

Nebraska Judicial Ethics Committee Opinion 26-2

Question Presented--

Can a county judge disregard the Order and Mandate from the district court, sitting as an appellate court, when the county judge disagrees with the specific directions and rulings of the district court?

Conclusion

No. A judge shall comply with the law. When a lower court is given specific instructions on remand, it **must** comply with the specific instructions and has no discretion to deviate from the mandate.

Statement of Facts

The relevant facts, summarized, are as follows: The judge requesting the instant opinion presided over a forcible entry and detainer trial in county court. The verdict was appealed to the district court. The appeal was dismissed by the district court and remanded for further proceedings. In the order and mandate from the district court, the district judge gave the county court specific instructions. The county judge disagrees with those specific instructions and asks whether those instructions can be ignored by the county court on remand.

Applicable Code Sections

Neb. Rev. Code of Judicial Conduct § 5-301.1

References in Addition to Nebraska Revised Code of Judicial Conduct

Molina v. Salgado-Bustamante, 21 Neb. App. 75, 837 N.W.2d 553 (2013).

Jurgensen v. Ainscow, 160 Neb. 208, 69 N.W.2d 856 (1955).

Robertson v. Jacobs Cattle Co., 292 Neb. 195, 874 N.W.2d 1 (2015).

VanHorn v. Nebraska State Racing Comm., 273 Neb. 737, 732 N.W.2d 651 (2007).

Discussion

Neb. Rev. Code of Judicial Conduct § 5-301.1 provides that “[a] judge shall comply with the law.” In appellate procedure, a “remand” is an appellate court’s order returning a proceeding to the court from which the appeal was originated for further action in accordance with the remanding order. *Molina v. Salgado-Bustamante*, 21 Neb. App. 75, 837 N.W.2d 553 (2013). Nebraska appellate courts have made it clear that after receiving a mandate, a trial court is without power to affect the rights and duties outside the scope of the remand. *Id.* Nebraska courts have consistently held that when a lower court is given specific instructions on remand, it must comply with the specific instructions and has no discretion to deviate from the mandate. See *id.* See, also, *Robertson v. Jacobs Cattle Co.*, 292 Neb. 195, 874 N.W.2d 1 (2015); *VanHorn v. Nebraska State Racing Comm.*, 273 Neb. 737, 732 N.W.2d 651 (2007).

In *Jurgensen v. Ainscow*, 160 Neb. 208, 211, 69 N.W.2d 856, 858 (1955), the Nebraska Supreme Court explained as follows:

“When a particular judgment is directed by the appellate court, the lower court is not acting on its own motion, but in obedience to the order of its superior. What that superior says it shall do, it **must** do, and that alone. Public interests require that an end shall be put to litigation, and when a given cause has received the consideration of this court, its merits determined, and then remanded with specific directions, the court to which such mandate is directed has no power to do anything but to obey the mandate; otherwise, litigation would never be ended, and the supreme tribunal of the state would be shorn of that authority over inferior tribunals with which it is invested by our fundamental law. . . .”

(Emphasis supplied.)

In this case, the district court is properly sitting as an appellate court. The Committee makes no comment or finding whether the remand issued to the county court was proper or whether it had the power in this case to make specific instructions. The question presented is limited to whether the county court can disregard the mandate that was issued by the superior court. The answer is clearly no, given the case law cited above.

Disclaimer

This opinion is advisory only and is based on the specific facts and questions submitted by the person or organization requesting the opinion pursuant to appendix A of the Nebraska Revised Code of Judicial Conduct. Questions concerning ethical matters for judges should be directed to the Judicial Ethics Committee.

APPROVED AND ADOPTED BY THE COMMITTEE
ON SEPTEMBER 21, 2026

Judge Matthew L. Acton
Judge Michael W. Pirtle (not participating)
Judge Travis P. O’Gorman
Judge Andrew R. Lange
Judge Bryan C. Meismer
Judge Mary M. Z. Stevens
Judge Timothy E. Hoeft