LOCAL RULES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

As Amended November 14, 2002 *

* Rule 5.2.1 amended November 14, 2002

LOCAL RULES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

_____

TABLE OF RULES

Page

I. SCOPE OF THE RULES - ONE FORM OF ACTION

1.1 Scope of the Rules.

(a) Scope of Rules. Pursuant to Fed. R. Civ. P. 83 and Fed. R. Crim. P. 57, these rules shall govern all applicable proceedings brought in this court after they take effect. They also shall apply to all proceedings pending at the time they take effect, except to the extent that in the opinion of the judge deciding the issue the application of them would not be feasible or would work injustice, in which event the former rule shall govern.

(b) Rule of Construction and Definitions.

(1) United States Code, Title 1, Sections 1 to 5 shall, as far as applicable, govern the construction of these rules.

(2) The following definitions shall apply:

(A) "Judge" without further description shall mean any Article III judge or magistrate judge assigned or designated for service in the District of Nebraska.

(B) "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.

(C) "Clerk" without further description shall mean the Clerk of this court or any of his or her deputies.

(D) "Marshal" shall mean the United States Marshal of this district or any of his or her deputies.

1.2 Availability of the Local Rules.

Copies of these rules, and the amendments and appendices to them, shall be available from the Clerk's office for a reasonable charge to be determined by the court.

2.1 One Form of Action.

[Reserved.]

II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

3.1 Civil Cover Sheet.

A completed civil cover sheet on a form available from the Clerk must be submitted with every complaint or other document initiating a civil action. This requirement is solely for administrative purposes, and matters appearing on the civil cover sheet have no legal effect in the action.

3.2 Prepayment of Fees.

(a) Filing Fees. The party commencing an action or the party removing an action from a state court shall pay to the Clerk the statutory filing fee before the case may be docketed and process issued. Excepted from the operation of this rule are proceedings in forma pauperis as governed by various statutory provisions or local rules (**See** NELR 3.5).

(b) Miscellaneous Fees. Prepayment of all other fees collectible by the Clerk and prescribed by statute or by the Judicial Conference of the United States shall be required by the Clerk before furnishing the service. To this end the Clerk may require advance deposit of sums reasonably estimated to be required for the furnishing of the service requested; and, upon the termination of the proceeding or the completion of the service requested, any sums so deposited and not required in payment of fees chargeable to the person making the deposit shall be promptly returned to that person.

3.3 Appearance of Counsel.

(a) Appearance, Civil Case. An attorney making an appearance in a civil case shall cause, either by filing a written appearance or by signature to the first pleading filed by him or her, the Clerk's record to reflect clearly the office address and telephone number of the attorney and the party for whom appearance is made.

(b) Appearance, Criminal Case. An attorney appearing for a defendant in a criminal case shall promptly file a written appearance with the Clerk and serve a copy thereof upon the United States Attorney. The appearance shall show the office address and telephone number of the attorney.

(c) Change of Address or Telephone Number. An attorney whose address or telephone number has changed from that of the initial appearance shall timely file a notice of a change of address or telephone number with the Clerk of the court and serve a copy of the notice on all other parties.

(d) Withdrawal of Appearance. An attorney who has appeared of record in a case may withdraw for good cause shown, but shall be relieved of his or her duties to the court, the client, and opposing counsel, only after service of notice of withdrawal on all other parties and on the client, filing with the Clerk of the court notice and proof of service thereof, and entry of an order authorizing the withdrawal.

3.4 Proceedings by Persons Without Counsel (Pro Se).[1]

(a) Scope of Rule. This rule shall apply to all cases involving litigants who are not attorneys authorized to appear before this court and who are proceeding pro se.

(b) Compliance with Other Rules. Except as provided in NELR 15.1, all litigants proceeding pro se shall be bound by and comply with all local rules of this court, and the Federal Rules of Civil Procedure, and the Federal Rules of Criminal Procedure.

(c) Filing of Cases by Institutionalized Persons; Assignment to Judge. Proceedings under 28 U.S.C. § 2255 shall be filed in the city in which the sentencing judge sits or sat at the time of sentencing. Petitions for writs of habeas corpus and civil rights complaints from persons incarcerated or institutionalized in Douglas, Sarpy, Washington and Dodge counties shall be filed with the Clerk's office in Omaha. All other such cases shall be filed with the Clerk's office in Lincoln. Such cases shall be assigned in accordance with NELR 40.1(b).

---

[1] While these rules were being drafted, the President signed into law the "Prison Litigation Reform Act of 1996" (PLRA), Pub. L. 104-134, 110 Stat. 1321 (1996). To the extent that the Local Rules of the United States District Court for the District of Nebraska (NELR) conflict with that act, the PLRA will govern. Any discrepancies between the NELR and the PLRA will be handled by order of the court.

(d) Responsibilities of Clerk and Magistrate Judge. Upon the receipt of a complaint filed pro se, the Clerk shall present the complaint and any accompanying documents to the magistrate judge assigned to review such complaints, in accordance with the following provisions:

(1) Complaints for Which the Filing Fee Has Been Paid. Upon receipt of the complaint, the Clerk shall inform the plaintiff of the court's practice of reviewing pro se complaints, and offer the plaintiff the choice of whether he or she wishes the review process to be completed prior to or following the issuance of summons. The Clerk shall abide by the preference stated by the plaintiff. After the filing of the complaint, the Clerk shall deliver the file to the magistrate judge in Lincoln, noting thereon whether summonses have been issued to the plaintiff for service upon the defendants. Upon receipt of a complaint for which summons has been issued, the magistrate judge may grant the defendant(s) an extension of time to respond to the complaint until the initial review process has been completed. The magistrate judge shall proceed to review the pro se complaint and after such review, may, in addition to the actions authorized by NELR 72.1:

(A) Order the Clerk to issue summons for service upon one or more of the defendants, if summons has not theretofore been issued, or alternatively, if summons has been issued, order some or all of the defendants to respond to some or all of the claims in the complaint; following such action, the case shall proceed in the ordinary course;

(B) Report to the court if the complaint or petition fails to establish subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1) or fails to state a claim

upon which relief may be granted under Fed. R. Civ. P. 12(b)(6), and thereupon recommend dismissal;

(C) Order the respondent to answer in cases filed under 28 U.S.C. § 2254 or § 2255;

(D) Grant the plaintiff or petitioner leave to file an amended pleading in accordance with the directives of the magistrate judge. (The amended pleading, if filed, shall be forwarded by the Clerk to the magistrate judge for review); AND/OR

(E) Order the matter stayed in accordance with the provisions of NELR 83.9.

(2) Complaints Accompanied by a Request to Proceed In Forma Pauperis. Upon the receipt of a complaint or petition accompanied by an application to proceed in forma pauperis, the Clerk shall present the complaint to the magistrate judge locally assigned to review the plaintiff's application, in accordance with NELR 3.5. The magistrate judge shall review the pleading presented and the financial information provided by the applicant. The final review of the application may be delayed pending the receipt of additional financial information, and may be combined with the initial review of the sufficiency of the pleading. Pending final approval or denial of the application to proceed in forma pauperis in accordance with NELR 3.5, the complaint shall be filed and regarded as if the application had been granted. Once the matter is filed, the Clerk shall present the file to the magistrate judge in Lincoln, who shall review the complaint or petition. The magistrate judge may, in addition to the actions authorized by NELR 72.1:

(A) Upon the granting of leave to proceed in forma pauperis, order the Clerk to issue summonses for service upon the defendants;

(B) Grant the defendants an extension of time in which to respond to the pleading until after the completion of the initial review process;

(C) Order some or all of the defendants to respond to some or all of the claims in the pleading;

(D) Report to the court if the pleading fails to establish subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1), fails to state a claim upon which relief may be granted under Fed. R. Civ. P. 12(b)(6), or is legally frivolous or malicious under 28 U.S.C. § 1915 (d), and thereupon recommend dismissal;

(E) Order the respondent to answer in cases filed under 28 U.S.C. § 2254 or § 2255;

(F) Grant the plaintiff or petitioner leave to file an amended pleading in accordance with the directives of the magistrate judge (The amended pleading, if filed, shall be forwarded by the Clerk to the magistrate judge for review); AND/OR

(G) Order the matter stayed in accordance with the provisions of NELR 83.9.

3.5 Applications to Proceed In Forma Pauperis Generally; Persons Institutionalized; Payment of Partial Filing Fee; Appointment of Counsel.[2]

(a) Financial Affidavit. All applications to proceed in forma pauperis shall be accompanied by a financial affidavit substantially in the form prescribed by the court, which shall disclose the applicant's income, assets, expenses, and liabilities, as applicable. In addition, such applications received from incarcerated or institutionalized persons shall also be accompanied by a statement from the institution or the appropriate governmental entity certifying the amount of funds held in the applicant's trust account at the institution and for the six months preceding the submission of the application. (If the applicant has been at the institution for less than six months, the statement shall show the account's activity for such period.) If the required trust account information does not accompany the application, the court may provisionally allow the applicant to proceed in forma pauperis, and the Clerk shall request such information from the institution and/or the applicant. The filing of an application to proceed in forma pauperis shall constitute the consent of the applicant for the institution to release the required trust account information to the Clerk. If the action for which leave to proceed in forma pauperis is being requested is being brought by more than one person as plaintiffs or petitioners, each person who is a plaintiff or petitioner shall file an application and affidavit, and shall provide the required trust account information.

(b) Objections to Trust Account Statement. When the trust account statement is received from the institution, the applicant shall be provided an opportunity to comment and correct any misleading information in the trust account statement or demonstrate special

---

[2] **See** NELR 3.4, ***supra*** note 1, at 4.

circumstances justifying fee waiver or payment of a fee lower than that allowed by this rule. When the trust account statement accompanies the application to proceed in forma pauperis, the applicant's comments must also accompany the application. In the event the institution in which the applicant resides refuses to furnish the court with a statement of the applicant's trust account, the court shall proceed to consider the application on the basis of the information contained therein and the applicant's comments, if any. Thereafter, however, any party associated with that institution shall not be permitted to challenge the applicant's eligibility to proceed in forma pauperis as of the time of filing of the case. If the applicant refuses to provide the trust account statement, even though it is available to him or her, the application to proceed in forma pauperis shall be denied.

(c) Order that Applicant Pay Portion of Fee. If, following review of the application, the trust account statement, and the applicant's comments, if any, the court finds, applying the factors set forth below, that the applicant should be required to pay all or part of the filing fee, an order to that effect may be entered in accordance with the following:

(1) Any partial filing fee required shall not exceed 30 percent of the average monthly income (total of deposits) to the trust account for the six months (or other applicable period) preceding the filing of the action, or, alternatively, 30 percent of the account balance at the time of filing, whichever is greater.

(2) In the event leave to proceed in forma pauperis in the same case is requested by more than one person, any partial filing fee shall be computed for each person individually under the provisions of this rule, provided that the partial filing fees required from such persons shall not, in the aggregate, exceed the full filing fee charged by the

Clerk for that type of action. In the event that the partial filing fees required from such persons would exceed, in the aggregate, the full filing fee when computed under this rule, the fees shall be proportionately reduced to the amount of the full filing fee.

(3) If the partial filing fee required is based upon the current balance of the applicant's trust account, the court may require a higher partial filing fee if the applicant has withdrawn funds from the account to avoid payment of the filing fee, but in that event, the court shall make specific findings to that effect, after affording the applicant an opportunity to explain the withdrawal.

(4) In calculating the average monthly income, gifts of $5.00 or less shall be excluded unless the applicant has received a sufficient number of such gifts that it is reasonable to include them in the applicant's average income.

(5) No partial filing fee in an amount less than $2.00 shall be required.

(6) If a partial filing fee is required, the applicant may, in the discretion of the court, be granted up to three months to pay the filing fee to the Clerk. Installment payments shall not be accepted. During the interim period before the filing fee is paid, the applicant shall be allowed provisionally to proceed in forma pauperis, and the case shall proceed as other cases. The failure of the applicant to pay the fee before the expiration of the time granted therefor shall be cause for dismissal of the case.

(d) Rescission of Leave to Proceed In Forma Pauperis. The court may, either on its own motion or the motion of any party made in accordance with this rule, review and rescind, wholly or in part, leave to proceed in forma pauperis if the party to whom leave was granted becomes capable of paying the complete filing fee or on any other lawful ground, as, for example,

when the court determines the case is frivolous, or that the applicant has wilfully misstated information in his or her application for leave to proceed in forma pauperis.

(e) Consent to Apply Portion of Recovery to Payment of Fees and Costs. An application for leave to commence or proceed with any civil action without being required to prepay fees or costs or give security for costs, shall constitute consent of the applicant and counsel that a portion of any recovery, as directed by the court, shall be paid to the Clerk, who will pay therefrom all unpaid fees and costs, including attorney fees, taxed against the applicant.

(f) Abuse of Privilege to Proceed In Forma Pauperis. The court may limit an applicant's opportunities to proceed in forma pauperis if the court finds that the applicant has abused the privilege to so proceed.

(g) Appointment of Counsel.

(1) Any person proceeding under this rule may request the court to appoint counsel to represent him or her during the pendency of such proceeding. Request for appointment of counsel shall be made at the time of the filing of the original complaint or petition, or at such other time as the court shall determine. In a case in which counsel has been appointed, all further pleadings and other communications with the court shall be made exclusively through counsel, unless otherwise specifically permitted by the court. Any further pro se pleadings or other communications submitted to the court shall be returned, unfiled, to the sending party or, alternatively, may be forwarded to counsel for the sending party.

(2) In the event that appointed counsel files a motion to withdraw, the court may, but need not, appoint substitute counsel for the person formerly represented.

(3) Nothing contained in this subsection shall be construed as a limitation on the authority of the court to appoint counsel on its own motion.

(h) Expenses of Litigation. The granting of an application to proceed in forma pauperis does not waive the applicant's responsibility to pay the expenses of litigation which are not waived by 28 U.S.C. § 1915. Likewise, the appointment of counsel pursuant to the above subsection does not waive the pro se litigant's ultimate responsibility for such expenses. **See** NELR 83.4, concerning counsel's duties and the availability of funds from the Federal Practice Fund.

4.1 Service of Process.

(a) Manner. Service of all papers requiring service may be made in the manner specified in the Federal Rules of Procedure, both Civil and Criminal, or as required or permitted by statute. The party seeking service of papers shall be responsible for completing the summons and arranging the service. The Clerk is authorized to sign orders specially appointing persons to serve process.

