

**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.** In construing these rules, the following definitions shall apply:

- (a) "Judge" without further description shall mean any Article III (district) 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.
- (e) "Counsel" or "attorney" includes, if appropriate, a pro se party.
- (f) "System" shall mean the District of Nebraska's Electronic Case Filing (ECF) System.
- (g) "Electronic filing" or "electronically file" shall mean uploading a pleading or document directly from a registered attorney's computer, using the court's Internet-based System to file that pleading or document in the court's case file. Electronic filing shall also include any uploading to the System done by the clerk's office of documents submitted to the court in paper format or as .pdf ("Portable Document Format") files. Sending a document or pleading to the court via electronic mail (e-mail) or facsimile transmission (fax) is not electronic filing.
- (h) "Filing" or "file" shall mean "electronic filing" or "electronically file" unless otherwise specified. A paper document is deemed filed on the date the clerk's office receives and file stamps it rather than the date on which the clerk's office subsequently uploads it to the System.

**3.1 Civil Cover Sheet.** Whenever a complaint is not filed electronically, 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. 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 Filing Fees.** Any statutory filing fee must be paid 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.

**3.3 Applications to Proceed in Forma Pauperis.**

(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. The affidavit shall comply with 28 U.S.C. § 1915(a) and shall disclose the applicant's income, assets, expenses, and liabilities, as applicable.

(b) **Prisoner Applications; Trust Account Information.** In addition to submitting a financial affidavit, any person who is a prisoner as defined by 28 U.S.C. § 1915A(c) at the time of the filing of the complaint and who is seeking leave to proceed in forma pauperis, shall file a certified copy of the prisoner's trust account information in conformity with 28 U.S.C. § 1915(a)(2).

(1) **Consent to Release of Information and to Payment of Fee.** The filing of an application to proceed in forma pauperis is the applicant's consent for the institution to release the required trust account information to the clerk, and the applicant's consent to the institution's payment of any filing fee that 28 U.S.C. § 1915(b) requires.

(2) **Continuing Payment Obligation.** Until fully paid, and despite dismissal of the case after the court has granted leave to proceed in forma pauperis, the court shall collect and continue to collect, and the applicable institution shall pay and continue to pay, the filing fee that 28 U.S.C. § 1915(b)(1) requires. This subparagraph shall 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 being requested, each person who is a plaintiff shall file an application, affidavit, and, if applicable, trust account information. In multi-plaintiff prisoner civil rights cases, the assigned judge may require each prisoner to pay the full district court filing fee; joinder of such plaintiffs will be allowed when otherwise appropriate under Federal Rule of Civil Procedure 20.

**4.1 Service of Process.** The party seeking service of process shall be responsible for completing the summons and arranging the service. The clerk is authorized to sign orders specially appointing persons to serve process. A party may not electronically serve a complaint and summons, but instead must perfect service according to Federal Rule of Civil Procedure 4.

(a) **Issuance of Electronic Summons Authorized.** The clerk's office is authorized to sign, seal, and issue summonses electronically. Such electronically-issued summonses may not, however, be served electronically.

**5.1 Electronic Case Filing (ECF).**

(a) **Electronic Pleadings Authorized.** Pursuant to Federal Rule of Civil Procedure 5(e), 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 Procedure.

(b) **Mandatory Electronic Case Opening and Filing.** Attorneys and registered pro se parties filing new civil cases in this district after June 30, 2007, are required to open the cases themselves using the System. All documents submitted for filing in civil cases in this district, no matter when a case was originally filed, shall be filed electronically using the System.

(c) **Exceptions.** The following matters or individuals are excepted from mandatory electronic case opening and filing:

- (1) Parties proceeding pro se who are not registered participants;
- (2) Cases filed under seal pursuant to court order;
- (3) Exhibits, evidence, or attachments the nature of which precludes electronic filing;
- (4) Cases or documents excepted from electronic filing requirements by statute or rule; and
- (5) Cases in which counsel applies for and receives permission from:
  - (A) The chief judge to have the clerk's office open the new case on the System; or

- (B) The assigned judge to file documents in paper format.
- (d) **Facsimile and E-mail Filings not Permitted.** A document shall not be considered filed for purposes of the Federal Rules of Civil Procedure until the filing party receives a System-generated “Notice of Electronic Filing” after uploading the document to the System. For that reason, a document or pleading faxed or e-mailed to the clerk’s office or to the assigned judges shall not be considered filed unless otherwise ordered by the court.
- (e) **Timely Filing.** A document will be deemed filed on a date certain if filed prior to 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.** When a document has been 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. The clerk’s office will not maintain a paper court file in any case except as otherwise provided in these rules or required by law.
- (1) **Conventionally-Filed Documents.** The official record shall also include any documents filed conventionally in accordance with these rules.
- (2) **Original Paper Documents Scanned and Discarded.** The clerk’s office will scan and discard original documents brought to the clerk’s office for filing unless the size or nature of the document requires it to be kept in a conventional format. An attorney or pro se party who wishes to have an original document returned after the clerk’s office scans and uploads it to the System may, prior to submitting the document to the clerk’s office, seek written authorization from the assigned judge for the document’s return. Authorization will be granted on a case-by-case basis. No blanket authorizations for the return of all original documents filed by an attorney or office will be allowed.
- (g) **File Date.** Except for documents first filed with the court in paper form and subsequently uploaded to the System, a document filed electronically is deemed filed at the date and time stated on the Notice of Electronic Filing generated by the System.

## 5.2 Electronic Service.

- (a) **Receipt of Notice of Electronic Filing as Service on Registered Party.** Pursuant to Federal Rule of Civil Procedure 5(d), receipt of the Notice of Electronic Filing (NEF) generated by the 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.
- (b) **Service on a Non-Registered Party.**
- (1) A party who is not a registered participant of the System must be served with a paper copy of any electronically-filed pleading, document, or order. The filing party must therefore provide the non-registered party with the pleading, document, or order according to the Federal Rules of Civil Procedure. When serving copies of documents that have been electronically filed, the filing party must also provide the recipient with proof of the filing. Proof of a document's filing is either a copy of the associated NEF or a copy of the document bearing the header automatically printed by the System.
  - (2) Service on a non-registered party of the pleading, document, or order and the NEF may be accomplished by e-mail.
  - (3) In the unusual situation where a filer must bring a document to the clerk's office for scanning and uploading to the System, the filer must serve conventional copies on all non-registered parties to the case. Because there may be some delay in the uploading and subsequent electronic noticing of the document, the filer should consider paper service or service by alternate means, such as e-mail or fax, if time is an issue.

**5.3 Privacy.** To comply with the policy of the Judicial Conference of the United States and the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899 (codified at 5 U.S.C. §§ 3701-3707 and scattered sections) and the policies of this court, the following privacy rules shall apply to all pleadings, documents, and exhibits filed in the district and bankruptcy courts.

- (a) **Mandatory Redaction of Filed Documents.** Filing parties shall redact the following personal data identifiers from all pleadings, documents, and exhibits, whether filed electronically or on paper, unless the assigned judge orders otherwise.

- (1) Minors' names. Minors' initials shall be used.
  - (2) Financial account numbers. The name or type of account and the financial institution where the account is maintained shall be used, but only the last four numbers of the account number shall be stated.
  - (3) Social Security numbers. Only the last four numbers shall be used.
  - (4) Taxpayer identification number. Only the last four digits shall be used.
  - (5) Dates of birth. Only the year shall be used.
  - (6) Other data as ordered by the court.
- (b) **Discretionary Redaction of Filed Documents.** In addition, the filing party may redact the following confidential information from all pleadings, documents, and exhibits, whether filed electronically or on paper, 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, evaluations, treatments, and diagnoses.
  - (4) Employment history.
  - (5) Individual financial information.
  - (6) Proprietary or trade secret information.
  - (7) Information which may identify an individual cooperating with the government.
  - (8) Information regarding the victim of any criminal activity.
  - (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).

