

NSBA Member SPOTLIGHT

Forty Years and Still Loving Life in Law: A Conversation with Howard Duncan

by Susan Ann Koenig

I sat down with bankruptcy attorney Howard Duncan to hear his reflections on 40 years in the practice of law. Wearing both my lawyer and my life coach hats, I was curious. Edits have been made for clarity and conciseness.

Your first career was teaching junior high. What did that teach you about practicing law?

I learned how to listen well, how to really pay attention. I learned the importance of teaching my students the need for personal responsibility in their work and behavior.

I learned in my first year of teaching that being overly “nice” at the outset does not work well with 7th graders. More importantly, I got a lesson in turning my mistakes into learning opportunities and had a much better second year.

Did you limit your practice to bankruptcy from the very start of your legal career?

Like many of us back then (you included) I started out as a general practitioner and I did everything from wills and probate to divorce and workers’ compensation. Among the courts I practiced in was the Omaha Municipal Court, which had nine judges at the time.

What major changes in the bankruptcy law have you seen?

The Bankruptcy Reform Act of 1978 made sweeping changes to the law, forming what we have since called “the Bankruptcy Code.” While Congress had passed the legislation, the case law had not yet been developed. I’ve been watching it unfold over the decades. A second big change occurred in 2005 when the law was overhauled, especially impacting those filing for Chapter 7.

In the beginning, there were no forms for any of the work we did. Everything had to be created. Of course, technology continues to change everything for attorneys everywhere.

Some lawyers see bankruptcy as primarily a transactional practice, even though it involves court filings. Do you agree?

When the Code was first passed, there was a lot of litigation because the law had not been interpreted by the courts and there was no case law to rely upon. I practiced before Nebraska’s first bankruptcy judge, the Honorable David Crawford. Some lawyers disliked his insistence that any relief sought needed to be specifically included in the pleadings, but I respected his rigor. Today, many bankruptcies conclude without litigation. However, the more complex the case, the greater the probability



You can always count on Howard for consistency: both in how he represents clients and in his facial hair.

of an “adversary proceeding,” a separate lawsuit filed within a bankruptcy to resolve disputed issues. Litigation has long been a routine part of my practice.

You have a reputation for handling the “messiest cases” with a lot of challenging issues. What do you enjoy about handling such complex matters?

I love to strategize. First, I really listen to the client, longer than I know many other lawyers would. Then I set about creating a plan.

I’ve handled some unbelievable cases when it comes the facts and the issues. How does a rancher with no money get the people and trucks to move his cattle out of tribal land before the gates are locked up? How do you resolve who has control of a family business when you can only represent one party, the cash isn’t flowing, and there’s a dispute about an inheritance of stock in the company? How do you determine where jurisdiction lies when your client lives in one state, operations are in a second, and assets are in a third?

One case involved a business that produced grain alcohol. The company was collapsing. The officers of the corporation were being sued, and no other attorney wanted to touch the case. We were successful in avoiding a nearly \$200,000 claim.

Do you have a favorite courtroom story?

There was one case in which the opposing counsel was a seasoned trial attorney. He persisted in repeatedly asking objectional questions. The court consistently sustained my objections.

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Eventually the judge grew weary of what appeared to be pure posturing rather than the making of a record. He addressed the other attorney:

Counselor. Look to your right. He did.

Now look to your left. He did.

You'll see the jury box. The lawyer looked confused.

You'll notice it's empty.

The court made its point that the lawyer's performance had no audience.

You grew your knowledge of bankruptcy law in a time when the statutes were the only law. What advice would you have for newer lawyers wanting to develop expertise in an emerging practice area?

I was a keen student of the law long after passing the bar. I read every bankruptcy opinion that was handed down. At one point I asked the sitting bankruptcy judge if I could borrow or "check out" all of his opinions. Mind you, this was pre-digital age, pre-internet. I copied all of them and studied them.

I bought three books on bankruptcy and I read them over and over again. I started doing the simpler Chapter 7 and Chapter 13 bankruptcies for individuals. Eventually I moved on to Chapter 11s for businesses and Chapter 12s for family farmers. It was a process built on keeping abreast of all available information and using the experience gained with each client.

Has your bankruptcy practice been limited to Nebraska?

I expanded my practice to Iowa because I saw an opportunity for growth, and I've handled bankruptcy matters throughout the Midwest, and, of course, in Delaware because of so many businesses being incorporated there.

What advice do you have for handling clients who are uncooperative or behaving badly?

