

## How to Judge a Judge . . .

Every two years, Nebraska lawyers complete an evaluation of all judges. Those evaluations and profiles of judges up for election can be found at [www.nebar.com](http://www.nebar.com).

In deciding whether to vote "yes" or "no" to retain a Nebraska Supreme Court, Court of Appeals, District, County or Juvenile Court Judge, the Nebraska State Bar Association recommends that you consider a multitude of factors, including the Bar's judicial evaluation and profile. You should consider:

- ◆ **INTEGRITY:** A judge should possess high moral character, honesty, industry and diligence.
- ◆ **EXPERIENCE:** A judge should demonstrate exposure to legal issues and substantial and diverse experience with the justice system.
- ◆ **LEGAL KNOWLEDGE AND ANALYSIS:** A judge should possess a high degree of intellect, knowledge of the law, writing and analytical ability, judgment and courtroom experience.
- ◆ **JUDICIAL TEMPERAMENT AND DEMEANOR:** A judge should be unbiased, courteous, open-minded, understanding, fair and committed to the rule of law.
- ◆ **DILIGENCE:** A judge should be diligent, attentive and punctual.
- ◆ **PUBLIC SERVICE:** A judge should demonstrate a commitment to justice for all.

Additional information on Nebraska's judges is available on the NSBA website at [www.nebar.com](http://www.nebar.com).



## Understanding Judicial Discretion

After careful review of all the facts and circumstances connected with recent news coverage, it would be helpful to describe the role of a judge and how and why a judge has discretion in determining what an appropriate sentence is:

### Confidentiality

1. Much of what the judge sees is confidential information to protect the process, the victim and the alleged perpetrator.
2. A specific example is the pre-sentence investigation: it is conducted by the probation department and is provided only to the prosecutor, judge and defendant's attorney. A pre-sentence investigation report is never released to the public.
3. A judge may never make any comment on a case, either pending or impending. The prohibition is set out clearly in the Nebraska Code of Judicial Conduct.

### Sentencing:

1. Sentencing is in the discretion of the judge, within certain parameters. Some serious crimes have mandatory minimum sentences, but lesser felonies do not.
2. A lesser felony, such as the one in this instance, has no mandatory minimum because the government has realized that for the sake of public safety and for the process of rehabilitation, there maybe a combination of alternatives that will be more effective than mandatory incarceration.
3. The government has recognized that there can be a useful alternative to incarceration through intensive supervision probation. This provides for frequent monitoring, testing, reports and visits to a probationers home. It is up to the judge's discretion to determine whether this is a plausible alternative for a first-time offender.

### Applying the law to the facts:

1. The legislature sets the laws, the judge is then guided by the law, and has the responsibility to apply that law to the facts. In addition to the judge, it is the responsibility of the prosecutor and the defense attorney to both put forward the most important facts in the case.
2. The role of a judge is like a referee to know and understand the rules (laws), to look at a situation and make a decision.
3. Judges need both independence and discretion is crafting the best solution that protects the public safety and to allow the criminal justice system to provide but accountability and rehabilitation.