. Brown III
Mary C. Byrd
Katherine R. Chadek
Jeffrey P. Ensz
William J. Erickson
Kyle J. Flentje
Elizabeth N. Flynn
Stefanie S. Flynn
Leah J. Gleason
Patrick M. Heng
Emilee L. Higgins
Alexandra J. Hubbard
Margaret R. Jackson
Mark F. Jacobs
Jessica Kallstrom-Schreckengost
Jennifer D. Kearney
John A. Lentz
Alex M. Lierz
Brett T. McArthur
James K. McGough
Ceci N. Menjivar
Samantha F. Miller
David J. Myers
James A. Owen
Patrick M. Patino
Wendy J. Ridder
Gregory A. Rosen
Jasen J. Rudolph
Courtney R. Ruwe
Audrey L. Sautter
Megan E. Shupe
Jackson L. Slechta
Morgan L. Smith
Ashley K. Spahn
Bruce E. Stephens
Ryan M. Swaroff
Derek A. Terwey
Christina Thornton
Joanna M. Uden
Jamel J. Walker
Melissa A. Wentling
Lyle E. Wheeler Jr.
Leigha E. Wichelt
Timothy J. Wollmer
Brandi J. Yosten

No Fee Pro Bono Cases

Mark D. Albin
Roxanne M. Alhejaj
Jamie L. Arango
Dwyer Arce
Amber D. Aryes
Joel A. Bacon
Charles J. Bentjen
Arielle M. Bloemer
Amy K. Bonn
Kimberly A. Booth Chicoine
Elizabeth S. Borchers
Donald H. Bowman
D.C. "Woody" Bradford III
Timothy E. Brogan
Kara E. Brostrom
Lucrece H. Bundy
Angela Burmeister
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
Mark J. Daly
Michael J. Decker
Richard A. Dewitt
Megan A. Dockery
Brett E. Ebert
John F. Eker III
Allan J. Eurek
Bradley A. Ewalt
Elizabeth Eynon-Kokrda
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
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
Jeffrey B. Hubka
Kathleen J. Hutchinson
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
Craig H. Lane
Jane F. Langan Mach
Mary J. Livingston
Barbara C. Lohr Van Sant
Dana M. London
Christin P. Lovegrove
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
Katie Navratil
Leslie J. Nordhausen
Kevin J. O'Connell
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
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
Thomas J. Shomaker
Megan E. Shupe
Bradley A. Sipp
Jackson L. Slechta
Shaylene M. Smith
Mark A. 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
Andrew J. Van Velson
Jeffrey A. Wagner
Joshua W. Weir
Melissa A. Wentling
Kelle J. Westland
LaShawn D. Young

Pro Bono Partners

Tenant Assistance Project *(Lincoln)*

Alejandra Ayotitla, *student*
Terry K. Barber
Robert F. Bartle
Shayna Bartow, *student*
Sam Baue, *student*
Ann Bauerle, *student*
Taylor Christopher, *student*
Rachel T. Dick, *student*
Patrick M. Driver
Alan Dugger, *student*
Christopher L. "Spike" Eickholt
Meaghan A. Geraghty
Zachary Hadenfelt, *student*
Cal Harman, *student*
Max Hjermstad, *student*
Katherine Hoatson, *student*
Deanna Hobbs, *student*
James H. Hoppe
Wilson Hupp, *student*
Haley Huson, *student*
Miranda Hussy, *student*
Cyrus Jarrett, *student*
Bobby Larson, *student*
Tessa Lengeling, *student*
Alex M. Lierz
Emma Lindemeier, *student*
Ivy Lutz, *student*
Kait Madsen, *student*
Jordan Mason, *student*
Kaitlyn Moore, *student*
Mauricio Murga Rios, *student*
Sarah O'Neill, *student*
Stephany P. Pleasant Maness
Sean M. Reagan
Kevin L. Ruser
Stephen A. Sael
Margaret E. Schiefen
Christopher Schmidt, *student*
John Schmidt, *student*
Jackson L. Slechta
Amy Sonnenfeld, *student*
Charles T. Steenson
Ryan P. Sullivan
Ryan M. Sump
Audrey R. Svane
David P. Thompson
Madison Whitney, *student*
Emily Witzenburg, *student*

Nebraska Free Legal Answers

Alexa B. Barton
Carol A. Cleaver
John T. Densberger
Quinn R. Eaton
Daniel J. Esquivel
Michael R. Faz
Mattea Fosbender
Brenna M. Grasz
Mason Gregory
John T. Haarala
Katheryn L. Harouff
Sydney L. Hayes
John L. Holtz
Sara P. Hulac
Ashley M. Inbau
Susan M. Koenig
Jeffrey B. Lapin
Alex M. Lierz
Catherine M. Mahern
Ann C. Mangiameli
Sarah E. Preisinger
Kevin L. Ruser
Andrew T. Schlosser
Lyndi A. Skinner
Rachael A. Smith
Ryan P. Sullivan
Abbie J. Widger
Matthew J. Wurstner

Self-Help Centers

Buffalo
Melodie T. Bellamy, *Coordinator*
Coy T. Clark
Brandon J. Dugan
Lucas J. Elsbernd
John D. Icenogle
Jeffrey C. Knapp
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

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

John P. Farrell, *Speaker*

Law Students

The following 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

Live, In-Person NSBA Section Events and CLEs Return!

