

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**CIVIL RULES**

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**5.0-1 Electronic Case Filing (CM/ECF).**

- (a) **Electronic Documents Authorized.** Under Federal Rule of Civil Procedure 5(d), the clerk accepts documents filed, signed, or verified electronically that are consistent with technical standards established by the Judicial Conference of the United States. A document filed in compliance with this rule is a written document for purposes of the local rules and the Federal Rules of Civil Procedure.
- (b) **Mandatory Electronic Case Opening and Filing.** Attorneys filing new civil cases in this district are required to open the cases themselves using the System. All documents must be filed electronically.
- (c) **Exceptions.** The following matters or individuals are excepted from mandatory electronic case opening and filing:
- (1) pro se parties who are not registered users;
  - (2) cases filed under seal by court order;
  - (3) exhibits, evidence, or attachments, the nature of which precludes electronic filing;
  - (4) cases or documents excepted by statute or rule; and
  - (5) situations in which an attorney applies for and receives permission from:
    - (A) the chief judge to have the clerk open the new case on the System; or
    - (B) the assigned judge to file documents nonelectronically.
- (d) **Facsimile and E-mail Filings not Allowed.** A document is not filed under the Federal Rules of Civil Procedure until the filing party receives a System generated NEF after uploading the document to the System. A document faxed or e-mailed to the clerk or assigned judge is not considered filed without a court order.

- (e) **Timely Filing.** A document is considered timely filed if filed before midnight Central Standard Time (or Central Daylight Time, if in effect). However, the assigned judge may order a document filed by a time certain.
- (f) **Official Record.** The clerk does not maintain a paper court file in any case unless required by law or local rule. When a document is filed electronically, the official record is the electronic recording of the document as stored by the court, and the filing party is bound by the document as filed.
  - (1) **Documents Filed Nonelectronically.** The official record also includes documents filed nonelectronically under local rule.
  - (2) **Original Documents Scanned and Discarded.** The clerk scans and discards original documents brought to the clerk for filing unless the document's size or nature requires that it be kept in a paper format. An attorney who wishes to have an original document returned after the clerk scans and uploads it to the System may, before submitting the document to the clerk, ask the assigned judge for written authorization for the document's return. Authorization is granted on a case-by-case basis. The court does not allow blanket authorizations for the return of all original documents filed by an attorney or office.
- (g) **File Date.** Except for documents first filed with the court nonelectronically and then uploaded to the System, a document filed electronically is considered filed as of the date and time stated on the NEF.

#### **5.0:2 Electronic Service.**

- (a) **Receipt of NEF as Service on Registered Party.** Under Federal Rule of Civil Procedure 5(d), receipt of the NEF is considered service of the document on parties who consent to electronic service and waive the right to service by personal service or first class mail.
- (b) **Service on Nonregistered Party.**
  - (1) A party filing electronically must serve a nonregistered user of the System with: (A) a paper copy of any electronically filed document, see Fed. R. Civ. P. 5(a); and (B) proof of the filing, defined as a copy of either (i) the associated NEF or (ii) the document bearing the header printed by the System.
  - (2) Service on a nonregistered party of the document and NEF may be by e-mail or fax.
  - (3) If a filer must bring a document to the clerk for scanning and uploading to the System, the filer must serve paper copies on all

nonregistered parties. Due to possible delay for uploading and electronic noticing, the filer should consider service by paper or alternate means, including e-mail or fax.

### **5.0-3 Privacy.**

- (a) Mandatory Redaction.** See Federal Rule of Civil Procedure 5.2(a) or Federal Rule of Bankruptcy Procedure 9037 regarding mandatory redaction in electronic and nonelectronic filings. The following privacy rules also apply to all documents and exhibits filed in the district and bankruptcy courts.
- (b) Discretionary Redaction.** The filing party may also redact the following information from all documents and exhibits filed electronically or nonelectronically, unless the assigned judge orders otherwise:

  - (1) personal identifying numbers, such as driver's license numbers;
  - (2) home street addresses;
  - (3) medical or psychological records;
  - (4) employment history;
  - (5) individual financial information;
  - (6) proprietary or trade secret information;
  - (7) information that may identify a cooperating individual;
  - (8) information regarding a crime victim;
  - (9) national security information;
  - (10) sensitive security information as described in 49 U.S.C. § 114(s);
  - (11) education records as defined by 20 U.S.C. § 1232g(a)(4)(A); and
  - (12) other data as the court orders.
- (c) Restricting Access to Unredacted Documents.** With the court's leave, a party may restrict access to a document containing the unredacted personal data identifiers listed in Nebraska Civil Rule 5.0-3(b), Federal Rule of Civil Procedure 5.2, or Federal Rule of Bankruptcy Procedure 9037.

