

NOTICE OF COMMENT PERIOD

The Nebraska Supreme Court considered proposed amendments to Neb. Ct. R. App. P. § 2-109(E), regarding “Cases Involving Constitutional Questions.”

The Nebraska Supreme Court invites interested persons to comment on the proposed rule amendments. Anyone desiring to submit a public comment for the Supreme Court’s consideration should do so via email to joshua.shasserre@nejudicial.gov, with the following text listed in the email subject line: **Neb. Ct. R. App. P. § 2-109(E)**. Comments will be accepted through August 1, 2024.

The full text of the proposal is available below. To obtain a paper copy, please call the Clerk’s Office at 402-471-3731.

CHAPTER 2: APPEALS

Article 1: Nebraska Court Rules of Appellate Practice.

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§ 2-109. Briefs; constitutional questions.

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(E) Cases Involving Constitutional Questions. A party who asserts that a Nebraska statute is unconstitutional under the Nebraska Constitution or the U.S. Constitution must file and serve notice thereof with the Clerk ~~by a separate notice or by notice in a Petition to Bypass at the time of filing such party’s brief.~~ This notice requirement applies to an appellant, appellee, cross-appellant, or cross-appellee if it is the party asserting that a Nebraska statute is unconstitutional. Such notice may not be filed until the appeal is docketed. Such notice shall be filed by the party and accepted by the Clerk before the filing of the party’s brief. If the Attorney General is not already a party or representing a party to the action, upon acceptance of the notice filed by the party, the Clerk shall add the Attorney General to the case and provide notice of the filing to the Attorney General.

If the Attorney General is not already a party to an action or representing a party to an action where the constitutionality of the statute is in issue, ~~a copy of the~~

~~notice and~~ the brief asserting unconstitutionality must be served on the Attorney General ~~within 5 days of the filing of the brief with the Clerk,~~ and the Attorney General shall be entitled to file a response and may be heard at oral argument upon seeking leave to do so, which may be granted at the Supreme Court's discretion. Proof of such service shall be filed with the Clerk. In the absence of such notice pertaining to a constitutional question, the Supreme Court will not consider any constitutional question except by special order of the Supreme Court, which may be issued at its discretion.

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