

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

GENERAL RULES

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

GENERAL RULES

1.1 Introduction.

- (a) **Scope; Title; Citation.** These rules, which shall be known as the General Rules of the United States District Court for the District of Nebraska (“Nebraska General Rules”), and which may be cited as “NEGenR ____,” are adopted by the court as local rules pursuant to Federal Rule of Civil Procedure 83 and Federal Rule of Criminal Procedure 57. These rules apply to all civil and criminal court proceedings in this district, and they regulate the conduct of court personnel, practicing attorneys, parties, members of the public, and members of the press.
- (b) **Other Local Rules.** In addition to these general rules, the court has separate local rules of procedure for civil cases, criminal cases, and bankruptcy cases, which are adopted pursuant to Federal Rule of Civil Procedure 83, Federal Rule of Criminal Procedure 57, and Federal Rule of Bankruptcy Procedure 9029, respectively. The local rules of the United States Bankruptcy Court for the District of Nebraska are available at the bankruptcy clerk’s office; they are also located on that court’s Web site at www.neb.uscourts.gov.
- (c) **Deviations from Rules or Procedures.** Notwithstanding anything to the contrary, a judge of this court may deviate from these rules or from any other rules or procedures adopted by this court when the interests of justice will be served by such deviation. This rule shall be construed to take precedence over every other rule or procedure.
- (d) **Definitions.** In construing these rules, the following definitions shall apply:
- (1) "Judge" without further description shall mean any Article III (district) judge, or magistrate judge assigned or designated for service in the District of Nebraska.
 - (2) "Court" shall mean "judge" unless by its context it is determined to mean the judges of the United States District Court for the District of Nebraska collectively.
 - (3) "Clerk" without further description shall mean the clerk of the district court or any of his or her deputies.

- (4) "Marshal" shall mean the United States Marshal of this district or any of his or her deputies.
 - (5) "Counsel" or "attorney" includes, if appropriate, a pro se party.
 - (6) "Electronic filing" or "electronically file" shall mean uploading a pleading or document directly from a registered attorney or pro se party's computer, using the court's Internet-based System to file that pleading or document in the court's case file. Electronic filing shall also include any uploading to the System done by the clerk's office of documents submitted to the court in paper format or as .pdf ("Portable Document Format") files. Sending a document or pleading to the court via electronic mail (e-mail) or facsimile transmission (fax) is not electronic filing.
 - (7) "Filing" or "file" shall mean "electronic filing" or "electronically file" unless otherwise specified. A paper document is deemed filed on the date the clerk's office receives and file stamps it rather than the date on which the clerk's office subsequently uploads it to the System.
- (e) **Effective Date.** All of the court's local rules are effective immediately upon approval, and shall apply to all cases pending when they take effect, unless the assigned judge orders otherwise.
- (f) **Availability.** Paper copies of these general rules and the local rules of civil and criminal procedure are available from the district court clerk's office for a reasonable fee, but such rules and procedures can also be accessed and downloaded free of charge from the district court's Web site, www.ned.uscourts.gov.

1.2 General Information.

- (a) **Sessions of Court.** At Omaha and Lincoln, the court shall be in continuous session on all business days throughout the year. At North Platte, the court shall be in session during periods set by order from time to time and as the business there shall require.
- (b) **Official Station of Clerk.** The official station of the clerk shall be at Omaha. Deputy clerks in such number as required shall be appointed by the clerk and shall be stationed at Omaha and Lincoln.
- (c) **Release of Information by Court Personnel.** All personnel serving the court, including but not limited to marshals, deputy marshals, court clerks,

courtroom deputies, court reporters, law clerks, judicial assistants, and secretaries, shall not disclose to any person without the court's authorization information divulged in arguments and hearings held in chambers or otherwise outside the presence of the public, or any information relating to a pending case that is not part of the public records of the court.

(d) Prepayment of Fees. Before furnishing a service, the clerk will require prepayment of all fees collectible by the clerk and prescribed by statute or by the Judicial Conference of the United States. The clerk may require a party to deposit in advance a sum reasonably estimated to cover the service requested. Any unused portion of the deposit will be returned to the party when the proceeding ends or the service is completed, so long as the party owes no other fees.

(1) Methods of Paying Filing Fees. Any fee required for filing a pleading or document in district court is payable to the clerk by credit/debit card, check, money order, or cash. The court will not maintain electronic billing or debit accounts for lawyers or law firms.

(e) Payment of Fees by Credit Card.

(1) In General. Information on the use of credit cards to pay fees, including filing fees, is available from the clerk's office and can also be found on the district court's Web site at www.ned.uscourts.gov/info/index.html "Fees."

(2) Refunds of Duplicate or Erroneous Filing Fees Paid Electronically with Credit Cards. The clerk is authorized to refund duplicate or erroneous filing fees paid online by credit card. This limited approval to issue refunds does not otherwise amend the policy of the Judicial Conference prohibiting refunds of filing fees.

(A) Motion or Application. To request a refund of a duplicate or erroneous filing fee paid online with a credit card, the payor must file a motion or application in the case explaining the circumstances leading to the request and stating the amount of the requested refund. The clerk will authorize the refund request, deny it, or refer it to chambers.

(B) Review of Denials. If the clerk denies the refund request, the payor has five (5) business days to file a motion asking the chief judge to review the denial.

- (C) **Payment of Refunds.** The clerk's office will process authorized refunds through the electronic credit card system, pay.gov. If the payor's credit card is no longer valid, the clerk's office will issue a United States Treasury check to the payor. The clerk's office will not make cash refunds.
- (f) **Miscellaneous Fees.** A schedule of miscellaneous fees is available on the district court's Web site at www.ned.uscourts.gov/info/fees.html, or from the clerk's office.
- (g) **Court Reporting Fees.** This district has adopted a "court reporting fee schedule," a copy of which is available on the district court's Web site at www.ned.uscourts.gov/pom/crtplans/index.html>"Court Reporting Fee Schedule," or from the clerk's office.
- (h) **Mediation.** The court has adopted a Mediation Plan which is available from the clerk's office and can also be found on the district court's Web site at www.ned.uscourts.gov/pom/crtplans/index.html>"In the Matter of Court-Annexed Mediation." Parties settling a case are requested to advise the court if they engaged in mediation, whether successfully or unsuccessfully, and to provide the mediator's name and the dates of the mediation.
- (i) **Federal Practice Fund.** Pursuant to the authority granted the district courts by the Administrative Office of the United States Courts implementing policies of the Judicial Conference of the United States, the provisions of 28 U.S.C. § 1914(b), and the court's inherent authority, the District of Nebraska has established the Federal Practice Fund. The purpose of the Fund, and the provisions for administering, using, and seeking reimbursement from the Fund are set forth in the Amended Plans for Administration of the Federal Practice Fund and the Federal Practice Committee, available on the district court's Web site at www.ned.uscourts.gov/pom/crtplans/index.html>"Amended Plans for Administration of the Federal Practice Fund and the Federal Practice Committee," or from the clerk's office.
- (j) **Judicial Misconduct and Disability Complaints.** Information on filing complaints about the behavior of federal judges is available on the district court's Web site at www.ned.uscourts.gov/>"Judicial Misconduct and Disability."

1.3 Case Filings; Appearance and Withdrawal of Counsel; Pro Se Litigants.

- (a) **Electronic Case Filing (ECF).** The district court has adopted and implemented an electronic case filing (ECF) system ("System"). Failure to

comply with the court's ECF procedures may result in the imposition of sanctions on counsel or a party. Extensive information about ECF is available on the court's Web site at www.ned.uscourts.gov/cmecf.