By Jennifer Hiatt, Section Facilitator

We are so happy to announce that the NSBA has returned to supporting live section events and CLEs and the calendar is already filling up! We would like to thank all of our section executive committees for making the commitment to pivot during the past year. Our virtual social events were well supported, and our CLEs were well attended. We are grateful for our section members' support throughout the last year!

Moving forward, we have established the following protocols to ensure safe and successful events:

- Section CLEs must be three credit hours or more to be hosted live
- Unvaccinated attendees will be asked to wear a mask
- Social distancing is requested
- Hand sanitizing stations will be provided

If you are not able to abide by these safety measures, we ask that you notify us as soon as possible so we can switch your registration to webcast attendance.

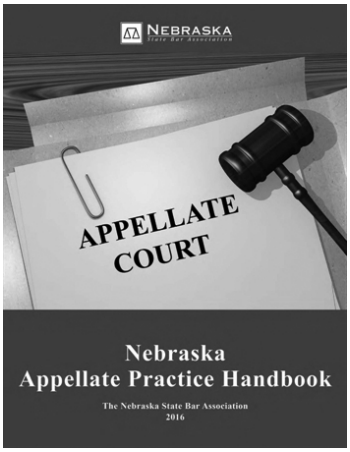
We will continue to monitor safety guidance and if recommended, we will return to fully-remote CLE. Thank you for your cooperation in making our live events this year as safe as possible. We look forward to being able to finally see everyone again!

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

Upcoming Section Events/Seminars

- **July 29** - Health Law Seminar
- **July 30** - Government and Administrative Practice Seminar
- **August 11** - Elder Law Seminar
- **August 13** - Real Estate, Probate and Trust Law Section Legislative Meeting
- **August 19** - Young Lawyers Professional Development Series: Leadership Development: Importance of Volunteerism
- **August 20** - Public Interest Section Seminar
- **August 27** - Business Law Seminar
- **August 31** - Opening of Term Seminar
- **September 1** - Women and the Law's 21 Day Grit Challenge
- **September 2** - Diversity Summit
- **September 17** - YLS Annual Survey of the Law
- **September 24** - Real Estate Seminar
- **October 21** - Young Lawyers Professional Development Series: Managing Your Law School Debt
- **November 18** - Young Lawyers Professional Development Series: End of Year Preparations - Best Practices
- **November 19** - Workers' Compensation Seminar
- **December 16** - Young Lawyers Professional Development Series: Maximizing Your NSBA Member Benefits

From *NSBA Nebraska Appellate Practice Handbook (2016)*. This manual was created to assist lawyers when creating an appeal.



2-2 Appeal by Defendant

2-2(a) Right of Appeal

A defendant in a criminal case may appeal to the district court from a final judgment or final order of the county court. Neb. Rev. Stat. § 29-611 (Reissue 1995); Neb. Rev. Stat. § 25-2728 (Cum. Supp. 2006)). The appeal must be perfected within thirty days after the entry of the judgment or final order. Neb. Rev. Stat. § 25-2729(1) (Cum. Supp. 2006). Entry "occurs when the clerk of the court places the file stamp and date upon the judgment or final order. For purposes of determining the time for appeal, the date stamped on the judgment of final order" is the date of entry. Neb. Rev. Stat. §25-2729(3) (Cum. Supp. 2006). See generally the procedure for civil appeals to the district court in Chapter 1 of this Handbook.

While most appeals raise trial issues or excessive sentence considerations a significant number in recent years have involved speedy trial issues. If a Motion to Discharge for violation of speedy trial is denied then the defendant **MUST** pursue an interlocutory appeal. Such an appeal acts as a stay on the pending County Court proceeding until the District Court reviews the lower court decision. If the District Court also denies the Motion to Discharge the defendant can pursue the matter all the way to the Supreme Court. (*See also State v. Hausmann*, 277 Neb. 819, 765 N.W.2d 219 (2009) for the proposition that while an intermediate appellate court still has jurisdiction over an appeal, it has the "inherent power" to vacate or modify a final judgment or order.)

