Remaining Nonpartisan in an Increasingly Partisan Environment

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PRESENTED BY: THOMAS VAUGHN & RACHELE HJELMAAS

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Presenters

Thomas R. Vaughn, Associate General Counsel, Office of Legislative Research and General Counsel, Utah

Thomas has worked for the Office of Legislative Research and General Counsel for over 10 years. He drafted legislation in the area of election law, campaign finance, and government ethics. He is also responsible for the office’s drafting manual and trains all new drafting attorneys hired by the office.

Rachele Hjelmaas, Senior Legal Counsel, Legislative Services Agency, Iowa

Rachele staffs the Judiciary and Public Safety Committees and the Joint Appropriations Subcommittee on Transportation, Infrastructure, and Capital Appropriations and drafts legislation in the areas of civil law, domestic abuse, victim rights, probate, OWI, weapons, civil commitment, public records, and infrastructure.

The presenters have provided their handouts accompanying the webinar, but you will not need them during the presentation. The handouts and copy of the slides will be available on the NCSL website one week after the presentation.

What Does it Mean to be Nonpartisan?

Nonpartisan v. Bipartisan

Nonpartisan Definition:
Not partisan, free from party affiliation, bias, or designation

—Merriam Webster

Bipartisan Definition:
Of, relating to, or involving members of two parties; marked by or involving cooperation, agreement, and compromise between two major political parties

—Merriam Webster

Nonpartisan Synonyms:
Candid, equal, equitable, evenhanded, impartial, just, fair, objective, unbiased, unprejudiced.

—Merriam Webster
Why is the distinction important?

- Recognizes “factions” or “interests” within and across parties
  - Liberal, moderate, conservative
  - Formal or informal caucuses based on ideals, philosophies, issues, geography, rural v. urban, House v. Senate
  - Who is your client?

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  - Not to further the interest of a party or parties

The benefits of nonpartisan staff

- Not competing to persuade members to take certain public policy positions
  - Responsibility to deliver services in an objective, discreet, and candid manner

- Preserving Institutional Memory
The benefits of nonpartisan staff

- Preserving Institutional Memory
  - Promotes efficiency & encourages proactive rather than reactive staffing skills

Challenges to Remaining Nonpartisan

Perspectives from different states

Iowa’s political environment and legislative staff structure

- “Split” legislature
- Partisan and nonpartisan staff
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- “Split” legislature
- Partisan and nonpartisan staff
- LSA: Centralized nonpartisan staff

Challenges: Bill drafting

- Bill drafting priority and deadline concerns
- Bill draft requests with constitutional or other legal issues
- Confidential bill drafts and confidentiality policies

Challenges: Providing legal services in the legislative environment
Challenges: Providing legal services in the legislative environment

- Who do we serve?
  - Preserving authority of both Houses to make own rules
  - Protecting legislative privileges of members

Large Majority of One Party in Both Houses

- Pressure to "give in" to "political reality"

Utah's Perspective

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Large Majority of One Party in Both Houses

- Pressure to “give in” to “political reality”
- Relevancy
- Priorities

Functioning in a State With a Large Majority

- The minority party is part of the process – their constituency put them there
- Legislative staff members are hired by the Legislature, not a party

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- The minority party is part of the process – their constituency put them there
- Legislative staff members are hired by the Legislature, not a party
- Being nonpartisan is the most important part of legislative staff’s job description
Functioning in a State With a Large Majority

- Create a culture of nonpartisanship
- Legislators from both parties expect us to act in a nonpartisan manner
- We constantly remind them that we are nonpartisan
- Communicate equally with all Parties and all parties
- Follow the rules

Polarization: Not Just a National Problem
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• “My way or the highway”
• Legislators want you on their side
• Legislators don’t accept the courts’ opinion

Educate

• Explain your role
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• Explain your role
• Explain how nonpartisanship benefits them

Being “On Their Side” as Nonpartisan Staff

• Recognize the legitimacy of their argument/position

Being “On Their Side” as Nonpartisan Staff

• Recognize the legitimacy of their argument/position
• Be active, not passive, in helping the legislator accomplish the legislator’s goals

Telling Them What They Don’t Want to Hear

• “I don’t want you to be caught off guard…”
**Telling Them What They Don’t Want to Hear**

- “I don’t want you to be caught off guard…”
- “Here are some ways you can avoid potential challenges…”
- “This is the position they (the courts) have taken…”
- Use disclaimers

**Maintaining Your Professional Integrity**

- I will always follow the rules
Maintaining Your Professional Integrity

- I will always follow the rules
- I will tell my clients what they don’t want to hear, but I won’t rub their face in it
- I will be nonpartisan in reality and in appearance
- I will not let something be falsely attributed to me
- I will protect my professional reputation
- I will never lie or break the law

The Relationship Between Legislative Attorneys and Non-legislators

Legislators often ask legislative attorneys to work with lobbyists, constituents, or other stakeholders when drafting legislation.
Don't Forget Who Your Client is

- Keep your client in the loop
- Don't keep confidences from your client
- Don't share information you don't have authority to share
- Advise, raise issues, discuss options

Questions?

Rachel Hjelmov
Senior Legal Counsel
Iowa Legislative Services Agency, Legal Division
515-281-8127
michele.hjelmov@legis.iowa.gov

Thomas Vaughn
Associate General Counsel
Office of Legislative Research & General Counsel
801-538-0124
tomvaughn@le.utah.gov