(1) **Public Access to the System.** Public remote electronic access to the System for viewing purposes is limited to subscribers of the Public Access to Court Electronic Records ("PACER") system, <http://www.pacer.psc.uscourts.gov>. The Judicial Conference of the United States has ruled that a user fee will be charged for remotely accessing certain detailed case information, such as docket sheets and filed documents, but excluding written opinions and general information.

(A) **Exemptions from PACER User Fees.** The PACER user fee does not apply to:

- (i) Official recipients of electronic documents, *i.e.*, parties legally required to receive service or to whom service is directed by the filer in the context of service under the Federal Rules of Civil Procedure. Official recipients will receive the initial electronic copy of a document free to download as they see fit, but if they remotely access the document again, they will be charged the standard PACER user fee.
- (ii) Indigents. See http://pspsc.psc.ao.dcn/documents/epafee_sched.pdf.
- (iii) Individuals who access the electronic docket and documents filed in the System at the clerk's office during regular business hours. Conventional copies and certified copies of electronically-filed documents may be purchased at the clerk's office. The fee for copying and certifying will be in accordance with 28 U.S.C. § 1914.

(B) **Restrictions on Remote Access.**

- (i) **Sealed Documents.** A case or document filed under seal will be placed on the System, but will not be remotely accessible to the public and will not be available at the public terminals in the clerk's office unless the court orders the case or document unsealed. See NECivR 7.5 and NECrimR 12.4.

- (ii) **Restricted Access Documents.** Because certain filed documents contain personal identifying information protected by the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899 (codified at 5 U.S.C. §§ 3701-3707 and scattered sections), remote access to these documents will be restricted to counsel of record and court users. In addition, public access to these documents will not be allowed at terminals in the clerk's office. See NECivR 5.3 and NECrimR 49.3.
- (2) **Electronic Orders, Decrees, and Judgments.** All orders, decrees, judgments, and proceedings of the court will be filed in accordance with these rules, which will constitute entry on the docket kept by the clerk under Federal Rule of Civil Procedure 58 and 79. Court personnel will file electronically all signed orders. Any order or other court-issued document filed electronically without the original signature of a judge or clerk has the same force and effect as if the judge or clerk had signed a paper copy of the order and it had been entered on the docket in a conventional manner. Orders may also be issued as "text-only" entries on the docket (*i.e.*, without an attached .pdf document). Such orders are also official and binding.
 - (A) **Oral Orders.** If a judge enters an order during a hearing, copies of the order will be distributed electronically after the hearing, either as minutes, a text-only order, or as a separate .pdf document.
 - (B) **Notice to Unregistered Participants.** To provide a party who is not a registered participant of the System with proof of the filing of an electronically-filed order, the clerk's office will mail a paper copy to the non-participant. The paper copy will bear the header automatically printed by System or be accompanied by the associated Notice of Electronic Filing.
- (3) **Filing Errors.** Once a document is submitted and becomes part of the case docket, corrections to the electronic docket are made only by the clerk's office. The System will not permit the filing party to make changes to the documents or docket entry filed in error once the transaction has been accepted. As soon as possible after an error is discovered, the filing party should contact the clerk's office with the case number and document number for which the correction is being

requested. The clerk's office will notify the party if the document needs to be re-filed or if the party needs to file a motion to strike.

- (4) **Technical Failures.** A filing party whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.

(b) **Registration for ECF.**

- (1) **District Court Registration Form.** Before an attorney or pro se party may electronically file any pleadings, motions, or other papers with the district court, the attorney must complete and sign an attorney registration form. This form is available on the district court's Web site at www.ned.uscourts.gov/forms/index.html > "CM/ECF Registration Form," or in the clerk's office. Registration constitutes an attorney or pro se party's consent to electronic service and waiver of the right to service by personal service or first class mail. Once registration is completed, the court will provide the registered user with a login and password; the user's login and password will serve as part of the user's electronic signature on documents and pleadings filed on the System. See Nebraska Civil Rule 11.1 and Nebraska Criminal Rule 49.2

- (2) **Passwords for Attorneys.** Upon registration, each attorney admitted to practice in the District of Nebraska and in good standing shall be entitled to one System password from the District Court. To be in good standing, an attorney must meet the requirements in Nebraska General Rule 1.7(d), including timely payment of the assessment imposed in Nebraska General Rule 1.7(h).

(A) No attorney shall knowingly permit or cause to permit his or her password to be utilized by anyone other than an authorized agent. If an attorney comes to believe that the security of an existing password has been compromised and that a threat to the System exists, the attorney must change the password immediately.

(B) Once registered, the attorney will be responsible for all documents filed with his or her password.

(C) An attorney admitted pro hac vice must register for a password in accordance with these rules.

- (3) **Passwords for Pro Se Parties.** A pro se party to a pending civil action, *i.e.*, one who is not represented by an attorney, may register to use the system solely for purposes of the action. The pro se party will be assigned a password permitting the pro se party to electronically retrieve and file pleadings and other papers in the action.
- (A) By registering to use the System, the pro se party consents to electronic service of all documents as provided in these rules and in accordance with the Federal Rules of Civil Procedure.
- (B) If during the course of the action the pro se party retains an attorney who appears on the party's behalf, the pro se party will no longer receive Notices of Electronic Filing when documents are filed in the case. The System will send all Notices of Electronic Filing to the attorney.
- (4) **Withdrawal from System.** Once registered, an attorney or pro se party may withdraw from participating in the System by providing the clerk's office with a written notice of withdrawal. Upon receipt, the clerk's office will immediately cancel the password. An attorney may not circumvent the court's mandatory electronic filing rule simply by withdrawing from participation in the System; withdrawal will not be construed as authorization to file cases or documents conventionally.
- (c) **Privacy Policy.** The district court has adopted local rules to comply with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899 (codified at 5 U.S.C. §§ 3701-3707 and scattered sections). Among other provisions, parties and their counsel are responsible under such rules for preventing the disclosure of certain confidential information in case filings. The court clerks will not review case filings for compliance with such rules nor will they redact or seal noncomplying filings on their own motion.
- (d) **Appearance of Counsel.** An attorney makes an appearance in a case by (1) filing a written entry of appearance or signed pleading, or (2) personally appearing at a hearing or proceeding. An attorney who has orally entered an appearance shall promptly file and serve a written appearance. A written appearance or pleading signed by an attorney shall show the attorney's bar number, office address, telephone number, fax number, and e-mail address.
- (e) **Change of Address, Telephone, Fax, or E-Mail.** An attorney or pro se party whose address, telephone number, fax number, or e-mail address has

changed from that previously provided in any ongoing case must file and serve notice thereof within thirty (30) calendar days of the change.

- (f) **Withdrawal of Appearance.** An attorney who has appeared of record in a case may withdraw upon a showing of good cause, but will be relieved of applicable duties to the court, the client, and opposing counsel only after filing a motion to withdraw with the court, providing proof of service of the notice on the client, and obtaining the court's leave to withdraw.
- (g) **Proceedings by Persons Without Counsel (Pro Se).** Except as otherwise expressly provided, all litigants who are proceeding pro se shall be bound by and comply with all local rules and with the federal rules of procedure.
- (h) **Appointment of Counsel.** Any plaintiff or petitioner who is pro se and who has received leave to proceed in forma pauperis may file a motion requesting appointment of counsel. If a request for appointed counsel is filed at the time the original complaint or petition is filed, the motion shall be a separate document. Except when required by statute or rule of court, the decision whether to appoint counsel is committed to the discretion of the court. In a case in which counsel has been appointed, all further pleadings, motions, and other communications with the court shall be made exclusively through counsel, unless otherwise specifically permitted by the court. Any further pro se pleadings, motions or other communications submitted to the court may be (1) returned, unfiled, to the sending party or (2) forwarded to counsel for the sending party. If appointed counsel files a motion to withdraw, the court may, but need not, appoint substitute counsel. Nothing contained in this rule will be construed as a limitation on the authority of the court to appoint counsel on its own motion.