  - (1) Motion.**

(A) **Procedure.** A party seeking to file an unredacted document must electronically file a motion to restrict access to the document under the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899 (Dec. 17, 2002) (codified at 5 U.S.C. §§ 3701-3707 and scattered sections) (“E-Government Act”). The motion must state why filing an unredacted document is necessary and why redaction would not reduce or eliminate the need for restriction.

(B) **Unredacted Document not Attached.** The unredacted document must not be attached to the motion, but rather filed separately as a restricted document. The document remains provisionally restricted pending the ruling on the motion to restrict access. If the court denies the motion, it will direct the clerk to lift the restriction on the unredacted document.

(2) **Order.** In ruling on the motion, the assigned judge may lift the restriction on the document, strike it, or order the filing party to place a redacted copy of the document on the public docket.

(3) **Docket Sheet Entries.** When access to a document is restricted under the E-Government Act, an entry noting the restricted access appears on the public electronic docket sheet; however, only parties of record and court users may routinely access the document electronically. The public does not have remote access to the restricted document from the docket sheet. The court may grant the public leave for remote access upon motion.

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**7.0-1 Motion Practice.** All miscellaneous motions, applications, requests, and petitions are filed and considered under this rule. Unless this rule states otherwise, a party who does not follow this rule may be considered to have abandoned in whole or in part that party's position on the pending motion.

(a) **Supporting a Motion.** A moving party must state the basis for the motion and the specific relief requested.

(1) **Supporting Brief.**

(A) **Substantial Issue of Law.** A motion raising a substantial issue of law must be supported by a brief filed and served together with the motion. The brief must be separate from, and not attached to or incorporated in, the motion or index of evidence. The brief must concisely state the reasons for the motion and cite to supporting authority. A party's failure to brief

an issue raised in a motion may be considered a waiver of that issue. The brief must not recite facts unless supported as described in Nebraska Civil Rule 7.0:1(a)(2).

- (B) **No Substantial Issue of Law.** A brief is not required if (i) a motion raises no substantial issue of law and (ii) relief is within the court's discretion. Examples include motions to which all parties consent, to withdraw as counsel to a party, for an extension of time, or for leave to proceed in forma pauperis. If the court concludes that a motion raises a substantial issue of law, however, it may treat the failure to file a brief as an abandonment of the motion.

(2) **Evidence and Evidence Index.**

- (A) **Factual Support.** If a motion requires the court to consider any factual matters not stated in the pleadings, when filing the supporting brief the moving party must also file and serve supporting evidentiary materials not previously filed. A factual assertion in the motion and the supporting brief must cite to the pertinent page of the pleading, affidavit, deposition, discovery material, or other evidence on which the moving party relies.
- (B) **How to File.** Evidentiary materials may be attached to the brief if the brief includes a listing of each item of evidence being filed, and the evidence citations within the brief provide hyperlinks to the evidence attached and offered in support of the factual statements. In all other cases, evidentiary materials may not be attached to the brief but rather must be filed separately with an index listing each item of evidence being filed and identifying the motion to which it relates.
- (C) **Required Affidavit.** An affidavit must identify and authenticate any documents filed with the index offered as evidence. The affidavit must be made on personal knowledge, set forth facts that would be admissible in evidence, show affirmatively that the affiant is competent to testify to the matters stated, and identify the related motion.

(b) **Opposing a Motion.**

(1) **Opposing Brief.**

- (A) **Form and Content.** The party opposing a motion must not file an “answer,” “opposition,” “objection,” or “response,” or any similarly titled responsive pleading. Rather, the party must file

a brief that concisely states the reasons for opposing the motion and cites to supporting authority. The brief must not recite facts unless supported as stated in Nebraska Civil Rule 7.0-1(b)(2).

