

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

CIVIL RULES

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

CIVIL RULES

1.1 Definitions. The following definitions apply to these rules, unless stated otherwise.

- (a) "Judge" means any district or magistrate judge serving this district.
- (b) "Court" means "judge" or, collectively, the judges of this district.
- (c) "Clerk" means the clerk or a deputy clerk of this district.
- (d) "Marshal" means the United States Marshal or a deputy marshal of this district.
- (e) "System" means the District of Nebraska's Case Management/Electronic Case Files (CM/ECF) System.
- (f) "Electronic filing" or "electronically file" means uploading a document directly from a registered user's computer, using the court's Internet based System to file that document in the court's case file. Electronic filing also includes uploading to the System done by the clerk of documents given to the court in paper format or as .pdf ("Portable Document Format") files. Sending a document to the court via electronic mail (e-mail) or facsimile transmission (fax) is not electronic filing.
- (g) "Filing" or "file" means "electronic filing" or "electronically file." A paper document is considered filed on the date the clerk receives and file stamps it rather than the date the clerk uploads it to the System.
- (h) "NEF" means "notice of electronic filing."

3.1 Civil Cover Sheet. Except in pro se cases, when a complaint is filed nonelectronically it must be accompanied by a civil cover sheet. A civil cover sheet is a form available from the clerk and on the court's Web site. Matters appearing on the civil cover sheet have no legal effect.

3.2 Prepayment of Filing Fees. Statutory filing fees must be paid before a case is filed and process is issued. Exceptions are proceedings in forma pauperis as governed by statute or local rules.

3.3 Applications to Proceed in Forma Pauperis.

- (a) **Financial Affidavit.** A financial affidavit that substantially complies with 28 U.S.C. § 1915(a) and discloses the applicant's income, assets, expenses, and liabilities must accompany an application to proceed in forma pauperis.
 - (b) **Prisoner Applications; Trust Account Information.** In addition to submitting a financial affidavit, a prisoner as defined by 28 U.S.C. § 1915A(c) filing a complaint and seeking leave to proceed in forma pauperis must file a certified copy of the prisoner's trust account information that complies with 28 U.S.C. § 1915(a)(2).
 - (1) **Consent to Release of Information and Fee Payment.** An application to proceed in forma pauperis is consent for the institution to release trust account information to the clerk and to pay any filing fee required by 28 U.S.C. § 1915(b).
 - (2) **Continuing Payment Obligation.** The court must continue to collect, and the institution must continue to pay, the filing fee required by 28 U.S.C. § 1915(b)(1) until the fee is fully paid, despite dismissal of a case in which the court granted leave to proceed in forma pauperis. This subparagraph does not apply to petitions for writ of habeas corpus.
 - (c) **Multiple Plaintiffs.** If more than one person brings a civil action for which leave to proceed in forma pauperis is requested, each plaintiff must file an application, affidavit, and, if applicable, trust account information. In multiplaintiff prisoner civil rights cases, the assigned judge may require each prisoner to pay the full district court filing fee; joinder of plaintiffs is allowed if appropriate under Federal Rule of Civil Procedure 20.
- 4.1 Summons.** The plaintiff is responsible for completing a summons and arranging service. The clerk is authorized to sign orders specially appointing persons to serve process. The clerk is authorized to sign, seal, and issue summonses and subpoenas electronically. Electronically issued summonses and subpoenas may not, however, be served electronically.
- 5.1 Electronic Case Filing (CM/ECF).**
- (a) **Electronic Documents Authorized.** Under Federal Rule of Civil Procedure 5(d), the clerk accepts documents filed, signed, or verified electronically that are consistent with technical standards established by the Judicial Conference of the United States. A document filed in compliance with this rule is a written document for purposes of the local rules and the Federal Rules of Civil Procedure.

- (b) **Mandatory Electronic Case Opening and Filing.** Attorneys filing new civil cases in this district are required to open the cases themselves using the System. All documents must be filed electronically.
- (c) **Exceptions.** The following matters or individuals are excepted from mandatory electronic case opening and filing:
- (1) pro se parties who are not registered users;
 - (2) cases filed under seal by court order;
 - (3) exhibits, evidence, or attachments, the nature of which precludes electronic filing;
 - (4) cases or documents excepted by statute or rule; and
 - (5) situations in which an attorney applies for and receives permission from:
 - (A) the chief judge to have the clerk open the new case on the System; or
 - (B) the assigned judge to file documents nonelectronically.
- (d) **Facsimile and E-mail Filings Not Allowed.** A document is not filed under the Federal Rules of Civil Procedure until the filing party receives a System generated NEF after uploading the document to the System. A document faxed or e-mailed to the clerk or assigned judge is not considered filed without a court order.
- (e) **Timely Filing.** A document is considered timely filed if filed before midnight Central Standard Time (or Central Daylight Time, if in effect). However, the assigned judge may order a document filed by a time certain.
- (f) **Official Record.** The clerk does not maintain a paper court file in any case unless required by law or local rule. When a document is filed electronically, the official record is the electronic recording of the document as stored by the court, and the filing party is bound by the document as filed.
- (1) **Documents Filed Nonelectronically.** The official record also includes documents filed nonelectronically under local rule.
 - (2) **Original Documents Scanned and Discarded.** The clerk scans and discards original documents brought to the clerk for filing unless the

document's size or nature requires that it be kept in a paper format. An attorney who wishes to have an original document returned after the clerk scans and uploads it to the System may, before submitting the document to the clerk, ask the assigned judge for written authorization for the document's return. Authorization is granted on a case-by-case basis. The court does not allow blanket authorizations for the return of all original documents filed by an attorney or office.

- (3) **Copies of Filings.** A party who requests a copy of a paper document submitted for filing must, at the time of filing, supply the clerk's office with the copy and, if the return is to be made by mail, a self-addressed, stamped envelope.
- (g) **File Date.** Except for documents first filed with the court nonelectronically and then uploaded to the System, a document filed electronically is considered filed as of the date and time stated on the NEF.

5.2 Electronic Service.

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

5.3 Privacy.

- (a) **Mandatory Redaction.** See Federal Rule of Civil Procedure 5.2(a) or Federal Rule of Bankruptcy Procedure 9037 regarding mandatory redaction in electronic and nonelectronic filings. The following privacy rules also apply to all documents and exhibits filed in the district and bankruptcy courts.
- (b) **Discretionary Redaction.** The filing party may also redact the following information from all documents and exhibits filed electronically or nonelectronically, unless the assigned judge orders otherwise:
- (1) personal identifying numbers, such as driver's license numbers;
 - (2) home street addresses;
 - (3) medical or psychological records;
 - (4) employment history;
 - (5) individual financial information;
 - (6) proprietary or trade secret information;
 - (7) information that may identify a cooperating individual;
 - (8) information regarding a crime victim;
 - (9) national security information;
 - (10) sensitive security information as described in 49 U.S.C. § 114(s);
 - (11) education records as defined by 20 U.S.C. § 1232g(a)(4)(A); and
 - (12) other data as the court orders.
- (c) **Restricting Access to Unredacted Documents.** With the court's leave, a party may restrict access to a document containing the unredacted personal data identifiers listed in Nebraska Civil Rule 5.3(b), Federal Rule of Civil Procedure 5.2, or Federal Rule of Bankruptcy Procedure 9037.
- (1) **Motion.**
 - (A) **Procedure.** A party seeking to file an unredacted document must electronically file a motion to restrict access to the document under the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899 (Dec. 17, 2002) (codified at 5 U.S.C.

§§ 3701-3707 and scattered sections) (“E-Government Act”). The motion must state why filing an unredacted document is necessary and why redaction would not reduce or eliminate the need for restriction.

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

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

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

5.4 Restrictions on Filing Discovery.

(a) In General. Disclosures under Federal Rule of Civil Procedure 26(a)(1) and (2), 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 must not be filed until needed for trial, resolution of a motion, or on the court’s order. If a member of the public asks the clerk for nonfiled documents, the parties must make the documents available for inspection, subject to the entry of protective orders under the Federal Rules of Civil Procedure and other applicable law provisions.

