UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CRIMINAL RULES

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1.1 Definitions.

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

(a) "Judge" means any district or magistrate judge serving this district.

(b) "Court" means "judge" or, collectively, the judges of this district.

(c) "Clerk" means the clerk or a deputy clerk of this district.

(d) "Marshal" means the United States Marshal or a deputy marshal of this district.

(e) "Government" means the United States Attorney General or an authorized assistant, a United States attorney or an authorized assistant, or any other attorney authorized by law to act as a prosecutor.

(f) "System" means the District of Nebraska's Case Management/Electronic Case Files (CM/ECF) System.

(g) "Electronic filing" or "electronically file" means uploading a document directly from a registered user's computer, using the court's Internet-based System to file that document in the court's case file. Electronic filing also includes uploading to the System done by the clerk of documents given to the court in paper format or as .pdf ("Portable Document Format") files. Sending a document to the court via electronic mail (e-mail) or facsimile transmission (fax) is not electronic filing.

(h) "Filing" or "file" means "electronic filing" or "electronically file." A paper document is considered filed on the date the clerk receives and file stamps it rather than the date the clerk uploads it to the System.

(i) "NEF" means "notice of electronic filing."

3.1 Presenting a Criminal Complaint

(a) To Judge.

A complaint is presented to a magistrate judge for review and execution, or to a district judge if no magistrate judge is reasonably available. When no

federal judge is reasonably available, *see* NECrimR 3.1(c)(2), a complaint may be presented to a state judicial officer.

(b) Manner of Presenting.

When presenting a complaint to a judge:

(1) a copy of the proposed complaint and any supporting affidavits must be delivered in advance for the judge's review; and

(2) a government attorney should accompany the person presenting the complaint.

(c) Emergency.

When an emergency requires a complaint's immediate presentation:

(1) the judge may waive the requirements of Nebraska Criminal Rule 3.1(b); and

(2) a magistrate judge, or a district judge if a magistrate judge is not available, may be contacted away from the courthouse, including at home, to consider a proposed complaint.

4.1 Sealing Arrest Warrants and Complaints.

Arrest warrants are filed under seal. The clerk unseals criminal complaints that are filed under seal upon receiving notice that all named defendants have been arrested unless the presiding judge orders for good cause shown that the documents remain sealed.

5.1 Initial Appearance Before Magistrate Judge.

(a) Scheduling.

The government must schedule an initial appearance by contacting the magistrate judge's courtroom deputy, or an individual authorized by the magistrate judge to assist with scheduling. The initial appearance must be scheduled as soon as possible after an information, indictment, or complaint is filed.

(b) Initial Appearance; Arrest Before Finding of Probable Cause.

In the absence of a filed information, indictment, or complaint, or a prior judicial finding of probable cause to arrest, the following procedures apply.

(1) Scheduling.

Unless a represented defendant agrees to delay the proceeding, an arrested defendant's initial appearance must be scheduled as soon as the court's business allows and no more than 48 hours after the defendant's arrest and placement in custody. If necessary, the government attorney may contact a magistrate judge at home to conduct an initial appearance outside of business hours.

(2) Judicial Review.

Before an initial appearance:

(A) the government must present a criminal complaint to the magistrate judge for review;

(B) the magistrate judge, upon review and consideration, must sign the complaint; and

(C) the complaint must be filed.

6.1 Initiating Grand Jury Proceedings.

(a) Supervision.

The court directly supervises grand juries that convene as the chief judge orders. The chief judge or, if the chief judge is unavailable or disqualified, the next senior and available active district judge, impanels and discharges the grand jury and acts on the court's behalf during grand jury proceedings.

(b) Docket Assignment.

The clerk assigns each newly impaneled grand jury a grand jury docket number. Documents pertaining to grand jury matters must bear the assigned docket number and are maintained by the clerk under seal; no motion or order to seal is necessary.

6.2 Grand Jury Proceedings.

(a) Composition or Term of Impaneled Grand Jury

The impaneling judge or the clerk under supervision of the court decides a grand jury pool member's request to be excused from participating in grand jury selection, or, once selected, from continued service.

(b) Grand Jury Process or Proceedings.

(1) Form; Content.

Pre-indictment challenges to grand jury subpoenas, proceedings, or other grand jury matters, must be in writing, filed with the clerk under seal, and state all related facts including:

(A) the grand jury docket number;

(B) the date the subpoena was served;

(C) the date in the subpoena when the person served is to appear or produce documents; and

(D) the relevant law supporting the challenge to the subpoena.

Absent an ex parte order by the impaneling judge or a magistrate judge assigned to rule on the challenge, a motion filed by a private party must include proof of service of the motion on the government.

(2) Motion to Quash; Timing.

Absent good cause shown, a motion to quash or limit a grand jury subpoena must be filed and served 7 days before the date in the subpoena for a witness's appearance or the production of documents.

(3) Timing of Decision.

Upon the filing of a motion to quash or limit a grand jury subpoena, whenever possible the impaneling judge or assigned magistrate judge rules on the motion on or before the subpoena's return date.

6.3 Preserving Grand Jury Secrecy.

(a) Courthouse Decorum.

When a grand jury convenes, no one may be in the courthouse to observe or monitor persons who enter and leave the grand jury chambers. This rule does not apply to (1) grand jurors; (2) witnesses; (3) government attorneys,

agents, and employees; (4) court personnel; (5) private attorneys with clients called to appear as witnesses at a grand jury session in progress or about to begin; and (6) others that the court specifically authorizes to be present.