(b) Prepayment of Fees. Except as may be otherwise provided by statute or order, the person requested to make service may require prepayment of fees before serving any papers.

4.2 Schedule of Fees.

[Reserved. **See** 28 U.S.C. §§ 1821, 1911.]

5.1 Restrictions on Filing Discovery.

Disclosures pursuant to Fed. R. Civ. P. 26(a)(1)-(3), depositions, interrogatories, answers and objections to interrogatories, requests for admissions, answers and objections to requests for admissions, requests to produce or inspect, and responses to requests to produce or inspect shall not be filed until they are needed for trial or resolution of a motion or on order of the court. Upon request of a member of the public made to the Clerk's office, non-filed documents shall be made available by the parties for inspection, subject to the power of the court to enter protective orders under the Federal Rules of Civil Procedure and other applicable provisions of law.

5.2 Certificate of Service when Service is Required by Rule 5 of the Federal Rules of Civil Procedure or Rule 49 of the Federal Rules of Criminal Procedure.

(a) Form. Except as otherwise provided in the Federal Rules of Procedure, both Civil and Criminal, or by order of the court or statute, the certificate of service filed with any pleading, motion or other paper required to be served may consist of a certificate of counsel, written receipt of the opposing party or his or her attorney, affidavit of the person making service, return of the United States Marshal or other proof satisfactory to the court. The certificate of service shall show the name and address of each person served and shall be personally signed by one of the counsel of record.

(b) Amendment of Certificate. Failure to file the certificate of service will not affect the validity of the service, and the court may at any time allow the certificate of service to be amended or supplied, unless it clearly appears that to do so would result in material prejudice to a substantial right of any party.

5.2.1 Filing by Facsimile or Other Electronic Means.

(a) The Clerk's Office will not accept any facsimile transmission unless ordered by the Court.

(b) Pursuant to Federal Rule of Civil Procedure 5(e) and Federal Rule of Criminal Procedure 49(d) , the Clerk's Office will accept papers filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes, if ordered by the Court. A paper filed by electronic means in compliance with this rule constitutes a written paper for the purposes of applying these rules and the Federal Rules of Civil and Criminal Procedure.

(c) Pursuant to Federal Rule of Civil Procedure 5(d) and Federal Rule of Criminal Procedure 49(b), receipt of the Notice of Electronic Filing generated by the Court's Electronic Case Filing System shall constitute the equivalent of service of the pleading or other paper on persons who have consented to electronic service and waived the right to service by personal service or first class mail.

6.1 Enlargements of Time.

(a) One enlargement of time, not to exceed thirty days after the defendant's initial answer date or the plaintiff's initial reply date, to serve an answer to the complaint, or to serve a reply to a counterclaim contained in the answer, or to serve a motion under Fed. R. Civ. P. 12(b) or (e) to the complaint or to a counterclaim contained in the answer, may be granted by an order signed by the Clerk, if the party seeking the enlargement moves to obtain it before the expiration of the time originally allotted to answer or reply. All motions for enlargement under

this subdivision shall state the date upon which the answer or reply was originally to be served and shall be accompanied by a proposed order granting the motion and setting forth the extended service date. A sample form of the order is as follows:

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

_____ [Plaintiff(s) name(s)], Plaintiff(s), vs. _____ [Defendant(s) name(s)], Defendant(s).	_____ [Case Number] ORDER

Considering the defendant(s) _____ ['s or s'] motion for extension of time in accordance with NELR 6.1(a), the file shows that the motion for extension of time was filed before the original date for service of a responsive pleading.

IT IS ORDERED, pursuant to NELR 6.1(a), that defendant(s) _____ [are (or) is] granted until _____ [answer deadline], to serve an answer to the complaint or a reply to a counterclaim contained in an answer, or to serve a motion under Fed. R. Civ. P. 12(b) or 12(e).

Dated: _____ [date signed (written out)].

NORBERT H. EBEL, CLERK
U.S. District Court

By _____
Deputy Clerk

7.1 Motion Practice.

All motions, applications, requests and petitions of a miscellaneous nature shall be filed and considered in accordance with this rule. Except as otherwise stated in this rule, failure of a party to observe the requirements of the rule may be deemed an abandonment in whole or in part of that party's position on the pending motion.

(a) Making of Motions. Any party making a motion shall provide an extra copy of the motion to the Clerk. The moving party shall set forth in the motion the basis for the motion and the specific relief requested.

(1) Supporting Briefs. Every motion raising a substantial issue of law shall be supported by a brief. The brief shall contain a concise statement of the reasons for the motion and a citation of authorities relied upon. The brief shall not include recitations of fact not supported as provided in subparagraph (2) below. At the time of the filing of the motion, the original only of the brief shall be delivered to the district judge to whom the matter has been assigned or to the magistrate judge to whom the matter has been referred by order or rule, and a copy shall be served on each other party. The brief shall not be filed with the Clerk. For cases to be tried in North Platte, delivery of the brief shall be to the magistrate judge in Lincoln.

Briefs are not required when the motion raises no substantial issue of law and relief is within the court's discretion. Examples may include motions to which all parties are shown to consent, to submit a reply brief, to withdraw as counsel to a party, for an extension of time, or for leave to proceed in forma pauperis. In the event the court

concludes that the motion raises a substantial issue of law, the failure to submit a brief may be treated as an abandonment of the motion.

(2) Evidence and Evidence Index--Civil Cases Only. Except as to discovery motions provided for in subparagraph (j) below, if a motion requires consideration of matters not established by the pleadings, the moving party at the time of delivery and service of its supporting brief shall file with the Clerk such evidentiary materials, including discovery materials and affidavits, as are being relied upon and have not previously been filed, and shall serve a copy of them upon each other party; such documents shall not be attached to the brief. Any materials filed with the Clerk in support of a motion shall be accompanied by an index separately listing each item of evidence then being filed and identifying the motion to which it relates. All materials accompanying an index that are printed on 8½ by 11 inch or 8½ by 14 inch paper must be bound together by fasteners or placed in a binder. All materials not amenable to binding must be submitted in an envelope or other closeable container. Documents must be identified and authenticated by affidavit. Each affidavit must be made on personal knowledge, set forth such facts as would be admissible in evidence, show affirmatively that the affiant is competent to testify to the matters stated therein, and identify the motion in connection with which the affidavit is filed.

(b) Opposing of Motions.

(1) Opposing Briefs. Any brief opposing a motion shall contain a concise statement of the reasons for opposing the motion and a citation of authorities relied upon. The brief shall not include recitations of fact not supported as provided in subparagraph

(2) below. The original only of an opposing brief shall be delivered to the district judge to whom the matter has been assigned or to the magistrate judge to whom the matter has been referred by order or rule, and a copy shall be served on each other party. The brief shall not be filed with the Clerk. For cases to be tried in North Platte delivery of the opposing brief shall be to the magistrate judge in Lincoln. No "answer," or "opposition," or "response" to a motion, or any similarly titled "pleading" in opposition to a motion shall be filed, delivered or served. Any opposing brief may be delivered and served no later than ten days after service of the motion and supporting brief, except as to a motion to dismiss or for summary judgment, with respect to which the opposing brief may be delivered and served no later than twenty days after service of the motion and supporting brief. Failure to deliver and serve an opposing brief shall not be considered to be a confession of the motion.

(2) Evidence and Evidence Index--Civil Cases Only. The non-moving party may, at the time of delivery and service of its opposing brief, file with the Clerk such additional evidentiary materials as are being relied upon, and have not previously been filed, and shall serve a copy of them upon each other party. Any materials filed with the Clerk in opposition to a motion shall be accompanied by an index separately listing each item of evidence then being filed and identifying the motion to which it relates. Documents must be identified and authenticated by affidavit. Each affidavit must be made on personal knowledge, set forth such facts as would be admissible in evidence, show affirmatively that the affiant is competent to testify to the matters stated therein, and identify the motion in connection with which the affidavit is filed.

(c) Replying to Opposing Briefs and Evidence. No reply brief or evidence shall be permitted, except upon order of the court.

(d) Procedures for Motions for Summary Judgment.

See NELR 56.1.

(e) Oral Argument. Oral argument on any motion shall be held only upon order of the court. A request for oral argument may be made by the moving party by separate statement at the conclusion of the motion or by an opposing party by a separate motion filed at the time the opposing brief is delivered and shall be included in the title of the motion.

(f) Oral Testimony. A party at the time of serving its supporting or opposing brief may file with the Clerk and serve on all other parties a request that the party be permitted to present oral testimony in support of or opposition to the motion. Failure to file and serve such request shall constitute an assent to a submission without oral testimony. Oral testimony shall be permitted only upon order of the court.

(g) Submission of Motions. Unless oral argument or oral testimony is ordered, a motion shall be deemed submitted and shall be decided by the court on the briefs delivered and served and the evidence filed and served, if any, at the expiration of the time limits specified in this rule. Briefs delivered and served without leave of court after a motion has been submitted may or may not be considered in the discretion of the judge to whom the matter has been assigned or referred.

(h) Extensions of Time for Filing or Responding to Motions.

See NELR 6.1.

(i) Discovery Motions--Prerequisite. To curtail undue delay in the administration of justice, this court shall refuse to consider any and all motions relating to discovery unless moving counsel, as part of the motion, shall make a written showing that after personal consultation with counsel for opposing parties and sincere attempts to resolve differences, they are unable to reach an accord. This showing shall recite, additionally, the date, time and place of such conference and the names of all persons participating in them. As used in this subparagraph, "counsel" includes parties who are acting pro se.

(j) Form of Discovery Motions. A discovery motion shall include in the motion or in an attachment a verbatim recitation of each interrogatory, request, answer, response, and objection that is the subject of the motion.

(k) Conference Telephone Calls. Hearings on any motion may be conducted by telephone conference, in the discretion of the judge.

(l) Certificate of Service. Whenever service is required under this rule, a certificate of service shall be made upon the original, as required by NELR 5.2(a).

7.2 Preparation and Filing of Orders.

At the time of filing a motion for which no supporting brief is required, the moving party shall submit to the judge a proposed order granting the motion and setting forth the requested relief. Only the original of the proposed order need be submitted.

See also NELR 7.1(a)(1); 55.1.

7.3 Agreements and Stipulations.

An agreement, stipulation or consent between parties or counsel shall be binding only if (a) reduced to writing and signed by the parties or their counsel, or if oral, made a part of the record, and (b) approved by appropriate order or ruling of the court if such approval is required. For discovery stipulations, see NELR 29.1.

7.4 Motions in Criminal Cases.

The filing and consideration of motions in criminal cases shall be in keeping with the provisions of NELR 7.1-7.3, as may be modified by progression orders entered in the case.

The filing and consideration of motions filed pursuant to 28 U.S.C. § 2255 shall be as provided in the Rules Governing Section 2255 Proceedings in the United States District Courts and the progression order(s) entered in respect to the particular motion.

8.1 General Rules of Pleading.

[Reserved.]

9.1 Pleading Special Matters.

(a) Social Security Number in Social Security Cases. Any person seeking judicial review of a decision of the Commissioner of Social Security under Section 205(g) of the Social Security Act (42 U.S.C. § 405 (g)) shall provide, on a separate paper attached to the copy of the complaint served on the Commissioner of Social Security, the social security number of the worker on whose wage record the application for benefits was filed. The person shall also state,

in the complaint, that the social security number has been attached to the copy of the complaint served on the Commissioner of Social Security. Failure to provide a social security number to the Commissioner of Social Security may be grounds for sanctions, not including dismissal of the complaint.

(b) Procedure for Notification of Any Claim of Unconstitutionality. In any action, suit or proceeding in which the United States or any agency, officer or employee thereof is not a party and in which the constitutionality of an Act of Congress is drawn in question or in any action, suit or proceeding in which a State or any agency, officer or employee thereof is not a party and in which the constitutionality of any statute of the State is drawn in question, the party raising the constitutional issue shall notify the court of the existence of the question either by checking the appropriate box on the civil cover sheet or by stating on the pleading that alleges the unconstitutionality, immediately following the title of the pleading, "Claim of Unconstitutionality." Any party raising the claim of unconstitutionality at any time after the complaint shall file a pleading entitled "Notice of Claim of Unconstitutionality."

9.2 Request for Three-Judge Court.

(a) In any action or proceeding which a party believes is required to be heard by a three-judge district court pursuant to 28 U.S.C. § 2284 or any other provision of federal law, the words "Three-Judge District Court Requested" or the equivalent shall be included immediately following the title of the first pleading in which the cause of action requiring a three-judge court is pleaded. Unless the basis for the request is apparent from the pleading, it shall be set forth in the pleading or in a brief statement attached thereto.

(b) In any action or proceeding in which a three-judge court is requested, parties shall file the original and three copies of every pleading, motion, notice, or other document with the Clerk until it is determined either that a three-judge court will not be convened or that the three-judge court has been convened and dissolved, and the case remanded to a single judge. The parties may be permitted to file fewer copies by the order of the court.

(c) A failure to comply with this local rule is not a ground for failing to convene or for dissolving a three-judge court.

10.1 Form of Pleadings.

(a) Copies. All copies of papers served shall be clear and legible and not subject to unusual fading or deterioration.

(b) Size. The paper used for pleadings presented for filing shall be standard 8½ x 11 inches in size, white and of standard weight. A two inch margin shall be left at the top of the first page of any paper filed with the Clerk so that the filing stamp of the Clerk can be applied.

(c) Form. All pleadings shall be presented without backs and shall be legibly typewritten, mimeographed, photostatically reproduced, printed, or if necessary, handwritten, without erasures or interlineations materially defacing them. Exhibits attached to pleadings shall be similarly typewritten, mimeographed, printed, photostatically reproduced, or if necessary, handwritten, in clear, legible, and permanent form and not subject to unusual fading or deterioration.

(d) Attachments. Any materials filed with the Clerk regarding a motion shall be accompanied by an index listing each item attached. If not pre-bound, such as a transcript or

book, all attachments to the index that are printed on 8½ by 11 inch or 8½ by 14 inch paper must be bound together by fasteners. All materials not amenable to binding must be submitted in an envelope or other closeable container.

(e) Identification of Pleading. A pleading offered for filing shall plainly show the caption of the case, a description or designation of its contents, and the party or person/entity on whose behalf it is filed. All pleadings subsequent to the pleading initiating a proceeding shall also show the proper docket number. Any demand for jury trial, designation of a class action, claim of unconstitutionality of a statute or request for a three-judge court shall be noted in the title of the pleading as set out in NELR 9.1, 9.2, 23.1, or 38.1.

