

Nebraska Judicial Ethics Committee Opinion 21-2

Question Presented--

- (1) Whether it would be proper and/or appropriate and/or ethical to provide to a landlord an informational pamphlet in regards to available pre-trial mediation services when an eviction proceeding is initiated in County Court?*
 - (2) Would it be appropriate and/or ethical to provide to a tenant an informational pamphlet in regards to available pre-trial mediation services as an attachment to the summons and complaint when an eviction proceeding is initiated in County Court?*
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Conclusion

Pamphlets or documents that are for informational or educational purposes and relate to the judicial process and the business of the court may be provided to litigants, as well as posted prominently in highly visible areas near courtrooms or other locations throughout the courthouse.

Pamphlets or documents promoting any specific services, unless permitted by statute, should not be provided to a party with a summons.

Statement of Facts

The county judge who seeks this opinion has stated it is anticipated that there will be a sharp increase in the number of evictions filed in County Court once the federal eviction moratorium ends. The Douglas County Court has partnered with a local mediation center in an attempt to help manage the eviction docket by providing landlords and tenants with an alternative mechanism for resolving their dispute in a neutral environment in an attempt to arrive at a mutual agreement that benefits both parties. The partnering mediation center is creating, at its expense, a pamphlet that outlines the mediation process, which has been identified as voluntary, and that provides contact information for that specific mediation center. It is anticipated that the pamphlets will be written in neutral language and be provided to both the landlord and the tenant solely for informational or educational purposes.

Applicable Code Sections

Neb. Rev. Code of Judicial Conduct § 5-302.6(B)

Neb. Rev. Code of Judicial Conduct § 5-303.7(C)(2)

References in Addition to Nebraska Revised Code of Judicial Conduct

Neb. Rev. Stat. § 25-2943

Neb. Rev. Stat. § 76-1442

Neb. Rev. Stat. § 43-2108.02

Nebraska Judicial Ethics Opinion 06-2

Nebraska Judicial Ethics Opinion 20-1

Discussion

It is anticipated that there will be a sharp increase in the number of evictions filed throughout the State of Nebraska following the ending of the federal eviction moratorium. The County Court's clear intention is to provide information about a voluntary mediation program to both landlords and tenants in eviction cases in the hopes that it will help courts to better manage an anticipated influx of eviction cases, as well as to provide a neutral environment that empowers both the landlord and the tenant to engage in discussions in a neutral environment in an attempt to arrive at a mutual agreement that benefits both parties. The Committee supports those efforts.

Neb. Rev. Stat. § 25-2943 provides that a court may refer a civil case to mediation or another form of alternative dispute resolution. While the request before the Committee is not whether or not mediation could be ordered in these types of cases, which it clearly can be, but how the court may properly inform litigants about a voluntary mediation program that is available to help resolve their dispute.

Neb. Rev. Code of Judicial Conduct § 5-303.7(C)(2) states that a judge may endorse projects and programs directly related to the law, the legal system, administration of justice, and the provision of services for those coming before the courts.

Neb. Rev. Code of Judicial Conduct § 5-302.6(B) states that a judge may encourage parties to a proceeding to settle matters in dispute, but shall not act in a manner that coerces any party into settlement. In comment number 4 of that section, it is stated that mediation, which is court-ordered according to law, does not constitute coercion within the meaning of that rule.

Nebraska Judicial Ethics Opinion 06-2 concluded that materials that are related to the business of the court may be displayed in public places near a courtroom and specifically found that "it is appropriate to provide informational brochures prepared and/or provided by the court for pro se litigants. Likewise, it is appropriate to provide brochures regarding approved parenting classes that are required to be completed in custody cases pursuant to court rule."

Similarly, Nebraska Judicial Ethics Opinion 20-1 found that the posting of information in a highly visible position near courtrooms and in other locations throughout the courthouse, provided that the information is directly related to the court's business, assists the court in fulfilling its duties under §§ 5-302.6 and 5-303.7 of the Nebraska Revised Code of Judicial Conduct.

The Committee believes that it is appropriate and permitted for the court to provide and display the mediation pamphlets in highly visible locations near courtrooms and in other locations in the courthouse as these, based on the information provided in the request letter, are directly related to the court's business and will assist the court in fulfilling its duties under §§ 5-302.6 and 5-303.7 of the Nebraska Revised Code of Judicial Conduct.

As it pertains to the question of whether it would be appropriate and/or ethical to provide the pamphlets as an attachment to the summons and complaint served upon the tenant, a similar question was posed in Nebraska Judicial Ethics Opinion 20-1. In that opinion, one question posed was whether or not information about specific legal services may be included with an eviction summons. The conclusion reached in that opinion is that "documents provided to a party with summonses are controlled by the statutes governing various types of cases" and that it would "be inappropriate . . . to include extraneous materials promoting one specific group of service providers with the summonses."

When an eviction process is commenced, Neb. Rev. Stat. § 76-1442 provides: "The summons shall be issued and directed, with a copy of the complaint attached thereto, and shall

state the cause of the complaint, the time and place of trial of the action for possession, answer day for other causes of action, and notice that if the defendant fails to appear judgment shall be entered against him or her." Nowhere in that statute, or anywhere else within the Uniform Residential Landlord and Tenant Act for that matter, is there a provision regarding other items, such as brochures or pamphlets that may also be attached to the summons, besides the complaint.

By contrast, Neb. Rev. Stat. § 43-2108.02 of the Nebraska Juvenile Code requires a county attorney or a city attorney to attach to any juvenile petition or complaint a copy of a written notice that specifically informs juveniles of the process of having their records sealed in Juvenile Court. That statute also specifically states what the language of that written notice shall include.

The intent of attaching to the summons a brochure or pamphlet about a voluntary mediation program is well-intended in this case. However, in considering the question before this Committee and consistent with Nebraska Judicial Ethics Committee Opinion 20-1, which states that documents provided to a party with summonses are controlled by statutes governing various types of cases, this Committee does not believe that such a procedure is appropriate without a specific statutory provision for the same.

Disclaimer

This opinion is advisory only and is based on the specific facts and questions submitted by the person or organization requesting the opinion pursuant to appendix A of the Nebraska Revised Code of Judicial Conduct. Questions concerning ethical matters for judges should be directed to the Judicial Ethics Committee.

APPROVED AND ADOPTED BY THE COMMITTEE
ON AUGUST 20, 2021

*Judge J Russell Derr
Judge James C. Stecker
Judge Jeffrey M. Wightman
Judge Michael W. Pirtle (not participating)
Judge Matthew L. Acton
Judge Mark J. Young
Judge Reggie L. Ryder*