(b) Electronic Service of Discovery. Notwithstanding the restrictions on filing discovery documents in subparagraph (a) of this rule, the parties may agree at any time to serve discovery documents electronically (*e.g.*, by e-mail or fax).

6.1 Time.

- (a) **Computation; 3-Day Mailing Rule.** Federal Rule of Civil Procedure 6 applies when computing any period of time stated in these rules. The 3-day federal mailing rule applies whether service is accomplished by mail, by leaving with the clerk, by electronic filing, or by other means to which the parties have consented.
- (b) **Response Time Computation.** Unless a local rule states otherwise, Federal Rule of Civil Procedure 6 governs the computation of response time.

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

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

(1) Supporting Brief.

(A) Substantial Issue of Law. A motion raising a substantial issue of law must be supported by a brief filed and served together with the motion. The brief must be separate from, and not attached to or incorporated in, the motion or index of evidence. The brief must concisely state the reasons for the motion and cite to supporting authority. A party's failure to brief an issue raised in a motion may be considered a waiver of that issue. The brief must not recite facts unless supported as described in Nebraska Civil Rule 7.1(a)(2).

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

(2) Evidence and Evidence Index.

(A) Factual Support. If a motion requires the court to consider any factual matters not stated in the pleadings, when filing the supporting brief the moving party must also file and serve supporting evidentiary materials not previously filed. A factual

assertion in the motion and the supporting brief must cite to the pertinent page of the pleading, affidavit, deposition, discovery material, or other evidence on which the moving party relies.

- (B) **How to File.** Evidentiary materials may be attached to the brief if the brief includes a listing of each item of evidence being filed, and the evidence citations within the brief provide hyperlinks to the evidence attached and offered in support of the factual statements. In all other cases, evidentiary materials may not be attached to the brief but rather must be filed separately with an index listing each item of evidence being filed and identifying the motion to which it relates.
- (C) **Required Affidavit.** An affidavit must identify and authenticate any documents offered as evidence. The affidavit must be made on personal knowledge, set forth facts that would be admissible in evidence, show affirmatively that the affiant is competent to testify to the matters stated, and identify the related motion.

(b) **Opposing a Motion.**

(1) **Opposing Brief.**

- (A) **Form and Content.** The party opposing a motion must not file an “answer,” “opposition,” “objection,” or “response,” or any similarly titled responsive filing. Rather, the party must file a brief that concisely states the reasons for opposing the motion and cites to supporting authority. The brief must not recite facts unless supported as stated in Nebraska Civil Rule 7.1(b)(2).
- (B) **Time for Filing.** A brief opposing a motion to dismiss, for judgment on the pleadings, or for summary judgment must be filed and served within 21 days after the motion and supporting brief are filed and served. A brief opposing any other motion must be filed and served within 14 days after the motion and supporting brief are filed and served.
- (C) **Effect of Failure to File.** Failure to file an opposing brief is not considered a confession of a motion but precludes the opposing party from contesting the moving party’s statement of facts.

(2) Evidence and Evidence Index.

- (A) Factual Support.** When filing the opposing brief, the opposing party must also file and serve supporting evidentiary material not previously filed. A factual assertion in the opposing brief must cite to the pertinent page of the pleading, affidavit, deposition, discovery material, or other evidence on which the opposing party relies.
- (B) How to File.** Evidentiary materials may be attached to the brief if the brief includes a listing of each item of evidence being filed, and the evidence citations within the brief provide hyperlinks to the evidence attached and offered in support of the factual statements. In all other cases, evidentiary materials may not be attached to the brief but rather must be filed separately with an index listing each item of evidence being filed and identifying the motion to which it relates.
- (C) Required Affidavit.** An affidavit must identify and authenticate any documents offered as evidence. The affidavit must be made on personal knowledge, set forth facts that would be admissible in evidence, show affirmatively that the affiant is competent to testify to the matters stated, and identify the related motion.
- (c) Replying to Opposing Briefs and Evidence.** The moving party may file a reply brief and index of evidence within 7 days after the opposing party files and serves the opposing brief. The reply brief may not merely repeat the moving party's initial arguments, but rather must address factual or legal issues raised in the opposing brief. No party may file further briefs or evidence without the court's leave. If the moving party does not file an initial brief, it may not file a reply brief without the court's leave.
- (d) Request for Oral Argument or Evidentiary Hearing.** Any request for oral argument or for an evidentiary hearing by a moving party must be included in the motion or else presented by a separate motion filed no later than the deadline for filing a reply brief. Any request for oral argument or for an evidentiary hearing by an opposing party must be presented by a motion filed no later than the deadline for filing an opposing brief. In general the court does not allow oral argument or evidentiary hearings on motions. The party requesting oral argument or an evidentiary hearing must state (1) why argument or a hearing is necessary and (2) an estimate of the time required for the argument or hearing.

- (e) **Request to Present Oral Testimony.** A party failing to request the opportunity to present oral testimony consents to the motion's submission without oral testimony. No oral testimony is allowed without the court's prior leave.
 - (f) **Submission of Motion.** Unless the court grants leave for oral argument, a motion is submitted on the briefs and any evidence filed when the time limit specified in Nebraska Civil Rule 7.1(c) expires.
 - (g) **Procedures for Summary Judgment Motions.** See Nebraska Civil Rule 56.1.
 - (h) **Extensions of Time for Filing or Responding to Motions.** See Nebraska Civil Rule 6.1.
 - (i) **Discovery Motions.** To curtail undue delay in the administration of justice, this court only considers a discovery motion in which the moving party, in the written motion, shows that after personal consultation with opposing parties and sincere attempts to resolve differences, the parties cannot reach an accord. This showing must also state the date, time, and place of the communications and the names of all participating persons. "Personal consultation" means person-to-person conversation, either in person or on the telephone. An exchange of letters, faxes, voice mail messages, or e-mails is also personal consultation for purposes of this rule upon a showing that person-to-person conversation was attempted by the moving party and thwarted by the nonmoving party.
 - (j) **Conference Telephone Calls.** The judge may conduct a motion hearing by telephone or video conference.
 - (k) **Certificate of Service.** All motions, briefs, and evidence indexes require a certificate of service under Nebraska Civil Rule 5.4.
- 7.2 Proposed Order.** A party may submit a proposed order to the assigned judge's chambers by e-mail sent to the address listed on the judge's information page on the court's Web site. See <http://www.ned.uscourts.gov/attorney/judges-information> A proposed order may not be filed by a party.
- 7.3 Agreements and Stipulations.** An agreement, stipulation or consent between parties is binding only if (a) in writing and signed by the parties or their attorneys, or if oral, made a part of the record and (b) approved by an appropriate court order or ruling if required. For provisions on multiple signatures on electronically filed documents, see Nebraska Civil Rule 11.1(a)(3). For discovery stipulations, see

Nebraska Civil Rule 29.1. The attorney who electronically files a joint stipulation must file a certificate of service.

7.4 Motion to Certify a Question to State Court. A party may move to certify a question of state law to the highest court of that state when it appears that (a) an issue of that state's law is determinative of the case and (b) there is no clear controlling state law precedent. The moving party's brief must include a statement of the precise issue to be certified. If the court grants the motion, it orders the parties to prepare and file stipulated facts, which this court forwards to the state court.

7.5 Sealed Documents and Objects.

(a) Procedure.

(i) Motion to Seal. A party seeking to file a sealed document or object must electronically file a motion to seal. The motion must state why sealing is required and whether redaction could eliminate or reduce the need for sealing. A motion to seal is not required if the document or object is already subject to a protective order or included within a category of documents or objects considered sealed under a federal statute or rule of procedure, local rule, or standing order of this court.

(ii) Sealed Document not Attached. The document to be sealed must not be attached to the motion but rather filed separately as a provisionally sealed document. The document remains provisionally sealed until the court rules on the motion to seal.