(f) Identification of Attorney. The name, address, telephone number, and a bar number shall be typed under the signatures of each attorney appearing on each pleading.

(g) Copies. Upon request parties shall forthwith furnish to the Clerk clear and legible copies of any pleading, order, judgment, exhibit, or any other matter of record, to enable the Clerk to comply with the provisions of any statute or rule. This direction includes but is not limited to requirements for service of process and preparation of records on appeal.

(h) Certificate of Service. See NELR 5.2 for the form of the certificate of service.

11.1 Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions.

[Reserved.]

12.1 Defenses and Objections--When and How Presented--By Pleading or Motion--Motion for Judgment on the Pleadings.

[Reserved.]

13.1 Counterclaim and Cross-Claim.

[Reserved.]

14.1 Third-Party Practice.

[Reserved.]

15.1 Form of a Motion to Amend and Its Supporting Documentation.

A party who moves for leave to amend a pleading (including a request to add parties) shall attach to the motion an unsigned copy of the proposed amended pleading. Except as provided in these rules or by leave of court, the proposed amended pleading so submitted shall be a complete pleading which, if allowed to be filed, shall supersede the pleading amended in all respects; no portion of the prior pleading may be incorporated into the proposed amended pleading by reference.

The motion for leave to amend shall set forth specifically the amendments proposed to be made to the original pleading, and shall identify the amendments in the proposed amended pleading.

In considering amended pleadings filed or submitted for filing by pro se litigants the court may in its discretion consider the amended pleading as supplemental to, rather than as superseding, the original pleading, unless the pleading states that it supersedes the prior pleading.

Caution: The granting of the motion for leave to amend does not constitute filing of the amended pleading. The party to whom leave to amend is granted, after leave is given, must then file and serve the amended pleading.

16.1 Scheduling Orders Required by Fed. R. Civ. P. 16.

(a) The magistrate judges are authorized to enter scheduling orders pursuant to Fed. R. Civ. P. 16(b).

(b) The proceedings listed below are inappropriate for the scheduling order required by Fed. R. Civ. P. 16(b):

- habeas corpus actions, 28 U.S.C. §§ 2254 and 2255;
- social security cases filed under 42 U.S.C. § 405(g) and any other action for judicial review of administrative decisions of government agencies where review is on the basis of the administrative record;
- actions to compel arbitration or to confirm or set aside arbitration awards;
- proceedings to compel or challenge efforts to obtain testimony or production of documents under a subpoena or summons issued by an officer, agency or instrumentality of the United States not authorized to compel compliance;
- appeals from rulings by a bankruptcy judge;
- actions for enforcement of a civil fine, penalty or forfeiture of property;
- naturalization proceedings;
- proceedings under the Freedom of Information Act;

- proceedings to compel testimony or production of documents relative to actions in another district or perpetuation of testimony for use in any court.

16.2 Pretrial Procedures in Civil Cases.

(a) Matters to Be Completed Before Final Pretrial Conference. Unless otherwise ordered by the court, counsel shall complete prior to the final pretrial conference each of the following:

(1) The physical numbering and inspecting by counsel of all papers and other objects expected to be introduced as exhibits and the listing of such exhibits on forms available from the Clerk, except that papers and other objects expected to be used solely for impeachment purposes and which have not been furnished to adverse counsel need not be numbered or listed until identified at the trial. All objections to the admissibility of any exhibit listed on the exhibit list shall be noted on the exhibit list. Except upon a showing of good cause, failure to list an exhibit required by this rule to be listed shall result in its nonadmissibility over an objection. Objections not disclosed on the exhibit list, other than objections under Rules 402 and 403 of the Federal Rules of Evidence, shall be deemed waived unless excused by the court for good cause shown. A format for an acceptable exhibit list is as follows:

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

_____,	)	_ :CV_____
Plaintiff(s),	)	
	)	LIST OF EXHIBITS

v.)
)
_____,) Hearing Date:
Defendant(s).) Courtroom Deputy:
) Court Reporter:

Trial Dates:

EXHIBIT NO. PL	DF	3PTY	DESCRIPTION	OFF	OBJ	RCVD	NOT RCVD	DATE

OBJECTIONS
R: Relevancy
H: Hearsay
A: Authenticity
O: Other (specify)

(2) A proposed final pretrial order, titled "Order on Final Pretrial Conference," prepared jointly by counsel, for presentation to the judge at the pretrial conference, in approximately the following form:

"A final pretrial conference was held on the _____ day of _____, 19___. Appearing for the parties as counsel were: (List the counsel who will attend the pretrial conference).

(A) Exhibits: **See** Attached Exhibit List.

Caution: Upon express approval of the judge holding the pretrial conference for good cause shown, the parties may be authorized to defer listing of exhibits or objections until a later date to be specified by the judge holding the pretrial conference. The mere listing of an exhibit on an exhibit list by a party does not

mean it can be offered into evidence by the adverse party without all necessary evidentiary prerequisites being met.

(B) Uncontroverted Facts. The parties have agreed that the following may be accepted as established facts for purposes of this case only: (State in detail all uncontroverted facts, including those which are to be stipulated, in such form that the statement may be read to the jury).

(C) Controverted and Unresolved Issues. The issues remaining to be determined and unresolved matters for the court's attention are: (Set out in detail each element of the claim or defense which is genuinely controverted, including issues on the merits and issues of jurisdiction, venue, joinder, validity of appointment of a representative of a party, class action, substitution of parties, attorney's fee and applicable law under which it is claimed, prejudgment interest, and other matters which should be drawn to the court's attention, such as possible consolidation for trial, bifurcated trials on specified issues, and pending motions. In any action in which special damages or permanent injuries are claimed they shall be specified. In any negligence action elements of negligence and contributory negligence, if any, shall be specified).

(D) Witnesses. All witnesses, including rebuttal witnesses, whom the plaintiff(s) expect to call to testify, except those who may be called for impeachment purposes as defined in NELR 16.2(c) only, are: (List names and complete addresses of all persons who will testify in person only. Such list

shall identify those whom the party expects to be present and those whom the party may call if the need arises).

(All other parties shall similarly list their witnesses.)

It is understood that, except upon a showing of good cause, no witness whose name and address does not appear herein shall be permitted to testify over objection for any purpose except impeachment. A witness appearing on any party's witness list may be called by any other party.

(E) Expert Witnesses' Qualifications.

(i) Experts to be called by plaintiff and their qualifications are: (Set out the qualifications of each person expected to be called as an expert witness. A curriculum vitae or resume may be attached in lieu of setting out the qualifications).

(ii) Experts to be called by defendant and their qualifications are: (Set out the qualifications of each person expected to be called as an expert witness. A curriculum vitae or resume may be attached in lieu of setting out the qualifications).

(F) Depositions and Other Discovery Documents.

(i) All depositions, answers to written interrogatories, and requests for admissions or portions thereof which are expected to be offered in evidence by the plaintiff as part of the plaintiff's case-in-chief are: (Designate portions of depositions either by page and line number or by highlighting; eliminate repetitious and unnecessary material; edit video

depositions; designate answers to interrogatories and requests by number).

Objections by the defendant are: (List all objections including those under Fed. R. Civ. P. 32(a) or the Federal Rules of Evidence; the court will, if possible, rule on the objections prior to trial. Objections not so disclosed, other than objections under Rules 402 and 403 of the Federal Rules of Evidence, shall be deemed waived unless excused by the court for good cause shown).

(ii) All depositions, answers to written interrogatories, and requests for admissions or portions thereof which are expected to be offered in evidence by the defendant as part of the defendant's case-in-chief are: (Designate in the manner set out in F(i)).

Objections by the plaintiff are: (List all objections including those under Fed. R. Civ. P. 32(a) or the Federal Rules of Evidence; the court will, if possible, rule on the objections prior to trial. Objections not so disclosed, other than objections under Rules 402 and 403 of the Federal Rules of Evidence, shall be deemed waived unless excused by the court for good cause shown).

(If there are other parties, a designation should be made by each and objections by adverse parties listed).

(G) Voir Dire. Counsel have reviewed Fed. R. Civ. P. 47(a) and NELR 47.1 and suggest the following with regard to the conduct of juror examination: _____.

(H) Number of Jurors. The parties suggest that this matter be tried to a jury composed of _____ members. (Counsel shall review Fed. R. Civ. P. 48 and NELR 48.1).

(I) Verdict. The parties (will) (will not) stipulate to a less than unanimous verdict.

(J) Delivery of Brief, Instructions, and/or Proposed Findings.

(i) Trial briefs shall be delivered to the judge at least three (3) working days before the first day of trial.

(ii) Proposed jury instructions shall be delivered to the judge on or before the first day of trial.

(iii) Proposed findings of fact and conclusions of law in a non-jury case shall be delivered to the judge at least three (3) working days before the first day of trial.

(K) Length of Trial. Counsel estimate the length of trial will consume not less than _____ day(s), not more than _____ day(s), and probably about _____ day(s).

(L) Trial Date. Trial is set for _____."

(b) Representation Required. Unless otherwise approved in advance by the judge conducting the conference, each party for whom counsel has filed an appearance shall be

represented in the conference by lead trial counsel who, in attending the conference, shall be possessed of information and authority adequate for his or her responsible and effective participation in it for all of its purposes.

(c) "Impeachment Purposes" Defined. With regard to this rule, "impeachment purposes" shall mean only (1) to attack or support the credibility of a witness or (2) to attack or support the validity of or the weight to be given to the contents of a document or other thing used solely to attack or support the credibility of a witness. It does not include evidence which merely contradicts other evidence.

17.1 Parties Plaintiff and Defendant; Capacity.

[Reserved.]

18.1 Joinder of Claims and Remedies.

[Reserved.]

19.1 Joinder of Persons Necessary for Just Adjudication.

[Reserved.]

20.1 Permissive Joinder of Parties.

[Reserved.]

21.1 Misjoinder and Nonjoinder of Parties.

[Reserved.]

22.1 Interpleader.

[Reserved.]

23.1 Designation of "Class Action" in the Caption.

In any case sought to be maintained as a class action the complaint or other pleading asserting a class action shall include next to its caption the legend "Class Action."

23.1.1 Derivative Actions by Shareholders.

[Reserved.]

23.2.1 Actions Relating to Unincorporated Associations.

[Reserved.]

24.1 Intervention.

[Reserved.]

25.1 Substitution of Parties.

[Reserved.]

26.1 General Provisions Governing Discovery; Duty of Disclosure.

Upon serving disclosures pursuant to Fed. R. Civ. P. 26(a)(1)-(3), the disclosing party shall file a certificate of service.

27.1 Depositions Before Action or Pending Appeal.

[Reserved.]

28.1 Persons Before Whom Depositions May be Taken.

[Reserved.]

29.1 Discovery Stipulations.

Stipulations extending the time provided in Fed. R. Civ. P. 33, 34 & 36 for responses to discovery, if they would interfere with court-imposed deadlines for the completion of discovery, motion deadlines or trial dates, shall be effective only upon order of the court. All other discovery stipulations are effective upon the filing of a written stipulation, specifying the agreed upon change and signed by all parties of record.

30.1 Depositions.

(a) Certificate of Reporter. When the transcript of a deposition is completed, a certificate of the court reporter shall be filed showing the name of the deponent, the date of the taking, the name and address of the person having custody of the original of the deposition, and the charges made for the original.

(b) Filing and Opening. Unless otherwise ordered by the court pursuant to Fed. R. Civ. P. 5(d) or 26(c), depositions when received and filed by the Clerk shall then be opened by the Clerk or a deputy, who shall affix the filing stamp to the cover page of the depositions.

(c) Certificate as to Fee. As a part of the certificate thereto the officer taking the deposition shall plainly show the amount of the fee for the original.

31.1 Depositions Upon Written Questions.

[Reserved.]

32.1 Use of Depositions in Court Proceedings.

See NELR 16.2(a)(2)(F).

33.1 Interrogatories.

(a) The parties shall number each interrogatory or request sequentially, regardless of the number of sets of interrogatories or requests. In making answer or objection to interrogatories the responding party shall first state verbatim the propounded interrogatory and immediately thereafter the answer or objection to it.

(b) The practice of separately defining words used in an interrogatory is prohibited unless leave of the court is obtained. For purposes of determining the number of interrogatories, including sub-questions, each inquiry that endeavors to discover a discrete item of information shall be counted as a separate interrogatory. For example, a question which states: "Please state

the name, address, and telephone number of any witness to the accident set forth in the complaint" shall be counted as three (3) interrogatories.

(c) The demanding party, upon serving interrogatories, shall file a certificate of service. The responding party shall also file a certificate of service upon serving a response.

34.1 Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes.

The demanding party, upon serving a request for production or inspection, shall file a certificate of service. The responding party shall also file a certificate of service upon serving a response. In making answer or objection to requests to produce or inspect, the party shall first state verbatim the propounded request and immediately thereafter the answer or objection to it.

35.1 Physical and Mental Examination of Persons.

[Reserved.]

36.1 Requests for Admission.

The demanding party, upon serving a request for admission, shall file a certificate of service. The responding party shall also file a certificate of service upon serving a response. In making answer or objection to requests for admission, the party shall first state verbatim the propounded request and immediately thereafter the answer or objection to it.

37.1 Failure to Make Disclosure or Cooperate in Discovery: Sanctions.

[Reserved.]

38.1 Notation of "Jury Demand" in the Pleading.

If a party demands a jury trial by endorsing it on a pleading, as permitted by Fed. R. Civ. P. 38(b), a notation shall be placed on the front page of the pleading, immediately following the title of the pleading, stating "Demand for Jury Trial" or an equivalent statement. This notation will serve as a sufficient demand under Fed. R. Civ. P. 38(b). Failure to use this manner of noting the demand will not result in a waiver under Fed. R. Civ. P. 38(d).

See NELR 81.2 regarding demands for jury trials in removed cases.

39.1 Opening Statements and Closing Arguments.

(a) Opening Statements. After the jury is selected and sworn, the party upon whom rests the burden of proof may without argument make an opening statement, after which the adverse party in like manner may make an opening statement.

(b) Closing Argument. At the conclusion of all the evidence, the parties may make final argument. Allotted time will be determined by the judge after conferring with counsel. The plaintiff's counsel may take no more than one-third of the plaintiff's allotted time in the closing portion of the plaintiff's summation. Unless otherwise ordered, the plaintiff's counsel shall not discuss in the closing portion of the plaintiff's summation any subject which was not discussed previously by either the plaintiff's counsel or the defendant's counsel during summation, and waiver by the defendant of the closing argument shall preclude rebuttal by the

plaintiff, but waiver by the plaintiff of closing argument shall not preclude closing argument by the defendant. If the party having the burden of proof is not the plaintiff, that party shall be treated as the plaintiff for purposes of this rule.