- (B) **Time for Filing.** A brief opposing a motion to dismiss or for summary judgment must be filed and served within 21 days after the motion and supporting brief are filed and served. A brief opposing any other motion must be filed and served within 14 days after the motion and supporting brief are filed and served.
- (C) **Effect of Failure to File.** Failure to file an opposing brief is not considered a confession of a motion but precludes the opposing party from contesting the moving party's statement of facts.

(2) **Evidence and Evidence Index.**

- (A) **Factual Support.** When filing the opposing brief, the opposing party must also file and serve supporting evidentiary material not previously filed. A factual assertion in the opposing brief must cite to the pertinent page of the pleading, affidavit, deposition, discovery material, or other evidence on which the opposing party relies.
  - (B) **How to File.** Evidentiary materials may be attached to the brief if the brief includes a listing of each item of evidence being filed, and the evidence citations within the brief provide hyperlinks to the evidence attached and offered in support of the factual statements. In all other cases, evidentiary materials may not be attached to the brief but rather must be filed separately with an index listing each item of evidence being filed and identifying the motion to which it relates.
  - (C) **Required Affidavit.** An affidavit must identify and authenticate any documents filed with the index offered as evidence. The affidavit must be made on personal knowledge, set forth facts that would be admissible in evidence, show affirmatively that the affiant is competent to testify to the matters stated, and identify the related motion.
- (c) **Replying to Opposing Briefs and Evidence.** The moving party may file a reply brief and index of evidence within 7 days after the opposing party files and serves the opposing brief. The reply brief may not merely repeat the moving party's initial arguments, but rather must address factual or legal

issues raised in the opposing brief. No party may file further briefs or evidence without the court's leave. If the moving party does not file an initial brief, it may not file a reply brief without the court's leave.

- (d) **Request for Oral Argument or Evidentiary Hearing.** Any request for oral argument or for an evidentiary hearing by a moving party must be included in the motion or else presented by a separate motion filed no later than the deadline for filing a reply brief. Any request for oral argument or for an evidentiary hearing by an opposing party must be presented by a motion filed no later than the deadline for filing an opposing brief. In general the court does not allow oral argument or evidentiary hearings on motions. The party requesting oral argument or an evidentiary hearing must state (1) why argument or a hearing is necessary and (2) an estimate of the time required for the argument or hearing.
- (e) **Request to Present Oral Testimony.** A party failing to request the opportunity to present oral testimony consents to the motion's submission without oral testimony. No oral testimony is allowed without the court's prior leave.
- (f) **Submission of Motion.** Unless the court grants leave for oral argument, a motion is submitted on the briefs and any evidence filed when the time limit specified in Nebraska Civil Rule 7.0:1(c) expires.
- (g) **Procedures for Summary Judgment Motions.** See Nebraska Civil Rule 56.1.
- (h) **Extensions of Time for Filing or Responding to Motions.** See Nebraska Civil Rule 6.1.
- (i) **Discovery Motions.** To curtail undue delay in the administration of justice, this court only considers a discovery motion in which the moving party, in the written motion, shows that after personal consultation with opposing parties and sincere attempts to resolve differences, the parties cannot reach an accord. This showing must also state the date, time, and place of the communications and the names of all participating persons. "Personal consultation" means person-to-person conversation, either in person or on the telephone. An exchange of letters, faxes, voice mail messages, or e-mails is also personal consultation for purposes of this rule upon a showing that person-to-person conversation was attempted by the moving party and thwarted by the nonmoving party.
- (j) **Conference Telephone Calls.** The judge may conduct a motion hearing by telephone or video conference.

(k) **Certificate of Service.** All motions, briefs, and evidence indexes require a certificate of service under Nebraska Civil Rule 5.4.