It's not unusual to have clients who are arrogant, insulting, or manipulative. I have a great capacity to hear the flak and not take it personally. I can see the situation from their view—what frustrates them, what motivates them. They may hate attorneys, the system, the government, or the world, but that's not what I focus on.



Nothing has changed! You can still find Howard at his desk just like this photo in 1985.

I am accepting of people with problems. People come to us in large part because they need our help. Regardless of the attitude or demeanor of the client, I don't let it get into my head or my heart. I don't condemn them. I simply disagree.

We've all experienced the client who shops around hoping to find the lawyer who will tell them what they want to hear. If such a client argues that another lawyer has given them advice contrary to my counsel, I tell them "Well then the attorney who said that is the one you'll have to have represent you."

You represented a lot of farmers and ranchers during the farm crisis of the 1980s when interest rates soared, land values dropped, and many Midwest farmers were facing foreclosure. What are you seeing today when it comes to finances and farmers?

These are difficult times. Climate change has meant unpredictable weather patterns and more flooding. The trade tariffs with China have meant lost markets. All of the uncertainty has made financing more difficult, too, as bankers consider the possibility of an economic downturn.

A fellow bankruptcy attorney referred to you as a "tough guy." What's the difference between being a tough guy and being a bully?

I hate bullying. Early in my career an attorney tried to bully me into a decision by being especially insulting and nasty. I said three words, "That'll be enough." He fell silent.

A tough guy doesn't wince and doesn't back down. If you're going to stand up, I'm going to stand up. You can't intimidate me. If you make a threat, I'll consider my next move.

A tough guy will investigate the rules and use them to advocate for the client. He'll recognize his own weaknesses and isn't afraid to turn down a case he can't handle.

Which qualities of a lawyer do you think have served you best?

My duty as an attorney is to not be involved in anything illegal, unethical, or immoral. I'm clear about this with my clients from our very first conversation. I don't make promises about the future, and I don't predict the outcome.

I go the extra mile for a client because I want everything to be handled well for them.

I know that for clients, there is often something more at stake than the money, like their family heritage or their reputation. If they feel they have touched rock bottom, my job is to see that they are not pulverized. Then I'm happy. My job is helping people. I don't give up and I don't quit.

How has the business side of your practice changed throughout the years?

I started as a sole practitioner and grew my practice over time, adding an associate and paralegals. I was in a space sharing arrangement at the start of my career, then, as the practice grew, I was able to design offices that uniquely suited my law practice and my employees.



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Now I have an office with Koenig Dunne in Little Bohemia. This came about after my son-in-law, Patrick Patino, joined me. We saw the advantage of a larger firm for the support and management of the practice.

I wanted to keep my focus on practicing bankruptcy law without worrying about operations. I'd known you (Susan) for over 30 years. Our firms shared the values of excellence, support and integrity. Merging with Koenig|Dunne looked like a great fit, and, indeed, it has been.

What do you know now about practicing law that you wish you'd known sooner?

I wish I'd known the importance of enjoying life more along the way, including the learning. I wish I'd know the value of allowing others to help me. I wish I'd been more forgiving of myself for my mistakes. Being human, we all make them.



Howard still leads an exceptional bankruptcy legal team 40 years into practice alongside attorney (and son-in-law) Patrick Patino and paralegal Kylie Clayton at Koenig|Dunne, PC, LLO

You often represent successful people who own millions of dollars in assets yet find themselves in a stressful financial crisis. That can't be easy. What helps to keep your own anxiety and stress at bay?

I've developed a lifestyle that keeps me healthy and happy.

Although I'm an introvert, I enjoy working out with others. I go to the gym three or four times a week, participating in six classes each week. I try to maintain a healthy diet.

What are your joys outside of the practice of law?

Time with my family is at the top of the list. My wife, Jennifer, and I have been married almost as long as I've been practicing law. I have two daughters—Sarah and Amy—and four incredible grandchildren who give me a chance to play with toy trains, among other fun. My daughter Amy is married to Patrick Patino who practices bankruptcy with me at Koenig|Dunne.

I enjoy walks with Jennifer and our dog, Skye. I also help Jennifer in her work as a volunteer gardener in the Midtown area. I remain an avid reader, and enjoy biographies and books about history, government, science, economics, religion, and politics.

Susan Ann Koenig is of counsel and coach at Koenig|Dunne, a divorce and debt resolution firm located in Little Bohemia in Omaha. Susan enjoys an encore career as an executive coach, speaker, and writer. She is on the faculty of the NSBA Leadership Academy and has coached lawyers and leaders for over 15 years. You can find Susan's blog NEXT at www.koenig-dunne.com.