1.4 Assignment of Judges.

- (a) **District Court.**
 - (1) **Dockets.** As determined by the majority of the active district judges, the court maintains various dockets generally defined by geography or the nature of the case. Not all judges participate in each docket. Moreover, a judge who participates in a docket may not necessarily receive cases in the same proportion as other participating judges. The judges who are selected to participate in one or more of these dockets and the proportion of participation is determined by the chief judge after consultation with the other active district judges.

- (2) **Assignment Method.** Except as otherwise provided in these rules or as otherwise directed by the chief judge, the clerk will assign cases from each particular docket to the participating judges on a random basis. However, pursuant to the directions of the chief judge after consultation with the other active district judges, a magistrate judge may be paired with a district judge on a non-random basis when the magistrate judge is not serving as the trial judge. (For assignment of civil cases to magistrate judges for trial, see Nebraska Civil Rule 73.1.) In the event of a dispute or question regarding this rule, the creation or definition of dockets, the participation or proportion of participation by individual judges in particular dockets, or the assignment of cases more generally, the decision of the chief judge shall be final.
- (3) **Reassignments.**
- (A) **District Judges.** The chief judge, with the consent of the district judge to whom a case is assigned, may reassign the case to any other district judge because of personal disqualification of the district judge to whom the case was assigned or other good cause. If the district judge to whom a case is assigned is disabled and unable to consent to the reassignment of the case, the chief judge may reassign the case without the district judge's consent. If the chief judge is disqualified or disabled, the authority to reassign the case shall pass to the active status district judge then available and next senior in service. If all active status district judges are disqualified or disabled, the authority to reassign the case shall pass to the senior status district judge then available who is most senior in service. If all district judges are disqualified or incapacitated, and if a visiting judge has been designated for service in this district, the authority to reassign the case shall pass to the visiting judge.
- (B) **Magistrate Judges.** The district judge to whom a case is assigned may reassign the reference on the case from one magistrate judge to another magistrate judge because of the personal disqualification of the assigned magistrate judge or other good cause.
- (C) **Visiting Judges.** Reassignment of a case to a visiting district judge who has been designated for service in this district may be made by the district judge to whom the case is assigned or

by the chief judge with the consent of the district judge to whom the case is assigned. If the district judge to whom a case is assigned is disabled and unable to consent to the reassignment of the case, the chief judge may reassign the case without the district judge's consent.

(4) Related Cases.

(A) Notification. Attorneys of record are charged with the duty of notifying the court that a case is or may be related to any other case, either pending or closed, in this court. Failure to inform the court may result in sanctions on counsel and parties. Accordingly,

- (i) At the time of filing, pro se filers filing in paper shall note cases known to be related as "related" on the civil cover sheet. Since civil cover sheets are no longer required when filing electronically, filers must indicate that a case is related when opening the case. On the "open unassigned case" screen, filers should enter "USDC-NE" in the "other court" name field and the number of the related case in the "other court number" field.
- (ii) Subsequent to filing, any attorney of record who becomes aware that a case is or may be related to any other case, either pending or closed, in this court must immediately inform the clerk and the chief judge by filing electronically a notice of related cases.

(B) Assignments. If a case is noted as related on the civil cover sheet or on the case opening screen when filed, the clerk will assign it to the district judge who handled the earlier pending or closed case. If the court, the clerk, or counsel become aware subsequent to filing that two or more cases are or may be related, the chief judge shall be informed as soon as possible. If the chief judge finds that the cases are related, the case or cases shall be reassigned to the district judge with the lowest numbered case unless good cause exists for not ordering the reassignment.

(C) "Related" Cases Defined.

- (i) Criminal cases are related when some or all of the charges in them arise from the same general set of

events, whether or not any of the cases are closed. A superseding indictment or information is related to the indictment or information it supersedes.

- (ii) Bankruptcy appeals are related when they involve some or all of the same property or the same debtor or debtors, whether or not any of the appeals are closed.
- (iii) Civil cases are related when they involve some or all of the same issues of fact or arise out of the same transaction or involve the validity or infringement of the same patent, whether or not any of the cases are closed.
- (iv) Civil cases are not related to criminal cases.

(5) The Nebraska Docket.

(A) Applicable Cases. Except for cases challenging the death penalty under 28 U.S.C. § 2254 and cases where the designated place of trial is North Platte, civil cases shall be placed on one docket called the “Nebraska docket” if:

- (i) The State of Nebraska or any of its agencies are the named defendants in the original complaint;
- (ii) The named defendant in the original complaint is being sued for acts or omissions allegedly occurring while the defendant was allegedly an employee of the State of Nebraska or one of its agencies;
- (iii) The plaintiff is the United States of America;
- (iv) The plaintiff is pro se (not represented by counsel) when the case is filed;
- (v) The plaintiff is a prisoner in State custody when the case is filed;
- (vi) The case is a Social Security appeal; or
- (vii) The case is a bankruptcy appeal.

(B) Application Notes.

- (i) An “agency” of the State of Nebraska shall not include local political subdivisions such as cities or counties, natural resource districts, public power districts, or similar entities.
 - (ii) Motions filed under 28 U.S.C. § 2255 are not civil cases for purposes of this rule.
 - (iii) If the clerk is uncertain as to whether a case is properly placed in the Nebraska docket the clerk may seek the guidance of the chief judge, and the decision of the chief judge shall be final.
- (C) Assignment of Judges.** Pursuant to Nebraska General Rule 1.4(a)(2), cases placed in the Nebraska docket shall be randomly assigned to and equitably divided among the district judges regardless of their duty station and without regard to the place of trial designated by the plaintiff. The magistrate judge who is normally paired with the assigned district judge will also be assigned to the case. If the assigned district judge is not normally paired with a magistrate judge, then the clerk will randomly assign an Omaha magistrate judge to a case filed in Omaha and will assign a Lincoln magistrate judge to a case filed in Lincoln.
- (D) Place of Trial.** The district judge to whom a case from the Nebraska docket is assigned has discretion to try the case in Omaha or Lincoln, regardless of the place of trial designated by the plaintiff, taking into consideration the convenience of the parties, the lawyers, the witnesses, and any other pertinent matters.
- (E) Jury Selection.** All juries in Nebraska docket cases shall be selected from the pool of jurors used at the place where the case is actually tried.
- (6) Death Penalty Cases.** The chief judge will assign a case brought pursuant to 28 U.S.C. § 2254 which challenges the death penalty.
- (A) Location of Proceedings.** The district judge assigned to the case has discretion to decide the location of all proceedings, regardless of where the parties designate the place of trial.

- (B) **Stay of Execution.** If the district judge assigned to the case is absent or is unavailable to consider a motion for a stay of execution, any district judge may consider and rule on such a motion.
- (7) **Challenges.** All motions challenging the operation or seeking avoidance or restraint of this rule shall be made to the chief judge or, if the chief judge is disqualified or disabled, to the district judge then available and next senior in service.
- (8) **Sanctions.** No person shall (a) reveal to any other person the sequence of district judges' or magistrate judges' names within a calendar category or any rotation randomly determined; (b) assign any case otherwise than as provided in this provision or as ordered by the court; or (c) directly or indirectly cause or procure or attempt to cause or procure any person (i) to reveal the sequence of district judges' or magistrate judges' names within a calendar category or rotation randomly determined, or (ii) to assign any cases otherwise than as provided in this rule or as ordered by the court. Any person violating this provision shall be punished as for criminal contempt of court.
- (b) **Bankruptcy Court.**
- (1) **Assignment Method.** The bankruptcy judges will, from time to time, adopt a general policy concerning the assignment of cases for implementation by the clerk. The general policy will be varied on a case-by-case basis at the judges' discretion based on a number of factors which include the relative workload of judges, conflict of interests, and recusals. Upon the filing of a petition, the clerk of the bankruptcy court shall assign the case to a particular judge.
- (2) **Subsequent Filings.** After the bankruptcy court's assignment of cases, all subsequent pleadings or motions shall be filed in the office of the clerk in the location of the assigned judge.
- (3) **Place of Hearings.** The clerk and the assigned judge shall determine the location of hearings in a particular bankruptcy case.
- (4) **Reassignments.** If the bankruptcy judge to whom a case is assigned is disabled and unable to consent to the reassignment of the case, the chief bankruptcy judge may reassign the case without the bankruptcy's judge's consent. If the chief bankruptcy judge is

disqualified or disabled, the authority to reassign a case passes to the bankruptcy judge who is next senior in service. If all bankruptcy judges are disqualified or disabled, the authority to reassign a case passes to the chief district judge.