NEBRASKA
State Bar Association

Upcoming CLE Programs

July 29
Health Law Seminar
In Person and Webcast - Omaha

July 30
Government and Administrative Practice Seminar
In Person and Webcast - Lincoln

August 11
Elder Law Seminar
In Person and Webcast - Lincoln

August 20
Public Interest Section Seminar
In Person and Webcast - Ashland

August 25
NSBA Summer Ethics Tour Program
In Person, Tommy Gunz Banquet Hall, Grand Island

August 26
NSBA Summer Ethics Tour Program
In Person, Grandma Jo's, Sidney

August 27
NSBA Summer Ethics Tour Program
In Person, Chadron State College - Student Center Bordeaux Room, Chadron

August 27
Business Law Seminar
In Person and Webcast - Omaha

August 31
Appellate Law Section Opening Of Term Seminar
In Person - Lincoln

September 2
Diversity Summit
Webcast

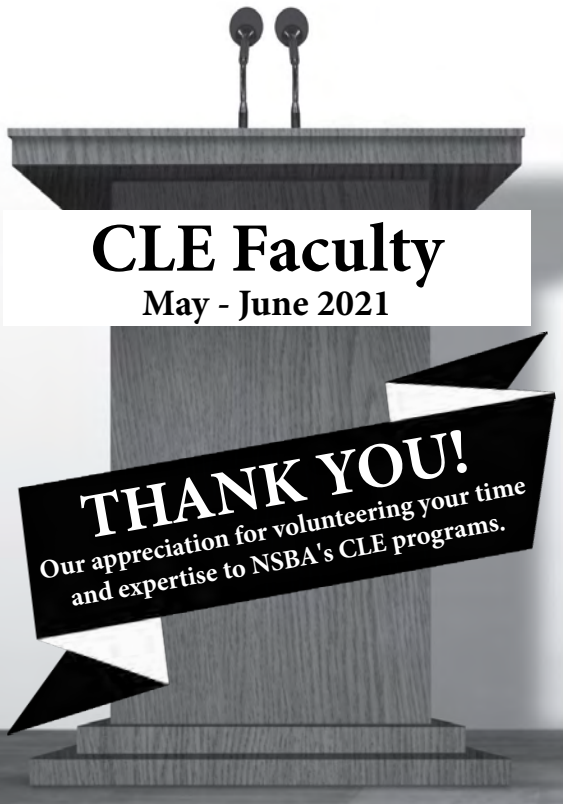
September 17
YLS Annual Survey of the Law
In Person and Webcast - Lincoln

September 24
Real Estate Seminar
In Person and Webcast - Kearney

October 13 - 15
NSBA Annual Meeting
In Person - Embassy Suites, La Vista

November 19
Workers' Compensation Seminar
In Person and Webcast - Omaha

New seminars are added to this list weekly. Visit the NSBA Calendar at www.nebar.com for the most up-to-date listing of seminars being offered.



Tom Boyle
TrustBooks

Jonathan Breuning
Baird Holm, LLP

Ron Carucci
Navalent

Bill Eddy
High Conflict Institute

Carri Fitzgerald
Nebraska Lottery and Charitable Gaming Division

Laurie Heer Dale
NSBA Volunteer Lawyers Project

Prof. Edward A. Morse
Creighton University School of Law

Jordan Mruz
Nebraska Lottery and Charitable Gaming Division

Sharon D. Nelson
Sensei Enterprises, Inc.

Hon. Patrick Runge
Winnebago Tribal Court

Jon Schroeder
Schroeder and Schroeder P.C.

Krystal L. Siebrandt
HBE, LLP

John W. Simek
Sensei Enterprises, Inc.

Doug Simon
Tredas, LLC

Shawntal M. Smith
Omaha Home for Boys

Colten C. Venteicher
Bacon, Vinton, & Venteicher, LLC

David L. Wilson, Jr.
Nebraska Secretary of State

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

Career Changes.....and Relocations

Christopher R. Hedican

BAIRD HOLM LLP is pleased to announce that **CHRISTOPHER R. HEDICAN** has been named as the Firm's new Managing Partner. He replaces Richard E. Putnam, who served in this role for the past 12 years, and will be returning to the full-time practice of law at the Firm. Chris has been an attorney for 31 years, and at Baird Holm for 24 years. His practice has been focused on employment litigation, prosecuting noncompete, trade secret and fiduciary breach claims and defending all types of employment claims, including discrimination, wrongful termination, retaliation, employment torts and public policy claims. For the past five years, Chris has also served as a member of the Firm's Executive Committee. Chris graduated from Washington University in St. Louis School of Law in 1990. He was conferred a Master's of Business Administration from the John M. Olin Graduate School of Business of Washington University in St. Louis in 1990. He also received a Bachelor of Science degree, cum laude, from Creighton University in 1986. Chris is Vice President of the Brownell-Talbot School Board of Trustees, and is active in many local charitable organizations, some of which include GO Beyond Nebraska and the Heart Ministry Center. He has also served on the Board of Directors of the Ollie Webb Center, Head Start, and Morningstar Lutheran Church. Chris and his wife, Cindy, a former Baird Holm attorney, have three children.