39.2 Briefs.

(a) Trial Briefs. Unless otherwise ordered, the original only of a trial brief on behalf of each party shall be delivered at least three working days before the trial begins to the judge who will preside at the trial, but none shall be filed with the Clerk.

(b) Motion Briefs. Briefs on motions shall be submitted in accordance with NELR 7.1.

(c) Briefs on Submitted Cases and Pursuant to Briefing Schedules. When a judge has set a time for submitting a brief, the failure to submit a brief or to discuss an issue in the brief submitted may be treated as an abandonment of that party's position on any issue not discussed.

(d) Briefs in Habeas Corpus Cases. In matters brought pursuant to 28 U.S.C. §§ 2254 and 2255 counsel shall file with the court the briefs submitted by the petitioner or movant on direct appeal, and they may be considered to be part of the records of the case. They shall not, however, be incorporated by reference in or considered to be the petitioner's or movant's brief in the habeas case.

(e) Service of Briefs. Each brief shall be served on all adverse parties, and proof of service shall be endorsed upon the original, showing the name and address of each person served.

39.3 Use of Exhibits at Trial.

Exhibits received in evidence at the final pretrial conference shall be delivered to the Clerk before the commencement of trial, together with the exhibit list required by NELR 16.2(a)(1). In cases involving extremely numerous exhibits or in cases requiring special provisions for access, safekeeping, or inspection of exhibits, counsel shall confer with the courtroom deputy to establish procedures for the handling of exhibits during and after the trial.

40.1 Assignment of Civil and Criminal Cases by Place of Trial and to Judges.

(a) Determination of Place of Trial.

(1) Civil Cases -

(A) Initial Request. The plaintiff at the time of filing a complaint in a civil action or the removing party at the time of filing a petition for removal shall make written request for trial of the case at Omaha, Lincoln, or North Platte.

(B) Request by Opposing Party. Each defendant or third-party defendant at the time of filing that defendant's first pleading in a civil action, or the plaintiff in a removed action within ten days after service of the notice of removal, may file and serve a written request for trial at Omaha, Lincoln, or North Platte. If the request is for a place different from that requested by the plaintiff, third-party plaintiff, or removing party, it shall be accompanied by an affidavit in support of the request.

(C) Form of Request. The request for place of trial may be a separate pleading or may be endorsed upon the complaint or other first pleading referred to above in this rule, and shall be served upon each party.

(D) Conflicting Requests. When any party files a request for a place of trial different from that requested by the plaintiff, third-party plaintiff, or removing party, accompanied by an affidavit as required by NELR 40.1(a)(1)(B), any other party may file and serve within ten days after the filing of the conflicting request an affidavit in support of its request for place of trial. Resolution of conflicting requests may be made by the judge without oral argument. In deciding the place of trial the judge shall give consideration to the convenience of the litigants, witnesses and counsel.

(E) An initial or opposing request for place of trial can be amended at any time during the pendency of the action if the material circumstances bearing on the proper place of trial change.

(2) Criminal Cases -

(A) Initial Request. At the time of filing an indictment or information the government shall endorse upon the indictment or information a written request for trial of the case at Omaha or Lincoln.

(B) Subsequent Request. At a time after the arraignment and on or before the time set for the filing of pretrial motions as set forth in the scheduling or progression order, the defendant or the government may make

a request for a change of the place of trial to Omaha, Lincoln, or North Platte. The request shall be made by motion and supported by affidavit.

(3) Calendaring of Cases. The Clerk shall calendar the case, civil or criminal, in accordance with the initial request. In the absence of an initial request in accordance with these rules, the case shall be calendared in the city of the location of the Clerk's office receiving the case for filing.

(b) Assignment of Cases to District Judges and Magistrate Judges.

(1) General. Except for reassignments under subsection (b)(2) of this rule and related cases governed by subsection (b)(3) of this rule, each case shall be assigned by the Clerk in accordance with the court's general order on assignment of cases to district judges and magistrate judges, copies of which are available at the Clerk's office.

(2) Reassignments. 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 chief judge is disqualified or disabled, the district judge then available and next senior in service may make the reassignment under the same standard. 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. 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.

(3) Related Cases.

(A) Assignments. At the time of filing any action counsel or the pro se plaintiff shall indicate on an appropriate form available from the Clerk whether the case is related to another pending or closed case. If relationship is so indicated, the case shall be assigned to the district judge to whom the earlier closed case was or pending case is assigned. If any party or any party's counsel becomes aware, after the filing of a case, that it is related to an earlier-filed case, he or she shall immediately so inform the Clerk, who then shall communicate that fact in writing to the chief judge, who then shall transfer the case to the district judge to whom the earlier-closed case was or the earlier-pending case is assigned, unless the chief judge finds good cause for not making the transfer.

(B) Definitions.

(i) Criminal cases are related when some of or all the charges in them arise from the same general set of events, whether or not any of the cases is closed. A superseding indictment or information is related to the indictment or information it supersedes.

(ii) Bankruptcy appeals are related when they involve some of or all the same property, whether or not any of the appeals is closed.

(iii) Civil cases are related when they involve some of or all 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 is closed.

(iv) Civil cases are not related to criminal cases.

(4) Challenges. All applications 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.

(c) Sanctions. No person shall reveal to any other person the sequence of district judges' or magistrate judges' names within a calendar category or any rotation randomly determined, or assign any case otherwise than as provided in this rule or as ordered by the court. No person shall directly or indirectly cause or procure or attempt to cause or procure any person to reveal the sequence of district judges' or magistrate judges' names within a calendar category or rotation randomly determined or 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.

40.2 Trial Calendar.

Orders setting trial will be issued by the court from time to time and copies thereof mailed by the Clerk to all counsel of record affected thereby. Counsel shall keep informed of the progress of the business before the court and be ready when their respective cases are reached. No arrangement as to time or order of trial will be recognized unless approved by the court. Trial sessions in North Platte will be determined annually by general order of the court.

41.1 Dismissal of Actions.

If a case which has been at issue for one year or more and in which for a period of one year no advancement has been made in the pleadings or in its preparation for trial, the case may be ordered for trial forthwith or dismissed unless good cause is shown for some other disposition. At any time when it appears that any action is not being prosecuted with reasonable diligence the court may dismiss it for lack of prosecution.

42.1 Consolidation; Separate Trials.

[Reserved.]

43.1 Taking of Testimony.

See NELR 83.2.

44.1 Proof of Official Record.

[Reserved.]

44.1.1 Determination of Foreign Law.

[Reserved.]

45.1 Subpoenas.

(a) Civil.

[Reserved. **See** Fed. R. Civ. P. 45.]

(b) Criminal.

(1) Production Before Trial. Except upon order of a judge, no subpoena for production of documents or objects shall be sought or issued if such subpoena requests production before trial. Fed. R. Crim. P. 17(c).

(2) Depositions. Except upon order of a judge, no subpoena for a deposition shall be sought or issued. Fed. R. Crim. P. 15 and 17(f).

46.1 Exceptions Unnecessary.

[Reserved.]

47.1 Jury Selection.

(a) Voir Dire. Voir dire examination may be conducted by the court, by counsel, or by both, as the court shall determine. Within the sound discretion of the court, counsel's examination may be limited by time and subject matter.

(b) Impanelment of Jury. Unless otherwise ordered, the jury shall be impaneled as follows: After all challenges for cause have been exercised and determined, the jurors remaining shall equal the number required for the jury plus a total number of peremptory challenges which the parties are entitled to exercise.

(c) Peremptory Challenges. Unless otherwise ordered, peremptory challenges shall be exercised alternately by all parties, beginning with the plaintiff. Each party will be informed,

after the exercise of each peremptory challenge, of the identity of each prospective juror peremptorily challenged by each other party.

(d) Waiver of Peremptory Challenges. To pass or refuse to exercise a peremptory challenge shall constitute a waiver of the right to exercise the challenge. If a party waives the right to exercise a peremptory challenge, the court shall exercise it after the parties have exercised or waived all other challenges to which they are entitled.

48.1 Jury Deliberation.

(a) Number of Jurors. In civil cases the court shall determine, after consultation with counsel, the number of jurors, which shall not be less than six nor more than twelve.

(b) Recess During Jury Deliberations. At the conclusion of the trial the court, in its discretion, may recess the court while the jury continues its deliberations, and in so doing the court may direct the jury that upon arriving at a verdict they seal it, deposit it with the marshal or other person designated by the court, and return to the courtroom at a predetermined time for the opening and reading of the verdict.

(c) Availability of Counsel During Jury Deliberations. Counsel shall be available on short notice during jury deliberations in the event of a verdict or a question by the jury. The Clerk shall be kept informed as to where counsel will be at all times when the jury is deliberating.

(d) Absence of Counsel on Receipt of Verdict. In civil cases the court will not deem it necessary that any party or any counsel be present or represented when the jury's verdict is received by the court.

49.1 Special Verdicts and Interrogatories.

[Reserved.]

50.1 Judgment as a Matter of Law in Actions Tried by Jury; Alternative Motion for New Trial; Conditional Rulings.

[Reserved.]

51.1 Instructions to Jury.

(a) When Submitted and Served. As far as practicable, and unless otherwise ordered, each party shall submit to the trial judge and serve on all other parties any requested instructions on or before the opening day of the trial. Additional requested instructions relating to matters arising during the trial may be submitted and served at any time prior to the conclusion of the testimony.

(b) Supporting Memorandum or Authority. A memorandum in support of or in opposition to any requested instructions may be submitted and served. Instead of a memorandum a requested instruction may be followed by a citation of authority supporting the instruction.

(c) Form. Each requested instruction shall identify the party requesting it and shall be separately numbered.

52.1 Proposed Findings in Civil Cases.

In civil nonjury trials each party shall submit proposed findings of fact, sufficiently detailed that, if adopted by the court, they would form adequate factual basis, supported by anticipated evidence, for resolution of the case and for support of a judgment. The proposed findings shall be submitted to the judge who will preside at the trial and served upon all adverse parties at least three working days before the trial begins.

53.1 Masters.

See NELR 72.1(e) and NELR 72.5(b).

53.2 Arbitration/Alternative Dispute Resolution.

[Reserved.]

Commentary

As of this writing, the most recent mediation plan adopted by the court is reproduced below for the convenience of counsel. Counsel are cautioned to check with the Clerk to determine whether the plan has been subsequently modified, and, if so, to obtain a copy of the modified plan from the Clerk.

(a) Purpose. It is the purpose of the court to provide mediation services with resultant savings in time and expenses to litigants and the court without sacrificing the quality of justice to be rendered or of the right of the litigants to trial in the event a voluntary settlement satisfactory to the parties is not achieved through the mediation procedure.

(b) Designation of Civil Cases for Mediation. Any district, magistrate, or bankruptcy judge may by order refer a case to mediation when the judge finds that the nature of the case and the amount in controversy, together with the information available regarding the possibility of settlement make resolution of the case by mediation a practical possibility within the purposes noted above. Such cases may include, but are not limited to:

(1) Employment cases in which the parties have not previously engaged in conciliation proceedings;

(2) Cases involving policy or practice questions that lend themselves to negotiation regarding actions or procedures to be taken in the future;

(3) Cases in which the parties are involved in an ongoing relationship which will continue after the resolution of the litigation;

(4) Cases in which the litigation costs are high in relation to the amount in controversy;

(5) Cases in which the amount in controversy is determined to be less than $100,000; and

(6) Cases to which the United States is a party and the parties to the litigation have not previously engaged in negotiations, work-out arrangements, or similar efforts.

(c) Procedure for Referral to Mediation.

(1) As soon as practicable after all defendants have answered the complaint, the court shall, after conferring with the parties and/or counsel by mail or otherwise, determine whether to designate the case for mediation.

(2) At such time the judge shall enter an order which shall stay all further proceedings in the case, pending the outcome of the mediation, and refer the case to the appropriate mediation center designated as follows: Cases on the Omaha docket shall be referred to the Metro Mediation Center in Omaha, Nebraska or alternatively, if the parties and their attorneys reside outside the Douglas and Sarpy county area, to the Lincoln/Lancaster Mediation Center for referral to the mediation center in Nebraska nearest to the parties' and their attorneys' residences; all other cases shall be referred to the Lincoln/Lancaster Mediation Center for referral to the mediation center in Nebraska nearest to the parties' and their attorneys' residences. The parties and counsel may by agreement cause the referral of the case to a particular mediation center.

(3) The order of referral shall require all parties or their fully authorized representatives, and counsel, to attend the mediation session scheduled by the mediation center. Failure of a party, an attorney, or a fully authorized representative of a party to attend the mediation session shall be cause for the imposition of sanctions against the offending party and/or counsel.

(4) Any party may file an objection to the reference of the case to mediation, not later than seven working days following the filing of the order described in subparagraphs (2) and (3), above. The objection may: challenge the reference in toto if the party views the dispute as wholly inappropriate for mediation; challenge some lesser aspect of the reference, such as particular substantive matters or procedure; or alternatively, state that the parties have, themselves, selected a mediator other than one to be obtained through the auspices of the Nebraska Office of Dispute Resolution to which the mediation should be referred. The objection shall set forth the bases for the objection and in addition, if it is directed to some specific substantive matter or procedure, shall propose alternative provisions in the order which would, if adopted, resolve the objection to the satisfaction of the objecting party. Any such proposal shall first have been discussed in person or by telephone with opposing counsel or parties, unless such a discussion is shown to be impossible. Unless all parties are shown to have agreed to the objector's proposal, as soon as practicable after the filing of an objection,

the judge shall confer with counsel and/or the parties in an attempt to resolve the objection so the mediation can take place. Such resolution may include making the subject of the objection itself a subject for mediation as a preliminary matter during the mediation session. If such conference resolves the disagreement raised by the objection, the judge shall enter an amended order in accordance with that resolution. If after such conference the judge is unable to resolve the objection to facilitate the mediation, he or she shall withdraw the order referring the case to mediation. During the pendency of the objection, the order of reference shall be automatically stayed.

(d) Procedure for Mediation.

(1) Within twenty days of the entry of the order of referral, counsel for the parties shall confer with the staff of the mediation center to secure a date for the mediation session. The mediation center shall determine the date, time and place of the mediation session, taking into consideration the convenience of all persons attending.