1.5 Bankruptcy Cases.

- (a) **Reference to Bankruptcy Court.** All cases under Title 11 of the United States Code, and all proceedings arising under such Title 11, or arising in or related to a case under Title 11, are referred to the bankruptcy court of this district pursuant to 28 U.S.C. § 157.
- (1) **Civil Cases.** Upon the filing of a suggestion in bankruptcy, or other notification that a party to a civil case is a debtor in a bankruptcy case, the entire case will be referred to the bankruptcy court of this district for further action. Under this rule, the matter shall be referred to the bankruptcy court for this district even though the suggestion of bankruptcy indicates that the bankruptcy proceeding was initiated in another district. The bankruptcy judge shall request status reports from the parties. After reviewing the status reports, the bankruptcy judge will determine whether the case should proceed in bankruptcy court or be returned to district court. If the case is to be returned to the district court, the bankruptcy judge shall file a report and recommendation concerning withdrawal of the reference. The report shall include a recommendation regarding the necessity of the debtor's participation in the case, and, if appropriate, the bankruptcy judge shall enter an order in the bankruptcy case granting relief from the automatic stay to permit the case to proceed with the debtor as a party.
- (2) **Criminal Cases.** Upon notice to the court that a defendant in a criminal case is a debtor in a bankruptcy case, the district court may refer to the bankruptcy court questions about restitution, forfeiture of assets which may be property of the bankruptcy estate, or other pecuniary penalties. The bankruptcy judge shall respond to such referral with a recommendation related to the estate issues.
- (b) **Withdrawal of Reference.** The district court, acting on its own motion or on timely motion of a party, may withdraw in whole or in part a reference under this rule.
- (1) **Motions for Withdrawal.** Motions for withdrawal of reference shall be filed with the clerk of the bankruptcy court. The district court

hereby refers motions for withdrawal of reference to the bankruptcy court for a report and recommendation as to disposition, except as provided in subpart (7) of this rule.

- (2) **Report and Recommendation; Objections.** When a motion for withdrawal of reference is filed with the clerk of the bankruptcy court, a bankruptcy judge after notice and hearing shall file a report and recommendation with the clerk of the bankruptcy court and the clerk of the district court. The district court may adopt the report and recommendation if the parties file no objections within fifteen (15) calendar days of service. Parties shall file objections to the report and recommendation, if any, with both the bankruptcy court and the district court.
- (3) **Assignment of District Judge.** When the bankruptcy judge files the report and recommendation with the district court, the motion for withdrawal of reference and the report and recommendation of the bankruptcy court shall be assigned to a district judge in accordance with Nebraska General Rule 1.4(a)(2) and any applicable general order regarding assignment of district judges. The assigned district judge shall decide if the motion to withdraw should be granted. A motion for withdrawal of reference shall not stay any bankruptcy matter pending before a bankruptcy judge, unless a district judge or a bankruptcy judge issues a specific stay.
- (4) **Hearing on Objections.** If the assigned district judge determines that a hearing on objections to the report and recommendation should be held, the order setting the hearing shall be filed in both the district court and the bankruptcy court.
- (5) **Order of Withdrawal.** If the district court withdraws the reference, the order shall be filed in both the district court and the bankruptcy court. The clerk of the district court shall provide notice to interested parties. When the clerk of the bankruptcy court receives such an order, the clerk of the bankruptcy court shall deliver to the clerk of the district court those portions of the bankruptcy or adversary file necessary for the district court proceeding.
- (6) **Denial of Motion.** If the district court denies a motion for withdrawal of reference, the order shall be filed in both the district court and the bankruptcy court.

- (7) **Bankruptcy Judges Disqualified or Incapacitated.** If all bankruptcy judges are disqualified or incapacitated, the clerk of the bankruptcy court shall refer motions for withdrawal of reference to the clerk of the district court. The motion for withdrawal of reference shall then be assigned to a district judge in accordance with Nebraska General Rule 1.4(a)(2) and any applicable general order regarding assignment of district judges. The assigned district judge shall, after conducting such proceedings as he or she deems necessary, determine whether the motion to withdraw should be granted.
- (c) **Appeals from Bankruptcy Court Decisions.** Appeals from decisions of the bankruptcy court shall be in accordance with 28 U.S.C. § 158 and applicable federal and local bankruptcy rules. Federal Rule of Bankruptcy Procedure 8009, respecting the filing of briefs, shall not apply where an election has been made to have the appeal heard by the district court; in such appeals, briefs shall be filed in accordance with orders of the district court.
- (d) **Jury Trials.** If the right to a jury trial applies in a proceeding that a bankruptcy judge may hear, the district judges hereby specifically designate the bankruptcy judges to exercise the jurisdiction to conduct jury trials in bankruptcy cases and adversary proceedings with the express consent of all of the parties to the particular contested matter or adversary proceeding.

1.6 Public Security and Conduct in Courthouse and Courtroom.

- (a) **General Conduct.** No person shall loiter, sleep, or act in an abusive or disorderly manner.
- (b) **Entering and Leaving Building, Courtroom or Corridor.** Persons shall enter or leave the building or courtroom or corridor of the building only through doorways designated by court security officers, and may be required to show a valid photo ID (e.g., a current drivers' license) to court security officers as a condition to entry into the courthouse.
- (c) **Weapons and Destructive Devices.** No person, except federal, state, county, and city law enforcement officers and federal probation and pretrial services officers who are duly authorized to carry weapons in the performance of their duties, shall possess or cause to be brought into a courthouse any weapon, destructive device, or component thereof. The marshal may prohibit or otherwise regulate the possession of firearms by other law enforcement officers and federal probation and pretrial services officers within the confines of a courthouse. Except for law enforcement officers and federal probation and pretrial services officers who have

received specific, prior authorization from the marshal to possess or carry a weapon in the courthouse, all persons, including attorneys, shall be subject to a search of their persons and possessions for any weapons, destructive device, or component thereof, and to a determination by a security officer that such persons have in their immediate possession no weapon, destructive device or component thereof, as a condition to such persons' entry into the courthouse and courtroom.

- (d) **Food and Tobacco.** No person shall eat any food or use any tobacco in a courtroom at any time.
- (e) **Cellular Telephones.**
 - (1) **No Audible Signals in Courtroom.** Cell phones must be turned off or rendered silent before entering a courtroom.
 - (2) **Use Prohibited.** No person may use a cell phone in a courtroom during a judicial proceeding without the express permission of the presiding judge.
- (f) **Cameras and Other Image/Video Devices.**
 - (1) **Use Prohibited.** No person shall photograph, videorecord, or televise, or cause to be photographed, videorecorded, or televised, any person or thing in a courtroom, jury room, corridor of the building on the floor on which a courtroom or jury room is located, or judge's chambers. The term "televise" includes broadcasting via the Internet.
 - (2) **Placement Prohibited.** No person shall place or cause to be placed any photographic, video, television, or other electronic equipment at any location from which it is capable of photographing, video recording, or televising any person or thing in a courtroom, jury room, corridor of the building on the floor on which a courtroom or jury room is located, or judge's chambers. Court security officers may prohibit any such equipment from being brought into the courthouse.
 - (3) **Camera Cell Phones.** Only federal employees who present agency identification, attorneys who present their bar cards, and jurors who present their summonses will be permitted to bring camera cell phones into the courthouses. Other visitors must leave their camera cell phones in their vehicles or with the court security officers at the security screening stations.