(iii) Order. In ruling on the motion, the assigned judge may also unseal the document, strike it, or order the filing party to electronically file a redacted copy.

(b) Notice. When a sealed document is filed, the System does not provide notice of electronic filing to all parties in the case. The filing party must use alternate forms of service to provide all parties entitled to notice with copies of the sealed document.

(c) Docket Sheet Entries. When a sealed document is filed electronically, an entry appears on the electronic docket sheet only for court users and the filing party. The parties and the public do not have remote access to the sealed document from the docket sheet.

(d) Motion to Unseal. A motion to unseal or view a document or object may be made on any legal grounds.

7.6 Denial of Pending Motions Upon Reference. When a district judge refers a case with pending motions to mediation or to the bankruptcy court, the clerk is authorized to enter a text-only order (a) automatically denying all pending motions as of the date of the reference and (b) stating that the denial is made under this rule and without prejudice to refiling.

9.1 Pleading Special Matters.

(a) Social Security Cases.

(1) Social Security Number Required. A 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) must provide, on a separate document attached to the copy of the complaint served on the Commissioner, the social security number of the worker on whose wage record the application for benefits was filed. The complaint must also state that the social security number has been attached to the copy of the complaint served on the Commissioner. Failure to provide a social security number to the Commissioner may result in sanctions that do not include dismissal of the complaint.

(2) Electronic Filing. Absent a showing of good cause, all documents in social security cases filed in this court must be filed and noticed electronically according to local rule, except as noted below.

(A) Transcript or Administrative Records. Social security transcripts or administrative records may be nonelectronically filed and served. If a transcript or administrative record is filed nonelectronically, the clerk docket a text-only event stating that the transcript or administrative record is available to parties and counsel of record in paper format from the clerk.

(b) Claim of Unconstitutionality. A party who pleads the unconstitutionality of an act of Congress or a state statute in any action in which the United States, the state, or a federal or state agency, officer or employee is not a party must notify the court of the question either by (1) checking the appropriate box on the civil cover sheet or (2) stating in the caption of the pleading that alleges unconstitutionality: "Claim of Unconstitutionality." A party raising a claim of unconstitutionality after the complaint must file a document entitled "Notice of Claim of Unconstitutionality."

(c) Request for 3-Judge Court. If a party believes a 3-judge district court is required to hear an action or proceeding under 28 U.S.C. § 2284 or any other federal law, the party must include the words "3-Judge District Court

Requested" or the equivalent immediately after the title of the first pleading in which the cause of action requiring a 3-judge court is pleaded. Unless the basis for the request is apparent from the pleading, it must be stated in the pleading or in a brief attached statement.

- (d) **Privacy Issues.** Documents containing personal identifying information must conform to the E-Government Act. *See also* Nebraska Civil Rule 5.0.3(a) and Nebraska General Rule 1.3(c). Parties, attorneys, and court personnel should be vigilant in protecting sensitive personal information found in documents including mental competency evaluations, substance abuse evaluations, and medical reports.

10.1 Form of Documents.

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

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

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

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

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

relevant excerpts or, if relevant, the complete document. The court may require parties to file additional excerpts or the complete document.

- (C) **Paper Documents.** If the court grants a party leave to submit evidentiary materials in paper, the party must also file a paper index of evidence listing each item of evidence being filed and identifying the motion to which it relates. The party must serve copies of nonelectronically filed supporting materials on other parties as if not subject to electronic filing procedures.
 - (D) **Additional Information.** Additional information on filing evidence or exhibits is available on the court's Web site at <http://www.ned.uscourts.gov/attorney/electronic-case-filing>.
- (3) **Content.** A document must plainly show the case caption, a description or designation of its contents, and the party or person/entity on whose behalf it is filed. All documents after the pleading initiating a proceeding must also show the correct docket number. A demand for jury trial, designation of a class action, claim of unconstitutionality of a statute, or request for a 3-judge court must be noted in the pleading caption.
- (4) **Hyperlinks.** Electronically filed documents allow only two types of hyperlinks: to other parts of the same document; and to an Internet location that contains a source document for a citation. A hyperlink to evidence attached to a court filing becomes a permissible hyperlink to an internet location upon filing in CM/ECF. These hyperlinks are provided only for users' convenience. Users are cautioned that hyperlinked documents in CM/ECF are subject to PACER fees.
- (A) **Cited Authority.** Hyperlinks to cited authority may not replace standard citation format. The text of the filed document must include complete citations. Neither a hyperlink, nor any site to which it refers, may be considered part of the record.
 - (B) **Responsibility for Hyperlinks.** The court accepts no responsibility for and does not endorse, approve, or guarantee any third parties or the services or products they provide on their Web sites. Likewise, the court has no agreements with any of these third parties or their Web sites. The court accepts no responsibility for any hyperlink's availability or functionality. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the Court's opinion.

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

11.1 Signing of Documents.

- (a) **Electronic Filings.** The user login and password required to file documents on the System serve as the filer's signature on electronically filed documents and for purposes of Federal Rule of Civil Procedure 11, these local rules, and any other signature requirement.
- (1) **Attorney's Signature.** An electronically filed document that requires an attorney's signature must be signed as follows: "s/ (attorney name)."
- (A) **Format.** The correct format for an electronic signature follows.

s/ Judith Attorney
Bar Number: 12345
Attorney for (Plaintiff/Defendant)
ABC Law Firm
123 South Street
Omaha, Nebraska 68000
Telephone: (402) 123-4567

- (a) **Form and Content.** A party who moves for leave to amend a pleading (including a request to add parties) must file as an attachment to the motion an unsigned copy of the proposed amended pleading that clearly identifies the proposed amendments. Except as stated in these rules or court order, the proposed amended pleading must be a complete pleading that, if allowed to be filed, supersedes the original pleading in all respects; no part of the prior pleading may be incorporated into the proposed amended pleading by reference. The motion for leave to amend must (1) specifically state the proposed amendments and (2) state whether the motion is unopposed or opposed, after conferring with opposing parties.
- (b) **Pro Se Cases.** In considering pro se litigants' amended pleadings, the court may consider the amended pleading as supplemental to, rather than as superseding, the original pleading, unless the pleading states that it supersedes the prior pleading.
- (c) **Filing of Amended Pleading.** The granting of the motion for leave to amend does not constitute filing the amended pleading. If granted leave to amend, the party must then file the amended pleading.

16.1 Scheduling Orders.

- (a) **Entered by Magistrate Judges.** Magistrate judges may enter scheduling orders under Federal Rule of Civil Procedure 16(b).
- (b) **Excepted Proceedings.** The proceedings listed below are inappropriate for the scheduling order required by Federal Rule of Civil Procedure 16(b):
 - (1) habeas corpus cases and motions for post-conviction relief filed under 28 U.S.C. §§ 2241, 2254, and 2255;
 - (2) Social Security cases filed under 42 U.S.C. § 405(g) and any other action for judicial review of an administrative decision of a government agency where review is based on the administrative record;
 - (3) actions to compel arbitration or to confirm or set aside arbitration awards;
 - (4) 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;
 - (5) appeals from the bankruptcy court;

- (6) actions for enforcement of a civil fine, penalty or forfeiture of property;
 - (7) naturalization proceedings;
 - (8) proceedings under the Freedom of Information Act, 5 U.S.C. § 552; and
 - (9) proceedings to compel testimony or production of documents relative to actions in another district or perpetuation of testimony for use in any court.
- (c) **Pro Se Cases.** Pro se cases assigned to a district judge for trial that are pending or filed after August 6, 2007, are exempt from the disclosure and conference requirements of Federal Rule of Civil Procedure 26. Unless otherwise ordered by the court, no scheduling orders will be entered in those cases.
- (1) **Prior Scheduling or Progression Order.** If the court has already issued a scheduling or progression order in a case pending on August 6, 2007, the parties must abide by the order.
 - (2) **Progression Order.** Approximately 30 days after the last defendant files an answer, the court issues a progression order addressing discovery and other issues. No discovery may take place until this progression order is entered except upon motion and order.