(12) Other data as ordered by the court.

(c) **Restricting Access to Unredacted Documents.** With leave of the court, a party may restrict access to a document containing the unredacted personal data identifiers listed above.

(1) **Motion.**

(A) **Procedure.** The party seeking to file an unredacted document shall file electronically a motion to restrict access to the document pursuant to the E-Government Act of 2002. The motion shall 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 shall not be attached to the motion, but instead filed separately as a restricted document. This document will remain provisionally restricted pending the ruling on the motion to restrict access.

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

(3) **Docket Sheet Entries.** When access to a pleading or document is restricted pursuant to the E-Government Act, an entry noting the restricted access will appear on the public electronic docket sheet; however, only parties of record and court users will be able to access the document electronically. The public will not have remote access to the restricted pleading or document from the docket sheet. Such remote access will be granted only with leave of the court.

#### 5.4 Certificate of Service.

(a) **Form.** Except as otherwise provided in the Federal Rules of Civil Procedure, or by order of the court or statute, the certificate of service filed with any pleading, motion, or other document required to be served may consist of (1) a certificate of counsel, (2) written receipt of the opposing party or opposing counsel, (3) affidavit of the person making service, (4) return of the marshal, or (5) other proof satisfactory to the court. The certificate of service shall



show the name and address of each person served and shall be signed by one of the counsel of record.

**(b) Electronic Certificate of Service.**

**(1) Required.** A certificate of service on all parties entitled to service or notice is required even when a party files a document electronically. The certificate of service on an electronically filed document must state the manner in which service or notice was accomplished on each party so entitled.

**(2) Nonregistered Parties.** A party who is not a registered participant of the System is entitled to a paper copy of any electronically filed pleading, document, or order. When mailing paper copies of documents that have been electronically filed, the filing party must include the "Notice of Electronic Filing" to provide the recipient with proof of the filing.

**(c) Filing of Certificate.** Failure to file the certificate of service at the same time as the served document will not affect the validity of the service. The clerk, however, may issue a deficiency notice to the filing party as to any pleading, motion, or other document that lacks a required certificate of service, and the court may order the document stricken from the court file if the deficiency is not corrected within fifteen (15) calendar days of such notice.

**5.5 Restrictions on Filing Discovery.**

**(a) In General.** Disclosures pursuant to 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 shall not be filed until they are needed for trial or resolution of a motion or on order of the court. If a member of the public asks the clerk's office for non-filed documents, the parties shall make the documents available 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.

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

**6.1 Time.****(a) Enlargements of Time.**

**(1) Addressed by Clerk.** Upon motion, the clerk may order one (1) enlargement of time, not to exceed thirty (30) calendar days after the defendant's initial answer date or the plaintiff's or cross-claimant's initial reply or answer date, to serve (A) an answer to the plaintiff's complaint; (B) a reply to a defendant's counterclaim; (C) an answer to a cross-claim contained in a defendant's answer; or (D) a motion under Federal Rule of Civil Procedure 12(b) or (e) to the complaint or to a counterclaim or cross-claim. The motion for an enlargement must be filed before the time originally allotted to answer or reply expires. The motion for enlargement shall state the date upon which the answer or reply was originally to be served and the new service date. If the motion is timely made, the clerk will enter a text-only order on the docket sheet granting the extension of time. No .pdf document will be attached to the entry.

**(2) Addressed by Judge.** Only the assigned judge may grant other or further enlargements of time, and only for good cause shown.

**(b) Three-Day Mailing Rule.** The three-day mailing rule prescribed by Federal Rule of Civil Procedure 6(e) 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.

**(c) Computation of Response Time.** Unless otherwise specified in these rules, the time by which a person or party must respond is computed according to Federal Rule of Civil Procedure 6.

**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, a party who fails to observe the requirements of this rule may be deemed to have abandoned in whole or in part that party's position on the pending motion.

**(a) Making a Motion.** A party making a motion shall 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 paginated brief filed and served contemporaneously with the motion. The brief shall not be attached to or incorporated in the motion or the index of evidence, but shall be a separate filing. The brief shall state concisely the reasons for the motion and cite the authorities relied upon. The brief shall not recite facts unless supported as provided in subparagraph (a)(2) of this rule.
- (B) **No Substantial Issue of Law.** A party need not file a brief if the motion raises no substantial issue of law and 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. Should the court conclude that the motion raises a substantial issue of law, however, it may treat a party's failure to file a brief as an abandonment of the motion.

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

- (A) **Factual Support.** Except for discovery motions described in subparagraph (i) of this rule, if a motion requires the court to consider any factual matters not established by the pleadings, the moving party at the time of filing the supporting brief shall also file and serve the evidentiary materials on which the party is relying and which have not previously been filed. Every factual assertion in the motion and the supporting brief shall cite to the pertinent page of the pleading, affidavit, deposition, discovery material, or other evidence upon which the moving party relies.
- (B) **How to File.** Evidentiary materials shall not be attached to the brief but shall instead be filed separately with an index listing each item of evidence being filed and identifying the motion to which it relates.
- (C) **Required Affidavit.** Any documents filed with the index must be identified and authenticated by affidavit. The 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 a Motion.**

**(1) Opposing Brief.**

- (A) Form and Content.** The party opposing a motion shall not file an "answer," or "opposition," "objection," or "response" to a motion, or any similarly titled responsive pleading, but instead shall file a paginated brief which concisely states the reasons for opposing the motion and cites the authorities relied upon. The brief shall not recite facts unless supported as provided in subparagraph (b)(2) of this rule.
- (B) Time for Filing.** A brief opposing a motion to dismiss or for summary judgment must be filed and served no later than twenty (20) calendar days after the motion and supporting brief are filed and served. A brief opposing any other motion must be filed and served no later than ten (10) business days after the motion and supporting brief are filed and served.
- (C) Effect of Failure to File.** Failure to file an opposing brief shall not be considered to be a confession of the motion, but shall preclude the nonmoving party from contesting the moving party's statement of facts.

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

- (A) Factual Support.** The non-moving party shall, at the time of filing the opposing brief, also file and serve any evidentiary materials on which the party is relying and which have not previously been filed. Every factual assertion in the opposing brief shall cite to the pertinent page of the pleading, affidavit, deposition, discovery material, or other evidence relied on by the non-moving party.
- (B) How to File.** Evidentiary materials shall not be attached to the brief but shall instead be filed separately with an index listing each item of evidence being filed and identifying the motion to which it relates.
- (C) Required Affidavit.** Any documents filed with the index must be identified and authenticated by affidavit. The 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.** The moving party may file a reply brief and index of evidence no later than five (5) business days after the non-moving party files and serves the opposing brief. The reply brief may not merely repeat the moving party's initial arguments, but must address factual or legal issues raised in the opposing brief. No further briefs or evidence may be filed without the court's leave. If the moving party has not filed an initial brief, it may not file a reply brief without the court's leave.
- (d) **Request for Oral Argument.** When filing a supporting, opposing, or reply brief, a party may include a motion or request to present oral argument, with or without oral testimony. In general, however, the court will not grant leave for oral argument on motions. The brief of the moving party shall state why oral argument or an evidentiary hearing is requested or will be of assistance to the court's determination of the issue raised by the motion, and approximately how much time will be required for the argument or hearing.
- (e) **Request for Oral Testimony.** A party failing to request oral testimony consents to a submission of the motion without oral testimony. No oral testimony will be permitted without the court's prior leave.
- (f) **Submission of Motions.** Unless the court grants leave for oral argument, a motion shall be deemed submitted on the briefs and the evidence filed, if any, when the time limit specified in subparagraph (c) of this rule expires. The judge to whom the matter has been assigned or referred may reject a brief filed without leave after the motion has been submitted.
- (g) **Procedures for Motions for Summary Judgment.** 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 will not consider any discovery motion unless counsel for the moving party, as part of the motion, shows in writing 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 also recite the date, time, and place of such communications and the names of all persons participating in them. As used in this rule, "counsel" includes parties who are acting pro se.

