

NOTICE OF COMMENT PERIOD

Pursuant to a proposal submitted by the Nebraska Bench Media Committee, the Nebraska Supreme Court is considering amendments to the Nebraska Revised Code of Judicial Conduct. The proposed amendments to Neb. Rev. Code of Judicial Conduct § 5-302.10, entitled “Judicial statements on pending and impending cases,” would add language to the “Comment” section to clarify the authority for judges to publicly comment on cases. The Supreme Court directed that the proposed amendments be published for a public comment period.

The Nebraska Supreme Court invites interested persons to comment on the proposed amendments. Anyone desiring to comment on the proposed amendments should do so in writing to the office of the Clerk of the Supreme Court and Court of Appeals, P.O. Box 98910, Lincoln, Nebraska 68509-8910, or via e-mail to joshua.shasserre@nejudicial.gov, **with the rule section listed in the subject line**, no later than May 1, 2025.

The full text of the proposed amendments is available below, or a paper copy may be obtained from the office of the Clerk of the Supreme Court and Court of Appeals upon request.

CHAPTER 5: JUDGES

....

Article 3: Nebraska Revised Code of Judicial Conduct. (Effective January 1, 2011.)

....

§ 5-302.0. Canon 2. A judge shall perform the duties of judicial office impartially, competently, and diligently.

....

§ 5-302.10. Judicial statements on pending and impending cases.

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending* or impending* in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial* performance of the adjudicative duties of judicial office.

(C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).

(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

COMMENT

[1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary. When speaking, writing, or teaching about issues in cases or matters, a judge must take care that the judge's comments do not impair public confidence in the independence, integrity, or impartiality of the judiciary.

[2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

[3] Depending upon the circumstances, and subject to the requirements of paragraph (A), the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter.

[4] Judges may engage in public comment on issues that surround the general administration of justice and civics education. The judiciary is uniquely qualified to provide leadership in (a) engaging in community outreach activities to promote the fair administration of justice; (b) identifying and resolving issues of access to justice; (c) developing civics education programs and scholarly presentations on the legal profession;

and (d) convening, participating in or assisting in advisory committees and community collaborations devoted to the improvement of the law, the legal system, the provision of legal services, and /or the administration of justice.

[5] Paragraph (D) allows a judge to provide context about the court's actions or explain court procedures and general legal principles through community outreach to the media or the public. A judge may, including in a pending* or impending* matter, provide additional context to media reports by referencing information available in pleadings, documentary evidence, and proceedings held in open court.

.....