Those cell phones permitted into the courthouses may not be used to photograph, record, televise, or otherwise transmit images or sounds of any person or thing in a courtroom, jury room, corridor of the building on the floor on which a courtroom or jury room is located, or judge's chambers.

(g) Sound Recording and Broadcasting Devices.

(1) Use Prohibited. No person shall record or broadcast or cause to be recorded or broadcast any sounds of proceedings or take any recording or broadcasting equipment into a courtroom, a jury room, or a judge's chambers. The term "broadcast" includes broadcasting via the Internet.

(2) Placement Prohibited. No person shall place or cause to be placed any sound recording or broadcasting device at any location from which the device could record or broadcast sounds of proceedings in any courtroom, jury room, or judge's chambers. Court security officers may prohibit any such equipment from being brought into the courthouse.

(3) Exemptions. This subparagraph (g) shall not apply where:

(i) The presiding judge authorizes electronic means to present evidence or perpetuate a record;

(ii) The presiding judge authorizes courtroom audio to be transmitted to the judge's chambers; or

(iii) The presiding judge of a ceremonial proceeding expressly approves the use of specifically identified devices for the sound recording or broadcasting of the proceeding.

(h) Seating of Spectators and News Media. On days of judicial proceedings, a security officer may reserve for members of the news media and spectators designated areas in the courtrooms for seating, and all persons shall abide by such designation. Spectator seats not designated for the press shall be available to spectators on a first-come, first-served basis. When all regular spectator seats except those reserved for the news media are filled, only the persons seated shall be permitted to remain as spectators. There shall be no reserved seats for spectators or members of the press leaving the courtroom after having once been admitted. Only court personnel, attorneys of record, and other persons specifically authorized by

the court shall be in the well of the courtroom. A pass system may be instituted by which some spectator seats in the courtrooms may be equitably allocated to persons receiving passes from the court and the parties. If a pass system is instituted, those spectator seats not covered by passes from the court or the parties shall be available to spectators on a first-come, first-served basis.

- (i) **Enforcement.** The marshal and other United States security personnel authorized by law or deputized are to enforce subparagraphs (a) through (h) of this rule and to take violators into custody and promptly bring a violator before a judge. In addition, the marshal and other United States security personnel are specifically authorized to seize equipment from violators.
- (j) **Exemption From or Interpretation of This Rule.** A person seeking an exemption from or interpretation of subparagraphs (a) through (h) of this rule should present a request to the officer in charge of security, who may present it to a judge.
- (k) **Counsel's Courtroom Decorum.**
 - (1) **Addressing the Court.** Counsel shall stand when addressing or addressed by the court. When making an objection, counsel need not stand unless the court directs otherwise. In courtrooms in which digital recording is used to make the record, counsel shall not stand when addressing or when addressed by the court, but shall remain seated so that the microphones located on the counsel tables will be able to record their voices.
 - (2) **Examination of Witnesses.** Except when necessary to approach the witness or an exhibit, counsel must conduct the examination of witnesses from the counsel table or from the lectern. When examining witnesses from a lectern, counsel shall stand in close proximity to the lectern and with the lectern between counsel and the witness. When examining witnesses from the counsel table, counsel shall remain seated in the chairs provided at the counsel table or may stand immediately adjacent to the counsel table.
 - (3) **Movement in the Courtroom.** Except to make an opening statement or closing argument, counsel shall not approach opposing counsel, the bench, a witness, the court reporter, the courtroom deputy, or the law clerk, or otherwise move from the counsel table or lectern without the court's permission. If counsel will need to make many such

movements during a trial, the court may grant, upon request, continuing leave to make specified approaches.

- (4) **Colloquy Between Counsel.** Counsel shall not participate in colloquy with opposing counsel, whether audible or inaudible to others, or whether in the form of a conference or otherwise, without the court's permission.
- (5) **Leaving the Courtroom.** Counsel, including co-counsel, must obtain the court's permission to leave the courtroom. Co-counsel may receive continuing permission to leave the courtroom at any time, although no counsel should leave during the testimony of a witness whom such counsel has examined.
- (6) **Referring to and Addressing Witnesses and Parties.** Witnesses and parties shall be referred to and addressed by their surnames, unless the court grants leave to do otherwise.

1.7 Practice of Law

- (a) **Bar of the Court.** The bar of this court shall consist of those persons admitted to practice before the court. See subparagraph (d) of this rule.
- (b) **Ethical Standards.** The standards of conduct governing the members of the bar of this court are these:
 - (1) **Rules.** Counsel shall comply with the rules of this court; and
 - (2) **Conduct.** Counsel shall refrain from conduct unbecoming of a member of the bar.
 - (A) The court declines specifically to adopt particular codes of professional responsibility or particular codes of ethics promulgated by others.
 - (B) However, and in addition to any other material, the court may consult codes of professional responsibility or codes of ethics promulgated by others when determining whether a lawyer has engaged in conduct unbecoming of a member of the bar.
- (c) **Free Press-Fair Trial Provisions.**
 - (1) **Statements Which Shall Not be Made.** A lawyer shall not make an extrajudicial statement that the lawyer knows or reasonably should

know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. An extrajudicial statement, other than one permitted by subparagraph (c)(2) of this rule, ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury, or a criminal matter or proceeding that could result in incarceration, and the statement relates to:

- (A) The character, credibility, reputation, or criminal record of a party, suspect in a criminal investigation, or witness, or the identity of a witness, or the expected testimony of a party or witness;
- (B) In a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense, or the existence or contents of any confession, admission, or statement given by a defendant or suspect, or that person's refusal or failure to make a statement;
- (C) The performance or results of any examination or test, or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;
- (D) Any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration; or
- (E) Information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudicing an impartial trial.

(2) Statements Which May Be Made. A lawyer involved in the investigation or litigation of a matter may state without elaboration:

- (A) The general nature of the claim or defense;
- (B) Information contained in a public record;
- (C) That investigation of the matter is in progress, including the general scope of the investigation, the offense or claim or defense involved, and, except when prohibited by law, the identity of the persons involved;

- (D) The scheduling or result of any step in litigation;
 - (E) A request for assistance in obtaining evidence and information necessary thereto;
 - (F) A warning of danger concerning the behavior of a person involved, when there is reason to believe that such danger exists; and
 - (G) In a criminal case:
 - (i) The identity, residence, occupation, and family status of the defendant or suspect;
 - (ii) If the defendant or suspect has not been apprehended, information necessary to aid in apprehension of that person;
 - (iii) The fact, time, and place of arrest, resistance, pursuit, and use of weapons; and
 - (iv) The identity of investigating and arresting officers or agencies, and the length of that investigation.
- (d) **Admission to Practice.** Upon oral or written application, a judge or the clerk may admit to practice in this court an attorney admitted and licensed to practice before the highest court of any state. The applicant must make a satisfactory showing of good moral character, take the prescribed oath, and pay the prescribed fee. The showing of good moral character may be made by oral or written declaration of a member of the bar of this court or by a certificate of the clerk of the highest court of any state in which the applicant is admitted to practice. The clerk shall then issue a certificate of admission and add the applicant's name to the roll of attorneys.
- (e) **Oath of Admission.** The following oath or affirmation shall be administered to an applicant for admission to the bar of this court:
- "You do solemnly swear (or affirm) that as an officer of the United States District Court for the District of Nebraska you will demean yourself faithfully, uprightly, and according to law; and that you will support, uphold, and defend the Constitution of the United States of America."