- (1) **“Personal Consultation” Defined.** “Personal consultation” shall include person-to-person conversation, either in the physical presence of each counsel or on the telephone. An exchange of letters, faxes, voice mail messages, or e-mails between or among counsel may also constitute 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 non-moving party.
  - (2) **Form.** A discovery motion shall include in the text of the motion or in an attachment a verbatim recitation of each interrogatory, request, answer, response, and objection that is the subject of the motion.
  - (j) **Conference Telephone Calls.** The judge may conduct a hearing on a motion by telephone conference or, if available, 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 Orders.** When filing a motion for which no supporting brief is required, see NECivR 7.1(a)(1)(B), the moving party shall submit contemporaneously to the judge a proposed order granting the motion and setting forth the requested relief. See *also* NECivR 7.5(c) (sealed documents) and 55.1 (default judgments).
- (a) **Method of Submission.** A proposed order should be e-mailed to the assigned judge at the address listed on the court’s CM/ECF Web page, <http://www.ned.uscourts.gov/cmecf/training.html>. The order must be in a word-processing format; judges will not accept proposed orders in .pdf format. The subject line of the e-mail should identify the case name and number. Proposed orders may not be combined with the electronically-filed motion into one document.
  - (b) **Motion Filed Prior to Sending Proposed Order.** The motion must be filed prior to submitting the proposed order to the judge, and the proposed order must refer to the resulting docket entry number for the motion.
- 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 the provisions on multiple signatures on electronically filed documents, see Nebraska Civil Rule 11.1(a). For discovery stipulations, see Nebraska Civil Rule 29.1. A certificate of service is required from the attorney who electronically files a joint stipulation.

**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. When a party requests certification, the supporting brief must include a statement of the precise issue to be certified to the state court. If the court grants the motion, it will order the parties to prepare and file stipulated facts, which this court in turn will forward to the state court.

**7.5 Sealed Pleadings, Documents, and Objects.**

**(a) Procedure.**

**(i) Motion to Seal.** The party seeking to file a sealed pleading, document, or physical object must first file electronically a motion to seal. The motion shall state why sealing is required and whether redaction may serve to eliminate or reduce the need for sealing. If the pleading, document, or object is already subject to an existing protective order, or included within a category of pleadings, documents, or objects deemed sealed pursuant to a federal statute, Federal Rule of Civil Procedure, local rule, or standing order of this court, no motion to seal is required.

**(ii) Sealed Pleading or Document not Attached.** The pleading or document to be sealed shall not be attached to the motion, but instead filed separately as a sealed document. This document will remain provisionally sealed pending the ruling on the motion to seal.

**(iii) Order.** In ruling on the motion, the assigned judge also has the discretion to unseal the pleading or document, strike it, or order the filing party to place a redacted copy of the pleading or document on the public docket.

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

**(c) Docket Sheet Entries.** When a pleading or document is filed electronically under seal, the entry will appear on the electronic docket sheet only for court users and the filing party. Neither the parties nor the public will have remote access to the sealed pleading or document from the docket sheet.

- (d) **Motion to Unseal.** A motion to unseal or view a pleading, document, or object may be made on any grounds permitted by law.
- (e) **Withdrawing Sealed Physical Objects After Case Closed or Dismissed.** Counsel may have ten (10) business days from the date a case is closed or dismissed to withdraw any object filed under seal. Counsel shall be responsible for maintaining the object in the manner provided in Nebraska Civil Rule 79.1(f)(1).

**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's office is authorized to enter a text-only order automatically denying all pending motions in the case as of the date of the reference. The order shall state that the denial is made pursuant to this rule and is 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), shall 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 shall 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 be grounds for sanctions, not including dismissal of the complaint.
- (2) **Electronic Filing.** Absent a showing of good cause, all documents, notices, and orders in social security reviews filed in the district court shall be filed and noticed electronically, except as noted below.
  - (A) **Pleadings and Other Documents.** Except as provided in subsection 2(B) below and unless the court orders otherwise, the complaint and other documents typically filed in a social security case, including briefs, will be filed and served electronically according to the court's local rules.
  - (B) **Transcript or Administrative Records.** Social security transcripts or administrative records may be conventionally filed and served since they contain large amounts of personal



identifying information about claimants that cannot be easily redacted. If the transcript or administrative records are filed conventionally, the clerk's office will docket a text-only event stating that the transcript or administrative record is available in paper format at the clerk's office.

- (C) **Restricted Remote Access.** To address the privacy issues inherent in a social security review, Internet access to the individual documents will be limited to counsel of record and court staff. Docket sheets, however, will be available over the Internet to non-parties. Further, non-parties may access all case documents on file at the clerk's office.
- (b) **Claim of Unconstitutionality.** A party who pleads the unconstitutionality of an act of Congress or a statute of the State in any action in which the United States, the State, or a federal or state agency, officer or employee is not a party 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." A party raising the claim of unconstitutionality after the complaint shall file a document entitled "Notice of Claim of Unconstitutionality."
- (c) **Request for Three-Judge Court.** If a party believes a three-judge district court is required to hear an action or proceeding pursuant to 28 U.S.C. § 2284 or any other provision of federal law, the party shall include the words "Three-Judge District Court Requested" or the equivalent 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.
- (d) **Privacy Issues.** Pleadings or documents containing personal identifying information shall conform to the provisions of the E-Government Act of 2002. See *also* Nebraska Civil Rule 5.3 and Nebraska General Rule 1.3. Parties, their counsel, and court personnel should be vigilant in protecting sensitive personal information found in documents such as mental competency evaluations, substance abuse evaluations, medical reports, and the like.

### 10.1 Form of Pleadings.

- (a) **Electronic Filings.** Unless otherwise permitted by the local rules or the order of the assigned judge, all pleadings and documents submitted for filing

in this district in civil cases shall be filed electronically using the Electronic Filing System ("System"). The following provisions apply to all electronically filed pleadings or documents.

- (1) **Legibility.** The filing party is responsible for the legibility of any scanned pleading or document uploaded to the System. If for any reason a document cannot be easily read after scanning, the filing party must file it in paper format with the clerk's office.
- (2) **Evidence, Exhibits, and Attachments.**
  - (A) **Index of Evidence.** Evidence, exhibits, and attachments in support of a motion shall be identified on an electronically filed index of evidence. The index of evidence must identify the motion to which it relates.
  - (B) **Excerpts Required.** A filer must submit as exhibits or attachments only those excerpts of the referenced documents that are directly germane to the matter under consideration by the court. Excerpted material must be clearly and prominently identified as such. Filers 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 excerpts or the complete document that they believe are directly germane. 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 shall also file in paper an index of evidence listing each item of evidence then being filed and identifying the motion to which it relates. The party shall serve copies of conventionally 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 Internet site at <http://www.ned.uscourts.gov/cmecf/training.html>.
- (3) **Content of Pleading or Motion.** A pleading or motion 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 and motions 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 caption of the pleading. See NECivR 38.1, 23.1(a), 9.1(b) and 9.1(c). See *also* NECivR 40.1(b) (requests for place of trial).

(4) **Hyperlinks.** Only two types of hyperlinks are permitted in electronically filed documents: hyperlinks to other portions of the same document, and hyperlinks to a location on the Internet that contains a source document for a citation.

(A) **Cited Authority.** Hyperlinks to cited authority may not replace standard citation format. Complete citations must be included in the text of the filed document. Neither a hyperlink, nor any site to which it refers, shall be considered part of the record. Hyperlinks are simply convenient mechanisms for accessing material cited in a filed document.