Jeff Hansen

JEFF HANSEN has been promoted to Executive Vice President, General Counsel at **TROON** in Scottsdale, Arizona. Hansen is a native of Scottsbluff, Nebraska and received his B.S. in Accounting from UNL in 1986 and his J.D. from UNL in 1990. Hansen practiced with Simmons Olsen Law Firm in Scottsbluff, Nebraska from 1990 to 2008 and has been with Troon since 2008. Hansen provides oversight of the six person legal team including representing the Company's interests in corporate, transactional, employment and facility related matters. Troon is the largest third party manager of golf, tennis and club operations in the world and has a presence in 30+ countries and 45+ states providing services to approximately 600 locations worldwide.

ENDACOTT PEETZ & TIMMER law firm is pleased to announced the addition of attorneys **JIM TITUS** and **BLAKE SIMPSON** to the firm.

Jim Titus

Titus will be of counsel to the firm. He has a legal career spanning more than 40 years in estate planning, real estate law, general corporate law, agricultural creditor litigation, elder law, and in health care law, representing physicians. He is experienced in arbitration and mediation matters and has served on the bankruptcy court mediation panel since 2011. In addition to his lengthy experience as an attorney, Titus passed the Uniform CPA Examination and holds a Certificate issued by the Nebraska State Board of Public Accountancy. He graduated from UNL, with high distinction in accounting, and with distinction from the College of Law. He is admitted to practice in the state courts of Nebraska, U.S. District Court for Nebraska, the U.S. Tax Court, and the U.S. Court of Appeals for the Eighth and Ninth Circuits. Titus' volunteer service includes a long tenure with the Peoples City Mission, including serving as president of its board of directors.

Blake Simpson

Simpson was most recently the Director of Compliance and Title IX Coordinator at Southeast Community College, and an adjunct professor at the University of Nebraska College of Law. Prior to that he worked for the Nebraska Department of Revenue and was in private practice in his hometown of Fairbury. He graduated with highest distinction from Nebraska Wesleyan and with distinction from the University of Nebraska College of Law. He is admitted to practice in Nebraska, Kansas and the U.S. District Court for Nebraska. He will practice in the areas of commercial, construction and trust and estate litigation at EPT.

Titus and Simpson will practice at the firm's Lincoln office, located at 5825 South 14 Street, Suite 200.


Michael Brewer

KOENIG|DUNNE is excited to welcome **MICHAEL BREWER** to their team of divorce attorneys. Michael joins the largest divorce firm in Nebraska with over 10 years of family law experience. Michael graduated with his Bachelors from Hastings College and received his Juris Doctor from Creighton University. Mike is fulfilled by helping people facing difficult circumstances by empowering them through the process.


Natalie Williams

NATALIE WILLIAMS recently joined **DENTONS DAVIS BROWN** as an associate in the firm's real estate department. Natalie provides guidance on all aspects of commercial real estate, including leasing, purchases, sales, and financing. Before joining Dentons Davis Brown, Natalie practiced commercial real estate law at Baird Holm in Omaha. Natalie also has experience in the renewable energy sector in Nebraska and South Dakota. She has assisted both large, international, and small, start-up renewable energy developers and public power providers with wind and solar projects. Natalie received her Juris Doctor, magna cum laude, from Creighton University School of Law, where she served as the Senior Lead Articles Editor of the Creighton Law Review. She also worked with Professor Irina Fox conducting research on the United States bankruptcy code. Natalie graduated from Iowa State University in 2015 with a Bachelor of Science in public relations.

STUART TINLEY LAW FIRM LLP of Council Bluffs, Iowa, has moved their offices effective July 1, 2021. After 33 years at their present location in the CenturyLink Building in Council Bluffs, Stuart Tinley Law Firm LLP will be moving to their new offices located at 300 West Broadway, Suite 175, Council Bluffs, Iowa 51503. Client parking will be convenient and available just steps from the firm's front door. The firm's phone and facsimile numbers will remain the same: 712-322-4033 and 712-322-6243 respectively. Stuart Tinley Law Firm LLP and its predecessor partnerships have been in continuous practice in Council Bluffs for the past 160 years and look forward to serving their clients at the new location.