16.2 Pretrial Procedure in Civil Cases.

- (a) **Matters to Be Completed Before Final Pretrial Conference.**
- (1) **Exhibit List.** Unless the court orders otherwise, before the pretrial conference documents and objects expected to be introduced as exhibits must be physically numbered and inspected. Exhibits must be listed on approved forms available from the clerk and on the court's Web site, <http://www.ned.uscourts.gov/forms> > "Exhibit List," or on forms prepared in substantially the same format. Documents and objects expected to be used solely for impeachment purposes that have not been given to opposing parties need not be numbered or listed until identified at trial. Except upon a showing of good cause, failure to list an exhibit required by this rule to be listed results in its nonadmissibility over an objection.
 - (A) **Objections.** All objections to the admissibility of any listed exhibit must be noted on the exhibit list. Objections not

disclosed on the exhibit list, other than objections under Federal Rules of Evidence 402 and 403, are considered waived unless excused by the court for good cause.

- (B) **Exception for Good Cause.** The judge holding the pretrial conference may, for good cause shown, authorize the parties to defer listing exhibits or objections until a later date specified by that judge.
 - (C) **Effect of Listing.** Merely because a party lists an exhibit on an exhibit list does not mean that an opposing party may offer it into evidence without meeting all necessary evidentiary prerequisites.
- (2) **Proposed Final Pretrial Order.** Unless the court orders otherwise, a proposed "Order on Final Pretrial Conference" that includes each matter listed below must be jointly prepared and presented to the judge at the pretrial conference. An acceptable pretrial order form is available from the clerk or on the court's Web site, <http://www.ned.uscourts.gov/forms>>"Order on Final Pretrial Conference."
- (A) **Exhibits.** A complete list of exhibits and objections prepared under Nebraska Civil Rule 16.2(a)(1) must be attached to the proposed order.
 - (B) **Uncontroverted Facts.** The parties must jointly state any facts that may be accepted as established at trial, in a form that may be read to the jury.
 - (C) **Controverted and Unresolved Issues.** The parties must jointly list all remaining legal issues to be determined, setting out in detail each element of the genuinely controverted unresolved claim or defense (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 fees and applicable law under which fees are claimed, and prejudgment interest). The following must be specified: (i) any claimed special damages or permanent injuries; (ii) any elements of negligence and contributory negligence; and (iii) any other unresolved matters requiring the court's attention, for example, possible consolidation for trial, bifurcated trials on specified issues, and pending motions.

- (D) **Witnesses.** Each party must separately list all witnesses, including rebuttal witnesses, whom that party expects to call to testify, except witnesses who may be called for impeachment purposes as defined in Nebraska Civil Rule 16.2(c). The list must (1) include the city and state where each witness resides and (2) identify witnesses whom the party expects to be present and whom the party may call. Except upon a showing of good cause, a witness whose name and city of residence does not appear on the list will not be permitted to testify over objection for any purpose except impeachment. The witness list must identify each witness whose only testimony is intended to establish foundation for an exhibit for which foundation has not been waived, and unless the witness was disclosed under Federal Rule of Civil Procedure 26(a)(3), over objection the witness may not testify for any other purpose. A witness appearing on any party's witness list may be called by any other party.
- (E) **Expert Witness Qualifications.** The parties must separately list persons whom they expect to call as expert witnesses and (i) state each witness's qualifications or (ii) attach the witness's curriculum vitae.
- (F) **Voir Dire.** In cases to be tried to a jury, parties must state any requests regarding the conduct of juror examination. See Fed. R. Civ. P. 47(a); NECivR 47.2(a).
- (G) **Number of Jurors.** In cases to be tried to a jury, parties must state a preference regarding the number of jurors. See Fed. R. Civ. P. 48 and NECivR 48.1.
- (H) **Verdict.** In cases to be tried to a jury, the parties must state whether they will stipulate to a less-than-unanimous verdict.
- (I) **Briefs, Instructions, and Proposed Findings.** Parties must state any requests regarding: deadlines for filing trial briefs, see NECivR 39.2(a); proposed jury instructions, see NECivR 51.1(a); or proposed findings of fact, see NECivR 52.1.
- (J) **Length of Trial.** Parties must estimate the length of trial (in days) and state both the minimum and maximum number of trial days that the court should reserve.

- (K) **Trial Date.** Parties must state any special requests regarding the setting of a trial date.
- (b) **Representation Required.** Unless otherwise approved in advance by the judge conducting the conference, each party for whom an attorney has filed an appearance must be represented at the conference by the lead trial attorney who has adequate information and authority to responsibly and effectively participate in every aspect of the conference. All attorneys attending the final pretrial conference must be identified in the final pretrial order and may be required to sign the order approving its form at the conference.
- (c) **"Impeachment Purposes" Defined.** With regard to this rule, "impeachment purposes" means only to attack or support (1) a witness's credibility or (2) the validity of or the weight to be given to the contents of a document or object used solely to attack or support a witness's credibility. It does not include evidence that merely contradicts other evidence.

23.1 Class Action Procedures.

- (a) **Designation on Pleading.** In a case filed as a class action, the complaint or other pleading asserting a class action must include in its caption the phrase "Class Action."
- (b) **Notice to Class Members.** In addition to the notice requirements of Federal Rule of Civil Procedure 23(c)(2)(B), all notices to class members must specifically state that all documents sent to the court by any class member, including any letter or document expressing the member's desire to be excluded from the class and any objection to a proposed settlement, voluntary dismissal, or compromise, are filed electronically by the clerk and therefore will be available for public review.
- (c) **Filing of Documents Submitted by Class Members.** Before the clerk electronically files any document submitted by a class member, the clerk must provide the document to the assigned judge's chambers. The judge will instruct the clerk concerning the filing of the document and its appropriate docket entry.

26.1 Service of Disclosures.

- (a) **Certificate of Service.** When serving disclosures under Federal Rule of Civil Procedure 26(a)(1) and (2), the disclosing party must electronically file a certificate of service.

- (b) **Service by E-Mail or Fax.** To the extent practicable and if all parties agree, Rule 26(a)(1) and (2) disclosures may be served by e-mail or fax.

29.1 Discovery Stipulations. If stipulations to extend the time stated in Federal Rules of Civil Procedure 33, 34, and 36 for responses to discovery would interfere with court imposed discovery deadlines, motion deadlines, or trial dates, the stipulations are effective only upon court order. All other discovery stipulations are effective when the parties file a written stipulation signed by all parties that specifies the agreed upon change.

30.1 Video Depositions. Video depositions are authorized without a prior motion and order.

- (a) **Notice.** The deposition notice must state that the deposition will be recorded by video.
- (b) **Identification of Camera Operator.** At the deposition, the camera operator must be identified. An employee of the attorney who noticed the deposition may operate the camera.
- (c) **Swearing of Witness.** The witness must be sworn on camera.
- (d) **Camera Operation.** The camera must be directed at the witness at all times, showing a head and shoulders view. Close-up views of exhibits are allowed as requested by the questioning attorney.
- (e) **Voluntary Resolution of Objections.** Before trial, a party seeking to use the deposition at trial must initiate the voluntary resolution of objections made at the deposition.
- (f) **Unresolved Objections.** The party seeking to use the deposition at trial must submit any unresolved objections to the court in a motion in limine after the deposition, but no later than 7 days before trial or, alternatively, the date set by the pretrial order. A transcript of the video must accompany the motion.

32.1 Editing Video Depositions for Court Proceedings.

- (a) **Notice to Opposing Parties.** After the court rules on the unresolved objections raised in a motion in limine brought under Nebraska Civil Rule 30.1(f), the party seeking to use the deposition must notify opposing parties of the pages and line numbers of the deposition transcript that the party plans to delete from the tape. The party seeking to use the video deposition at trial must then edit the tape accordingly and bear the editing expense.