**7.0.2 Proposed Order.** A party ~~filing a motion that does not require a supporting brief must e-mail~~ may submit a proposed order to the assigned judge's chambers. ~~See NE CivR 7.0.1(a)(1)(B) (defining motions that do not require a supporting brief); NE CivR 7.5 (sealed documents); NE CivR 55.1 (default judgments).~~

~~(a) **Method of Submission.** A proposed order should be e-mailed to the assigned judge at by e-mail sent to the address listed on that judge's information page ~~located~~ on the court's Web site ~~at~~. See <http://www.ned.uscourts.gov/attorney/judges-information>. The order must be in a word processing and not a .pdf format. The subject line of the e-mail should identify the case name and number. Proposed orders may not be combined with an electronically filed motion into one document.~~

~~(b) **Motion Filed Before Sending Proposed Order.** The motion must be filed before submitting the proposed order to the judge, and the A proposed order must refer to the motion's filing number may not be filed by a party.~~

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## 10.1 Form of Documents.

(a) **Electronic Filings.** Absent a contrary local rule or assigned judge's order, all documents must be filed electronically on the System as .pdf files. To make these .pdf files text-searchable, filers should convert word processed documents to .pdf format and then upload them to the System; filers should avoid printing the documents on paper and then scanning them to produce .pdf files for uploading. The following provisions apply to all electronically filed documents.

(1) **Legibility.** The filing party is responsible for the legibility of any scanned document uploaded to the System. If a document cannot be easily read after scanning, the filing party must file it nonelectronically with the clerk.

(2) **Evidence, Exhibits, and Attachments.**

(A) **Index of Evidence. Evidence Listing or Index. Court filings which include hyperlinks to attached evidence, exhibits, and documents must include a listing of each item of evidence being filed. In all other cases, evidence,** exhibits, and attachments in support of a motion must be identified on an electronically filed index of evidence, which must identify the related motion.

**(B) Excerpts Required.** A filer must submit as exhibits or attachments only excerpts of the referenced documents that are directly relevant to the matter under consideration. Excerpted material must be clearly and prominently identified. Persons who file excerpts of documents as exhibits or attachments under this rule do so without prejudice to their right to timely file additional excerpts or the complete document. Responding parties may timely file additional relevant excerpts or, if relevant, the complete document. The court may require parties to file additional excerpts or the complete document.

**(C) Paper Documents.** If the court grants a party leave to submit evidentiary materials in paper, the party must also file a paper index of evidence listing each item of evidence being filed and identifying the motion to which it relates. The party must serve copies of nonelectronically filed supporting materials on other parties as if not subject to electronic filing procedures.

**(D) Additional Information.** Additional information on filing evidence or exhibits is available on the court's Web site at <http://www.ned.uscourts.gov/attorney/electronic-case-filing>.

**(3) Content.** A document must plainly show the case caption, a description or designation of its contents, and the party or person/entity on whose behalf it is filed. All documents after the pleading initiating a proceeding must also show the correct docket number. A demand for jury trial, designation of a class action, claim of unconstitutionality of a statute, or request for a 3-judge court must be noted in the pleading caption.

**(4) Hyperlinks.** Electronically filed documents allow only two types of hyperlinks: to other parts of the same document; and to an Internet location that contains a source document for a citation. [A hyperlink to evidence attached to a court filing becomes a permissible hyperlink to an internet location upon filing in CM/ECF.](#) These hyperlinks are provided only for users' convenience. Users are cautioned that hyperlinked documents in CM/ECF are subject to PACER fees.

**(A) Cited Authority.** Hyperlinks to cited authority may not replace standard citation format. The text of the filed document must include complete citations. Neither a hyperlink, nor any site to which it refers, may be considered part of the record.

**(B) Responsibility for Hyperlinks.** The court accepts no responsibility for and does not endorse, approve, or guarantee

any third parties or the services or products they provide on their Web sites. Likewise, the court has no agreements with any of these third parties or their Web sites. The court accepts no responsibility for any hyperlink's availability or functionality. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the Court's opinion.