Recognition


Ashlei Spivey

For over 50 years in Nebraska, the ACLU has worked in courts, the Nebraska Legislature, and communities to protect the constitutional and individual rights of all people. The **ACLU OF NEBRASKA** congratulates its new board officers and returning board members. During their May 2021 meeting, board members approved the following nominations: **ASHLEI SPIVEY** (President and Equity and Inclusion Officer), **KARSON KAMPFE** (1st Vice President), **MARJ PLUMB** (2nd Vice President), **MOLLY BRUMMOND** (Secretary), **MICHAEL BERRY** (Treasurer), and **ANDREW ALEMAN** (National Board Representative). The new positions follow the annual board election, in which four incumbents were re-elected by ACLU of Nebraska members: Andrew Aleman, Molly Brummond, Stephen Jackson and Ashlei Spivey.

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."


Phyllis M. Beck

PHYLLIS M. BECK, 97, of Creighton, died May 27, 2021. She was born March 25, 1924, at Sioux City, Iowa to Philip F. Verzani and Emma L. DePover. She graduated from Ponca High School in 1941. Phyllis worked in her father's law office for a few years after she graduated from high school. She attended Wayne State College for two years and University of Nebraska for two years. She received her teaching certificate and taught typing at Central City for four years. Phyllis then attended law school at Creighton University and practiced law for 67 years. Some of those years were spent working at her law office as well as in her father's law office. Phyllis was united in marriage to Alois J. "AJ" Beck on Feb. 6, 1963, at St. Joseph Catholic Church in Ponca. They were blessed with two children, Maria L. Beck and Philip F. Beck. She was a member of St. Ludger Catholic Church in Creighton and the Altar Society. Phyllis was involved in and Catholic Daughters of America (St. Catherine's Laboure Court #1802) in Creighton and Verdigre. She was also a member of the Nebraska State Bar Association, Veterans of Foreign Wars Post 1151 Auxiliary and Creighton Hospital Auxiliary. Phyllis is survived by her daughter, Dr. Maria L. Beck and husband Doug Mead of Ravenna; son Philip F. Beck of Creighton; sister Mrs. Robert (Emile) Scoville of Crofton; and many nieces and nephews. She was preceded in death by her father, Philip F. Verzani in 1989; mother Emma L. Verzani in 1988; her loving husband, Alois "AJ" Beck in December 2005; brothers Frank Verzani, Paul Verzani and Robert Verzani; and sister Lou Ann Verzani. Memorials may be directed to the family, which will then be shared with St. Ludger Elementary School, VFW Post 1151 Auxiliary, Catholic Daughters of America in Creighton and Verdigre and St. Mary's Cemetery in Osmond.


Guy F. "Jeff" Bush

GUY F. "JEFF" BUSH, age 85, passed away of natural causes May 5, 2021 in Kimball, NE. Jeff was born in Sidney, on October 19, 1935, to Jarvis C. and Helen C. (Doran) Bush. He graduated from Sidney High School in 1953. After graduation he attended University of Nebraska-Lincoln, married his wife Wanda on June 13, 1956 at Light Memorial Presbyterian Church, and then graduated college. Soon after he was commissioned and served aboard the U.S.S. Cimarron. After his service in the Navy, he attended school at UNL and graduated with a Law Degree in 1963. Upon returning to Sidney, Jeff and Wanda adopted their daughter Lora and son Doran. Jeff managed the family farm and commercial real estate businesses as well as his own law practice. In Jeff's free time, he was an active community member serving as a city councilman, former mayor, was an ordained elder, and served as treasurer at the church. He had a passion for music and the huskers. Jeff was in the UNL marching band and loved playing the tuba so much, in his later years he would drive for miles in order to continue playing. He loved spending time and fishing at the family cabin in Grand Lake, CO. Jeff was preceded in death by his grandparents Fred A. and Tessie E. Bush and Guy V. and Mable Doran, sister Judith A. "Judy" his brother Stuart R. "Randy" Bush and daughter Lora J. Bush. He is survived by his wife Wanda Bush, son Doran and wife Kristina Bush, grandchildren Kallie and Kole Bush, Ashley Thompson, Garrett Burbank and Sarah Irwin. Great grandchildren Olivia and Harper Grimm, Nova Lincoln, Riley Burbank, Isabelle, Jack and Lawson Irwin. Memorial contributions may be made in his name to the Light Memorial Presbyterian Church in Sidney, NE.


