

NOTICE OF COMMENT PERIOD

The proposed Rules for Expanded News Media Coverage in Nebraska Trial Courts would provide uniform regulation of media coverage of proceedings in district and county courts and replace any conflicting Supreme Court or local rules.

The Nebraska Supreme Court invites interested persons to comment on the proposed rules. Anyone desiring to comment on the proposed rules 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 jill.machacek@nebraska.gov, no later than November 15, 2016.

The full text of the proposed rules is available below, or a hard copy may be reviewed in the office of the Clerk of the Supreme Court and Court of Appeals upon request.

Article 20: Rules for Expanded News Media Coverage in Nebraska Trial Courts.

§ 6-2001. Scope, limitations, and effective date.

Expanded news media coverage shall be permitted in the county and district courtrooms in Nebraska courts, except as otherwise provided for within these rules.

The Nebraska Juvenile Code is founded in serving the best interests of the child through protecting privacy, nonpunitive interventions, and rehabilitative outcomes. In support thereof, expanded news media coverage is not authorized in actions pending in Nebraska's juvenile courts.

The official record of all judicial proceedings are the exclusive duty of the official court reporters and courtroom clerks pursuant to Neb. Ct. R. § 1-201 et seq.

Expanded news media coverage within a courtroom is prohibited by anyone other than court personnel and those authorized under these rules.

These rules shall become effective on March 1, 2017.

§ 6-2002. Definitions.

(A) "Expanded news media coverage" includes broadcasting, recording, photographing, and live electronic reporting of judicial proceedings by the news media for gathering and disseminating news in any medium. Expanded news media coverage is limited to the news media unless otherwise ordered by the judicial officer.

(B) "Good cause" for exclusion and suspension under these rules means a substantial reason; one that affords a justifiable basis which is a subjective, factual question within the sole discretion of the judicial officer. A finding of good cause for exclusion or suspension of expanded news media coverage does not constitute closing in whole or in part judicial proceedings as promulgated in Neb. Ct. R. §§ 6-201 through 6-205.

(C) "Judicial officer" means the clerk magistrate, county judge, or district judge presiding in a judicial proceeding.

(D) "Judicial proceedings" or "proceedings" includes: All public trials, hearings, or other proceedings in a trial court, for which expanded media is requested except as specifically excluded by these rules.

(E) "News media" includes Nebraska journalists who write for newspapers or magazines or prepare news to be broadcast on radio or television licensed by the Federal Communications Commission and are current members of the Nebraska Press Association and/or Nebraska Broadcasters' Association.

(F) "News Media coordinator" includes only coordinators designated by the Nebraska Supreme Court. (See § 6-2004(A))

§ 6-2003. General.

Expanded news media coverage of judicial proceedings as set forth in the definition of “Judicial Proceedings” (See § 6-2002(D)) shall be permitted under the following conditions:

(A) Prior authorization. No expanded news media coverage shall occur without prior authorization from the judicial officer, who may prescribe conditions of coverage as provided in this rule.

(B) Rights to a fair trial. Expanded news media coverage of a proceeding is permitted unless the judicial officer finds that under the circumstances of the particular proceeding, such coverage would materially interfere with the rights of the parties to a fair trial.

(C) Objections. The judicial officer and parties may object to expended news media coverage of the judicial proceeding. (See exception § 6-2003(E))

The ruling by the judicial officer on objections rests within the sole discretion of the judicial officer and is a nonappealable temporary injunction or suspension of expanded news media coverage.

(D) Coverage of witnesses.

(1) Expanded news media coverage of a witness may be denied by the judicial officer upon objection and showing of good cause.

(2) Expanded news media coverage of the testimony of an alleged victim/witness in criminal prosecutions or civil cases when the victim/witness is a minor under 19 years of age, the proceedings relate to sexual abuse or sexual assault, or such are essential elements of the matter is not allowed.

(E) Initial appearances in criminal proceedings in County Court.

Expanded news media coverage of initial appearances in criminal proceedings in County Court involving bond settings and arraignments is permitted unless otherwise ordered by the court pursuant to § 6-2003(B), (F), and (J). The right of parties to object does not extend to such proceedings.

A judicial officer’s granting of expanded news media coverage of an initial appearance applies only to that particular initial appearance. Authorization for expanded news media coverage of proceedings subsequent to the initial appearance must be requested separately under § 6-2004(B).