(B) **Responsibility for Hyperlinks.** The court accepts no responsibility for and does not endorse any product, organization, or content at any hyperlinked site, or at any site to which that site may be linked. The court accepts no responsibility for the availability or functionality of any hyperlink.

(b) **Paper Filings.** In the unusual event a pleading or motion must be filed in paper format, the following provisions apply.

(1) **Paper Size; Margins.** The paper used shall be 8½ "x 11", 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.

(2) **Presentation.** All pleadings and motions shall be presented without backs and shall be legibly typewritten, photocopied, printed, or if necessary, handwritten, without erasures or interlineations materially defacing them. Exhibits attached to pleadings shall be similarly typewritten, printed, photocopied, or if necessary, handwritten, in clear, legible, and permanent form.

(3) **Additional Materials.** Any materials filed in connection with 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" 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 of Pleading or Motion.** A pleading or motion 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 appear in the caption of the pleading. See NECivR 38.1, 23.1(a), 9.1(b) and 9.1(c). See *also* NECivR 40.1(b) (requests for place of trial).

### 11.1 Signing of Pleadings, Motions, and Other Papers.

- (a) **Electronic Filings.** The user log-in and password required to submit documents to the System serve as the filer's signature on all electronic documents filed with the court. They also serve as a signature for purposes of Federal Rule of Civil Procedure 11, the local rules of this court, and any other purpose for which a signature is required in connection with proceedings before the court.

- (1) **Attorney or Pro Se Filer's Signature.** An electronically filed pleading or other document which requires an attorney or pro se filer's signature shall be signed in the following manner: "s/ (attorney or pro se filer name)."

- (A) **Format.** The correct format for an electronic signature is as follows:

**s/ Judith Attorney**  
 Bar Number: 12345  
 Attorney for (Plaintiff/Defendant)  
 ABC Law Firm  
 123 South Street  
 Omaha, Nebraska 68000  
 Telephone: (402) 123-4567  
 Fax: (402)123-4567  
 E-mail: judith\_attorney@law.com

- (B) **Challenges to Authenticity.** Any party challenging the authenticity of an electronically filed document or the attorney's

signature on that document must file an objection to the document within five (5) business days of receiving the Notice of Electronic Filing.

(2) **Non-Attorney Signature, Generally.** If an original document requires the signature of a non-attorney, the filer may scan and upload the signed document to the System. Alternately, the filer may electronically file the document with the non-attorney signature or signatures represented by an “s/” and the name typed in the space where the signature or signatures would otherwise appear.

(A) **Maintenance of Original Document.** The filer must maintain the original signed document in paper form until all time periods for appeal have expired. At the court’s request, the filer must provide the original document for review.

(B) **Disputes.** A non-filing signatory or party who disputes i) the authenticity of an electronically-filed document with a non-attorney signature, or ii) the authenticity of the signature on that document must file an objection to the document within five (5) business days of receiving the Notice of Electronic Filing.

(3) **Multiple Signatures.**

(A) **Filing Methods.** Documents requiring signatures of more than one party must be electronically filed either by i) submitting a scanned document containing all necessary signatures; ii) representing the consent of the other parties on the document; or iii) in any other manner approved by the court.

(B) **Disputes.** A non-filing signatory or party who disputes the authenticity of an electronically filed document containing multiple signatures or the authenticity of the signatures themselves must file an objection to the document within five (5) business days of receiving the Notice of Electronic Filing.

(b) **Paper Filings.** The name, address, telephone number, fax number, and a bar number shall be typed under the signatures of each attorney appearing on each pleading.

### 15.1 Motion to Amend Pleading.

- (a) **Form and Content.** A party who moves for leave to amend a pleading (including a request to add parties) shall file as an attachment 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 must be a complete pleading which, if allowed to be filed, supersedes 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, state whether the motion is unopposed, and identify the amendments in the proposed amended pleading.
- (b) **Pro Se Cases.** In considering pro se litigants' amended pleadings, 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.
- (c) **Filing of Amended Pleading.** The granting of the motion for leave to amend does not constitute filing of the amended pleading. The party to whom the court grants leave to amend must then file the amended pleading, after leave is given.

#### 16.1 Scheduling Orders.

- (a) **Entered by Magistrate Judges.** The magistrate judges are authorized to enter scheduling orders pursuant to 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 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 administrative decisions of government agencies where review is on the basis of 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 rulings by a bankruptcy judge;
  - (6) Actions for enforcement of a civil fine, penalty or forfeiture of property;
  - (7) Naturalization proceedings;
  - (8) Proceedings under the Freedom of Information Act; 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. No scheduling orders will be entered in such cases.
- (1) **Prior Scheduling or Progression Order.** If the court has already issued a scheduling or progression order in a case pending as of August 6, 2007, the parties shall abide by the prior order.
  - (2) **Progression Orders.** Approximately thirty (30) days after the last defendant has answered, the court will issue 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 Procedures in Civil Cases.

- (a) **Matters to Be Completed Before Final Pretrial Conference.**
- (1) **Exhibit List.** Unless otherwise ordered by the court, the physical numbering and inspecting by counsel of all papers and other objects expected to be introduced as exhibits shall be completed before the final pretrial conference. Such exhibits shall be listed on approved forms that are available from the clerk's office and on the court's Web site, [www.ned.uscourts.gov](http://www.ned.uscourts.gov), or else on forms that are prepared in substantially the same format as the approved form. 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. 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.

- (A) **Objections.** All objections to the admissibility of any exhibit listed on the exhibit list shall be noted on the exhibit list. Objections not disclosed on the exhibit list, other than objections under Federal Rules of Evidence 402 and 403, shall be deemed waived unless excused by the court for good cause shown.
- (B) **Exception for Good Cause.** The judge holding the pretrial conference, for good cause shown, may authorize the parties to defer listing exhibits or objections until a later date to be specified by that judge.
- (C) **Effect of Listing.** Merely because a party lists an exhibit on an exhibit list does not mean that the adverse party can offer it into evidence without meeting all necessary evidentiary prerequisites.
- (2) **Proposed Final Pretrial Order.** Unless otherwise ordered by the court, counsel shall jointly prepare and present to the judge at the pretrial conference a proposed order, captioned "Order on Final Pretrial Conference," that includes each of the matters listed below. An acceptable form of the final pretrial order is available from the clerk's office or on the court's Web site, [www.ned.uscourts.gov](http://www.ned.uscourts.gov).
- (A) **Exhibits.** A complete listing of exhibits and objections, prepared in accordance with subparagraph (a)(1) of this rule, shall be attached to the proposed order.
- (B) **Uncontroverted Facts.** The parties shall jointly state any facts that may be accepted as established for purposes of the case to be tried, in such form that the statement may be read to the jury.
- (C) **Controverted and Unresolved Issues.** The parties shall jointly list all legal issues remaining to be determined, setting out in detail each element of the unresolved 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, and prejudgment interest). 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. Any other unresolved matters requiring the court's attention, such as possible consolidation for trial, bifurcated trials on specified issues, and pending motions, shall also be listed.