John E. Dier

JOHN ERNEST DIER, 99 years of age, of Holdrege, passed away May 18, 2021, at Holdrege Memorial Homes in Holdrege. John was born August 28, 1921, at Hastings, Nebraska, the youngest of five children to Andrew J. and Bertha (Ough) Dier. The family moved to Lincoln, Nebraska where John received his education at Teachers College High School, where he graduated with the class of 1939. In October of 1938, at the age of 17, John joined the 134th Infantry, Nebraska National Guard Unit in Lincoln, while still in high school. In 1940, the Nebraska National Guard sent a 12-man rifle team to the National Rifle Matches at Camp Perry, Ohio for a national shooting contest. John was one of those 12 chosen to compete. Then on December 23, 1940, the Nebraska National Guard were mobilized and placed into federal service and sent to Little Rock, Arkansas. In 1941, President Roosevelt extended all enlistments for 18 months. John was a buck Sergeant at that time, so he decided to apply for Officer Candidate School. Before any action was taken on his OCS application, Pearl Harbor was attacked. His 35th Infantry Division was sent to protect the U.S. coast in California, where he was lucky enough to run into his brother, Richard who was also serving. In February 1942, John was detached and sent to OCS in Fort Benning, Georgia. John was then sent to Camp Carson in Colorado Springs, Colorado to form the 89th Infantry Division. While in Colorado Springs, he was appointed as battalion communication officer and was promoted to First Lieutenant. Another transfer would soon emerge and he was sent to Fort Benning, Georgia with the 71st Division, where John was promoted to Captain on November 8, 1944. In February 1945, John landed in Europe at La Havre, France, and in March his Infantry relieved the 100th Infantry Division at Bitche, France. As the old saying goes, "It is a small world!" in France he ran into another brother, Clifford during the war. He served in Europe under Patton's Third Army and

after the war ended in 1946, John was able to use the G.I. Bill to attend teacher's college in Wayne, Nebraska, where he received his Bachelor's Degree in Education. Returning G.I.'s attending college were much older than the other students who were just out of high school. John was inspired to go on to law school by a friend, Lt. Col. Roy Fitzgerald, an attorney out of Ohio who was killed during the war. John attended law school at the University of Nebraska at Lincoln, graduating with his Law degree in 1953. John continued to serve in the Reserves and at the time of his honorable discharge he had achieved the rank of Major. John was awarded a Bronze Star Medal and a Combat Infantry Badge. In 1953, John started practicing Law in Holdrege. On April 24, 1955, he was united in marriage to Lela Artz in Republican City, Nebraska. The couple were blessed with two daughters: Sally and Susan. The family made their home in Holdrege. John served as Phelps Country Attorney for eight years and was active in political affairs, both county and state-wide. John was a partner in Dier, Osborn and Cox, P.C., where he continued to practice law well into his 80's. John and Lela worked side-by-side together as she was his legal secretary for many years. In his younger years, he loved building things. He built seven homes in Wayne, and one in Lincoln to help put himself through school. John also built cabins by the river near Overton, Nebraska, and in Buena Vista, Colorado on the Arkansas River. Many fond memories were formed spending time with family and friends throughout the years at the cabins. He and Lela also enjoyed spending many winters in Mesa, Arizona with friends. He was always interested in aviation, and learned how to fly at the age of 50; and was proud of the fact that he attained his private pilot's license along with his daughter, Sally during her high school years. John had a great love for his dogs, especially his Schnoodles: Shadow, Abby and Molly. John and Lela had a special bond with their grandson, Elliot who spent many days with them caring for their every need in their "Golden Years." John was a long-time member of the First United Methodist Church in Holdrege; was active in the local Jaycee organization, was a member of the Jachin Lodge #146 A.F. & A.M. of Holdrege and served as co-chairman of the finance committee which raised money to build the Phelps Memorial Hospital. John was also active with the Phelps County Historical Society and many other organizations throughout his business career. Anyone who knew John can relate to the fact that he loved to talk about WWII, and always had a story to tell. He could recite poetry, and his terrific memory could amaze family and friends. John was honored to be a chosen veteran to go on the Hero Flight to Washington, D.C. with his good friend, Wilbur Gewecke on November 19, 2008, which they both enjoyed! John was quoted in the Nebraska Prairie Museum Stereoscope, as he was asked the question about his generation being called, "The Greatest American Generation." To this John replied, "Each generation has to take care of their problems. We took care of ours – they will take care of theirs. Young people are shaped by the environment they are in and the younger generation would step up if the situation and circumstances called for it." John had faith in the ability of the human race. John concluded by saying, "Serving is just what we did." Besides his wife, Lela in 2020, John was preceded in death by his parents; his brothers: Clifford Dier and his wife, Bette; Milo Dier and his wife, Nona; and Richard Dier and his wife, Ruth; sister, Ruth Meyer and her husband, George "Dewey" Meyer; father-in-law and mother-in-law, Paul and Annie Laura Artz; sisters-in-law and brothers-in-law: Alice Evelyn Artz in infancy; Hazel Bennett and her husband, Harold; Edith Byler and her husband, Gordon; Delmar "Pete" Artz and his wife, Tillie; Chester Artz and his wife, Doris; George Artz and his wife, Reta; Willard Artz at the age of 14 in 1930; Della Sindt and her husband, Bennie Joe; and Lewis Artz; and a niece, and nephews. John is survived by; his two daughters: Sally Hammond and her husband, Don of Bennington, Nebraska; and Susan Dier of Holdrege; grandson, James Elliot Graf and his special friend, Sormeh Salimpour of Denver, Colorado; step-grandson, Nate Hammond and his wife, Sara of Marietta, Georgia; three great-granddaughters: Brianna, Nellie and Lydia Hammond; sister-in-law, Barbara Artz of Minden, Nebraska; and a host of nieces, nephews, other relatives and friends. A memorial has been established in John and Lela's honor, and kindly suggested to the Holdrege Animal Shelter.