**(b) Nonelectronic Filings.** If a document must be filed nonelectronically, the following provisions apply.

- (1) Paper Size; Margins.** The paper used must be 8½ "x 11", white, and of standard weight. A 2-inch margin must appear at the top of the first page for the clerk's filing stamp.
- (2) Presentation.** All documents must be single-sided and legibly typewritten, photocopied, printed, or handwritten if necessary, and without materially defacing erasures or interlineations. Attached exhibits must be similarly typewritten, printed, photocopied, or handwritten if necessary, in clear, legible, and permanent form.
- (3) Additional Materials.** Any materials filed in connection with a motion must be accompanied by an index listing each item attached. If not pre-bound, such as a transcript or book, all attachments to the index printed on 8½" x 11" paper must be bound together by fasteners. All materials not amenable to binding must be submitted in an envelope or other closeable container.
- (4) Content.** A document filed nonelectronically must include the same information as an electronically filed document. See NECivR 10.1(a)(3).

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## **39.2 Briefs.**

- (a) Trial Briefs.** Unless ordered otherwise, each party must file a trial brief at least 7 days before the trial begins.
- (b) Motion Briefs.** Motion briefs must be prepared according to Nebraska Civil Rule 7.0:1.
- (c) Abandonment of Issues.** Except as stated in Nebraska Civil Rule 7.0:1(b)(1)(C), when by local rule or separate order a time has been set for filing a brief, a judge may treat a party's failure to file a brief or discuss an issue in a brief as an abandonment of that party's position on any issue not briefed or discussed.

- (d) **Habeas Corpus and Post-Conviction Relief.** In matters brought under 28 U.S.C. §§ 2241 and 2254, counsel must file the briefs submitted by the petitioner on direct appeal. In cases brought under §§ 2241, 2254, and 2255, direct appeal briefs may be considered as part of the record of the habeas case. They must not, however, be incorporated by reference in, or considered to be, the petitioner's brief. Pro se parties are not required to electronically file briefs or other documents.

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#### 45.1 Subpoenas to Nonparties.

- (a) **Notice to Adverse Party.** No subpoenas for production or inspection may be issued for service on a nonparty without giving the adverse party notice stating the name and address of the nonparty being subpoenaed, the documents or items to be produced or inspected, the time and place for production or inspection, and the date on which the subpoena will issue.
- (b) **Objections.** After receipt of the notice, the adverse party has 7 days to serve written objections to the subpoena on the noticing party. The adverse party must specifically identify the grounds for the objections and must file a certificate of service with the court. No subpoena may be issued for documents or premises whose inspection or production is contested under this rule until the parties resolve the objections. Any unresolved objections will be resolved by the court on appropriate motion filed in accordance with NECivR 7.0:1. Nothing in this rule affects the availability of objections described in Federal Rule of Civil Procedure 45(c) and (d).
- (c) **Effect of Failure to Object.** Failure to object to issuance of a subpoena to a nonparty does not preclude an adverse party from moving for a protective order under Federal Rule of Civil Procedure 26(c).

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#### 51.1 Proposed Jury Instructions.

- (a) **When Filed and Submitted.** Unless ordered otherwise, each party must file requested instructions 7 days before the first day of trial. In addition, a party should submit requested instructions in a WordPerfect-compatible word processing format on a ~~3.5-inch disk or~~ CD delivered, or through an e-mail addressed to, the trial judge's chambers. A party may file and submit to the trial judge additional requested instructions relating to matters arising during the trial at any time before the trial ends.
- (b) **Objections.** Objections to requested jury instructions, with supporting authority, must be filed at least 3 days before the first day of trial.

- (c) **Form.** Each requested instruction must be numbered, state the presenting party, and cite the instruction's source and any additional supporting authority. Parties must use the latest edition of the Eighth Circuit Model Jury Instructions whenever possible. If a submitted instruction is modified from the pattern instruction, deleted material must be in parentheses and additions must be underscored. Requests for routine instructions are unnecessary and should not be filed.

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**56.1 Summary Judgment Procedure.** Unless this rule states otherwise, the procedures of Nebraska Civil Rule 7.0:1 apply to summary judgment motions. Generally, the court does not hear oral argument on summary judgment motions.