- (b) **Overruled Objections.** If the court overrules an objection made during the deposition, the objection need not be deleted. If requested, the court will give an instruction regarding objections heard on the video when the deposition is shown at trial.
- (c) **Copy to Opposing Parties.** At least 7 days before showing the video, the party seeking to use the tape at trial must deliver a copy of the edited video to opposing attorneys. An opposing attorney may only object if: (1) the edited version does not comply either with (A) the parties' agreement described in Nebraska Civil Rule 30.1(e), or (B) the court's ruling on the motion in limine filed under Nebraska Civil Rule 30.1(f); or (2) the quality of the video will make it difficult for the jury to understand. Any objections must be in writing and served at least 24 hours before the video is to be shown.

33.1 Interrogatories.

- (a) **Sequential Numbering.** A party must number each interrogatory sequentially, despite the number of interrogatory sets.
- (b) **Separate Definitions Prohibited.** A party may not separately define words used in an interrogatory without the court's leave.
- (c) **Number of Interrogatories.** In determining the number of interrogatories, including subquestions, each inquiry seeking a discrete item of information is counted as one interrogatory. For example, the following question is counted as 3 interrogatories: "Please state the name, address, and telephone number of any witness to the accident set forth in the complaint."
- (d) **Form of Response.** In answering or objecting to interrogatories, the responding party must first state verbatim the interrogatory and immediately thereafter the responsive answer or objection.
- (e) **Certificate of Service.** The demanding party, when serving interrogatories, must file a certificate of service. The responding party must also file a certificate of service upon serving a response.
- (f) **Alternative Methods of Service.** If all parties agree, interrogatories and answers or objections may be served by e-mail or fax. The answering party must maintain during the pendency of the proceeding a paper copy of all answers to interrogatories, sworn to and signed as required by Federal Rule of Civil Procedure 33(b), and must produce this copy upon a party's request.

34.1 Requests for Production or Inspection.

- (a) **Form of Response.** In responding or objecting to requests to produce or inspect, the party must first state verbatim the propounded request and immediately thereafter the party's response or objection.
- (b) **Certificate of Service.** The demanding party, upon serving a request for production or inspection, must file a certificate of service. The responding party must also file a certificate of service upon serving a response.
- (c) **Alternative Methods of Service.** If all parties agree, requests and responses or objections may be served by e-mail or fax.

34.2 Persons Not Parties. For the rule on subpoenas to nonparties, see Nebraska Civil Rule 45.1.

36.1 Requests for Admission.

- (a) **Sequential Numbering.** A party must number each request sequentially, despite the number of sets of requests for admission.
- (b) **Form of Response.** In answering or objecting to requests for admission, the responding party must first state verbatim the propounded request and immediately thereafter the party's answer or objection.
- (c) **Certificate of Service.** The demanding party, upon serving requests for admission, must file a certificate of service. The responding party must also file a certificate of service upon serving answers or objections.
- (d) **Alternative Methods of Service.** If all parties agree, requests and answers or objections may be served by e-mail or fax.

38.1 Notation of "Jury Demand" on Pleading. If a party demands a jury trial by including it on a pleading, as Federal Rule of Civil Procedure 38(b) allows, a notation must be on the front page and immediately after the title of the pleading, stating "Demand for Jury Trial" or the equivalent. This notation serves as a sufficient demand under Federal Rule of Civil Procedure 38(b). Failure to use this manner of noting the demand does not result in a waiver under Federal Rule of Civil Procedure 38(d). Regarding jury trials in removed cases, see Federal Rule of Civil Procedure 81(c)(3).

39.1 Opening Statements and Closing Arguments.

- (a) **Opening Statements.** After the jury is selected and sworn, the party on whom the burden of proof rests may, without arguing, make an opening statement, after which each adverse party may do the same.

- (b) **Closing Arguments.** The parties may each make a final argument. The judge, after conferring with the attorneys, allots time for each argument. The plaintiff's attorney may take no more than one-third of the plaintiff's allotted time for rebuttal. Unless ordered otherwise, during rebuttal the plaintiff's attorney may discuss only subjects previously discussed during either party's closing argument. If the defendant waives closing argument, the plaintiff may not offer rebuttal. However, if the plaintiff waives closing argument, the defendant may make a closing argument. If the party having the burden of proof is not the plaintiff, that party is treated as the plaintiff for purposes of this rule.

39.2 Briefs.

- (a) **Trial Briefs.** Unless ordered otherwise, each party must file a trial brief at least 7 days before the trial begins.
- (b) **Motion Briefs.** Motion briefs must be prepared according to Nebraska Civil Rule 7.1.
- (c) **Abandonment of Issues.** Except as stated in Nebraska Civil Rule 7.1(b)(1)(C), when by local rule or separate order a time has been set for filing a brief, a judge may treat a party's failure to file a brief or discuss an issue in a brief as an abandonment of that party's position on any issue not briefed or discussed.
- (d) **Habeas Corpus and Post-Conviction Relief.** In matters brought under 28 U.S.C. §§ 2241 and 2254, counsel must file the briefs submitted by the petitioner on direct appeal. In cases brought under §§ 2241, 2254, and 2255, direct appeal briefs may be considered as part of the record of the habeas case. They must not, however, be incorporated by reference in, or considered to be, the petitioner's brief. Pro se parties are not required to electronically file briefs or other documents.

39.3 Trial Exhibits.

- (a) **Delivery to Clerk Before Trial.** On the day before the trial begins, attorneys must deliver to the clerk an exhibit list as described in Nebraska Civil Rule 16.2(a)(1).
- (b) **Custody.** Exhibits offered or received into evidence during a hearing or trial must be left in the clerk's custody.
- (c) **Special Cases.** In cases involving a large number of exhibits or in cases requiring special provisions for access, safekeeping, or inspection of exhibits,

attorneys must confer with the courtroom deputy to establish procedures for handling exhibits during and after the trial. Attorneys should (1) prepare trial evidence that includes a large number of paper documents in an electronic format and (2) may consult with the court's information technology staff for assistance.

- (d) **Numbering Exhibits.** Each party is responsible for numbering that party's intended trial exhibits. In a case with one plaintiff and one defendant, the defendant numbers exhibits with the next 100 series after the plaintiff's last exhibit number (e.g., Ex. 201 where the plaintiff's last exhibit was Ex. 154). In a case with multiple plaintiffs with separate attorneys and one defendant, each plaintiff numbers exhibits with a separate 100 series (e.g., Exs. 1-100 for the first plaintiff, Exs. 101-200 for the second plaintiff, and so on); the defendant numbers exhibits with the next 100 series after the final plaintiff's last exhibit number (e.g., Ex. 501 where the fourth plaintiff's last exhibit was Ex. 475). In cases with multiple defendants with separate attorneys and one plaintiff, the first defendant numbers exhibits with the next 100 series after the plaintiff's last exhibit number (e.g., Ex. 201 where the plaintiff's last exhibit was Ex. 154); each defendant numbers exhibits with a subsequent, separate 100 series (e.g., Ex. 501 for the fourth defendant where the third defendant's final exhibit was Ex. 417).

40.1 Trial Calendar.

- (a) **Setting Trial.** The court may issue occasional orders or communicate by e-mail to all affected attorneys of record regarding trial settings. Attorneys must keep informed of the progress of the court's business and be ready when their cases are reached. The district court annually determines trial sessions in North Platte by general order.
- (b) **Request for Place of Trial; Form.** 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, must request in writing trial in Omaha, Lincoln, or North Platte. 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 14 days after service of the notice of removal, may file a written request for trial at Omaha, Lincoln, or North Platte. A request for a place different from that requested by the plaintiff, third-party plaintiff, or removing party must be filed as a motion. Any other party then has 14 days to respond.
- (1) **Conflicting Requests.** Conflicting requests may be resolved without oral argument. Except for cases governed by the special rules for the Nebraska docket and the death penalty, see NEGenR 1.4(a)(5)-(6),

a judge considers the convenience of the litigants, witnesses, and attorneys when deciding the place of trial.