(2) The mediation center shall select a mediator from among those mediators who are qualified to serve as the mediator in the referred case. Such mediator shall meet all criteria required to qualify as a mediator under the Nebraska Dispute Resolution Act, and, in addition, shall meet the criteria set forth in paragraph 6, below. The mediator selected may be disqualified if found to have a conflict of interest or if, for any other reason, one or more of the parties establishes that the mediator cannot be expected to be impartial. Any request for replacement of the selected mediator shall be made to the mediation center. The mediator may, prior to the mediation session request or require counsel and/or the parties to supply him or her with information about the case, including material documents, exhibits and statements concerning the dispute and any prior attempts to resolve it.

(3) The mediation session shall be held no later than sixty days following the entry of the order of referral, unless all parties agree to a continuance, in which case the mediation session shall be held no later than ninety days following the entry of the order of referral. At the mediation session counsel for the parties and the parties themselves may be required to present information reasonably necessary for the mediator to understand the issues presented and the interests of the parties in settlement. The mediator shall conduct an orderly settlement negotiation with the parties and their counsel, identifying issues, generating options, and proposing solutions to the dispute. The mediator shall be impartial and shall not express his or her own opinions or make any determination or recommendations as related to the case. Except as may be specifically provided herein, the mediation session shall be conducted in accordance with the Nebraska Dispute Resolution Act, Neb. Rev. Stat. §§25-2901, et. seq., as existing at the time of the mediation proceedings.

(4) The mediation session(s) constitute settlement negotiations. Notwithstanding the provisions of Rule 408, Fed. R. Evid., all statements, whether written or oral, made only during the course of the mediation proceeding shall be deemed to be confidential and shall not be admissible in evidence for any reason in the trial of the case, should the case not settle.

(5) Within five working days of the conclusion of the mediation process, the mediation center shall report to the clerk of the district court or the bankruptcy court, as the case may be, whether or not the case has been settled, and whether or not the fees for the mediation have been paid by the parties responsible for them, and if not, the amount of unpaid fees and the responsible party or parties. No further information shall be provided.

(6) In the event the case has not settled, the clerk shall notify the assigned district, magistrate, or bankruptcy judge for the purpose of the entry of an order restoring it to the active docket of the court, including trial.

(7) In the event the mediation fees, or some portion thereof, have not been paid, the clerk shall note such fees, and such fees shall be included in the computation of any judgment entered in the case, unless the clerk has been notified by the mediation center prior to the entry of judgment that such fees have been paid.

(e) Fees for Mediation. The cost of the mediation service shall be borne by the parties to the mediation session at the rate established in conjunction with the mediation center, not to exceed $100.00 per hour total, which can be divided equally or on some pro rata basis as decided by the parties. At the conclusion of the mediation proceeding the mediation center shall present a payment request to the parties attending and their counsel. In the event one or more of the parties is proceeding in forma pauperis, the mediation fees of that party may, upon proper application and approval under NELR 67.4, be paid from the Federal Practice Fund, unless the mediated settlement includes payment of that party's mediation fee by another party.

(f) Mediators; Qualifications.

(1) The clerk of the district court shall certify those persons who are eligible and qualified to serve as mediators under this Plan. A current list of certified mediators shall be maintained in the offices of the clerk and shall be made available to counsel and the public upon request.

(2) An individual may be certified to serve as a mediator if he or she has qualified as a mediator under the requirements of the Nebraska Dispute Resolution Act, and, in addition,

(i) is an attorney in good standing in the state of Nebraska and in this court, and

(ii) has been admitted to practice law in any state for at least five years, and

(iii) has completed not fewer than 15 hours of specialized training in mediating cases in federal court.

(3) A person desiring to be certified as a mediator shall complete an application provided by the clerk of the district court which states the applicant's experience as a mediator, including mediating disputes which were, at the time of the mediation, in litigation; the applicant's training; and the subject matter areas in which the applicant claims particular expertise or in which the applicant has significant experience. In addition, the applicant shall, upon certification, take the oath or affirmation below:

"I, _____ , do solemnly swear/affirm that I do meet the qualifications required by the Mediation Plan for the United States District

Court for the District of Nebraska, and that I will promptly, faithfully and impartially discharge the duties of mediator in accordance with the Mediation Plan for the United States District Court for the District of Nebraska, applicable laws of the State of Nebraska, and the rules and orders of this court."

Certification shall be effective for a period of five years, and a certified mediator shall be eligible for recertification for succeeding periods of five years. No fee shall be charged by the clerk for initial certifications; however, the clerk may charge a nominal fee to cover administrative expenses for recertifications. The clerk shall promptly provide to the Nebraska Office of Dispute Resolution the names and addresses of mediators who have been certified or recertified pursuant to this plan, together with the expiration date of the certification.

(4) When exceptional circumstances warrant, an individual who does not meet the requirements of subparagraphs (2) and (3) of this paragraph may be approved as a mediator in a particular case with the consent of the parties and the approval, by order, of the judge.

(5) Two co-mediators may be assigned in a particular case in accordance with the joint request of the parties and the approval, by order, of the judge. Only one of such comediators need meet the criteria in (2) above, but both must be qualified under the Nebraska Dispute Resolution Act.

(g) Mediators; Requirements. An attorney-mediator shall meet the requirements of applicable ethical standards established by the Nebraska Office of Dispute Resolution, and in addition, shall:

(1) clearly inform the parties of the attorney-mediator's role as a mediator, including the confidentiality of the process, and of the fact that there is no attorney-client privilege or relationship between the attorney-mediator and any party;

(2) assist the parties in defining the issues of the dispute;

(3) advise and encourage unrepresented parties to seek independent legal advice before executing any settlement agreement drafted by the attorney-mediator;

(4) not have represented any of the parties before in any matter, not be, and not have been, affiliated with any firm or professional corporation or association which has represented any of the parties;

(5) not have any financial or other interest of any kind in any organization or entity which is a party or related to a party to the case;

(6) not hold any position, interest, or relationship to any party which might reasonably provide any basis for the mediator's impartiality to be questioned;

(7) not hold any personal interest, bias, or prejudice for or against any party;

(8) not represent any of the parties for a period of at least six months following the conclusion of the mediation, but after that time period may represent one of the parties only in a matter that is clearly distinct from the mediated issues;

(9) withdraw as mediator if any of the requirements of this paragraph is not met or if any of the parties so requests and makes a showing of one or more of the reasons in paragraph (f)(2), above, or if any of the conditions of this paragraph no longer is satisfied. Upon withdrawal the attorney-mediator shall not act or continue to act, in

any capacity, on behalf of any of the parties in the matter that was the subject of the mediation.

Nothing in this paragraph restricts or applies to the activities of attorneys representing clients in the negotiation or mediation process.

(h) Evaluation. At the conclusion of the mediation process for each case the clerk shall, in cooperation with the mediation centers, measure the effectiveness of the mediation program in terms of satisfaction of the parties and the attorneys involved, as well as savings to the parties in time and money, in comparison to litigating the case to ultimate disposition. The clerk shall report to the judges of the court on relevant statistics and evaluative measures regarding cases referred to mediation, on or about the second January 1st following implementation of the mediation plan, and annually thereafter. Such reports shall include copies of related correspondence received from parties, attorneys, mediators, mediation center personnel, or other interested persons concerning the mediation program. Copies of the report shall be delivered to the members of the Federal Practice Committee, which may further evaluate the program and propose changes to the judges in accordance with its findings.

54.1 Taxation of Costs.

(a) Procedure for Taxation in Civil Cases. The party entitled to recover costs shall file within 30 days after entry of judgment a verified bill of costs upon forms provided by the Clerk. The date on which the party will appear before the Clerk for taxation of the costs and proof of service of a copy upon the party liable for the costs shall be endorsed thereon. Post-trial motions shall not serve to extend the time within which a party must file a verified bill of costs as provided by this rule, except on order extending the time.

(b) Procedure for Taxation in Criminal Cases. Costs will not be imposed in any criminal case except at the request of the government, and then only after the filing of a verified bill of costs. In criminal cases, the bill of costs may be filed with the Clerk's office any time after fifteen (15) days following the conclusion of the trial or other proceeding in which costs are to be taxed, and the Clerk is directed to proceed with the taxation of costs so that the court may consider that action at the sentencing hearing. In cases where the government has failed

to file a bill of costs in a statutorily mandated case, the court will direct the government to file such a bill of costs.

(c) To Whom Payable. Except in criminal cases, suits for civil penalties for violations of criminal statutes, and government cases not handled by the Department of Justice, all costs taxed are payable directly to the party entitled thereto and not to the Clerk, unless otherwise ordered by the court.

(d) Waiver of Costs. Failure to file a bill of costs within the time provided for in this rule shall constitute waiver of taxable costs.

(e) Costs Defined. Costs as used in this rule shall not include attorney's fees.

54.2 Jury Cost Assessment.

To avoid the unnecessary attendance of jurors, if any civil action scheduled for trial is settled in advance of trial, the Clerk shall be notified of that fact at least one full business day before the date scheduled for trial; and, if such notice is not given within that time, the court may assess all juror costs and fees equally against the parties and their counsel, or otherwise, as the court may determine. If any civil action is settled by the parties during trial, the court may assess all juror costs and fees equally against the parties and their counsel, or otherwise, as the court may determine.

54.3 Award of Attorney's Fees and Non-Taxable Expenses.

Where an attorney's fee and related non-taxable expenses may be allowable (except in Criminal Justice Act cases), the court by order, either with or without the filing of a motion by

a party, may specify the time and method of making showings regarding a fee award. Otherwise, the time and method for filing a claim for attorney's fees and related non-taxable expenses is controlled by Fed. R. Civ. P. 54(d)(2). Any party applying for an award of attorney's fees and related non-taxable expenses shall support the application with appropriate and reliable evidence and authority. Affidavits and any written argument to be made should be submitted with the fee application. The court will expect counsel to adhere to appropriate criteria in connection with fee applications. Where a potential fee award issue exists, including cases with Criminal Justice Act appointments, counsel should consult the Fee Application Guidelines set forth in NELR 54.4.

54.4 Fee Application Guidelines.

With respect to services performed and expenses incurred in any case, including a Criminal Justice Act case, the following guidelines are offered to assist counsel in presenting to the court information essential to a reasoned explanation of the fee award.[3]

(a) As to Services Performed:

(1) Identify with particularity the work done. For example-

- if a conference, state who was present, what subjects were discussed, and how long it lasted;

---

[3] **See, e.g., *Farrar v. Hobby***, ___ U.S. ___, 113 S. Ct. 566 (1992); ***Hensley v. Eckerhart***, 461 U.S. 424 (1983). Counsel should review the most recent decisions of the circuit court. These Fee Guidelines also may be appropriate in applications for sanctions.

- if research, state who did it, what subjects and issues were researched, and whether the results were incorporated into a brief, motion, or pleading;

- if travel time is involved, segregate it, state who traveled, and the purpose and mode of travel;

- if preparation of pleadings, identify the pleading and who prepared it.

(2) Identify the status (attorney, paralegal, law student) of each person performing an item of work, and each person's background.

(3) If any services were performed by a paralegal or law student, state the salary or other wage rate at which the paralegal or law student was paid by the attorney or law firm.

(4) If the services were applicable to more than one case, identify the relative applicability to each case.

(b) As to Expenses Incurred:

Identify the expense with particularity. For example-

- if photocopying expense, what items were copied, why they were copied, what use was made of them, how many pages of material were photocopied;

- if deposition expense, list the name of the court reporter, the date of taking, the identity of the deponent, the purpose of taking the deposition (discovery or evidentiary), what use was made of the deposition;

- if long-distance telephone expense, list the date, by whom, to whom and where the call was made and the subject of the call;

(c) As to Rates of Compensation Requested:

Except in Criminal Justice Act cases, be prepared to submit affidavits or other evidence in support of the fee rates requested.

55.1 Default Judgments by the Clerk.

(a) To obtain a Clerk's Entry of Default under Fed. R. Civ. P. 55(a) and (b)(1) the following materials should be submitted to the Clerk:

(1) A Motion for Entry of Default by the Clerk.

(2) A Proposed Clerk's Entry of Default. This Clerk's Entry of Default should state that the default is being entered for failure to plead or otherwise defend as provided by Rule 55(a) of the Federal Rules of Civil Procedure.

(b) If a Clerk's entry of a Default Judgment is requested, the following materials should be submitted to the Clerk:

(1) A Motion for Clerk's Judgment by Default.

(2) An affidavit setting forth the amount, which should be for a sum certain or for a sum which can by computation be made certain, and which should not exceed the amount asked for in the complaint plus the addition of the exact computation of interest and costs. The affidavit should also set out the fact that the defendant against whom judgment is to be entered is not an infant or incompetent person as set out in Rule 55(b)(1) of the Federal Rules of Civil Procedure.

(3) The proposed Clerk's Judgment should be submitted to the Clerk for the Clerk's signature.

(c) If a judgment is requested from the court under Fed. R. Civ. P. 55(b)(2), the party requesting the judgment shall, after obtaining a Clerk's entry of default as prescribed in subsection (a), above, submit the following materials:

(1) An affidavit stating that the party against whom the default judgment is requested is not an infant or incompetent person as set out in Rule 55(b)(2) of the Federal Rules of Civil Procedure;

(2) A proposed judgment for the court's consideration.

56.1 Summary Judgment Procedure.

(a) Moving Party. The moving party shall set forth in the brief in support of the motion for summary judgment a separate statement of each material fact as to which the moving party contends there is no genuine issue to be tried and as to each shall identify the specific document or portion thereof or discovery response or deposition testimony (by page and line) which it is claimed establishes the fact.

(b) Opposing Party. The party opposing a motion for summary judgment shall set forth in its opposing brief a separate statement of each material fact as to which it is contended there exists a genuine issue to be tried and as to each shall identify the specific document or discovery response or deposition testimony (by page and line) which it is claimed establishes the issue. An opposing brief may be delivered and served no later than twenty days after service of the motion and supporting brief. Failure to deliver and serve an opposing brief *alone*

shall not be considered to be a confession of the motion; however, nothing in this rule shall excuse a party opposing a motion for summary judgment from meeting the party's burden under Fed. R. Civ. P. 56.

57.1 Declaratory Judgments.

[Reserved.]

58.1 Satisfaction of Judgment.

Satisfaction of a judgment shall be noted by the Clerk on the judgment index upon the happening of any one of the following:

(a) The filing with the Clerk of a written satisfaction of judgment executed by the judgment creditor or his or her attorney of record.

(b) The filing with the Clerk of a return of execution by the marshal showing the judgment collected by the marshal.

(c) The payment of the judgment into the registry account of the court, but such payment may only be made pursuant to an order of the court first obtained authorizing the payment.