- (D) **Witnesses.** Each party shall separately list all witnesses, including rebuttal witnesses, whom that party expects to call to testify, excepting only those witnesses who may be called for impeachment purposes as defined subparagraph (c) of this rule. The listing shall include the city and state where each witness resides and shall identify those witnesses whom the party expects to be present and those whom the party may call if the need arises. Except upon a showing of good cause, a witness whose name and city of residence does not appear on the list shall not be permitted to testify over objection for any purpose except impeachment. The witness list shall identify each witness whose only testimony is intended to establish foundation for an exhibit for which foundation has not been waived, and unless such witness has been disclosed pursuant to Federal Rule of Civil Procedure 26(a)(3), such witness shall not be permitted to testify for any other purpose, over objection. A witness appearing on any party's witness list may be called by any other party.
- (E) **Expert Witnesses' Qualifications.** The parties shall separately list those persons whom they expect to call as expert witnesses and state the witnesses' qualifications. A curriculum vitae or resume may be attached in lieu of stating the qualifications of any proposed expert witness.
- (F) **Voir Dire.** In cases to be tried to a jury, counsel shall state any requests they may have regarding the conduct of juror examination. See Fed. R. Civ. P. 47(a) and NECivR 47.2(a).
- (G) **Number of Jurors.** In cases to be tried to a jury, counsel shall state their 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 shall state whether they will stipulate to a less-than-unanimous verdict.

- (I) **Briefs, Instructions, and Proposed Findings.** Counsel shall state any requests they may have 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.** Counsel shall estimate the length of trial (in days) and state both the minimum and maximum number of trial days that should be reserved by the court.
  - (K) **Trial Date.** Counsel shall state any special requests they may have 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 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 counsel's responsible and effective participation in the conference for all of its purposes. All counsel attending the final pretrial conference shall be identified in the final pretrial order, and may be required to sign the order, approving it as to form, at the conclusion of the conference.
- (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.

### 23.1 Class Action Procedures.

- (a) **Designation on Pleading.** 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."
- (b) **Notice to Class Members.** In addition to the notice requirements set forth in Federal Rule of Civil Procedure 23(c)(2)(B), all notices to class members shall specifically advise the class member that all documents sent to the court by any member of the class, 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, will be filed electronically by the clerk and will thereby 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 shall provide the document to the chambers of the judge assigned to the class action proceeding. After reviewing such documents, the judge will instruct the clerk concerning the filing of the document and the appropriate docket entry to describe that filing.

### 26.1 Service of Disclosures.

- (a) **Certificate of Service.** When serving disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) and (2), the disclosing party shall file with the court a certificate of service.
- (b) **Service by E-Mail or Fax.** To the extent practicable and if all parties agree, service of Rule 26(a)(1) and (2) disclosures by electronic mail or facsimile transmission is permissible.

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

### 30.1 Depositions Upon Oral Examination.

- (a) **Certificate of Reporter.** When the transcript of a deposition is completed, a certificate of the court reporter shall be filed electronically 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. As a part of the certificate, the officer taking the deposition shall plainly show the amount of the fee for the original.
- (b) **Video Depositions.** Depositions recorded by videotape are authorized without the prior necessity of a motion and court order.
  - (1) **Notice.** The deposition notice shall state that the deposition will be recorded by videotape.
  - (2) **Identification of Camera Operator.** At the deposition, the operator of the camera shall be identified; however, nothing shall preclude having an employee of the attorney who noticed the deposition operate the camera.

- (3) **Swearing of Witness.** The witness must be sworn on camera.
- (4) **Camera Operation.** The camera shall be directed at the witness at all times, showing a head and shoulders view, except that close-up views of exhibits are permitted where requested by the questioning attorney.
- (5) **Voluntary Resolution of Objections.** Prior to trial, counsel for the party seeking to use the deposition at trial shall approach opposing counsel and attempt to resolve voluntarily all objections made at the deposition.
- (6) **Unresolved Objections.** The party seeking to use the deposition at trial shall submit any unresolved objections to the court any time after the deposition, but no later than one (1) week before trial or in compliance with any date established by the pretrial order. A transcript of the videotape must accompany the motion in limine.

### 32.1 Editing Video Depositions for Court Proceedings.

- (a) **Notice to Opposing Counsel.** After the court rules on the unresolved objections raised in a motion in limine made in accordance with Nebraska Civil Rule 30.1(c)(6), the party seeking to use the deposition shall notify opposing counsel of the pages and line numbers of the deposition transcript which the party plans to delete from the tape. The party seeking to use the video deposition at trial shall then edit the tape accordingly, and shall bear the expense of editing.
- (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 at the time the deposition is shown at trial regarding objections heard on the tape.
- (c) **Copy to Opposing Counsel.** At least three (3) business days before showing the tape, the party seeking to use the tape at trial shall deliver a copy of the edited tape to opposing counsel. Opposing counsel may only object if: (1) the edited version does not comply either with (A) the agreement of counsel described in Nebraska Civil Rule 30.1(c)(5), or (B) the court's ruling on the motion in limine under Nebraska Civil Rule 30.1(c)(6); or (2) the quality of the tape is such that it will be difficult for the jury to understand. Such objections, if any, must be made in writing and served at least twenty-four (24) hours before the tape is to be shown.

**33.1 Interrogatories.**

- (a) **Sequential Numbering.** The parties shall number each interrogatory sequentially, regardless of the number of sets of interrogatories.
- (b) **Separate Definitions Prohibited.** The practice of separately defining words used in an interrogatory is prohibited unless counsel obtains leave of the court.
- (c) **Number of Interrogatories.** 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 interrogatories.
- (d) **Form of Response.** In answering or objecting to interrogatories, the responding party shall first state verbatim the propounded interrogatory and immediately thereafter the answer or objection to it.
- (e) **Certificate of Service.** 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.
- (f) **Alternative Methods of Service.** If all parties agree, service of interrogatories and answers or objections by electronic mail or facsimile transmission is permissible. Counsel for the answering party shall 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 the request of another party.

**34.1 Requests for Production or Inspection.**

- (a) **Form of Response.** In responding or objecting to requests to produce or inspect, the party shall first state verbatim the propounded request and immediately thereafter the response or objection to it.
- (b) **Certificate of Service.** 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.

- (c) **Alternative Methods of Service.** If all parties agree, service of requests and responses or objections by electronic mail or facsimile transmission is permissible.

**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.** The parties shall number each request sequentially, regardless of the number of sets of requests for admission.
- (b) **Form of Response.** In answering or objecting to requests for admission, the responding party shall first state verbatim the propounded request and immediately thereafter the answer or objection to it.
- (c) **Certificate of Service.** The demanding party, upon serving requests for admission, shall file a certificate of service. The responding party shall also file a certificate of service upon serving answers or objections.
- (d) **Alternative Methods of Service.** If all parties agree, service of requests and answers or objections by electronic mail or facsimile transmission is permissible.

**38.1 Notation of "Jury Demand" on Pleading.** If a party demands a jury trial by endorsing it on a pleading, as permitted by Federal Rule of Civil Procedure 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 Federal Rule of Civil Procedure 38(b). Failure to use this manner of noting the demand will not result in a waiver under Federal Rule of Civil Procedure 38(d). For the rule on demands for jury trials in removed cases, see Nebraska Civil Rule 81.1.

**39.1 Opening Statements and Closing Arguments.**

- (a) **Opening Statements.** After the jury is selected and sworn, the party upon whom the burden of proof rests may, without arguing, make an opening statement, after which the adverse party may, in like manner, make an opening statement.
- (b) **Closing Arguments.** At the conclusion of all the evidence at trial, the parties may make a final argument. The judge, after conferring with counsel, will allot time for each argument. The plaintiff's counsel may take no more

than one-third of the plaintiff's allotted time for the rebuttal portion of the summation. Unless otherwise ordered, the plaintiff's counsel may discuss in the rebuttal portion of the summation only those subjects previously discussed during the summation by either the plaintiff's or the defendant's counsel. If the defendant waives closing argument, the plaintiff may not offer rebuttal, but if the plaintiff waives closing argument, the defendant is not precluded from making a closing argument. 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, each party shall file a trial brief at least five (5) business days before the trial begins.
- (b) **Motion Briefs.** Briefs on motions shall be submitted in accordance with Nebraska Civil Rule 7.1.
- (c) **Abandonment of Issues.** Except as provided in Nebraska Civil Rule 7.1(b)(1)(C), when by these rules or by separate order a time has been set for submitting a brief on a particular issue or pursuant to a briefing schedule, the judge may treat a party's failure to submit a brief or to discuss an issue in the brief submitted 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 pursuant to 28 U.S.C. §§ 2241, 2254, and 2255, counsel shall file 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, nor considered to be, the petitioner's or movant's brief. Parties proceeding pro se are not required to electronically file briefs or other documents.