(F) Excluded judicial proceedings. Expanded news media coverage is prohibited in:

(1) pretrial criminal motions;

(2) grand juries;

(3) juvenile court;

(4) criminal and civil cases where the defendant is under 19 years of age at the time of the judicial proceeding;

(5) dissolution/divorce/modification/child support enforcement;

(6) adoptions;

(7) paternity cases;

(8) protection order hearings;

(9) guardianship/conservatorship/probate cases;

(10) trade secret cases; and

(11) criminal and civil jury selection as further defined in § 6-2003(G).

Exceptions may be granted when consent is obtained from all parties subject to the discretion of the court.

(G) Coverage of Jurors. In all circumstances, expanded news media coverage of all summoned and/or impaneled jurors is prohibited. However, expanded news media coverage of the return of the jury's verdict shall be permitted, so long as there is no photographic, video, or audio coverage of jurors.

(H) Court conferences. Expanded news media coverage of conferences held in a judicial proceeding between attorneys and their clients, between co-attorneys, between attorneys and the judicial officer and court staff held at the bench, judicial chambers, or judicial staff offices is prohibited.

(I) Equipment. The quantity and types of equipment permitted in the courtroom are subject to the discretion of the judicial officer consistent with these rules.

(J) Limiting coverage during the proceedings. The judicial officer may limit or terminate expanded news media coverage at any time during the proceedings in the event the judicial officer finds that these rules, or additional rules imposed by the judicial officer, have been violated or that good cause for exclusion has arisen or rights to a fair trial will be prejudiced.

(K) Identification. All news media personnel authorized to broadcast, record, photograph, and live electronic report judicial proceedings in the courtroom must wear identification that is clearly visible to the judicial officer, court security, the public, and members of the jury. Said personnel shall also be subject to any and all security screening/scanning as deemed necessary by any office or agency providing security for the particular courtroom or judicial proceeding. Identification must be in the form approved by the Supreme Court Public Information Officer.

(L) Violation. Any violation of these rules by any news media shall be punishable by contempt of court to include but not be limited to suspension and/or termination of expanded news media coverage.

§ 6-2004. Procedural.

(A) News media coordinator. News media coordinators are appointed by the Nebraska Supreme Court. The judicial officer and all members of the media shall work, whenever possible, with and through the appropriate news media coordinator regarding all arrangements for expanded news media coverage. The

Nebraska Supreme Court will designate the jurisdiction of each news media coordinator. In the event a news media coordinator is not available for a particular proceeding, the judicial officer may deny expanded news media coverage or may temporarily appoint a news media representative to serve as the news media coordinator for the proceeding.

(B) Advance notice of coverage.

(1) All requests for expanded news media coverage in all proceedings, except initial appearances in criminal cases in county court (See § 6-2003(E)), shall be made to the news media coordinator. The request must be in written form, using the forms approved by the Administrative Office of the Nebraska Supreme Court and filed with the clerk of the court where the proceedings are pending.

The request shall be filed at least seven business days in advance of the time the proceeding is scheduled to begin. If the judicial proceeding is scheduled sooner than seven business days before the request, notice of the request shall be given as soon as practicable.

(2) A copy of the request shall be sent electronically, delivered by ordinary mail, or delivered in person to the last known contact of all attorneys of record, parties appearing without attorney representation, Supreme Court Information Officer, the appropriate court administrator, and the judicial officer expected to preside at the proceeding for which expanded media coverage is requested by the news media.

(3) Requests and notices shall be given using the forms approved by the Administrative Office of the Nebraska Supreme Court.

(C) Objections to expanded news media coverage.

(1) A party to a proceeding, except an initial appearance in a criminal case in county court (See § 6-2003(E)), objecting to the request for expanded media coverage must file a written objection using forms approved by the Administrative Office of the Nebraska Supreme Court.

The objection shall be filed at least three days before commencement of the proceeding. When the proceeding is not scheduled at least seven business days in advance, the objecting party must give notice of the objection as soon as practicable after the proceeding is scheduled.

(2) A copy of the objection shall be sent electronically, delivered by ordinary mail, or delivered in person to the last known contact of all attorneys of record, parties appearing without attorney representation, Supreme Court Information Officer, the appropriate court administrator, and the judicial officer expected to preside at the proceeding for which expanded media coverage is requested.

(3) Rulings on timely objections shall be made by the judicial officer prior to the commencement of the proceedings or as reasonably practical. The objecting party may be afforded an opportunity to present evidence by affidavit.

The judicial officer may rule on an objection on the basis of the written objection alone or on the combination of the written objection and the affidavits presented as evidence in the form of attachments to the objection.

(4) The deadline for filing of objections may be modified in the discretion of the judicial officer.

(5) The granting or denial of the objection to expanded media coverage is a nonappealable temporary order.