59.1 New Trials; Amendment of Judgments.

[Reserved.]

60.1 Relief from Judgment or Order.

[Reserved.]

61.1 Harmless Error.

[Reserved.]

62.1 Stay of Proceedings to Enforce a Judgment.

[Reserved.]

63.1 Inability of a Judge to Proceed.

[Reserved.]

64.1 Seizure of Person or Property.

[Reserved.]

65.1 Injunctions.

[Reserved.]

65.1.1 Security; Proceedings Against Sureties.

[Reserved.]

66.1 Receiverships.

[Reserved.]

67.1 Bonds and Other Sureties.

(a) General Requirements. Unless expressly directed otherwise by a judge acting pursuant to the provisions of 18 U.S.C. § 3146 in the supervision of a criminal matter, every bond, recognizance or other undertaking required by law or court order in any proceeding shall be executed by the principal obligor and by one or more sureties qualified as provided in this rule.

(b) Unacceptable Sureties. An attorney or the attorney's employee, a party to a case, or the spouse of a party to a case or of an attorney shall not be accepted as surety on a cost bond, bail bond, appeal bond, or any other bond filed in such case.

(c) Corporate Surety. A corporate surety upon any undertaking in which the United States is the obligee must be qualified in accordance with the provisions of 6 U.S.C. §§ 6-13, and approved thereunder by the Secretary of the Treasury of the United States. In all other instances a corporate surety qualified to write bonds in the State of Nebraska shall be an acceptable surety. In all cases a power of attorney showing the authority of the agent signing the bond must be attached to the bond.

(d) Personal Surety. Persons competent to convey real estate who own lands in the State of Nebraska of an unencumbered value of at least the stated penalty of the bond may obtain consideration for qualification as surety thereon by attaching thereto a duly acknowledged justification showing: (1) legal description of the real estate; (2) a complete list of all encumbrances and liens thereon; (3) its market value based on recent sales of like property; (4) a waiver of inchoate rights of any character and certification that the real estate is not exempt from execution; and (5) certification as to the aggregate amount of the penalties

of all other subsisting undertakings, if any, assured by said bondsman as of that date. Said justification and certifications shall be reviewed by the judge before whom the proceeding is pending for approval or disapproval of the surety.

(e) Cash Bonds. Cash bonds may be deposited into the registry of the court, but only upon execution and filing of a written bond sufficient as to form and setting forth the conditions of the bond. Withdrawal of cash bonds so deposited shall not be made except upon written order of the court.

(f) Cost Bonds. The court on motion or on its own initiative may order any party to file an original bond for costs or additional security for costs in such an amount and so conditioned as the court by its order may designate.

(g) Insufficiency--Remedy. Any opposing party may raise objections to a bond's form or timeliness or the sufficiency of the surety. If the bond is found to be insufficient, the judge may order that a sufficient bond be filed within a stated time, and if the order is not complied with, the case may be dismissed for want of prosecution or the judge may take other appropriate action.

67.2 Deposits.

(a) Order Directing the Investment of Funds. Any order directing the Clerk to invest funds deposited with the registry account of the court pursuant to 28 U.S.C. § 2041 shall include the following:

(1) The amount to be invested; and

(2) The type of interest-bearing account in which the funds are to be invested.

It shall be the responsibility of counsel to cause a copy of the order to be served personally upon the Clerk or chief deputy at Omaha or the deputy in charge at Lincoln.

(b) Time for Investing Funds. Upon such service the Clerk shall take all reasonable steps to invest the funds within ten days of the service of the order.

(c) Fee. Except as otherwise ordered by the court, the Clerk, at the time the income becomes available, shall deduct from the income earned on the investment a fee as authorized by the Judicial Conference of the United States and set out by the Director of the Administrative Office.

67.3 Withdrawal of a Deposit Pursuant to Fed. R. Civ. P. 67

Any person seeking withdrawal of money deposited in the court pursuant to Fed. R. Civ. P. 67 and subsequently deposited into an interest-bearing account or instrument as required by Fed. R. Civ. P. 67, shall provide a completed IRS Form W-9 attached to the motion seeking withdrawal of the funds.

67.4 Federal Practice Fund.

Funds generated from the admission and renewal fees for a Federal Practice Fund pursuant to NELR 83.4(c) and (e) and from other activities authorized by the court for Federal Practice Fund purposes shall be invested by the Clerk in a trust account. The trust account shall be maintained and accounted for separately from all other funds. Funds shall be paid out on the order of the chief judge in an amount and with a priority determined in light of the condition of the Federal Practice Fund and any other requests being made and expected to be made for

payment from the Federal Practice Fund. If the chief judge is not reasonably available, the district judge next senior in service to the chief judge may enter such an order. All requests for payment shall be sent to the Clerk who shall forward them to the chief judge or, if the chief judge is not reasonably available, the district judge next senior in service to the chief judge, together with a statement of the condition of the Federal Practice Fund. Payments may be ordered from the Federal Practice Fund in accordance with the guidelines adopted by general order of the active district judges of the court.

68.1 Settlement Procedures.

Upon notice to the court or to the Clerk that an action has been settled counsel shall file within 15 days thereafter, unless otherwise directed by written order, such pleadings as are necessary to terminate the action; upon failure to do so, the court may order dismissal of the action without further notice and without prejudice to the right to secure reinstatement of the case within 30 days after the date of the order by making a showing of good cause as to why settlement was not in fact consummated.

69.1 Execution.

[Reserved.]

70.1 Judgment for Specific Acts; Vesting Title.

[Reserved.]

71.1 Process in Behalf of and Against Persons Not Parties.

[Reserved.]

71A.1 Condemnation of Property.

[Reserved.]

72.1 Magistrate Judges.

(a) Duties under 28 U.S.C. § 636. Each magistrate judge of this court is authorized to perform the duties prescribed by 28 U.S.C. § 636 to the full extent authorized by law.

(b) Disposition of Misdemeanor Cases - 18 U.S.C. § 3401.

(1) By full-time magistrate judges. A full-time magistrate judge may:

(A) Try persons accused of, and sentence persons convicted of, misdemeanors committed within this district in accordance with 18 U.S.C. § 3401; and

(B) Direct the probation service of the court to conduct a presentence investigation in any misdemeanor.

(2) By part-time magistrate judges. Designation of part-time magistrate judges to conduct duties under 18 U.S.C. § 3401 shall be made by specific order as circumstances may require.

(c) Prisoner Cases under 28 U.S.C. §§ 2254 and 2255. A full-time magistrate judge may perform any or all of the duties imposed upon a district judge by the rules governing proceedings in the United States District Courts under 28 U.S.C. §§ 2254 and 2255. In so doing

a magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a district judge a report containing proposed findings of fact and recommendations for disposition of the petition or motion by the district judge. A magistrate judge may hear and determine cases brought under 28 U.S.C. § 2255 in which he or she entered judgment by the consent of the parties in the underlying criminal prosecution.

(d) Prisoner Cases under 42 U.S.C. § 1983. A full-time magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a district judge a report containing proposed findings of fact and recommendations for the disposition of complaints filed by prisoners challenging the conditions of their confinement.

(e) Special Master References. A magistrate judge may be designated by a district judge to serve as a special master in appropriate civil cases in accordance with 28 U.S.C. § 636(b)(2) and Fed. R. Civ. P. 53. Upon the consent of the parties a magistrate judge may be designated by a district judge to serve as a special master in any civil case, notwithstanding the limitations of Fed. R. Civ. P. 53.

72.2 Referral of Matters to Magistrate Judge.

(a) Criminal Cases.

(1) Misdemeanor cases. All cases initiated as misdemeanor cases shall be the responsibility of a full-time magistrate judge, who shall proceed in accordance with the provisions of 18 U.S.C. § 3401 and Fed. R. Cr. P. 58.

(2) Felony cases. Upon the return of an indictment or the filing of an information in any felony case it shall be the responsibility of a full-time magistrate judge to conduct an arraignment and such pretrial conferences or omnibus hearings as are necessary, determine all nondispositive motions, and hear all dispositive motions, in accordance with 28 U.S.C. § 636.

(b) Civil Cases. All civil cases shall be the responsibility of a full-time magistrate judge for scheduling trials, conducting such discovery, pretrial, and settlement conferences as are necessary and hearing and determining all pretrial procedural and discovery motions, including the issuance of progression orders. Where the parties consent to trial and disposition of a case by a magistrate judge under NELR 73.1, the case shall, with the approval of the district judge to whom it is assigned, be reassigned to a magistrate judge for the conduct of all further proceedings and the entry of judgment.

(c) General. Nothing in these rules shall preclude a district judge from reserving any proceeding for conduct by a district judge, rather than a magistrate judge, or modifying the method of assigning matters to a magistrate judge, as changing conditions may warrant.

72.3 Appeal of Nondispositive Matters.

(a) Scope of Rule. This rule applies to motions for reconsideration referred to in 28 U.S.C. § 636(b)(1)(A) and to objections referred to in Fed. R. Civ. P. 72(a).

(b) Statement of Appeal and Briefs. As provided in Fed. R. Civ. P. 72(a), a party wishing to appeal an order entered by a magistrate judge in a nondispositive matter (i.e., not excepted by 28 U.S.C. § 636(b)(1)(A)) may file a "Statement of Appeal of Magistrate Judge's

Order" within ten days after being served with a copy of the order, unless a different time is established by order. The statement of appeal shall set forth specifically the order or portion thereof appealed from and the basis of the appeal. The appealing party shall submit to the district judge at the time of filing the appeal a brief setting forth the party's arguments that the magistrate judge's order is clearly erroneous or contrary to law. It is insufficient to submit only a copy of the original brief submitted to the magistrate judge, although a copy of the original brief may be submitted and incorporated into the appeal brief. Failure to submit a brief in support of the appeal may be deemed an abandonment of the appeal.

Unless otherwise ordered, when an appeal of a nondispositive order has been filed, the opposing party or parties may submit briefs in opposition to the appeal within ten days of being served with a copy of the statement of appeal, arguing that the order of the magistrate judge is not clearly erroneous or contrary to law.

(c) Evidence on Appeal. If evidentiary materials were filed or received in evidence at the time of the magistrate judge's determination of the matter, the materials may be referred to in the briefs and need not be refiled or re-offered. There shall be no additional evidentiary material submitted unless ordered in matters of detention. **See** NELR 72.5(a)(3).

(d) Scope of Review. The district judge shall modify, set aside, or remand to the magistrate judge any nondispositive order or portion thereof found to be clearly erroneous or contrary to law.

(e) Stay Pending Appeal. The filing of a statement of appeal does not act as an order staying operation of the magistrate judge's order pending appeal. Any motion for stay pending appeal shall be filed and promptly delivered in the first instance to the magistrate judge

whose order is appealed; if the magistrate judge denies the motion for stay, the motion may be addressed to the assigned district judge.

72.4 Objections to Recommendations in Dispositive Matters.

A party may object to a recommendation entered by a magistrate judge in a dispositive matter (i.e., excepted by 28 U.S.C. § 636(b)(1)(A)) by filing a "Statement of Objection to Magistrate Judge's Recommendation" within ten days after being served with a copy of the recommendation, unless a different time is established by order. The statement of objection shall specify those portions of the recommendation to which objection is made and the basis of the objection. The objecting party shall submit to the district judge at the time of filing the objection a brief setting forth the party's arguments that the magistrate judge's recommendation should be reviewed de novo and a different disposition made. It is insufficient to submit only a copy of the original brief submitted to the magistrate judge, although a copy of the original brief may be submitted and incorporated into the brief in support of the objection. Failure to submit a brief in support of the objection may be deemed an abandonment of the objection.

Unless otherwise ordered, any opposing party may submit a brief opposing the objection within ten days of being served with a copy of the statement of objection.

If evidentiary materials were filed or received in evidence at the time of the magistrate judge's determination of the matter, such materials may be referred to in the briefs and need not be refiled or re-offered. There shall be no additional evidentiary materials submitted in connection with the objection; however, if an evidentiary hearing was held before the magistrate judge, the district judge may convene a supplemental hearing to consider additional evidence,

if the party making request therefor demonstrates good cause why the evidence was not adduced before the magistrate judge.

If the district judge remands the matter to the magistrate judge, a subsequent recommendation of the magistrate judge shall also be subject to objection in accordance with this rule upon the filing of another objection.

Counsel and parties are cautioned that the failure to object to a finding of fact in a magistrate judge's recommendation in a dispositive matter may be construed as a waiver of that party's right to appeal the order of the district judge adopting the recommendation as to the finding of fact.

72.5 Review of Magistrate Judge's Orders in Specific Matters.

(a) Detention Matters.

(1) When a detention order has been entered by a judicial officer of another district in a criminal case pending in this court, review of such detention order pursuant to 18 U.S.C. § 3145(b) shall be conducted by the magistrate judge in this district to whom the case has been referred or assigned.

(2) When a detention or release order has been entered by a magistrate judge in a criminal case pending in this court pursuant to a hearing held under 18 U.S.C. § 3142(f), any motion to "reopen" the proceeding as provided in that section shall be considered a motion for the magistrate judge to review the matter of release or detention.

(3) When reviewing a magistrate judge's order of detention or release, a district judge may hear and consider additional evidence not considered by the

magistrate judge if that evidence was not available to be presented to the magistrate judge at the time of the hearing held pursuant to 42 U.S.C. § 3142(f) or for other good cause shown. In the alternative the district judge may remand the matter to the magistrate judge to reopen the hearing. Unless additional evidence is received on review, the district judge shall review an order of release or detention de novo on the record made before the magistrate judge.

(b) Special Master Reports. When a magistrate judge has been designated as a special master with the consent of the parties under Fed. R. Civ. P. 53(b), or without the consent of the parties under the provisions of 28 U.S.C. § 636(b)(2), any party may seek review of or action on the special master report filed by the magistrate judge in accordance with the provisions of Fed. R. Civ. P. 53(e).

73.1 Magistrate Judges: Trial by Consent.

(a) Civil. Upon the consent of the parties a full-time magistrate judge may conduct any and all proceedings in any civil case, including the conduct of a jury or nonjury trial, and may order the entry of a final judgment, in accordance with 28 U.S.C. § 636(c). Unless the parties specifically agree at the time of filing the consent that any appeal will lie to a district judge in accordance with NELR 74, any appeal from a judgment entered in accordance with this rule shall be taken to the court of appeals.