- (f) **Admission for a Particular Case.** An attorney who has been admitted and licensed to practice before the highest court of any state may apply orally or in writing to a judge of this court or to the clerk to practice in this court for a particular case. The attorney must submit a certificate from the clerk of the highest court of any state in which the attorney is admitted to practice, take the prescribed oath, and pay the prescribed fee.
- (g) **Appointment of Counsel.** A judge of this court may appoint any member of the bar of this court to represent indigent litigants. This is an ethical obligation of attorneys. Once such an appointment has been made, counsel will be expected to conduct the litigation in a professionally zealous manner. Such an appointment does not, however, require counsel to advance to the litigant the expenses of the litigation; these expenses remain the responsibility of the litigant, and counsel may contract with the litigant for their payment. Appointed counsel may seek authorization to incur expenses in accordance with the Criminal Justice Act, 18 U.S.C. § 3006A, or in accordance with the Amended Plans for Administration of the Federal Practice Fund and the Federal Practice Committee. Appointed counsel shall not, however, contract with the litigant for the payment of attorney fees for professional services without the explicit prior approval of the court. Fees shall be available to appointed counsel only as prescribed by the court or, alternatively, by the statutory framework of the litigant's claim or defense. See, e.g., 18 U.S.C. § 3006A; 42 U.S.C. § 1988.
- (h) **Biennial Assessment.** In civil cases the only source of funds available to reimburse appointed counsel for reasonable expenses incurred in representing an indigent litigant is the Federal Practice Fund. To insure that the fund is sufficient to cover these expenses, the court will order each attorney enrolled in the bar of this court, except attorneys employed by the federal government or by a state, county, city or local government, to pay an assessment. This assessment will be paid on or before March 1 every other year. The proceeds of this assessment will be used to defray the cost of maintaining a roll of attorneys admitted to practice before this court and to fund the Federal Practice Fund. Failure to pay this assessment shall be grounds for removing an attorney from the roll of this court.
- (i) **Nonresident Attorneys.** A judge may require an attorney who is not a resident of this district to associate with an attorney who is both a resident of this district and a member of the bar of this court. This resident attorney's name shall be identified on all pleadings and motions filed thereafter and that attorney shall continue in the case unless other resident counsel makes an appearance. The resident attorney need not be present in court during all proceedings connected with the case unless the court otherwise orders. The

resident attorney shall have full authority to act for and on behalf of the client in all matters, including appearing at pretrial conferences, trial, or any other hearings.

(j) Clinical Legal Education.

(1) Limited Admission.

(A) By Motion. An eligible law student acting under a supervising attorney shall be admitted to the limited practice of law in this court on motion of the supervising attorney made pursuant to this rule.

(B) Representation.

(i) An eligible law student may represent the United States in both civil and criminal matters before this court.

(ii) If a supervising attorney and the client give written consent, an eligible law student may represent the client in any civil or criminal matter in this court.

(C) Permitted Activities. The eligible law student may, under the conditions stated below, interview, advise, hold consultations, and prepare and sign documents for filing with this court. The eligible law student may participate orally in the presentation of contested and uncontested matters, including the trial of cases.

(D) Application of Rules. The eligible law student shall be bound by all of the rules of this court which would be applicable to the supervising attorney in the case in which the law student is participating.

(2) Eligibility. To be eligible to appear and participate a law student must:

(A) Be a student duly enrolled and in good standing in a law school approved by the American Bar Association. A law student will be considered duly enrolled during the period of the student's law school's next summer vacation period following completion of the requirements of subparagraph (j)(2)(B) of this rule;

- (B) Have completed legal studies amounting to four (4) semesters or the equivalent if the law school is on some basis other than a semester basis;
- (C) File with the clerk:
 - (i) A certificate by the dean of the law school that the student is of good moral character, meets the requirements in subparagraphs (j)(2)(A) and (B) of this rule, and is qualified to serve as a legal intern. The certificate shall be in a form prescribed by the court and shall remain in effect until the expiration of twelve (12) months after it is filed or until the student's graduation from law school, whichever is earlier;
 - (ii) A certificate in a form prescribed by the court that the student has read and agrees to abide by the rules of the court, all applicable codes of professional responsibility, and other relevant federal practice rules; and
 - (iii) A notice of appearance in each case in which the student is participating or appearing as a law student intern. The notice shall be in the form prescribed by the court and shall be signed by the supervising attorney, the student intern, and the client or an authorized representative of the client;
- (D) Be introduced to the court in which the student is appearing by an attorney admitted to practice in this court; and
- (E) Receive the affirmative consent of the court for the student to appear before it.

(3) Restrictions. No law student admitted under these rules shall:

- (A) Request or receive any compensation or remuneration of any kind directly from the client, but this restriction does not prevent the supervising attorney or the attorney's law firm, a law school, a public defender, or any agency of the government from paying compensation to the law student, nor prevent any firm or agency from making such charges for its services as it may otherwise properly require;

- (B) Appear in court without the physical presence of the supervising attorney; or
 - (C) File any documents or papers with the court that the student has prepared which have not been read, approved, and signed by the supervising attorney and co-signed by the student.
- (4) **Notice.** A supervising attorney who intends to use a student attorney pursuant to this rule in a contested matter shall notify the court and opposing counsel before the matter is scheduled to commence. Should the court conclude that the student attorney's participation would be inappropriate, the court will so advise the supervising attorney and the student attorney may not appear.
- (5) **Termination.** A student attorney's certification terminates if the student attorney (A) does not take the first bar examination following graduation, (B) takes the examination and fails it, or (C) is admitted to full practice before this court. The dean of the student attorney's law school or the supervising attorney may withdraw the certification at any time by submitting a notice to that effect to the clerk. The notice need not state the cause for the withdrawal. A judge of this court also may terminate a student attorney's admission to limited practice at any time without notice or hearing or showing of cause.
- (6) **Supervising Attorney.** Any person acting as a supervising attorney under this rule must be admitted to practice in this court and shall also:
- (A) Assume personal professional responsibility for the conduct of the student being supervised;
 - (B) Co-sign all pleadings, papers and documents prepared by the student;
 - (C) Advise the court of the student's participation in accordance with subparagraph (j)(4) of this rule, be physically present with the student at all times in court, and be prepared to supplement oral or written work of the student as requested by the court or as necessary to ensure proper representation of the client; and
 - (D) Be available for consultation with the client.

1.8 Attorney Discipline.

(a) **Attorneys Convicted of Crimes.**

- (1) **Suspension.** When a certified copy of a judgment of conviction is filed with the court showing that an attorney admitted to practice in this court has been convicted of a serious crime, as defined in subparagraph (a)(2) of this rule, in any court of the United States or the District of Columbia, or of any state, territory, commonwealth or possession of the United States, this court shall enter an order immediately suspending that attorney. The court shall enter the suspension order whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial, or otherwise, and regardless of the pendency of an appeal. The court shall immediately serve the attorney with a copy of the suspension order. The court may set aside the suspension order upon good cause shown when it appears in the interest of justice to do so. The suspension shall remain in effect until the final disposition of the disciplinary proceeding required by subparagraph (a)(4) of this rule.
- (2) **“Serious Crime” Defined.** The phrase "serious crime" includes any felony. It also includes any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a serious crime.
- (3) **Conclusive Evidence.** A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based upon the conviction.
- (4) **Mandatory Disciplinary Proceeding.** In addition to suspending an attorney as provided in subparagraph (a)(1) of this rule the court shall also refer the matter to counsel for institution of a disciplinary proceeding before the court. The sole issue to be determined in this proceeding shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction. The court will not hold a final hearing in the disciplinary proceeding until the attorney has exhausted all appeals from the conviction.
- (5) **Discretionary Disciplinary Proceeding.** When a certified copy of a judgment of conviction is filed with the court showing that an

attorney admitted to practice in this court has been convicted of a crime not constituting a serious crime as defined in subparagraph (a)(2) of this rule, the court may refer the matter to counsel for whatever action counsel may deem warranted, including the institution of a disciplinary proceeding before the court. The court may of its own discretion, however, make no reference with respect to convictions for minor offenses.