§ 6-2005. Technical.

(A) Equipment specifications. Equipment to be used by the news media in courtrooms during judicial proceedings must be unobtrusive and must not produce distracting sound. In addition, such equipment must satisfy the following criteria, where applicable:

(1) Still cameras. Still cameras and lenses must be unobtrusive and not cause distracting light or sound.

(2) Television cameras and related video equipment. Television cameras, together with any related equipment to be located in the courtroom, must be unobtrusive in both size and appearance, without distracting sound or light. Television cameras are to be designed or modified so that participants in the judicial proceedings being covered are unable to determine when recording is occurring.

(3) Audio equipment. Microphones, wiring, and audio recording equipment shall be unobtrusive and of adequate technical quality to prevent interference with the judicial proceeding being covered. The judicial officer must approve any changes in existing courtroom audio systems. No modifications of existing systems should be made at public expense. Microphones for attorneys and judicial officers to use must be equipped with off/on switches to facilitate compliance with § 6-2003(H).

(4) Electronic devices. All electronic devices used for recording audio, video, or still images must adhere to § 6-2005(C)(1). Electronic devices include, but are not limited to, laptop computers, cellular telephones, personal digital assistants, smart phones, and tablet computers. The news media seeking expanded coverage shall disclose in advance all devices which will be used by the news media.

(5) Advance approval. It shall be the duty of news media personnel to demonstrate to the judicial officer reasonably in advance of the proceeding that the equipment sought to be utilized meets the criteria set forth in this rule. Failure to obtain advance judicial approval for equipment may preclude its use in the proceeding.

All news media equipment and personnel shall be in place at least 15 minutes prior to the scheduled time of commencement of the proceeding.

(B) Lighting. Other than light sources already existing in the courtroom, no flashbulbs or other artificial light device of any kind shall be used in the courtroom. With authorization of the judicial officer, modifications may be made in light sources existing in the courtroom (e.g., higher wattage light bulbs), provided such modifications are installed and maintained without public expense.

(C) Equipment and pooling. The following limitations on the amount of equipment and number of photographic and broadcast news media personnel in the courtroom shall apply:

(1) Video recording, audio recording, and still photography.

(a) one still camera and

(b) one television camera or video recorder;

(c) component parts of cameras or video recorders and operators shall, when practical, be located adjacent to the courtroom;

(d) audio recording devices must utilize existing courtroom equipment unless otherwise approved by the judicial officer.

(2) Electronic devices not used for recording audio, video, or still images. The devices defined in § 6-2005(A) may be used in the courtroom by members of the news media for live electronic reporting with advance approval from the judicial officer, provided the equipment does not make any disruptive noise or interfere with court equipment. Electronic devices may not be used for telephone calls by anyone in the courtroom. Electronic devices for photography, video recording, audio recording, or streaming video may not be used by anyone in the courtroom unless approved by the judicial officer in advance. The rule applies to news media only as defined in § 6-2002(E). Use of such electronic devices by others is prohibited.

(3) Pooling. Where the above limitations on equipment and personnel make it necessary, the news media shall be required to pool equipment and personnel. Pooling arrangements shall be the sole responsibility of the news media coordinator, and the judicial officer will not mediate any dispute as to the appropriate media representatives authorized to cover a particular judicial proceeding. Representatives of news media are responsible for contributing to electronic pool coverage of judicial proceedings when necessary. If a news organization is incapable of contributing to pool coverage, the news media coordinator may allow the news organization to share the pool coverage or may restrict the news organization's coverage.

(D) Location of equipment and personnel. Equipment and operating personnel, including news media using electronic devices to transmit and receive data communication, must be located in, and coverage of the proceedings must take place from, an area or areas the judicial officer designates within the courtroom. The area or areas designated shall provide reasonable access to the proceeding to be covered.

(E) Movement during proceedings. Television cameras and video and audio equipment may be installed in or removed from the courtroom only when the court is not in session. In addition, such equipment shall at all times be operated from a fixed position. News media personnel are prohibited from moving about the courtroom while proceedings are in session, nor shall they engage in any movement which attracts undue attention.

(F) Variance application. The judicial officer, upon application of the news media, may permit the use of equipment or techniques at variance with the rules, provided the application for variance is included in the advance notice of coverage provided for in § 6-2004(B). Objections, if any, shall be made as provided in § 6-2004(C). Approval or denial of the variance application is in the sole discretion of the judicial officer.

(G) Decorum. All news media personnel shall be properly credentialed and shall maintain proper courtroom decorum at all times while covering a judicial proceeding.