### 39.3 Trial Exhibits.

- (a) **Delivery to Clerk Before Trial.** One business day before the trial begins, counsel shall deliver to the clerk's office an exhibit list as described in Nebraska Civil Rule 16.2(a).
- (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, counsel shall confer with the courtroom deputy to establish procedures for handling exhibits during and after the trial. In cases involving a large number of paper documents, counsel should consider preparing trial evidence in an electronic format, and may consult with the court's information technology staff for further information on how this may be best accomplished.
- (d) **Numbering Exhibits.** Each party is responsible for numbering the exhibits that the party intends to use at trial. In a case with one plaintiff and one defendant, the defendant shall begin numbering exhibits with the next 100 series following 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 counsel and one defendant, each plaintiff shall number 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 shall begin numbering exhibits with the next 100 series following 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 counsel and one plaintiff, the first defendant shall begin numbering exhibits with the next 100 series following the plaintiff's last exhibit number (e.g., Ex. 201 where the plaintiff's last exhibit was Ex. 154); each defendant shall number 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 will from time to time issue orders setting trial directed 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. The court must approve any arrangement as to time or order. The district court will annually determine trial sessions in North Platte by general order.
- (b) **Requests for Place of Trial.** 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. 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 (10) business days after service of the notice of removal, may file 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 must be filed as a motion. Any other party then shall have ten (10) business days to respond.

- (1) **Form of Request.** The initial request for place of trial may be a separate pleading or may be endorsed upon the complaint or other initial pleading, and shall be served upon each party. Any subsequent request for a different place must be by motion.
  - (2) **Conflicting Requests.** The judge may resolve conflicting requests without oral argument. Except for cases governed by the special rules for the Nebraska docket and for the death penalty, see NEGenR 1.4(a)(5) and (6), the judge shall consider the convenience of the litigants, witnesses, and counsel when deciding the place of trial.
  - (3) **Amended Request.** A party may amend an initial or opposing request for place of trial at any time during the pendency of the action if material circumstances bearing on the proper place of trial change.
- (c) **Calendaring Cases.** The clerk shall calendar the case according to the initial request. If the parties make no initial request, the clerk will calendar the case in the city where the clerk's office receiving the case for filing is located.
- 41.1 Dismissal of Actions.** If a case which has been at issue for one (1) year or more and in which for a period of one (1) year no advancement has been made in the pleadings or in its preparation for trial, the court may order the case to trial forthwith or dismiss it unless good cause is shown for some other disposition. The court may at any time dismiss an action for lack of prosecution when it appears it is not being prosecuted with reasonable diligence.
- 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 at least ten (10) business days notice before the subpoena will be issued. The notice shall state the name and address of the nonparty who will be 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 be issued.
  - (b) **Objections.** After receipt of the notice, the adverse party shall have five (5) business days to serve written objections to the subpoena on the party who gave notice that a subpoena would be issued. The adverse party must

specifically identify the grounds for the objections. The objections shall not be filed with the court as a motion. No subpoena shall be issued for documents or premises whose inspection or production is contested under this rule until the parties resolve the objections. Nothing in this rule affects the availability of objections set forth in Federal Rule of Civil Procedure 45(c) and (d).

- (c) **Hearing.** The party who gave notice that a subpoena would be issued may move for a hearing on unresolved objections. Upon hearing after notice to all parties, the court may order that the subpoena be issued or not issued, or that discovery proceed in a different manner or subject to a protective order. The court may also, in its discretion, award expenses.
- (d) **Effect of Failure to Object.** A failure to object to issuance of a subpoena to a nonparty shall not preclude an adverse party from moving for a protective order under Federal Rule of Civil Procedure 26(c).

#### 47.1 Jury Pool Questionnaires.

- (a) **Standard Jury Questionnaire.** The clerk shall submit questionnaires to potential members of the jury pool. These completed questionnaires by prospective jurors cannot be obtained by counsel or the parties and are not available for review unless ordered by the court. A list of potential jurors will be available to parties and their counsel prior to trial and is to be used exclusively for the purposes of jury selection. Information included on the list shall not be released to members of the public.
- (b) **Additional Questionnaire for a Specific Case.** The judge who will preside over a trial may determine sua sponte or upon the motion of a party that the circumstances of a particular case justify submitting additional questions to prospective members of a jury pool. In the interest of securing a fair and impartial trial, the judge may solicit assistance from the parties in drafting additional questions and may require that additional written questions be submitted to potential members of the jury pool.

#### 47.2 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) **Peremptory Challenges.** Unless otherwise ordered, all parties shall exercise peremptory challenges alternately, 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.

- (c) **Waiver of Peremptory Challenges.** To pass or refuse 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 shall exercise it after the parties have exercised or waived all other challenges to which they are entitled.

**47.3 Disclosure of Juror Identity.** Documents identifying jurors or potential jurors in a case shall not be included in the public case file and shall not be made available to the public at the courthouse or via electronic access.

**48.1 Number of Jurors.** The court shall determine, after consultation with counsel, the number of jurors, which shall not be less than six (6) nor more than twelve (12).

**48.2 Jury Deliberations.**

- (a) **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 jurors that upon arriving at a verdict they must seal it, deposit it with the courtroom deputy, and return to the courtroom at a predetermined time for the opening and reading of the verdict.

- (b) **Availability of Counsel During Jury Deliberations.** Counsel shall be available on short notice during jury deliberations in the event the jury has a question. Counsel shall keep the courtroom deputy informed of their whereabouts at all times when the jury is deliberating.

- (c) **Receipt of Verdict.** Neither counsel nor the parties need be present or represented when the court receives the jury's verdict.

**51.1 Instructions to Jury.**

- (a) **When Filed and Submitted.** As far as practicable, and unless otherwise ordered, each party shall file requested instructions five (5) business days prior to the commencement of trial. In addition, a party shall submit requested instructions in a WordPerfect-compatible format on a 3.5 inch disk or CD delivered to the trial judge's chambers, 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 testimony concludes.

- (b) **Objections.** Objections to requested jury instructions, with supporting authority, shall be filed at least two (2) business days prior to the date the trial is scheduled to commence.
- (c) **Form.** Each requested instruction shall be numbered, indicate which party presents it, and cite the source of the instruction together with any additional supporting authority. Parties shall use the latest edition of the Eighth Circuit Pattern Jury Instructions whenever possible. If a submitted instruction is modified in any way, the deleted material shall be shown in parentheses and additions shall be underscored. Requests for routine instructions are unnecessary and should not be filed.

**52.1 Proposed Findings.** In civil nonjury trials, each party shall submit sufficiently detailed proposed findings of fact that, if adopted by the court, would form an adequate factual basis, supported by anticipated evidence, for resolution of the case and for support of a judgment. The proposed findings shall be filed at least five (5) business days before the trial begins.

#### **54.1 Taxation of Costs.**

- (a) **Handbook.** Counsel are directed to read the bill of costs handbook that is available on the district court's Web page, [www.ned.uscourts.gov/forms/index.html](http://www.ned.uscourts.gov/forms/index.html) "Bill of Costs Form (Handbook)", or from the clerk's office, prior to 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 shall file within thirty (30) calendar days after entry of judgment a verified bill of costs on forms that are available on the court's Web page, [www.ned.uscourts.gov/forms/index.html](http://www.ned.uscourts.gov/forms/index.html) "Bill of Costs Form," or from the clerk's office. Post-trial motions will not 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.
- (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 costs taxed are payable directly to the party entitled thereto 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 shall not include attorney's fees. For awards of attorney's fees, see Nebraska Civil Rule 54.3.