- (6) **Reinstatement.** An attorney suspended under the provisions of this rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed. An attorney's reinstatement will not terminate any disciplinary proceeding then pending against the attorney, however; the court will decide the disciplinary issues based on all available evidence pertaining to both guilt and the extent of discipline to be imposed.

(b) **Discipline Imposed by Other Courts.**

- (1) **Attorney's Duty to Notify This Court.** Any attorney admitted to practice before this court shall promptly inform the clerk if any other court of the United States or the District of Columbia or a court of any state, territory, commonwealth or possession of the United States publicly disciplines the attorney.
- (2) **Notice to Attorney.** If a certified or exemplified copy of a judgment or order is filed demonstrating that an attorney admitted to practice before this court has been disciplined by another court, this court shall issue a notice directed to the attorney, containing:
- (A) A copy of the judgment or order from the other court; and
- (B) An order directing the attorney to show cause within thirty (30) calendar days after service of the order why, on the grounds listed in subparagraph (b)(4) of this rule, the court should not impose the identical discipline.
- (3) **Discipline Stayed.** If the other jurisdiction has stayed the discipline it imposed, this court will defer any reciprocal discipline until the stay expires.
- (4) **Discipline Imposed.** Thirty (30) calendar days after service of the notice issued pursuant to subparagraph (b)(2)(B) of this rule, this

court shall impose the identical discipline imposed by another jurisdiction unless the respondent/attorney demonstrates or this court finds that upon the face of the record upon which the discipline in another jurisdiction is predicated, it clearly appears that:

- (A) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
- (B) There was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this court could not, consistent with its duty, accept as final the conclusion on that subject;
- (C) The imposition of the same discipline by this court would result in grave injustice; or
- (D) The misconduct established warrants substantially different discipline.

Where this court determines that any of these elements exists, it shall enter an order as it deems appropriate.

- (5) **Conclusive Evidence.** In all other respects, a final adjudication in another court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this court.
 - (6) **Appointment of Prosecuting Counsel.** This court may at any stage appoint counsel to prosecute the disciplinary proceedings.
- (c) **Disbarment on Consent or Resignation in Other Courts.**
- (1) **Disbarment by This Court.** When a certified copy of a judgment or order accepting an attorney's disbarment on consent or resignation is filed with the court showing that an attorney admitted to practice in this court shall be disbarred on consent or resign from the bar of any other court of the United States or the District of Columbia or from the bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending, the attorney shall no longer be permitted to practice before this court and shall be stricken from the roll of attorneys admitted to practice before this court.

- (2) **Attorney's Duty to Notify This Court.** Any attorney admitted to practice before this court shall promptly inform the clerk of a disbarment on consent or resignation from the bar of any other court of the United States or the District of Columbia or from the bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending.
- (d) **Violation of Code of Professional Responsibility.**
- (1) **Jurisdiction of the Court.** This court has disciplinary jurisdiction to investigate and, if appropriate, impose discipline against any attorney admitted to practice before this court, and any attorney specially admitted to this court for the purposes of a particular case, with respect to alleged misconduct of that attorney arising in the course of or in the preparation of a case pending in this court.
- (2) **Disciplinary Action.** Misconduct, as defined in these rules, may result in disciplinary action against an attorney if, after providing the attorney with notice and opportunity to be heard, good cause is shown to support a finding of misconduct. Any attorney subject to the court's disciplinary jurisdiction may be disbarred, suspended from practice before this court, reprimanded, or subjected to such other disciplinary action as the circumstances may warrant.
- (3) **"Misconduct" Defined.** Acts or omissions by an attorney, acting individually or in concert with any other person or persons, that violate the ethical standards set out in NEGenR 1.7(b) constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney/client relationship
- (4) **Disciplinary Procedure.** The following procedure will be followed in investigating alleged misconduct occurring within this court's disciplinary jurisdiction. This procedure shall not be construed to limit or govern this court's exercise of additional powers necessary to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States Code or under Federal Rule of Criminal Procedure 42.
- (A) **Imposition of Sanction; Referral.** When a judge of this court learns by complaint or otherwise of an attorney's alleged misconduct which, if substantiated, would warrant discipline, and the applicable procedure is not otherwise mandated, the judge may impose an appropriate sanction and/or refer the

matter to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate.

- (B) Appointment of Investigating Counsel.** Provided the complaint alleges misconduct which, if substantiated, may warrant discipline, the court shall appoint counsel pursuant to subparagraph (d)(8) of this rule to investigate the allegations of misconduct and to prosecute disciplinary proceedings.
- (C) Investigating Counsel's Recommendation.** After investigation and review, the investigating counsel will file with the court a recommendation indicating whether the matter should be dismissed because insufficient evidence exists to initiate a formal disciplinary proceeding against the respondent/attorney, or deferred because another proceeding is pending against the respondent/attorney, the disposition of which should be awaited before this court considers further action. The investigating counsel may also recommend other courses of action if based on valid reasons.
- (D) Order to Show Cause.** To initiate formal disciplinary proceedings, and upon a showing of probable cause, the investigating counsel will obtain an order from this court requiring the respondent/attorney to show cause why the attorney should not be disciplined. The order shall advise the respondent/attorney to respond within thirty (30) calendar days of being served. The order shall be served as set forth in subparagraph (d)(7) of this rule.
- (E) Hearing.** When the respondent/attorney answers the order to show cause, this court shall set the matter for prompt hearing before one or more judges if the answer raises any issue of fact or if the respondent/attorney wishes to be heard in mitigation; provided, however, that if the disciplinary proceeding is predicated upon the complaint of a judge, magistrate judge, or bankruptcy judge of this court, the hearing shall be conducted as follows:

 - (i) If two or more Article III judges of this court, other than the complainant, are available, the hearing shall be before a panel of two or more Article III judges of this court, other than the complainant, appointed by the chief judge of this court or, if the chief judge of this court

is the complainant, appointed by the active Article III judge of this court then available and next senior in service; or

- (ii) If the conditions of (i) are not applicable, the hearing shall be before a panel of two or more Article III judges appointed by the chief judge of this circuit.

(5) Disbarment on Attorney's Consent.

(A) Attorney's Affidavit; Contents. An attorney admitted or specially admitted to practice before this court who is the subject of an investigation or pending proceeding in any jurisdiction, including this court, involving allegations of misconduct may consent to disbarment by this court, but only by delivering to this court an affidavit stating that the attorney desires to consent to disbarment and that:

- (i) The attorney's consent is freely and voluntarily rendered, the attorney is not being subjected to coercion or duress, and the attorney is fully aware of the implications of so consenting;
- (ii) The attorney is aware of a presently pending investigation or proceeding involving allegations that grounds exist for the attorney's discipline, the nature of which the attorney shall specifically set forth;
- (iii) The attorney acknowledges that the material facts so alleged are true; and
- (iv) The attorney consents because the attorney knows that if charges were predicated upon the matters under investigation or if the proceeding were prosecuted, the attorney could not successfully defend himself or herself.

(B) Entry of Court Order. Upon receiving the attorney's affidavit, this court shall order the attorney disbarred.

(C) Public Disclosure of Affidavit and Order. The order disbarring the attorney on consent shall be a matter of public record; however, the affidavit required under the provisions of

this rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this court.

(6) Reinstatement.

