

Judge Bonnie Sudderth

From: [REDACTED] on behalf of Manuel Arrieta via groups.io
<[REDACTED]>
Sent: Sunday, November 13, 2022 2:53 PM
To: [REDACTED]
Subject: Re: [CliSciLeaders] Draft Agenda for Educational Program to the Nebraska Judiciary

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Tom, as usual, you've done a great job putting this together! I like how you have "localized" the issues and challenges that are upcoming; they draw more attention to the presentation since you bring it into everyone's neighborhood.

Tom, this suggestion is not for your draft but to keep in mind if you present. I've done a number of water law and climate science presentations and here's a couple of quick tips that I have become accustomed to in my presentations. If you are presenting, start with a few caveats;

First, clarify to the audience that you are not a climate scientist, but rather a judge with an interest in climate science.

Second, let everyone know that you don't come before them to talk about Climate Change, the big "C" big "C" term that gets tossed around as a political football over climate attribution - who caused it? But rather you are there to talk about climate change, small "c", small "c", or the change in climate. You know, the climatic events in the state for which there is little dispute such as, the fact that the Mississippi river dried up in many areas this year, the public record of the Neb. Dept of Nat. Resources that projects summer temperatures of over 100 F to extend to 13-25 days by 2100, etc, etc.

And third, as a judge you are not there to give advisory opinions, comment on a pending case, or take a position on any disputed issue.

Rather you are there to inform and educate about the judicial system and process in light of a changing environment in litigation. (This helps you strike a balance between the ethical rule that prohibits judges from making statements on pending and impending cases (our judicial conduct rule 21-211) and the allowed extrajudicial activities which encourages judges to "engage in educational ... activities" as we are "uniquely qualified to engage in extrajudicial activities that concern the law, the legal system and the administration of justice ..." (Committee commentary to our rule 21-301). We are also allowed to participate in educational activities with organizations and governmental entities (our rule 21-307) as long as they are not conducted for profit.) I find it helpful to phrase some of my comments as follows:
- "... this information comes from the public records of the Neb. Dept of Nat. Resources, Annual Report to the State, dated ___, which you can find available in the following links (or shown on the slides) ..."
[paragraph 7 of your draft]

- "... while I won't comment on a pending case, I can take judicial notice of the allegations in the complaint filed Envir. Dpt v. Smith, # Neb. Rptr. #, a public record, which allege a theory of"

- "... so will Envir. Dpt v. Smith answer the question of ___? - that's a rhetorical question - it remains to be seen and will just have to wait to see how it's resolved."

- "... so can the Courts restrain the depletion of the aquifer? - that will depend on the claims brought, the theories alleged, and the state of the facts and law at that time. It may also depend on action taken by the legislature. It remains to be seen ..." [Tom, I would delete the words "by the Courts" in paragraph 5 which suggests only the courts can do it - is there an administrative agency with oversight on groundwater?].

- "... there's a discussion floating around in several news articles and/or discussions among the Commission - I don't know whether they are accurate or even factually supported, but that does seem to be an issue that may be coming up in the horizon. We'll have to wait and see ..."

Sorry for the lesson in ethics, but if we are going to present (many of us will and should), we need to make sure we aim for a good balance in the presentation from the onset. Tom, when I have time I will go back and see what other comments I have. I really like what you have thus far. Keep us updated! Best, Mannie.

On Sat, Nov 12, 2022 at 8:20 AM Thomas Harmon <[REDACTED]> wrote:

I am attaching a draft copy of notes I have prepared for an initial meeting with our Judicial Education Coordinator. I intend to meet with her in mid-December for planning purposes of a seminar for next year. I would appreciate your reviews and comments for additions to the draft. I anticipate this occurring in either latter June or Mid-October of next year. Happy Thanksgiving to each of you!

Best personal regards,

Hon. Thomas K. Harmon

County Court Judge Fourth Judicial District (Douglas County)

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