(2) **Amended Request.** A party may amend an initial or opposing request for place of trial at any time based on a change in material circumstances.

(c) **Calendaring Cases.** The clerk calendars a case according to the initial request. If the parties make no initial request, the clerk calendars a case in the city where the case is filed.

41.1 Settlement Procedures. Attorneys must notify the court or clerk when the parties settle an action, and within 30 days after notification file all documents necessary to terminate the action, unless the court directs otherwise by written order. If the parties fail to file all documents, the court may dismiss 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 showing good cause as to why the parties did not consummate the settlement. If the parties engaged in mediation, the notification to the court or clerk should also state the mediator's name, the dates of the mediation, and whether the mediation was successful.

41.2 Dismissal of Action. Absent good cause, a case that has been filed for at least 1 year in which no advancement has been made in the pleadings or trial preparation for 1 year may be tried immediately or dismissed. At any time, a case not being prosecuted with reasonable diligence may be dismissed for lack of prosecution.

45.1 Subpoenas to Nonparties.

(a) **Notice to Adverse Party.** No subpoenas for production or inspection may be issued for service on a nonparty without giving the adverse party notice stating the name and address of the nonparty being subpoenaed, the documents or items to be produced or inspected, the time and place for production or inspection, and the date on which the subpoena will issue.

(b) **Objections.** After receipt of the notice, the adverse party has 7 days to serve written objections to the subpoena on the noticing party. The adverse party must specifically identify the grounds for the objections and must file a certificate of service with the court. No subpoena may be issued for documents or premises whose inspection or production is contested under this rule until the parties resolve the objections. Any unresolved objections will be resolved by the court on appropriate motion filed in accordance with NECivR 7.1. Nothing in this rule affects the availability of objections described in Federal Rule of Civil Procedure 45(c) and (d).

- (c) **Effect of Failure to Object.** Failure to object to issuance of a subpoena to a nonparty does not preclude an adverse party from moving for a protective order under Federal Rule of Civil Procedure 26(c).

47.1 Jury Selection.

- (a) **Voir Dire.** The court determines whether the court, the attorneys, or both will conduct voir dire. The court may limit an attorney's examination by time and subject matter.
- (b) **Peremptory Challenges.** Unless ordered otherwise, all parties exercise peremptory challenges alternately, beginning with the plaintiff. Each party is informed, after the exercise of each peremptory challenge, of the identity of each prospective juror peremptorily challenged by each other party.
- (c) **Waiver of Peremptory Challenges.** Passing or refusing to exercise a peremptory challenge constitutes a waiver of the right to exercise the challenge. If a party waives the right to exercise a peremptory challenge, the court exercises it after the parties exercise or waive all other challenges to which they are entitled.

47.2 Disclosure of Juror Identity. Documents identifying jurors or potential jurors in a case must not appear in the public case file or be given to the public at the courthouse or electronically.

48.1 Number of Jurors. After consulting the attorneys, the court determines the number of jurors, which must be between 6 and 12.

48.2 Jury Deliberations.

- (a) **Recess.** After trial, the court may recess while the jury deliberates. The court may direct the jurors that upon arriving at a verdict they must seal it, give it to the courtroom deputy, and return to the courtroom at a predetermined time for the opening and reading of the verdict.
- (b) **Attorney Availability.** Attorneys must be available on short notice during jury deliberations. Attorneys must inform the courtroom deputy of their whereabouts at all times during deliberations.
- (c) **Verdict.** Attorneys and parties need not be present when the court announces the verdict.

51.1 Proposed Jury Instructions.

- (a) **When Filed and Submitted.** Unless ordered otherwise, each party must file requested instructions 7 days before the first day of trial. In addition, a party should submit requested instructions in a word processing format on a CD delivered, or through an e-mail addressed to, the trial judge's chambers. A party may file and submit to the trial judge additional requested instructions relating to matters arising during the trial at any time before the trial ends.
- (b) **Objections.** Objections to requested jury instructions, with supporting authority, must be filed at least 3 days before the first day of trial.
- (c) **Form.** Each requested instruction must be numbered, state the presenting party, and cite the instruction's source and any additional supporting authority. Parties must use the latest edition of the Eighth Circuit Model Jury Instructions whenever possible. If a submitted instruction is modified from the pattern instruction, deleted material must be in parentheses and additions must be underscored. Requests for routine instructions are unnecessary and should not be filed.

52.1 Proposed Findings. In civil nonjury trials, each party must submit detailed proposed findings of fact that, if adopted, would sufficiently form an adequate factual basis, supported by anticipated evidence, to resolve the case and support a judgment. Parties should file their proposed findings of fact at least 7 days before the first day of trial.

54.1 Taxation of Costs.

- (a) **Handbook.** Attorneys should read the bill of costs handbook available on the court's Web page, www.ned.uscourts.gov/forms>"Bill of Costs Form (Handbook)," or from the clerk before submitting a bill of costs or filing a response to a bill of costs.
- (b) **Bill of Costs; When Filed; Form.** A party entitled to recover costs must file within 30 days after entry of judgment a verified bill of costs on a form available on the court's Web page, www.ned.uscourts.gov/forms>"Bill of Costs Form" or from the clerk. Post-trial motions do not extend the time for filing a verified bill of costs under this rule.
- (c) **To Whom Payable.** Except in (1) suits for civil penalties for violations of criminal statutes and (2) government cases not handled by the Department of Justice, all taxed costs are payable directly to the entitled party and not to the clerk, unless the court orders otherwise.
- (d) **Waiver of Costs.** A party failing to file a bill of costs within the time allowed waives taxable costs.

- (e) **Attorney's Fees Excluded.** "Costs" as used in this rule does not include attorney's fees. For attorney fee awards, see Nebraska Civil Rule 54.3.

54.2 Jury Cost Assessment. To avoid the unnecessary attendance of jurors, parties should notify the clerk of a settlement at least 24 hours before trial is scheduled to begin. The court may assess all juror costs and fees against one or more parties if the parties do not timely notify the clerk of a settlement and a jury is summoned. The court may also assess all juror costs and fees against one or more parties if parties settle a civil action during trial.

54.3 Award of Attorney's Fees and Nontaxable Expenses.

- (a) **Time and Method.** Where a party may be entitled to receive attorney's fees and related nontaxable expenses, the court may order, on its own or a party's motion, the time and method of making showings regarding a fee award. Otherwise, Federal Rule of Civil Procedure 54(d)(2) controls the time and method for filing a claim for attorney's fees and related nontaxable expenses.
- (b) **Support for Application.** A party applying for attorney's fees and related nontaxable expenses must support the application with appropriate and reliable evidence and authority, including affidavits and any written argument. Attorneys should follow appropriate criteria in connection with fee applications.
- (c) **Potential Award Issues.** Where a potential fee award issue exists, attorneys should consult the Fee Application Guidelines in Nebraska Civil Rule 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 should help attorneys present to the court information essential to a reasoned explanation of the fee award. Attorneys should also review the most recent circuit court decisions for additional guidance. These fee guidelines also may be appropriate in applications for sanctions.

(a) **Services Performed.**

- (1) Identify with particularity the work done.
 - (A) For a conference, state who was present, the subjects discussed, and how long it lasted.

- (B) For research, state who did it, the subjects and issues researched, and whether the results were incorporated into a brief, motion, or pleading.
 - (C) For travel time, segregate it, state who traveled, and the purpose and mode of travel.
 - (D) For filings, identify the filing and who prepared it.
- (2) Identify the status and background (attorney, paralegal, law student) of each person performing an item of work.
 - (3) If a paralegal or law student performed any services, state the salary or other wage rate at which the attorney or law firm pays the paralegal or law student.
 - (4) If the services apply to more than one case, identify the relative applicability to each case.
- (b) Expenses Incurred.** Identify the expense with particularity.
- (1) For photocopies, state the items copied, why they were copied, how they were used, and the number of pages copied.
 - (2) For depositions, list the court reporter's name, the date of taking, the deponent's identity, the purpose of the deposition (discovery or evidentiary), and the use made of the deposition.
 - (3) For long-distance telephone calls, list the date, by whom, to whom, and the location of the person called, and the subject of the call.
- (c) Rates of Compensation Requested.** Except in Criminal Justice Act cases, attorneys must file affidavits or other evidence in support of claimed hourly rates and hours.