(b) Criminal. Upon the consent of the defendant a full-time magistrate judge may conduct any and all proceedings in any criminal misdemeanor or petty offense case, including the conduct of a jury or nonjury trial, the entry of a final judgment, the pronouncement of

sentence as provided in 18 U.S.C. § 3401 and Fed. R. Cr. P. 58, and the resolution of post-trial motions.

73.2 Procedures Before Magistrate Judges: Trial by Consent.

(a) Notice. The Clerk shall notify the parties in all civil cases that they may consent to have a magistrate judge conduct any or all proceedings in the case and order the entry of a final judgment. Such notice shall be provided as soon as practicable after the commencement of the action and before the case is first scheduled for trial.

(b) Execution of Consent. The plaintiff shall be responsible for securing the execution of a consent form by the parties and for filing such form with the Clerk of court. The Clerk shall not accept a consent form unless it has been signed by all the parties or their counsel.

(c) Assignment. After the consent form has been executed and filed, the Clerk shall transmit it to the district judge to whom the case has been assigned for approval and assignment of the case to a magistrate judge.

74.1 Appeal to District Judge in Consent Cases.

(a) Civil. [Reserved; **See** Fed. R. Civ. P. 74.]

(b) Criminal. [Reserved; **See** Fed. R. Cr. P. 58.]

75.1 Procedure on Appeal to District Judge in Consent Cases.

(a) Civil. Procedures on appeal to a district judge in a consent case pursuant to 28 U.S.C. § 636(c)(4) shall be as provided in Fed. R. Civ. P. 75, with the following exceptions:

(1) Briefs shall not be filed with the Clerk but shall be submitted to the district judge and copies served upon opposing parties or counsel;

(2) A request for oral argument may be filed with the Clerk at the time that party's brief is submitted. In the absence of an order setting oral argument the matter shall be deemed submitted at the close of the briefing.

(b) Criminal. Procedures on appeal to a district judge in a consent case pursuant to 18 U.S.C. § 3401 shall be as provided in Fed. R. Cr. P. 58(g), with the following additional provisions: Unless otherwise ordered:

(1) The appellant's brief shall be submitted to the district judge within ten days following the filing of the notice of appeal;

(2) The appellee's brief shall be submitted to the district judge within ten days following submission of the appellant's brief;

(3) No oral argument shall be permitted.

76.1 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 a bankruptcy court of this district pursuant to 28 U.S.C. § 157.

(b) Withdrawal of Reference.

(1) A reference under this rule to the bankruptcy court may be withdrawn in whole, or in part, by a district judge on his or her own motion, or on timely motion of a party. 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.

(2) Motions for withdrawal of reference shall be filed with the Clerk of the Bankruptcy Court. After notice and hearing, a bankruptcy judge shall file a report and recommendation with the Clerk of the Bankruptcy Court and the Clerk of the District Court. Copies of the report and recommendation shall be served upon the parties by the Clerk of the Bankruptcy Court. The district court may adopt the report and recommendations if no objections are filed within fifteen (15) days of service upon the parties. Objections to the report and recommendation shall be filed with the Clerk of the Bankruptcy Court and the Clerk of the District Court.

(3) Upon filing of the report and recommendation of the bankruptcy court with the Clerk of the District Court, the motion for withdrawal of reference and the report and recommendation of the bankruptcy court shall be assigned to a district court judge in accordance with the district court's general order on assignment of cases to district judges. The assigned 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 specific stay is issued by a district court judge, or a bankruptcy judge.

(4) The district court for cause may on its own motion withdraw, in whole or in part, any case or proceeding referred to the bankruptcy court. The order of withdrawal of reference shall be filed with the Clerk of the District Court and the Clerk of the Bankruptcy Court. The Clerk of the District Court shall provide notice to

interested parties. Upon receipt of 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.

(5) If the district court adopts the report and recommendation of the bankruptcy court and withdraws the reference, the order shall be filed in the office of the Clerk of the District Court and the Clerk of the Bankruptcy Court and the notice and delivery-of-records provisions of subparagraph (4) of this rule apply.

(6) If the district court determines that a hearing on objections to the report and recommendation should be held, the order setting the hearing shall be filed with the Clerk of the District Court and Clerk of the Bankruptcy Court.

(7) If the district court denies a motion for withdrawal of reference, the order shall be filed with the Clerk of the Bankruptcy Court and the Clerk of the District Court.

(c) Appeal from Bankruptcy Judge Decisions. Appeals from a decision of the bankruptcy court shall be in accordance with 28 U.S.C. § 158 and applicable bankruptcy rules. Bankruptcy Rule 8009 respecting the filing of briefs shall not be applicable and 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 may be heard by a bankruptcy judge, the judges of the United States District Court for the District of Nebraska do 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.

77.1 Orders and Judgments Grantable by the Clerk.

See NELR 6.1 and NELR 55.1.

77.2 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.

77.3 Release of Information.

All court personnel of or serving the court, including but not limited to marshals, deputy marshals, court Clerks, bailiffs, court reporters, law Clerks and secretaries, shall not disclose, without authorization by the court, to any person 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.

77.4 Official Station of Clerk.

The official station of the Clerk shall be at Omaha. Deputy Clerks in such number as shall be required shall be appointed by the Clerk and shall be stationed at Omaha and Lincoln.

78.1 Motion Day.

[Reserved.]

79.1 Custody of Files and Exhibits.

(a) Temporary Withdrawal of Files and Papers. Except as authorized by the Clerk or ordered by the court, no file or item belonging to the files of the court shall be taken from the office or custody of the Clerk. A receipt for anything so taken shall be delivered to the Clerk by the party removing it.

(b) Permanent Withdrawal of Files and Papers. Upon a showing of good cause the court may by order permit one or more items belonging to the files to be permanently withdrawn; but a party requesting a withdrawal may be required to furnish to the Clerk a copy thereof for certification by the Clerk and a receipt for the original. The certified copy and receipt shall then be filed in lieu of the original and the party receiving the original shall pay the Clerk any costs involved.

(c) Custody of Exhibits. All exhibits offered but not received, if the offeror requests they be in the custody of the Clerk, and all exhibits received in evidence shall be left in the custody of the Clerk. Exhibits may not be taken from the custody of the Clerk while the judgment is not final or is subject to appellate review, except upon order of the court and execution of a receipt therefor.

(d) Withdrawal or Destruction of Exhibits in Civil Cases. Within 60 days after judgment in a civil case has become final and is no longer subject to appellate review exhibits shall be claimed and withdrawn by the party to whom they belong and receipt therefor given to the Clerk, unless the court orders otherwise. Any exhibits not so claimed and withdrawn may be destroyed or otherwise disposed of by the Clerk as the Clerk shall see fit. On the date that

the exhibits are destroyed, the Clerk shall enter a remark in the automated docketing system stating that the exhibits were destroyed and the date of destruction.

(e) Withdrawal or Destruction of Exhibits in Criminal Cases. After the Clerk has obtained an order granting the destruction of criminal exhibits and the exhibits have been destroyed, the Clerk shall enter a remark in the automated docketing system stating that the exhibits were destroyed.

80.1 Court Reporting Fees.

A current schedule of the transcript fees, as established by the Judicial Conference of the United States, is available in the Clerk's office or from the official court reporters.

81.1 Applicability in General.

[Reserved.]

81.2 Removed Cases, Demand for Jury Trial.

In an action removed from a state court, a party entitled to trial by jury under Fed. R. Civ. P. 38 shall be accorded it, if demand therefor is filed and served within ten days after the notice of removal is served or within ten days after the answer is served, whichever is later, if that party is the petitioner for removal; or, if not the petitioner, within ten days after service on that party of the notice of filing the notice of removal or within ten days after service of the answer of petitioner upon that party, whichever is later. Failure to make demand as directed herein constitutes waiver of trial by jury.

82.1 Jurisdiction and Venue Unaffected.

[Reserved.]

83.1 Free Press-Fair Trial Provisions.

(a) Statement Not to 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 paragraph (b) 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:

(1) 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;

(2) 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;

(3) 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;

(4) 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

(5) 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.

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

(1) The general nature of the claim or defense;

(2) Information contained in a public record;

(3) 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;

(4) The scheduling or result of any step in litigation;

(5) A request for assistance in obtaining evidence and information necessary thereto;

(6) A warning of danger concerning the behavior of a person involved, when there is reason to believe that such danger exists; and

(7) In a criminal case:

(A) The identity, residence, occupation and family status of the defendant or suspect;

(B) If the defendant or suspect has not been apprehended, information necessary to aid in apprehension of that person;

(C) The fact, time and place of arrest, resistance, pursuit and use of weapons; and

(D) The identity of investigating and arresting officers or agencies and the length of that investigation.

83.2 Courtroom and Courthouse Decorum.

(a) Counsel's Standing. Counsel shall stand when addressing or addressed by the court. When making an objection, counsel need not stand unless otherwise directed by the court.

(b) Counsel's Examination of Witnesses. Except when it shall be necessary for counsel to approach the witness or an exhibit, the examination of witnesses shall be conducted 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 him or her and the witness. When examining witnesses from the counsel table, counsel shall remain seated in the chairs provided for counsel beside the counsel table or may stand immediately adjacent to the counsel table.

(c) Counsel's Moving About the Courtroom. Counsel shall not approach opposing counsel, the bench, a witness, the court reporter's table, or the Clerk's desk, or otherwise move from the counsel table or lectern, without the permission of the court, except to make an opening statement or closing argument. If many such movements will be necessary during a trial, the court, upon request, may grant continuing leave to make specified approaches.

(d) 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 permission of the court.

(e) Counsel's Leaving the Courtroom. If any counsel, including co-counsel, wishes to leave the courtroom, permission of the court should be obtained. Co-counsel may receive continuing permission to leave the courtroom at any time, although no counsel should leave during the testimony of any witness he or she has examined.

(f) Addressing and Referring to Witnesses and Parties. Witnesses and parties shall be referred to and addressed by their surnames, unless leave to do otherwise is granted.

83.3 Public Security and Conduct in Courthouse.

(a) General Conduct. No person shall loiter, sleep, or conduct himself or herself 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 a security officer, if the persons have been informed of the designation.

(c) Weapons and Components. No person, except federal, state, county and city law enforcement officers who are duly authorized to carry weapons in the performance of their duties, shall have in his or her possession or cause to be brought into a courthouse any weapon, destructive device, or component thereof. Except for those law enforcement officers, 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 a courtroom or movement about the floor on which a courtroom is located.

(d) Seating of Spectators and News Media. On days of judicial proceedings the officer in charge of security may reserve, for members of the news media and spectators, designated areas for seating in the courtrooms, 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 equitable allocation is made of some of the spectator seats in the courtrooms for 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.

(e) Food, Drink and Tobacco. No person shall consume any beverage, eat any food, or use any tobacco in a courtroom at any time.

(f) Enforcement. The marshal and other United States security personnel authorized by law or deputized, are to enforce this rule and to take into custody and promptly bring any violator before a judge.

(g) Exemption from or Interpretation of this Rule. Any person seeking an exemption from or interpretation of this rule should present his or her request to the officer in charge of security, who may present it to a judge.

83.4 Bar Admission.

(a) Bar of the Court. The bar of this court shall consist of those persons admitted to practice before the court.

(b) Ethical Standards. The standards of conduct of the members of the bar of this court shall be those prescribed by the Code of Professional Responsibility adopted by the Supreme Court of Nebraska and any amendments thereto or any standards set out in the Local Rules of the United States District Court for the District of Nebraska (NELR).

(c) Admission by Oral or Written Application. An attorney who has been duly admitted and licensed to practice before the highest court of any state may be admitted to practice in this court by a judge of this court or by the Clerk upon oral or written application and upon satisfactory showing of the good moral character of the applicant and upon his or her taking the prescribed oath and paying the prescribed fee, a portion of which shall be retained in the Federal Practice Fund, in accordance with NELR 67.4. 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.

(d) 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."

(e) Admission for a Particular Case. An attorney who has been duly admitted and licensed to practice before the highest court of any state may be admitted to practice in this court for a particular case only by a judge of this court or by the Clerk upon oral or written application and upon satisfactory showing, in the manner set out in NELR 83.4(c), of the good moral character of the applicant and upon his or her taking the prescribed oath and paying the prescribed fee, a portion of which shall be retained in the Federal Practice Fund, in accordance with NELR 67.4.

(f) Appointment of Counsel. All members of the bar of this court are subject to be appointed to represent indigent litigants. This is an ethical obligation of attorneys in fulfillment of the underlying precepts of Canon 2 of the Code of Professional Responsibility. 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 provisions of NELR 67.4, regarding use of the Federal Practice Fund.

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 (*e.g.*, 42 U.S.C. § 1988; 18 U.S.C. § 3006A).

(g) Annual 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 (**See** NELR 67.4). To insure that this fund is sufficient to cover these expenses the court will order an annual assessment to be paid by each attorney enrolled in the bar of this court, other than those admitted for a particular case only. This assessment will be paid on or before March 1 of each 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.

83.5 Attorney Discipline.

(a) Attorneys Convicted of Crimes.

(1) Upon the filing with this court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the court has been convicted in any court of the United States or the District of Columbia, or of any state, territory, commonwealth or possession of the United States, of a serious crime, as hereinafter defined, the court shall enter an order immediately suspending that attorney, 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, until final disposition of a disciplinary proceeding to be commenced upon such conviction. A copy

of such order shall immediately be served upon the attorney. Upon good cause shown the court may set aside such order when it appears in the interest of justice to do so.

(2) The term "serious crime" shall include any felony. It shall also include 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) 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) Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime the court shall, in addition to suspending that attorney in accordance with the provisions of this rule, also refer the matter to counsel for the institution of a disciplinary proceeding before the court in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.

(5) Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a "serious crime," 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; provided, however, that the court may in its discretion make no reference with respect to convictions for minor offenses.

(6) 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, but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which will be determined by the court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

(b) Discipline Imposed by Other Courts.

(1) Any attorney admitted to practice before this court shall, upon being subjected to public discipline by any other court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth or possession of the United States, promptly inform the Clerk of this court of such action.

(2) Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this court has been disciplined by another court this court shall forthwith issue a notice directed to the attorney, containing:

(A) a copy of the judgment or order from the other court; and

(B) an order to show cause directing that the attorney inform this court within thirty days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in

subparagraph (4) hereof that the imposition of the identical discipline by the court would be unwarranted and the reasons therefor.

(3) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this court shall be deferred until such stay expires.

