

Taking a Bill to Capitol Hill

by Angela Dunne

Okay, maybe I didn't take a bill all the way to Capitol Hill, but who can resist the snazzy 80's cartoon jingle? But what I did do was actively participate in Nebraska's 2014 legislative session. In doing so, I learned a few things about how lawyers can contribute in meaningful and important ways to the legislative process, while keeping their day jobs as lawyers.

There is a national trend toward custody legislation reform. Nebraska has joined the ranks in looking at whether the "best interests of the child" standard should be replaced, modified, or upheld. In lieu of a best interests guidepost, some are calling for a presumption regarding legal custody (decision making) and physical custody (parenting time) for parents involved in custody litigation. There is great debate about whether the children's needs should trump a parent's rights and vice versa.

As a family law practitioner whose career has focused exclusively on paternity and divorce, I'm interested when change is in the air. Lawyers have the unique vantage point of years spent in their respective practice areas and having seen how laws are applied to a wide variety of fact patterns.

There are no ethical prohibitions for lawyers who wish to engage as individuals in legislative action. Lawyers should also be mindful that they are also permitted to work with and serve an organization involved in reform of the law under the Nebraska Rule of Professional Conduct, Section 3-506.4 which permits such involvement notwithstanding that the reform may affect the interests of a client of the lawyer.

When the winds of change come knocking at the door of our longstanding best interests standard, it makes some of us nervous. We have seen this standard work for millions of Nebraska's children. We have also seen firsthand when the systems fails our children. My opinion is that both the best interests of the child and protection for parents regarding their rights to parent them can be incorporated effectively for Nebraska families. So when I read yet another proposed bill being introduced in the legislature that, in my view, was too extreme, I felt compelled to take action and assessed the options available for me to do so.

Angela Dunne



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Write It

In years prior, our firm testified for and against proposed custody legislation. It was effective advocacy, but because the issue of custody is so important, we were looking to move our involvement to the next level. I didn't want to be the person that only ever complained and never attempted to do anything to solve the problem. As I was lunching with a person, who may or may not be the editor of this issue, he suggested that I write my own version of a proposed custody bill. The thought had not occurred to me. I am a divorce lawyer, not a legislator. And besides, who has time for that?

TAKING A BILL TO CAPITOL HILL

I found out that I actually did. I set out to get some ideas on paper in the form of a proposed legislative bill and to my utter surprise, it was not that difficult. Remarkably it did not take that much time. You see as lawyers working in our practice areas, we all apt to say “well that’s what the law says, but this is how it really works.” I just starting drafting from the practical standpoint of what I had seen working well for families and what wasn’t. I went back to the basics and pulled from Nebraska Supreme Court cases that guide family law practitioners and looked at what should be codified.

Know Them

Before January 1, I knew exactly zero Nebraska senators. But I did know the NSBA lobbyists, and I knew they would know the senator who had introduced the most recent custody bill. With name in hand, I scheduled a meeting with the introducing senator, with the intention of better understanding the senator’s primary concerns and major goals. The day of our

meeting, he and I both admitted to feeling nervous.

The senator/meat market owner from a small town and the Omaha divorce lawyer found common ground as divorced parents. We talked about our experiences and he asked me what I saw as I represented divorcing parents. I learned that he did not want to be legislating from one story or one set of facts; he wanted to know how the proposed legislation would impact all the different types of families and cases that he couldn’t possibly have considered.

In the middle of our meeting, he was called off to go make a vote on a veteran’s issue. It struck me that the legislators are not experts in many of the areas for which they are called upon to exercise expertise. Numerous bills are introduced in the legislature every session. The senators are expected to be conversant and knowledgeable in so many areas. They need and crave specific input to thoroughly understand the issues before them. The senator was so grateful for my reaching out to help him



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TAKING A BILL TO CAPITOL HILL

look at this issue. And it was so easy to do. It took an hour or two out of my afternoon, and from that single conversation the dialogue on the proposed legislation opened up.

The next step was meeting the opposing side. As a lawyer who litigates often, this part was very familiar and comfortable. It was helpful that those with an agenda different from mine were also lawyers trying to effectuate change. We scheduled times to discuss our varying viewpoints. We were respectful and attentive to each other. We came to understand each other's perspectives and underlying worries and fears and we started putting them out in the open so we could work with them.

I also needed to be mindful of the other players who had a vested interest in the outcome. I went to my clients and asked questions. I found out which interest groups wanted to contribute. All in the spirit of gathering my evidence to properly evaluate the problem and potential solutions. Without discerning the varying viewpoints looking at the proposed legislation, I would have been at risk for advocating an incomplete answer. In the end, I had to be very open and receptive to finding common ground. But as a lawyer, that is a muscle we are required to flex often. We are the makers of compromise in the midst of conflict.

Be Flexible

The legislative process is quite different from the judicial one. It is fast-paced, timelines change daily, and sometimes so do the players. The most disconcerting and difficult part of being involved in the process was that it didn't always neatly fit within my calendar. It was useful to develop a few key relationships with people working inside the capitol to keep me

apprised of changes, deadlines and hearings. This way I wasn't perpetually worried I would miss something important.

It also required a fair amount of flexibility when it was relayed that all our efforts in working on a collaborative amendment would be lost due to the time expiring on the session. Due to the limited number of days available in the session and the number of priority bills set ahead, the bill would likely not have enough time to get to a vote. So the process will begin again next year.

Make It Manageable

I confess to having a ridiculously awesome support team at my office that helped make most of the work I did possible. Some of you will not have a support team or will not be able to devote time each week for several weeks in a row during the legislative session. So if drafting legislation or lobbying may be more than you are willing to take on, the glad thing is that there are multiple ways and levels to be meaningfully involved.

- Serve on a legislative committee
- Give your opinion – on a bar association listserv, in a letter to the editor, or in a letter to your elected officials, or the senator who is sponsoring a bill that directly impacts your practice area. Pose the important questions that should be considered, for or against new legislation.

- Support a candidate. Make a donation. Work on a campaign. Put out a yard sign. Vote.

These are just a few suggestions to help you use your unique invaluable knowledge and skills toward creating better, more informed legislation to equip the courts with the power they need to give you the right outcomes for which you seek.

The NSBA did not take a position on the bill Ms. Dunne uses as the entrée into her discussion of attorney involvement in the legislative process. The NSBA does encourage all lawyers to be as active in the legislative process as they would like to be and encourages members who are interested in legislation to take advantage of the NSBA Legislative Update (a weekly email during the legislative session that keeps attorneys abreast of bills related to their practice areas) and to review and comment on proposed bills related to their practice, to be active in NSBA Sections related to their practice, to serve on the NSBA Legislation Committee, and/or to voice their thoughts and suggestions to their elected members of the House of Delegates.



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.

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.