(a) **Moving Party.**

- (1) **Statement of Material Facts.** The moving party must include in the brief in support of the summary judgment motion a separate statement of material facts about which the moving party contends there is no genuine issue to be tried and that entitles the moving party to judgment as a matter of law. Failure to submit a statement of facts may be grounds to deny the motion.
- (2) **Form; Citation to Record.** The statement of facts should consist of short numbered paragraphs, each containing pinpoint references to affidavits, pleadings, discovery responses, deposition testimony (by page and line), or other materials that support the material facts stated in the paragraph. A fact is "material" if pertinent to the outcome of the issues identified in the summary judgment motion. The statement of facts must describe the parties and recite all facts supporting the court's venue and jurisdiction. The statement must not contain legal conclusions. Failure to provide citations to the exact locations in the record supporting the factual allegations may be grounds to deny the motion.

(b) **Opposing Party.**

- (1) **Response to Movant's Statement.** The party opposing a summary judgment motion ~~should~~must include in its brief a concise response to the moving party's statement of material facts. ~~Each material fact in the response should address each~~must be set forth in a separate numbered paragraph ~~in the movant's statement and, in the case of any disagreement, contain,~~must include pinpoint references to affidavits, pleadings, discovery responses, deposition testimony (by page and line), or other materials upon which the opposing party relies, and, if applicable, must state the number of the paragraph in

the movant's statement of material facts that is disputed. Properly referenced material facts in the movant's statement are considered admitted unless controverted in the opposing party's response.

- (2) **Response Time.** An opposing brief may be filed within 21 days after service of the motion and supporting brief. Failure to file an opposing brief *alone* is not considered confession of a motion; however, nothing in this rule excuses a party opposing a summary judgment motion from meeting the party's burden under Federal Rule of Civil Procedure 56.

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## 67.1 Deposits.

- (a) **Receipt of Funds. ~~Order Directing Investment of Funds.~~** Attorneys are responsible for personally serving on the district court clerk, chief deputy at Omaha, or deputy-in-charge at Lincoln a copy of any order directing the clerk to invest funds deposited with the court's registry account under 28 U.S.C. § 2041. ~~The order must include the amount to be invested.~~

- (1) No money may be sent to the court or its officers for deposit into the court's registry without a court order by the presiding judge in a pending or adjudicated case.
- (2) All money ordered to be paid to the court or received by its officers in any pending or adjudicated case must be deposited with the Treasurer of the United States in the name and to the credit of this court pursuant to 28 U.S.C. § 2041 through depositories designated by the Treasury to accept such deposit on its behalf.
- (3) The party making the deposit or transferring the funds to the court's registry must serve the order permitting the deposit or transfer on the clerk.

- (b) **Investment of Registry Funds. Time for Investing Funds.** ~~The clerk must take all reasonable steps to invest the funds within 21 days of service of the order.~~

- (1) Funds on deposit with the court will be placed in interest-bearing instruments in the Court Registry Investment System (CRIS) administered by the Administrative Office of the United States Courts, which is the only investment mechanism authorized.
- (2) Under CRIS, monies deposited in each case will be "pooled" together with those on deposit with the Treasury to the credit of other courts in CRIS and used to purchase Government Account Series securities

through the Bureau of Public Debt, which will be held at the Treasury in an account in the name and to the credit of the Director of the Administrative Office of the United States Courts.

(3) An account for each case will be established in CRIS titled in the name of the case giving rise to the investment in the fund. Income generated from fund investments will be distributed to each case based on the ratio each account's principal and earnings has to the aggregate principal and income total in the fund.

(c) **Deduction of Fees. Fee.** ~~Unless ordered otherwise, the clerk deducts from the income earned on the investment when the income becomes available a fee as authorized by the Judicial Conference of the United States and set out by the Director of the Administrative Office of the United States Courts. The custodian will deduct a registry fee for maintaining accounts in CRIS and an investment services fee for the management of investments. The registry fee is determined by the rates published by the Director of the Administrative Office of the United States Courts, as approved by the Judicial Conference. The investment services fee is assessed from interest earnings according to the court's miscellaneous fee schedule.~~

(d) **Withdrawal of Deposit.** To withdraw money deposited with the court under Federal Rule of Civil Procedure 67 and ~~then deposited into an interest-bearing account or instrument as required by Rule 67~~ these rules, a party must file a motion for withdrawal of the funds and simultaneously submit a proposed order and completed IRS Form W-9.