**54.2 Jury Cost Assessment.** To avoid the unnecessary attendance of jurors, the parties to a civil action shall notify the clerk that the action has settled at least twenty-four (24) hours before the trial is scheduled to begin. The court may assess all juror costs and fees against one or more parties if the parties fail to notify the clerk of the settlement in time to avoid summoning a jury. The court may also assess all juror costs and fees against one or more parties if the parties settle a civil action during trial.

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

- (a) **Time and Method.** Where a party may be entitled to receive an attorney's fee and related non-taxable expenses, the court may order, either on its own motion or that of a party, 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 non-taxable expenses.
- (b) **Support for Application.** 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. A party should submit affidavits and any written argument with the fee application. The court will expect counsel to adhere to appropriate criteria in connection with fee applications.
- (c) **Potential Award Issues.** Where a potential fee award issue exists, counsel are directed to consult the Fee Application Guidelines set forth 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 will assist counsel in presenting the court with information essential to a reasoned explanation of the fee award. Counsel should also review the most recent decisions of the circuit court 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, what subjects were discussed, and how long it lasted;
    - (B) For research, state who did it, what subjects and issues were 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; and
    - (D) For 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 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 what items were copied, why they were copied, what use was made of them, and how many pages of material were photocopied.
  - (2) For depositions, 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), and what use was made of the deposition.
  - (3) For long-distance telephone calls, list the date, by whom, to whom, and where calls were made, and the subject of the call.
- (c) Rates of Compensation Requested.** Except in Criminal Justice Act cases, counsel shall file affidavits or other evidence in support of the claimed hourly rates and hours.

## 55.1 Default Judgments.

- (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's office at [clerk@ned.uscourts.gov](mailto:clerk@ned.uscourts.gov). This clerk's entry of default should state that the default is being entered for failure to plead or otherwise defend as provided by Federal Rule of Civil Procedure 55(a).
- (b) **Clerk's Entry of Default Judgment.** If a party is requesting 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, 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, and (b) stating 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; and
  - (3) E-mail a proposed clerk's judgment for the clerk's signature to [clerk@ned.uscourts.gov](mailto:clerk@ned.uscourts.gov).
- (c) **Court's Entry of Default Judgment.** If a party is requesting a judgment from the court under Federal Rule of Civil Procedure 55(b)(2), the party shall, after obtaining a clerk's entry of default pursuant to Federal Rule of Civil Procedure 55(a) and subparagraph (a) of this rule:
- (1) File an affidavit stating that the party against whom the default judgment is requested is not an infant or incompetent person as set out in Federal Rules of Civil Procedure Rule 55(b)(2);
  - (2) E-mail to the judge's chambers a proposed judgment for the court's consideration; and
  - (3) In those cases where damages must be proved, request an evidentiary hearing before the trial judge.

**56.1 Summary Judgment Procedure.** Except as otherwise provided in this rule, the procedures of Nebraska Civil Rule 7.1 apply to motions for summary judgment. Generally, the court will not hear oral argument on summary judgment motions.

**(a) Moving Party.**

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

**(b) Opposing Party.**

- (1) Response to Movant’s Statement.** The party opposing a motion for summary judgment shall include in its brief a concise response to the moving party’s statement of material facts. The response shall address each numbered paragraph in the movant’s statement and, in the case of any disagreement, contain pinpoint references to affidavits, pleadings, discovery responses, deposition testimony (by page and line), or other materials upon which the opposing party relies. Properly referenced material facts in the movant’s statement will be deemed admitted unless controverted by the opposing party’s response.
- (2) Response Time.** An opposing brief may be filed no later than twenty (20) calendar days after service of the motion and supporting brief. Failure to file 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 Federal Rule of Civil Procedure 56.

**58.1 Satisfaction of Judgment.** The clerk shall note satisfaction of a judgment on the judgment index 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 such payment may only be made after an order of the court authorizes the payment.

**60.1 Motions for Reconsideration.**

- (a) **In General.** All motions for reconsideration of an order shall be filed and considered in accordance with this rule and those provisions of Nebraska Civil Rule 7.1 concerning briefs and the filing of evidence. Except as otherwise stated, a party's failure to observe the requirements of this rule may be deemed an abandonment in whole or in part of that party's position on the pending motion.
- (b) **Time.** A party must file a motion for reconsideration of an order no later than ten (10) business days after the court files the order, unless the party shows good cause for a later filing.
- (c) **Standard of Review.** Motions for reconsideration are disfavored. The court will ordinarily deny such motions in the absence of (1) a showing of manifest error in the prior ruling; or (2) a showing of new facts or legal authority, neither of which could have been brought to the court's attention earlier with reasonable diligence.
- (d) **Consecutive Motions.** A party may file only one (1) motion for reconsideration of a particular order, even if the court modifies the order or changes the language in the order.
- (e) **Magistrate Judges.** A magistrate judge shall have the discretion to docket a motion for reconsideration of the magistrate judge's order as an appeal to the district judge, pursuant to Nebraska Civil Rule 72.2 and 28 U.S.C. § 636(b)(1)(A).

**65.1.1 Security; Proceedings Against Sureties.**

- (a) **General Requirements.** The principal obligor and one or more sureties qualified as provided in this rule must execute every 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 in accordance with the provisions of 31 U.S.C. §§ 9301-9309, and approved thereunder 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 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 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 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 the bondsman as of that date.

The judge before whom the proceeding is pending will approve or disapprove the surety after reviewing the justification and certifications.

- (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 party required to file the bond does not comply with such order, the case may be dismissed for want of prosecution, or the judge may take other appropriate action.

#### 67.1 Deposits.

- (a) **Order Directing Investment of Funds.** Counsel is responsible for personally serving on the district court clerk or chief deputy at Omaha or the deputy-in-charge at Lincoln a copy of any order directing the clerk to invest funds deposited with the registry account of the district court pursuant to 28 U.S.C. § 2041. The order must include the amount to be invested and the type of interest-bearing account in which the funds are to be invested.
- (b) **Time for Investing Funds.** The clerk shall take all reasonable steps to invest the funds within twenty (20) calendar days of the service of the order.
- (c) **Fee.** Except as the court otherwise orders, the clerk will deduct from the income earned on the investment at the time the income becomes available a fee as authorized by the Judicial Conference of the United States and set out by the Director of the Administrative Office of the United States Courts.
- (d) **Withdrawal of a Deposit.** To withdraw money deposited in the court pursuant to Federal Rule of Civil Procedure 67 and subsequently deposited into an interest-bearing account or instrument as required by Rule 67, a party must file a motion for withdrawal of the funds and simultaneously submit a proposed order and completed IRS Form W-9.

- 68.1 **Settlement Procedures.** Counsel shall notify the court or the clerk when the parties settle an action, and file within thirty (30) calendar days after such notification all documents necessary to terminate the action, unless the court directs otherwise by written order. If the parties fail to file such documents, the court may dismiss the action without further notice and without prejudice to the right to secure reinstatement of the case within thirty (30) calendar days after the date of the order

by making a showing of good cause about why the parties did not in fact consummate the settlement. If the parties engaged in mediation, the notification to the court or the clerk should also state the mediator's name, the dates of the mediation, and whether the mediation was successful.

**72.1 Magistrate Judges' Duties.** Magistrate judges are authorized pursuant to 28 U.S.C. § 636(b) to perform any duties assigned to them by any district judge of this court which are not inconsistent with the Constitution and laws of the United States. In civil cases, a full-time magistrate judge shall be responsible for (a) scheduling trials; (b) conducting any discovery, pretrial, and settlement conferences; (c) hearing and determining all pretrial procedural and discovery motions, including the issuance of progression orders; and (d) presiding over all proceedings related to executions of judgments pursuant to Federal Rule of Civil Procedure 69.