Paul J. LaPuzza

PAUL JAMES LaPUZZA passed away on May 30, 2021. It was his 73rd birthday. Paul was born in Omaha, Nebraska on May 30, 1948, to parents Anton "Tony" LaPuzza and Elaine Fitzsenry. Tony was a first-generation Italian American and served proudly as a B-17 radio operator in World War II. Elaine was a farm girl from Breda, Iowa, who moved to Omaha after high school. The two married after the war and raised Paul in the Omaha suburb of Irvington, Nebraska. An only child, he was raised in the extended Italian family and was close to his aunts and uncles. He attended Benson High School and was a proud Benson Bunny. Paul was a passionate member of both Army ROTC and the Debate Team in high school and continued in those pursuits while attending Creighton University's College of Business. He joined the Phi Kappa Psi fraternity at Creighton, where many of his brothers became lifelong friends. After graduating from Creighton, he continued on to the Creighton University School of Law, pursuing a childhood dream of becoming an attorney. While his love of the law may have been discovered watching Perry Mason, family friend and mentor Peter Marchetti gave him the opportunity and practical experience to prove to Paul that the law was his calling. Following graduation, and his honorable

discharge from the US Army, Paul began his own firm from his room in his parents' house in Irvington. Eventually, he joined lifelong friend Tom Young to create Young & LaPuzza, founding the firm where he spent the majority of his practice. Paul's experience grew in the practice of real estate law – a field in which his expertise was well known and respected among his contemporaries. Paul prided himself on always giving free counsel to any attorney who called with a question or in need of advice. Paul's legal instincts, always direct advice, and quick wit gained him a devoted group of clients, a countless number of which became friends. When he retired in 2011, he wrote to his clients, proudly proclaiming that he had "the best clients in the world." Paul's wife, Mary Classen, moved to Omaha from Humphrey, Nebraska to study and become a Registered Nurse. The two met on St. Patrick's Day, and celebrated the anniversary of their first date throughout a marriage that spanned the better part of 5 decades. They built a life together in Omaha, raising son Mark and daughter Tracey. Paul and Mary worked hard to provide the best for their children, but no gift they offered was more valuable than the example of kindness, strength, and dedication they served to be. The children stayed in Omaha and married, with Mark and his wife Amanda giving Paul and Mary their first grandson, Tony, in 2010. Tracey and her husband Justin Wiemer made Paul a grandfather again in 2019 with the birth of Lucas. Paul also developed a strong affection for Tracey's dog Lily – a 3-pound maltase-poodle mix – that was always sure to draw a smile from him. After his devoted wife Mary passed away in 2011, Paul found himself living at Hillcrest Country Estates in Papillion. While his years in retirement were far less hectic than his work as a lawyer, he kept up with friends and family whenever he could. He always appreciated those friends and family that were able to visit – particularly if they came bearing a LaCasa pizza or Krispy Kreme donuts. His age did nothing to diminish his dedication to his most beloved sports teams. Paul was a true fanatic when it came to Nebraska Cornhusker football, following every snap of every season and eager to discuss his beloved Huskers. He was also a great fan of the New York Yankees, with his father's stories of Babe Ruth making him a lifelong fan from Mantle to Mattingly to Mariano. He closely followed the basketball and baseball teams for Creighton and would often be seen wearing his Blue Jay gear in all seasons. Paul was preceded in death by devoted wife, Mary (Classen) LaPuzza; parents, Anthony and Elaine LaPuzza; beloved aunts and uncles. He is survived by son, Mark LaPuzza (Amanda); daughter, Tracey Wiemer (Justin); grandsons, Tony LaPuzza, Lucas Wiemer. Those that knew him are left with fond memories and countless great stories. Paul will be remembered by all for this sharp mind and sharp wit, as well as a strength of character and of will that served as an example to all. He will be greatly missed and remembered lovingly by those he left behind.