(4) Upon the expiration of thirty days from service of the notice issued pursuant to the provisions of subparagraph (b)(2)(B) above, this court shall impose the identical discipline, 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:

(A) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process, or

(B) that 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, or

(C) that the imposition of the same discipline by this court would result in grave injustice, or

(D) that the misconduct established is deemed by this court to warrant substantially different discipline. Where this court determines that any of said elements exist, it shall enter such other order as it deems appropriate.

(5) 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) This court may at any stage appoint counsel to prosecute the disciplinary proceedings.

(c) Disbarment on Consent or Resignation in Other Courts.

(1) Any attorney admitted to practice before this court who 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, shall, upon the filing with this court of a certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation, cease to be permitted to practice before this court and be stricken from the roll of attorneys admitted to practice before this court.

(2) Any attorney admitted to practice before this court shall, upon being disbarred on consent or resigning 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, promptly inform the Clerk of this court of such disbarment on consent or resignation.

(d) Standards for Professional Conduct.

(1) For misconduct defined in these rules, and for good cause shown, and after notice and opportunity to be heard, any attorney admitted to practice before this court may be disbarred, suspended from practice before this court, reprimanded, or subjected to such other disciplinary action as the circumstances may warrant.

(2) Acts or omissions by an attorney admitted to practice before this court, individually or in concert with any other person or persons, which violate the Code of Professional Responsibility adopted by this court, shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney/client relationship. The Code of Professional Responsibility adopted by this court is the Code of Professional Responsibility adopted by the Supreme Court of Nebraska, as amended from time to time, except as otherwise provided by specific rule of this court after consideration of comments by representatives of bar associations within the state.

(e) Discipline Proceedings in Instances of Conduct Other Than That Which May be Treated as Contempt of Court.

(1) When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of any attorney admitted to practice before this court shall come to the attention of a judge of this court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these rules, the judge, except in instances of conduct that may be treated as contempt of court, 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.

(2) Should counsel conclude after investigation and review that a formal disciplinary proceeding should not be initiated against the respondent/attorney, because sufficient evidence is not present or because there is pending another proceeding against the respondent/attorney, the disposition of which, in the judgment of counsel, should be awaited before further action by this court is considered or for any other valid reason, counsel shall file with the court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or otherwise setting forth the reasons therefor.

(3) To initiate formal disciplinary proceedings, counsel shall obtain an order of this court upon a showing of probable cause requiring the respondent/attorney to show cause within thirty days after service of that order upon that attorney, personally or by mail, why the attorney should not be disciplined.

(4) Upon the respondent's/attorney's answer to the order to show cause, if any issue of fact is raised or the respondent/attorney wishes to be heard in mitigation, this court shall set the matter for prompt hearing before one or more judges of this court; provided, however, that if the disciplinary proceeding is predicated upon the complaint of a judge, magistrate or bankruptcy judge of this court, the hearing shall be conducted as follows: (A) 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 (B) if the conditions of (A) 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.

(f) Disbarment on Consent While Under Disciplinary Investigation or Prosecution.

(1) Any attorney admitted to practice before this court who is the subject of an investigation into, or is in a pending proceeding involving, allegations of misconduct may consent to disbarment, but only by delivering to this court an affidavit stating that the attorney desires to consent to disbarment and that:

(A) 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;

(B) the attorney is aware that there is a presently pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline, the nature of which the attorney shall specifically set forth;

(C) the attorney acknowledges that the material facts so alleged are true; and

(D) the attorney so 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.

(2) Upon receipt of the required affidavit this court shall enter an order disbarring the attorney.

(3) 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.

(g) Reinstatement.

(1) After Disbarment or Suspension. An attorney suspended for three months or less shall be automatically reinstated at the end of the period of suspension upon the filing with the court of an affidavit of compliance with the provisions of the order. An attorney suspended for more than three months or disbarred may not resume practice until reinstated by order of this court.

(2) Time of Application Following Disbarment. A person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment.

(3) Hearing on Application. Petitions for reinstatement by a disbarred or suspended attorney under this rule shall be filed with the chief judge of this court. Upon receipt of the petition the chief judge shall promptly refer the petition to counsel and shall assign the matter for prompt hearing before one or more judges of this court; provided, however, that 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 less 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. The judge or judges assigned to the matter shall within thirty

days after referral schedule a hearing at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that he or she has the moral qualifications, competency and learning in the law required for admission to practice law before this court and that his or her 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.

(4) Duty of Counsel. In all proceedings upon a petition for reinstatement cross-examination of the witnesses of the respondent/attorney and the submission of evidence, if any, in opposition to the petition shall be conducted by counsel.

(5) Deposit for Costs of Proceeding. Petitions for reinstatement under this rule shall be accompanied by 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.

(6) 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 him or her, provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings and upon the making of partial or complete restitution to parties harmed by the petitioner whose conduct led to the suspension or disbarment, and provided further that if the petitioner has been suspended or disbarred for five years or more, reinstatement may be conditioned, in the discretion of the judge or judges before whom the matter is heard, upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other

jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

(7) Successive Petitions. No petition for reinstatement under this rule shall be filed within one year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

(h) Attorneys Specially Admitted. Whenever an attorney applies to be admitted or is admitted to this court for purposes of a particular case, the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this court for any alleged misconduct of that attorney arising in the course of or in the preparation for such proceeding.

(i) 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.

(j) Appointment of Counsel. Whenever counsel is to be appointed pursuant to these rules to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a disciplined attorney, this court shall appoint as counsel the disciplinary agency of the Supreme Court of Nebraska, unless such disciplinary agency declines appointment or unless such appointment is clearly inappropriate. If that agency is not appointed, 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 unless permission to do so is given by this court. Payment of fees and expenses of counsel shall be in accordance with NELR 67.4.

(k) Duties of the Clerk.

(1) Upon being informed that an attorney admitted to practice before this court has been convicted of any crime the Clerk of this court shall determine whether the Clerk of the court in which such conviction occurred has forwarded a certificate of such conviction to this court. If a certificate has not been so forwarded, the Clerk of this court shall promptly obtain a certificate and file it with this court.

(2) Upon being informed that an attorney admitted to practice before this court has been subjected to discipline by another court the Clerk of this court 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) Whenever it appears that any person convicted of any crime, disbarred, suspended, censured, or disbarred on consent by this court is admitted to practice law in any other jurisdiction or before any other court, the Clerk of this court shall within ten 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, as well as the last known address of the defendant or respondent.

(4) The Clerk of this court 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.

(l) Jurisdiction. Nothing contained in these rules shall be construed to deny to this court such powers as are necessary for the court to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States Code or under Rule 42 of the Federal Rules of Criminal Procedure.

83.6 Clinical Legal Education.

(a) Limited Admission. Any eligible law student acting under a supervising attorney shall be admitted to the limited practice of law in this court on motion of a supervising attorney pursuant to these rules. The practice of any eligible law student may include the representation of the United States in civil and criminal matters before this court. If written consent is given by a supervising attorney and by the client, an eligible law student may represent any person in any civil or criminal matter in this court. 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. 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.

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

(1) 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 (2) below;

(2) 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;

(3) file with the Clerk of the Court:

(A) a certificate by the dean of the law school that the student is of good moral character and possesses the above requirements 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 months after it is filed; or until the student's graduation from law school, whichever is earlier;

(B) a certificate in a form prescribed by the court that the student has read and agreed to abide by the rules of the court, and all applicable codes of professional responsibility and other relevant federal practice rules; and

(C) 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;

(4) be introduced to the court in which the student is appearing by an attorney admitted to practice in this court; and

(5) receive the affirmative consent of the court for the student to appear before it.

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

(1) request or receive any compensation or remuneration of any kind directly from the client, but this restriction does not prevent the supervising attorney or his or her 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;

(2) appear in court without the presence of the supervising attorney; or

(3) 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.

(d) Notice. Any supervising attorney intending to use a law student pursuant to this rule in any contested matter shall notify the court of such intention before the matter is scheduled to commence. If the court should conclude that, for reasons sufficient to the court, the participation by the student attorney would be inappropriate, the court shall so advise the supervising attorney and the said appearance shall not be made.

(e) Termination. Certification shall terminate if the student does not take the first bar examination following his or her graduation, or if the student takes and fails it, or if he or she is admitted to full practice before this court. The dean or the supervising attorney may withdraw the certification at any time by submitting a notice to that effect to the Clerk of the court. It is not necessary that the notice state the cause for the withdrawal. Any judge of this

court may terminate the admission to limited practice at any time without notice or hearing or showing of cause.

(f) Supervising Attorney. Any person acting as a supervising attorney under this rule must be admitted to practice in this court and shall:

(1) assume personal professional responsibility for the conduct of the student being supervised;

(2) co-sign all pleadings, papers and documents prepared by the student;

(3) advise the court of the student's participation in accordance with subparagraph (c) above, be 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

(4) be available for consultation with the client.

83.7 Nonresident Attorneys; Association of Resident Attorney.

A judge may require an attorney who is not a resident of this district to be associated with an attorney who is a resident of this district and who is a member of the bar of this court. Such resident attorney's name shall be identified on all pleadings filed thereafter and that attorney shall continue in the case unless other resident counsel be substituted. The resident attorney need not be present in court during all proceedings in connection with the case, unless otherwise ordered. The resident attorney shall have full authority to act for and on behalf of the client in all matters, including pretrial conferences, as well as trial or any other hearings.

83.8 Rules Governing Photography and Broadcasting of Court Proceedings.

(a) Recording and Broadcasting Devices. 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 (1) any courtroom, or (2) any jury room. No person shall place or cause to be placed any sound recording or broadcasting device at any location from which it is capable of recording or broadcasting any sounds of proceedings in any courtroom or in any jury room. This paragraph shall not apply (A) to the extent that the judge presiding shall authorize electronic means for the presentation of evidence or the perpetuation of a record, or (B) where the presiding judge of any ceremonial proceeding has given express approval for the use of specifically identified devices for the sound recording or broadcasting of the proceeding.

(b) Cameras, Videotape and Television. No person shall photograph, videotape, or televise or cause to be photographed, videotaped, or televised any person or thing in, or take any photographic, videotape, or television equipment into (1) any courtroom, (2) any jury room, or (3) any corridor of the building on the floor on which a courtroom or jury room is located. No person shall place or cause to be placed any photographic, videotape, or television equipment at any location from which it is capable of photographing, videotaping, or televising any person or thing in (1) any courtroom, (2) any jury room, or (3) any corridor of the building on the floor on which a courtroom or jury room is located. This paragraph shall not apply (A) to the extent that the judge presiding shall authorize electronic means for the presentation of evidence or the perpetuation of a record, or (B) where the presiding judge of any ceremonial proceeding has given express approval for the use of specifically identified devices for the visual recording of the proceeding.

83.9 Exhaustion of Administrative Remedies.

Any person confined in an institution under the jurisdiction of the State of Nebraska Department of Correctional Services who files a complaint under 42 U.S.C. § 1983 shall be subject to the following provisions regarding the exhaustion of administrative remedies through the Department of Correctional Services Inmate Grievance Procedure:

(a) The complaint shall be transferred to the Lincoln magistrate judge for initial review pursuant to NELR 3.4.

(b) If, upon initial review of the complaint, the magistrate judge finds that the subject matter thereof is within the scope of the department's grievance procedure and has not been presented through both steps of said procedure, the magistrate judge may, in his or her discretion, enter an order staying further proceedings in the case for a period of ninety days to allow such presentation.

(c) At the end of said ninety day period or after final disposition of the grievance, whichever shall first occur, the plaintiff in such a case shall file with the court a statement describing his or her efforts to use the procedure and what relief, if any, was obtained through the procedure. If the relief obtained through the procedure is satisfactory to the plaintiff, the case shall be dismissed. If no relief is obtained, or the relief is unsatisfactory to the plaintiff, the case shall proceed in the ordinary course.

(d) In the event that the plaintiff fails to file the statement described in subsection (c) above within ten days after the expiration of said ninety day period or final disposition of the grievance, whichever shall first occur, the case shall be dismissed.

83.10 Distribution of Copies of Rules Concerning Proceeding Pro Se, Proceeding In Forma Pauperis, and the Exhaustion of Administrative Remedies.

The Clerk shall provide copies of NELR 3.4, 3.5 and 83.9 to the Director of the Nebraska Department of Correctional Services and to the Director of the Nebraska Department of Public Institutions, and to the Attorney General of the State of Nebraska, for dissemination to interested institutions, including prisons and other penal institutions, in this state. The Clerk shall also provide to any person, upon request, a copy of NELR 3.4, 3.5, 83.9 and this rule, and shall make copies available to persons residing in institutions, together with copies of applications to proceed in forma pauperis, form affidavits in support of such applications, form complaints for submission to this court pursuant to 42 U.S.C. § 1983, and form petitions for submission to this court pursuant to 28 U.S.C. §§ 2254 and 2255. The Clerk shall request of the Director of the Department of Correctional Services that a copy of this rule be posted, or otherwise made available for inmate use, in every inmate law library within the jurisdiction of that department.

83.11 Rules Applicable to Criminal Cases Only.

(a) Issuance of Warrant of Arrest by Clerk. Upon the return of an indictment or upon the filing of an information supported by oath the Clerk shall issue at the request of the attorney for the government a warrant for the arrest of the person charged.

(b) Attendance of Defendants and Witnesses.

(1) All defendants and witnesses released pursuant to law shall, unless otherwise ordered, appear before the court upon notice from the United States Attorney to do so.

(2) When required to appear before the court, all persons on release shall first report to the marshal to be searched and shall remain in the marshal's custody during all proceedings held in connection with that appearance.

(3) All defendants and witnesses who are in custody shall be brought before the court for appropriate action as soon as the business of the court will permit.

(4) Unless otherwise ordered by the court, during jury deliberations all defendants in criminal cases shall remain in the building in which trial is held.

83.12 Complaints Against Judges and Magistrate Judges.

See The Judicial Conduct and Disability Act of 1980 (28 U.S.C. § 372(c)) and the Eighth Circuit Judicial Council's Rules for Processing of Complaints Against Judges and Magistrate Judges in the Eighth Circuit.

83.13 Local Rule Making.

Any of the local rules of this district shall be subject to such modification by the court as may be necessary in special instances to meet emergencies or to avoid injustice or great hardship.

84.1 Forms.

[Reserved.]

85.1 Title.

These rules shall be known as the Local Rules of the United States District Court for the District of Nebraska. They may be cited as "NELR ____."

86.1 Effective Date.

(a) Effective Date of Rules. These rules shall become effective on July 1, 1996.

(b) Prior Amendments. The Local Rules of the United States District Court for the District of Nebraska have been previously amended on May 17, 1989, and January 4, 1993.