55.1 Default Judgment.

- (a) Clerk's Entry of Default.** To obtain a clerk's entry of default under Federal Rule of Civil Procedure 55(a), a party must:
- (1) file a motion for the clerk's entry of default; and
 - (2) e-mail a proposed clerk's entry of default to the clerk at clerk@ned.uscourts.gov. This clerk's entry of default should state

that a default is being entered for failure to plead or otherwise defend under Federal Rule of Civil Procedure 55(a).

(b) Clerk's Entry of Default Judgment. If a party requests the clerk to enter a default judgment under Federal Rule of Civil Procedure 55(b)(1), the party must:

- (1) file a motion for clerk's judgment by default;
- (2) file an affidavit (a) stating the amount, for a sum certain or that can by computation be made certain, and that does not exceed the amount asked for in the complaint plus the exact computation of interest and costs, and (b) stating that the defendant against whom judgment is to be entered is not an infant or incompetent person as stated in Federal Rule of Civil Procedure 55(b)(1); and
- (3) e-mail a proposed clerk's judgment for the clerk's signature to clerk@ned.uscourts.gov.

(c) Court's Entry of Default Judgment. If a party requests a judgment from the court under Federal Rule of Civil Procedure 55(b)(2), the party must, after obtaining a clerk's entry of default under Federal Rule of Civil Procedure 55(a) and Nebraska Civil Rule 55.1(a):

- (1) file an affidavit stating that the party against whom the default judgment is requested is (a) not an infant or incompetent person as stated in Federal Rule of Civil Procedure Rule 55(b)(2) or (b) meets the exceptions stated in Federal Rule 55(b)(2);
- (2) e-mail to the judge's chambers a proposed judgment; and
- (3) in cases in which damages must be proved, request an evidentiary hearing before the trial judge.

56.1 Summary Judgment Procedure. Unless this rule states otherwise, the procedures of Nebraska Civil Rule 7.1 apply to summary judgment motions. Generally, the court does not hear oral argument on summary judgment motions.

(a) Moving Party.

- (1) **Statement of Material Facts.** The moving party must include in the brief in support of the summary judgment motion a separate statement of material facts about which the moving party contends there is no genuine issue to be tried and that entitles the moving party

to judgment as a matter of law. Failure to submit a statement of facts may be grounds to deny the motion.

- (2) **Form; Citation to Record.** The statement of facts should consist of short numbered paragraphs, each containing pinpoint references to affidavits, pleadings, discovery responses, deposition testimony (by page and line), or other materials that support the material facts stated in the paragraph. A fact is “material” if pertinent to the outcome of the issues identified in the summary judgment motion. The statement of facts must describe the parties and recite all facts supporting the court’s venue and jurisdiction. The statement must not contain legal conclusions. Failure to provide citations to the exact locations in the record supporting the factual allegations may be grounds to deny the motion.

(b) **Opposing Party.**

- (1) **Response to Movant’s Statement.** The party opposing a summary judgment motion must include in its brief a concise response to the moving party’s statement of material facts. Each material fact in the response must be set forth in a separate numbered paragraph, must include pinpoint references to affidavits, pleadings, discovery responses, deposition testimony (by page and line), or other materials upon which the opposing party relies, and, if applicable, must state the number of the paragraph in the movant’s statement of material facts that is disputed. Properly referenced material facts in the movant’s statement are considered admitted unless controverted in the opposing party’s response.
- (2) **Response Time.** An opposing brief may be filed within 21 days after service of the motion and supporting brief. Failure to file an opposing brief *alone* is not considered confession of a motion; however, nothing in this rule excuses a party opposing a summary judgment motion from meeting the party’s burden under Federal Rule of Civil Procedure 56.

58.1 Satisfaction of Judgment. The clerk notes satisfaction of a judgment on the docket sheet when any of the following events occurs:

- (a) the judgment creditor or the creditor’s attorney of record executes and files a written satisfaction of judgment;
- (b) the marshal files a return of execution showing the judgment the marshal has collected; or

- (c) the judgment is paid into the registry account of the court, but the payment may only be made after an order of the court authorizes the payment.

65.1.1 Security; Proceedings Against Sureties.

- (a) **General Requirements.** The principal obligor and one or more sureties qualified as stated in this rule must execute a bond, recognizance, or other undertaking required by law or court order in any proceeding.
- (b) **Unacceptable Sureties.** An attorney in a case, the attorney's spouse or employee, a party to a case, and the party's spouse may not act as a surety on a bond or other undertaking in a civil case.
- (c) **Corporate Surety.** A corporate surety upon any undertaking in which the United States is the obligee must be qualified under 31 U.S.C. §§ 9301-9309 and approved by the Secretary of the Treasury of the United States. The parties may consult with the clerk to confirm that a surety is qualified. In all other instances, a corporate surety qualified to write bonds in the State of Nebraska is 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 land in the State of Nebraska of an unencumbered value of at least the stated penalty of the bond may obtain consideration for qualification as a surety by attaching an acknowledged justification showing:
 - (1) a legal description of the real estate;
 - (2) a complete list of all encumbrances and liens on the real estate;
 - (3) 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 for the aggregate amount of the penalties of any other subsisting undertakings assured by the bondsman as of that date.

The judge before whom the proceeding is pending approves or disapproves the surety after reviewing the justification and certifications.

- (e) **Cash Bonds.** Cash bonds may be deposited into the court's registry only upon execution and filing of a written bond (1) sufficient in form and (2)

stating the bond's conditions. Withdrawal of cash bonds so deposited may not be made except upon a written court order.

- (f) **Cost Bonds.** The court on motion or its own initiative may order a party to file an original bond for costs or additional security for costs in an amount and under conditions designated in the order.
- (g) **Insufficiency; Remedy.** An opposing party may object to a bond's form or timeliness or the sufficiency of the surety. If a bond is found to be insufficient, the judge may order that a sufficient bond be filed within a stated time. If the party required to file the bond does not comply, the judge may dismiss the case for want of prosecution or take other appropriate action.

67.1 Deposits.

(a) Receipt of Funds.

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

(b) Investment of Registry Funds.

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

- (3) An account for each case will be established in CRIS titled in the name of the case giving rise to the investment in the fund. Income generated from fund investments will be distributed to each case based on the ratio each account's principal and earnings has to the aggregate principal and income total in the fund.
 - (4) The court will direct that post-adjudication deposits held on behalf of minors until their age of majority be invested in the Minors' Fund within CRIS.
- (c) **Deduction of Fees.** The custodian will deduct a registry fee for maintaining accounts in CRIS and an investment services fee for the management of investments. The registry fee is determined by the rates published by the Director of the Administrative Office of the United States Courts, as approved by the Judicial Conference. The investment services fee is assessed from interest earnings according to the court's miscellaneous fee schedule.
- (d) **Withdrawal of Deposit.** To withdraw money deposited with the court under Federal Rule of Civil Procedure 67 and these rules, a party must file a motion for withdrawal of the funds and simultaneously submit a proposed order and completed IRS Form W-9.
- 72.1 Magistrate Judge Duties.** Magistrate judges are authorized under 28 U.S.C. § 636(b) to perform any duties assigned to them by a district judge of this court that are consistent with the Constitution and laws of the United States. A full-time magistrate judge is responsible for: (a) scheduling trials; (b) conducting any discovery, pretrial, and settlement conferences; (c) hearing and determining pretrial procedural and discovery motions; (d) issuing progression orders; and (e) presiding over proceedings related to executions of judgments under Federal Rule of Civil Procedure 69.
- 72.2 Objections to Magistrate Judge's Order or Findings and Recommendations.**
- (a) **Statement of Objections.** A party may object to a magistrate judge's order in a nondispositive matter or findings and recommendation in a dispositive matter by filing a "Statement of Objections to Magistrate Judge's Order" or "Objections to Magistrate Judge's Findings and Recommendations" within 14 days after being served with the order or findings and recommendations, unless the order or recommendation states a different time. The party must specify (1) the parts of the order or findings and recommendations to which the party objects and (2) the legal basis of the objections. The statement of objections should also indicate whether the objecting party relies on a previously or newly filed brief. Unless ordered otherwise, an opposing party

may file an opposing brief within 14 days of being served with the statement of objections. This brief may refer to previously filed briefs.