Timothy J. Pugh

On May 17, 2021, the world lost a great man. **TIMOTHY J. PUGH** was a wonderful and loving husband, father, grandfather, and friend. The youngest child and only boy, he was born in St. Paul, Minnesota to Thomas and Florence Pugh with two older sisters, Mary Virginia ("Ginny") and Patricia. He liked to brag that he won the Most Beautiful baby contest. When he was nine years old, Tim and his family moved to Omaha. He attended Holy Cross Catholic School and Creighton Prep High School. During this time, he developed strong friendships which remain to this day. At Creighton Prep, Tim was an outstanding basketball player known for his rebounding, hustle, and left-handed sky-hook. He helped lead his team to the State championship finals in his senior year ultimately falling to Omaha Tech. Tim moved on to play collegiate basketball for Creighton University. He continued to be known for his rebounding and hustle plays – although his coaches probably complained that he was more interested in shooting. Despite his affinity for playing Bridge (and persuading others to skip class to play with him), he graduated from Creighton University and went onto Creighton Law School. In 1970, Tim graduated from Creighton Law School and was admitted to the Nebraska Bar Association. Tim practiced law at the same law firm, McGrath North, for over 40 years. While that firm merged and changed names throughout the years, it was the same firm he joined in 1970. He was a well-respected and experienced litigator handling over 100 trials in his first three years of practice. He was admitted to the U.S. Supreme Court and argued before the Nebraska Supreme Court and Eighth Circuit Court of Appeals. In addition to his career as an attorney, he had an adventurous curiosity, loved history museums, and had a well-known desire to learn. Among other things, he learned photography, accounting, woodworking, scuba diving, golf, fishing, skiing, piano, gourmet cooking, and to ride a motorcycle and fly a plane. He would pour his heart and time into mastering a subject – which, of course, included acquiring every possible gadget that he could find. After he reached a level of mastery in his mind, he moved on to a new subject. Tim is also known for his terrible puns/jokes, his quick wit, and the ability to change the lyrics of songs to his liking (although we can't be sure that he just didn't know the correct lyrics). His were the definition of "dad" jokes and he loved it. He would often send a terrible pun or joke to his friends and family. We laughed harder envisioning him chuckling quietly to himself than we laughed at the jokes. He also enjoyed entertaining us with humorous stories and useless trivia. Tim was a loyal and devoted friend. He developed strong friendships – primarily founded on playing cards, eating his favorite foods, and drinking good wine. He had a standing appointment for lunch with a group of friends every Wednesday. He had breakfast with friends on Saturdays. He met friends for a

"safety meeting" and drinks on Thursday evening. He regularly played card games with his friends complete with trophies and accusations of card counting. He could always be relied upon to support and entertain his friends and family. While at Creighton Law School, Tim met a fiery, tall, red-headed girl. He immediately swept her off her feet – mainly because he was the only one taller than her. And, even though she had to leap into his decrepit moving car when going on a date, she stayed with him. That fiery red-head became his wife, and they were married for 52 years until his death. Together Tim and Jan have had triumphs, heart-break, and utter joy. They played games and sports and developed friendships together. They raised three children, Rebecca, T.J., and Patrick. They argued zealously, loved deeply, and believed in their family. They taught their children to work hard and to be passionate and caring. They knew what each other were thinking and could communicate using words like "whatchamacallit" or "thingy" to the amazement and amusement of their children. They shared a lifetime of love – the true definition of soul mates. Tim adored and was adored by his children and grandchildren. He showed them how to work hard, be inquisitive and intelligent, care for each other, laugh, and enjoy life. He sang odd lyrics to songs, quizzed them on state capitals, and made them laugh every day. He taught them how to listen and to be loyal. He attended every game and theatre play from 1st grade bunch-ball to the NCAA tournament. During the COVID pandemic, he watched his grandchildren's games and concerts from home via their parents' live-streams. He regularly praised their athletic abilities (regardless of their actual ability, aptitude, or interest). He even praised his eight-year-old granddaughter who proclaimed, "I do not run" by responding, "Me neither!" His children and grandchildren made him extremely proud. While he will be sorely missed, he will always be in our hearts and minds and leaves a prominent legacy. He is preceded in death by his parents (Thomas and Florence) and his sister (Ginny). He is survived by his loving wife (Janet), his three children (Rebecca, T.J., and Patrick), his six grandchildren (Charlie, Rian, Mason, MacKenzie, Thomas, and Emily), his sister (Patricia), and many nieces and nephews and grand nieces and nephews. Memorials made be made to the American Cancer Society and/or Creighton Prep High School.

PATRICIA WENZL, born July 12, 1957, passed away in her home on the morning of June 19, 2021. Born in Lincoln Nebraska, Patti earned a degree in psychology from Sacramento State University, and a J.D. from McGeorge law school. Her varied law career included prosecuting child abuse cases and representing disabled veterans. Throughout her life, she frequently volunteered to help the less fortunate including extensive pro bono work. She is survived by four children: Eric, Douglas, Renee, and Ryan who will remember her for her wit and love of animals. Memorials may be made to the Wild Animal Initiative.

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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.

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