**72.2 Appeals of Magistrate Judges' Orders in Nondispositive Matters.**

- (a) **Statement of Appeal and Briefs.** As provided in Federal Rule of Civil Procedure 72(a), a party may appeal a magistrate judge's order in a nondispositive matter (*i.e.*, not excepted by 28 U.S.C. § 636(b)(1)(A)) by filing a "Statement of Appeal of Magistrate Judge's Order" within ten (10) business days after being served with the order, unless the order establishes a different time. The party shall specifically state the order or portion thereof appealed from and the basis of the appeal. The appealing party shall file contemporaneously with the statement of appeal a brief setting forth the party's arguments that the magistrate judge's order is clearly erroneous or contrary to law. A party may not merely reference or refile the original brief submitted to the magistrate judge. A party failing to file a brief in support of the appeal may be deemed to have abandoned the appeal. Unless otherwise ordered, any opposing party may file a brief opposing the appeal within ten (10) business days of being served with the statement of appeal, arguing that the order of the magistrate judge is not clearly erroneous or contrary to law.
- (b) **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 parties need not refile or re-offer the materials and may refer to them in the briefs. The parties may not offer additional evidentiary materials unless the court so orders.
- (c) **Scope of Review.** The district judge will not modify, set aside, or remand to the magistrate judge any nondispositive order or portion thereof unless clearly erroneous or contrary to law.

- (d) **Stay Pending Appeal.** The filing of a statement of appeal does not stay the magistrate judge's order pending appeal. Any motion for stay pending appeal shall be filed and presented first to the magistrate judge whose order is appealed. If the magistrate judge denies the motion for stay, the party may address the motion to the assigned district judge.
- (e) **Consent Cases Excluded.** This rule does not apply to cases in which the parties have consented to proceed before a magistrate judge. See NECivR 73.1.

### 72.3 Objections to Magistrate Judges' Recommendations in Dispositive Matters.

- (a) **Statement of Objection.** A party may object to a magistrate judge's recommendation 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 (10) business days after being served with the recommendation, unless the court orders a different time. The statement of objection shall specify those portions of the recommendation to which the party objects and the basis of the objection. The statement of objections should also indicate whether the objecting party is relying on the brief previously filed, or if a new brief has been filed along with the statement of objections. Unless otherwise ordered, any opposing party may file a brief opposing the objection within ten (10) business days of being served with the statement of objection. This brief may also refer to briefs previously filed.
- (b) **Evidence.** If evidentiary materials were filed or received in evidence at the time of the magistrate judge's determination of the matter, the parties need not refile or re-offer the materials and may refer to them in the briefs. The parties may not offer additional evidentiary materials; however, if the magistrate judge held an evidentiary hearing, the objecting party may request a supplemental hearing to consider additional evidence. The district judge may convene the hearing if the party demonstrates good cause why the evidence was not adduced before the magistrate judge.
- (c) **Remand.** 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.
- (d) **Failure to Object.** 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.

**72.4 Review of Magistrate Judges' Orders in Special Master Reports.** When a magistrate judge has been designated as a special master with the consent of the parties under Federal Rule of Civil Procedure 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 Federal Rule of Civil Procedure 53(e).

**73.1 Magistrate Judges; Trial by Consent.**

- (a) **Random Assignment.** Unless otherwise ordered by the court, the clerk shall assign each civil action to a district judge or a magistrate judge by automated random selection, except that when preliminary injunctive relief is requested by motion, the clerk shall assign the action to a district judge. In the event the action is assigned to a magistrate judge, each party shall execute and file within twenty (20) calendar days of its appearance either a written consent to the exercise of authority by the magistrate judge under 28 U.S.C. § 636(c), or a written election to have the action reassigned to a district judge. Each party shall indicate its consent or election on a form provided by the court. Failure to return the written election form and proceeding to trial before the magistrate judge without objection may be construed as consent to the magistrate judge's jurisdiction under 28 U.S.C. § 636(c). 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 shall notify the parties in a case assigned to a district judge that they may consent to have a magistrate judge conduct any or all proceedings in the case, including the conduct of a jury or nonjury trial, and order the entry of a final judgment, in accordance with 28 U.S.C. § 636(c). Such notice shall be provided as soon as practicable after the commencement of the action and before the case is first scheduled for trial. If all parties expressly consent on a form provided by the court to proceed before the magistrate judge, the clerk shall notify the assigned district judge of the parties' consent. After receiving the notice of the consent, the assigned district judge will consider the consent and reassign the case to the magistrate judge if appropriate.

**79.1 Custody of Files and Exhibits.**

- (a) **Clerk's Custody.** In general, papers or physical items belonging to the files of the court, whether the files are paper or electronic, 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 pleadings in the clerk's office in Omaha and Lincoln between the hours of 8:00 a.m. and 4:30 p.m. on days when the courthouses are open for business. A coin-operated copier is available in the public viewing room of the clerk's office in Lincoln. Upon request, the clerk's staff will copy public documents for a fee as prescribed 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 the hours of 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 electronically filed document are as prescribed by 28 U.S.C. § 1914.
  - (3) Payment for Copies.** Payment must be made at the time the service is requested by cash, check, or money order made payable to "Clerk, U.S. District Court." Fees shall apply to copying services rendered on behalf of the United States if the record or paper requested is available through electronic access. The clerk's staff cannot make change for cash payments to the clerk.
- (c) Inspecting Physical Evidence.** No one may inspect physical evidence in the clerk's custody such as 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 such evidence.
- (d) Temporary Withdrawal of Paper Court Files, Exhibits, and Documents.** Paper court files, exhibits, documents, and transcripts will not be taken from the clerk's office or custody without a written order from the assigned judge. To request permission to check out a court file, exhibit, document, or transcript, an attorney must electronically file a written motion and submit a proposed order to the assigned judge. 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 as directed by the judge or no later than two (2) business 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 following morning.

- (e) **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.
- (f) **Withdrawal or Destruction of Exhibits at Case Conclusion.**
- (1) **Withdrawal.** At the conclusion of trial or as soon as possible, but not later than ten (10) business days after a verdict is rendered or a judgment is entered, the offering attorney or pro se party 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 or pro se party must:
- (i) Retain exhibits withdrawn from the clerk's custody for at least one (1) year after the judgment is final and is therefore no longer subject to appellate review;
  - (ii) Preserve the retained exhibits in the same state or condition they were in when offered into evidence;
  - (iii) If an opposing counsel or pro se party requests the exhibits, make the exhibits available for examination and use at reasonable times and places; and
  - (iv) Promptly return the exhibits to the clerk if requested to do so.
- (B) **Sanctions.** Failure to abide by the provisions of this rule may subject the attorney or the pro se party to sanctions. 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 or pro se party may destroy or otherwise dispose of the exhibits without further authorization. If the attorney or pro se



party does not claim and withdraw the exhibits, the clerk may destroy or otherwise dispose of any exhibits not claimed and withdrawn. On the date that the clerk destroys the exhibits, the clerk shall enter a remark on the docket sheet stating that the exhibits were destroyed and the date of destruction.

- 81.1 Demand for Jury Trial in Removed Cases.** If applicable state law does not require the parties to make express demands in order to claim trial by jury, a party desiring trial by jury in a removed action shall make a demand therefor in this court within the time prescribed by Federal Rule of Civil Procedure 81(c). The failure of a party to make a demand as directed by this rule constitutes a waiver by that party of trial by jury.
- 85.1 Title; Citation.** These rules shall be known as the Civil Rules of the United States District Court for the District of Nebraska ("Nebraska Civil Rules"). They may be cited as "NECivR \_\_\_\_."