- (b) **Evidence.** If evidentiary materials were filed or received in evidence when the matter was before the magistrate judge, the parties need not refile or re-offer the materials and may refer to them in their legal arguments.
- (1) **Nondispositive Orders.** A party may not offer additional evidentiary materials without a court order.
- (2) **Dispositive Orders.** A party may not offer additional evidentiary materials; however, if the magistrate judge held an evidentiary hearing, the objecting party may request a supplemental hearing to offer additional evidence. The district judge may hold the supplemental hearing if the party shows good cause why the evidence was not presented to the magistrate judge.
- (c) **No Stay of Nondispositive Order Pending Resolution of Objections.** The filing of a statement of objections to a nondispositive order does not stay the magistrate judge's order pending resolution of the statement of objections. The magistrate judge whose order is objected to decides a motion for stay pending the resolution of the statement of objections. If the magistrate judge denies the motion for stay, the party may address the motion to the assigned district judge.
- (d) **Nondispositive Orders; Consent Cases Excluded.** A party may not object to a nondispositive order of a magistrate judge in which the parties consented to proceed before a magistrate judge. See NECivR 73.1.
- (e) **Dispositive Orders; Remand.** If the district judge remands a dispositive matter to the magistrate judge, the magistrate judge's subsequent recommendation is also subject to objection under this rule.
- (f) **Dispositive Orders; Failure to Object.** Failure to object to a finding of fact in a magistrate judge's recommendation may be construed as a waiver of the right to object to the district judge's order adopting the recommendation of the finding of fact.

72.3 Review of Magistrate Judge's Order in Special Master Report. When a magistrate judge is designated as a special master with the parties' consent under 28 U.S.C. § 636(b)(2), or without the parties' consent under Federal Rule of Civil Procedure 53(b), a party may request review of or action on the special master report filed by the magistrate judge under Federal Rule of Civil Procedure 53(f).

73.1 Magistrate Judge; Trial by Consent.

- (a) **Random Assignment.** Unless ordered otherwise, the clerk assigns each civil action to a district or magistrate judge by automated random selection. However, when a motion requests preliminary injunctive relief, the clerk assigns the action to a district judge. When the clerk assigns an action to a magistrate judge, each party must file either (1) a consent to the referral to the magistrate judge under 28 U.S.C. § 636(c) or (2) an election for reassignment to a district judge. The parties may indicate on Form 35 (the Rule 26(f) report) or other consent form provided by the court whether they consent to trial before a magistrate judge. Failure to timely return the election form will result in case reassignment to a district judge. Consent to a magistrate judge's authority does not constitute a waiver of any jurisdictional defense unrelated to the grant of authority under 28 U.S.C. § 636(c).
- (b) **Reassignment of Case to Magistrate Judge.** The clerk notifies the parties in a case assigned to a district judge that under 28 U.S.C. § 636(c) they may consent to have a magistrate judge (1) conduct any proceedings in the case, including a jury or nonjury trial, and (2) enter final judgment. This notice is provided as soon as practicable after the case is filed and before the case is first scheduled for trial. If all parties consent on the required form to proceed before the magistrate judge, the clerk notifies the district judge of the consent. The district judge considers the consent and reassigns the case to the magistrate judge if appropriate.

79.1 Custody of Files and Exhibits.

- (a) **Clerk's Custody.** In general, documents or physical items belonging to the court's paper or electronic files remain in the clerk's custody throughout a judicial proceeding.
- (b) **Viewing and Copying Court Files.**
- (1) **Paper Files.** The public may view files and documents in the clerk's office in Omaha and Lincoln between 8:00 a.m. and 4:30 p.m. on days when the courthouses are open for business. Upon request, the clerk's staff copies public documents for a fee as allowed by 28 U.S.C. § 1914.
- (2) **Electronic Files.** Electronic access to the electronic docket and documents filed in the System is available to the public at no charge at the clerk's office in Omaha and Lincoln between 8:00 a.m. and 4:30

p.m. on days when the courthouses are open for business. Fees to print a paper copy of an electronic filing and to obtain a certified copy of an electronically filed document are allowed by 28 U.S.C. § 1914.

- (3) **Payment for Copies.** Payment must be made when service is requested in cash, by credit card, or by check or money order payable to “Clerk, U.S. District Court.” Fees apply to copying services for the United States if the record or paper requested can be electronically accessed. Clerk’s staff cannot make change for cash payments.
- (c) **Inspecting Physical Evidence.** No one may inspect physical evidence in the clerk’s custody, including photographic negatives, tape recordings, contraband (including drugs and narcotics, firearms, and ammunition), currency, negotiable instruments, computer disks or tapes, and other items designated by a judicial officer except while in the presence and under the control of the clerk. The clerk may limit or preclude access and copying in order to preserve evidence.
- (d) **Temporary Withdrawal of Paper Court Files, Exhibits, and Documents.** Paper court files, exhibits, documents, and transcripts may not be taken from the clerk’s office or custody without a written order of the assigned judge. To request permission to check out a court file, exhibit, document, or transcript, an attorney must electronically file a written motion. If the assigned judge grants the motion, the attorney may have the court file, exhibit, document, or transcript upon delivery of a receipt for the file to the clerk. The attorney must return the court file, exhibit, document, or transcript when the judge directs or no later than 7 days, in the same condition and order in which it was filed in the clerk’s office. The judge may direct the file, exhibit, document, or transcript to be returned the next morning.
- (e) **Permanent Withdrawal of Files and Documents.** Upon a showing of good cause, the court may order an item in a file to be permanently withdrawn. The clerk may require a party requesting withdrawal to provide a copy of the item for certification and a receipt for the original. The certified copy and receipt are filed in lieu of the original, and the party receiving the original must pay the clerk any costs.
- (f) **Withdrawal or Destruction of Exhibits at Case Conclusion.**
- (1) **Withdrawal.** After trial or as soon as possible, but within 14 days after a verdict is rendered or a judgment is entered, the offering attorney must withdraw all exhibits in the clerk’s custody and give the clerk a receipt for the exhibits.

(A) Duty to Retain Exhibits. An attorney must:

- (i) retain exhibits withdrawn from the clerk's custody for at least 1 year after the judgment is final and is therefore no longer subject to appellate review;
- (ii) preserve the retained exhibits in the same condition they were in when offered into evidence;
- (iii) if an opposing attorney requests the exhibits, make them available for examination and use at reasonable times and places; and
- (iv) upon request, promptly return the exhibits to the clerk.

(B) Sanctions. Sanctions may be awarded for the failure to abide by this rule. Despite entry of judgment, the court retains jurisdiction over the parties and attorneys for purposes of enforcing this rule.

(2) Destruction. After the judgment is no longer subject to appellate review, the attorney may destroy or otherwise dispose of the exhibits without further authorization. If the attorney does not claim and withdraw the exhibits, the clerk may destroy or otherwise dispose of any exhibits not claimed and withdrawn. On the date the clerk destroys the exhibits, the clerk enters a remark on the docket sheet reflecting the date of destruction.

81.1 Removed Actions. If a motion is pending and undecided in state court at the time of removal, the court will not consider the motion unless and until a party refiles the motion in federal court in conformity with federal practice requirements.

85.1 Title; Citation. These rules are the Civil Rules of the United States District Court for the District of Nebraska ("Nebraska Civil Rules"). They may be cited as "NECivR____."