- (A) After Disbarment or Suspension.** An attorney suspended for three (3) months or less shall be automatically reinstated at the end of the period of suspension upon filing with the court an affidavit of compliance with the provisions of the order. An attorney suspended for more than three (3) months or disbarred may not resume practice until this court orders the attorney reinstated.
- (B) Time of Application Following Disbarment.** A person who has been disbarred after hearing or by consent may not apply for reinstatement until at least five (5) years from the effective date of the disbarment has expired.
- (C) Petition for Reinstatement.** A disbarred or suspended attorney shall file a petition for reinstatement with the chief judge of this court. After receiving the petition, the chief judge shall have the option to either:
- (i) Waive further proceedings under this rule and order the disbarred or suspended attorney reinstated; or
 - (ii) Appoint investigating counsel pursuant to subparagraph (d)(8) of this rule, and assign the matter for prompt hearing before one or more judges of this court.
 - (a) If the disciplinary proceeding was predicated upon the complaint of a judge of this court, the hearing shall be conducted before a panel of three other judges of this court appointed by the chief judge or, if there are fewer than three judges eligible to serve or the chief judge was the complainant, by the chief judge of the court of appeals for this circuit.
 - (b) The judge or judges assigned to the matter shall within thirty (30) calendar days after referral schedule a hearing at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that the petitioner has the

moral qualifications, competency, and learning in the law required for admission to practice law before this court and that the petitioner's resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice or subversive of the public interest.

- (D) **Duty of Investigating Counsel.** In all proceedings upon a petition for reinstatement, the investigating counsel shall cross-examine the respondent/attorney's witnesses and submit evidence, if any, opposing the petition.
- (E) **Deposit for Costs of Proceeding.** A respondent/attorney seeking reinstatement shall include with the petition an advance cost deposit in an amount to be set from time to time by the court to cover anticipated costs of the reinstatement proceeding.
- (F) **Conditions of Reinstatement.** If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate the petitioner, provided that the judgment may condition reinstatement upon the petitioner:
- (i) Paying all or part of the costs of the proceedings;
 - (ii) Making partial or complete restitution to parties harmed by the petitioner's conduct that led to the suspension or disbarment; and
 - (iii) Furnishing proof of competency and learning in the law, in the discretion of the judge or judges before whom the matter is heard, if the petitioner has been suspended or disbarred for five (5) years or more. Proof may include certification by bar examiners from another state or jurisdiction that the attorney successfully completed an examination for admission to practice subsequent to the date of suspension or disbarment.
- (G) **Successive Petitions.** No petition for reinstatement under this rule shall be filed within one (1) year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

- (7) **Service of Papers and Other Notices.** Service of an order to show cause instituting a formal disciplinary proceeding, or any other papers required by this rule, shall be made by personal service or by registered or certified mail addressed to the respondent/attorney at the most recent address shown in the records of the Nebraska State Bar Association, as to members of that Association, or the records of this court, as to others.
- (8) **Appointment of Investigating Counsel.** Whenever counsel is to be appointed pursuant to these rules to investigate allegations of misconduct, to prosecute disciplinary proceedings, or in conjunction with a reinstatement petition filed by a disciplined attorney, this court shall appoint as counsel one or more members of the bar of this court to investigate allegations of misconduct or to prosecute disciplinary proceedings under these rules; provided, however, that the respondent/attorney may move to disqualify an attorney so appointed who is or has been engaged as an adversary of the respondent/attorney in any matter. Counsel, once appointed, may not resign without the court's leave. Payment of fees and expenses of counsel shall be reimbursed from the Federal Practice Fund.
- (e) **Violation of Policy on Uncivil and Unprofessional Conduct.**
- (1) **Generally.** Any attorney admitted to practice before this court, or any attorney who has applied for and been specially admitted to this court for the purposes of a particular case, shall adhere to this court's Policy on Uncivil and Unprofessional Conduct, as set forth in subparagraph (e)(2) of this rule.
- (2) **Policy.** The court's Policy on Uncivil and Unprofessional Conduct states as follows:
- The litigation process, although adversarial in nature, should be nondiscriminatory and professional. All participants should be accorded fair, equal, and respectful treatment. To this end, the conduct of judges and lawyers should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms.
- Nondiscriminatory and professional conduct includes, as those terms are used in this policy, reasonable attempts by all participants to recognize and

accommodate persons for family emergencies and responsibilities, as well as making reasonable accommodation for professional conflicts.

Conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently, and such conduct tends to delay and often to deny justice.

- (3) **Procedure.** Unless the alleged uncivil or unprofessional conduct occurred in the court's presence, and a participant in the litigation raised a complaint or the court noted the conduct at that time, an alleged violation of the Policy on Uncivil and Unprofessional Conduct shall be reported to the court and handled as follows.
- (A) **Grievance or Complaint.** A grievance or complaint alleging a violation of the Policy on Uncivil and Unprofessional Conduct shall be submitted in letter form to the clerk and shall include the following:
- (i) Name, address, and telephone number of the person making the grievance or complaint;
 - (ii) Name, address, and telephone number of the person or persons against whom the grievance or complaint is made; and
 - (iii) A brief description of the events constituting the basis for the grievance or complaint, including the date of the proceeding or event at which the uncivil or unprofessional conduct allegedly occurred.
- (B) **Response.** The clerk shall, upon receipt of the written grievance or complaint, forward a copy to the person or persons against whom the grievance is made, granting such person or persons fourteen (14) calendar days to file a response.
- (C) **Court Review.** When the clerk receives a response or at the expiration of the fourteen-day period without receiving a response, the clerk will refer the matter to the chief judge of the district or bankruptcy court for further proceedings. If the grievance or complaint involves the chief judge, the matter

shall be referred to the next most senior active judge. If the grievance or complaint involves a bankruptcy judge, the matter shall be referred to another bankruptcy judge for this district or, if there is none, to the chief judge.

- (4) **Scope.** Recognizing that this policy on uncivil and unprofessional conduct is primarily aspirational, the reviewing judge shall be limited to (i) finding that the grievance or complaint is well-founded in whole or in part, and cautioning the offending party of the responsibility to act in a civil and professional manner as required by this rule; or (ii) finding that the complaint or grievance is not well-founded. Complaints or grievances under this rule and the resolution of them shall be informal. Unless the reviewing judge in the exercise of sound discretion decides otherwise, complaints or grievances under this rule and the resolution of them shall be confidential. The provisions of this rule on uncivil or unprofessional conduct do not limit or replace the authority or responsibility of the court or counsel to report or initiate disciplinary proceedings for any alleged uncivil or unprofessional conduct that violates this court's ethical standards set out in NGenR 1.7(b). Nor shall these provisions be construed to deny or govern this court's exercise of additional powers necessary to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States Code or under Federal Rule of Criminal Procedure 42.

(f) **Duties of the Clerk.**

- (1) **Attorneys Convicted of Crimes.** When the clerk learns that an attorney admitted to practice before this court has been convicted of a crime, the clerk shall determine whether the clerk of the court in which the conviction occurred has forwarded a certificate of the conviction to this court. If a certificate has not been forwarded, the clerk shall promptly obtain a certificate and file it.
- (2) **Discipline Imposed by Other Courts.** When the clerk learns that another court has disciplined an attorney admitted to practice before this court, the clerk shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this court, and if not, the clerk shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this court.

- (3) Notice to Other Courts.** If a person is still admitted to practice law in another jurisdiction or before another court after (A) being convicted of a crime by this court, or (B) disbarred, suspended, censured, or disbarred on consent by this court, the clerk shall, within ten (10) business days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction or to such other court a certificate of the conviction or a certified or exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent. The clerk shall include in this notice the person's last known address.
- (4) Notice to National Discipline Data Bank.** The clerk shall likewise promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this court.