(b) Grand Jury Files.

(1) Maintained Under Seal.

Records that the clerk maintains in the grand jury docket are restricted documents, maintained under seal, and available for review or unsealed only upon a judge's order. This rule applies to: grand jury subpoenas; transcripts of testimony; the clerk's docket of grand jury proceedings; and motions and orders relating to grand jury subpoenas, true bills, and no bills.

(2) Access; Witness's Attorney.

An attorney of record for a person subpoenaed to appear or produce documents at a grand jury proceeding may move for an order allowing access to a copy of the grand jury subpoena served on the client and the documents relating to that subpoena.

(c) Free Press-Fair Trial Provisions.

(1) Attorneys.

An attorney participating in or associated with the investigation may not make an extrajudicial statement that a reasonable person would expect to be disseminated, by any means of public communication, that goes beyond the public record or is not necessary to: inform the public the investigation is underway or to describe the investigation's general scope; obtain assistance in a suspect's apprehension; warn the public of any danger; or otherwise aid in the investigation.

(2) Court Personnel.

No court personnel, including employees or subcontractors retained by court reporters, may disclose to any person, without the court's authorization, information outside the court's public records relating to a pending grand jury proceeding or a criminal case.

(d) Contact with Grand Jurors.

(1) By Defendant or Witness.

Without the court's leave, no actual or potential defendant or witness, or attorney or other person acting on the defendant's or witness's behalf, may contact or speak with any actual or potential grand juror about grand jury service.

(2) By the Government.

Without the court's leave, no government attorney or person acting on the attorney's behalf may contact or speak with any grand juror or potential grand juror about grand jury service. However, contacts may be made on the record during grand jury proceedings in connection with the administration of the grand jury.

6.4 Return of Grand Jury Indictments.

The grand jury, or the foreperson or deputy foreperson of the grand jury, must return an indictment in open court to a magistrate judge, or if unavailable, a district judge. Upon the government's request, the judge may order the indictment sealed.

7.1 Criminal Case Cover Sheet.

A completed criminal case cover sheet must accompany a filed indictment or information.

7.2 Superseding Indictment or Information.

When a superseding indictment or information is filed, the government must simultaneously file a brief statement describing the differences between the original and superseding charges.

9.1 Delivery to Marshal of Warrant or Summons.

The original of any warrant (except a search warrant) or summons (except a summons on a "Petition for Warrant" or a "Summons for Offender Under Supervision") issued in this district must be delivered to the marshal. Upon request, the marshal may provide another agency with a copy of a warrant clearly marked "copy." A copy of the indictment, information, complaint, "Petition for Warrant," "Summons for Offender Under Supervision, " or "Petition for Action on Conditions of Pretrial Release" to which the warrant or summons relates must accompany the warrant or summons.

(a) Issuance of Electronic Warrant and Summons Authorized.

The clerk is authorized to sign, seal, and issue warrants and summonses electronically. Such electronically issued warrants and summonses may not, however, be served electronically.

11.1 Change of Plea Hearing.

(a) Notice.

If a defendant decides to change a previously entered "not guilty" plea, the defense attorney must notify the government's attorney and assigned judge as soon as possible.

(b) Requirements for Scheduling Hearing.

Defense counsel may not contact the court to schedule a change of plea hearing until (1) a plea agreement has been reached between the parties and (2) counsel has advised the defendant that, by pleading guilty, the defendant waives the constitutional right to a jury trial. The defendant may orally state to the defense attorney the defendant's understanding of the applicable constitutional rights and acceptance of the plea agreement. A change of plea hearing may be scheduled before the plea agreement and petition to enter a plea of guilty are signed.

(c) Interpreter Assistance.

If, in order to consider or enter a change of plea, a defendant requires an interpreter's assistance:

(1) the government must send a request for interpreter form to the courtroom deputy at least 7 days before the hearing; and

(2) the defense attorney must ensure that the petition to enter a plea of guilty, any plea agreement, and the indictment or information have been properly translated for the defendant before the change of plea hearing.

(d) Copies of Petition and Plea Agreement; Copy of Information.

The defense attorney must send copies of the petition to enter a plea of guilty, any plea agreement and the information (if applicable), to the judge presiding over the change of plea hearing at least 24 hours before the plea hearing, absent extenuating circumstances.

(e) Original Signed Petition and Plea Agreement; Original Information.

The government's attorney must bring the fully signed original petition to enter a plea of guilty, any fully signed original plea agreement, and the information (if applicable), to the change of plea hearing.

11.2 Change of Plea Hearing Before Magistrate Judge.

(a) Hearing.

With the assigned district judge's and the parties' consent, a magistrate judge may hold a change of plea hearing in:

(1) a felony case; or

(2) a misdemeanor case requiring consent but in which the parties did not consent to trial, judgment, and sentencing by a magistrate judge.

If the magistrate judge at the hearing finds that the defendant's written or oral consent to proceed with the change of plea before the magistrate judge is knowing and voluntary, the magistrate judge conducts the change of plea hearing. The magistrate judge must inquire about the existence and understanding of the terms of any plea agreement but may not accept or reject a plea agreement.

(b) Findings of Fact and Recommendation.

The magistrate judge must state on the record findings concerning the guilty plea's knowing and voluntary nature, the adequacy of the factual basis for the plea, and any other relevant matter, and must recommend to the district judge whether the guilty plea should be accepted. If there is a plea agreement, the magistrate judge must also recommend to the district judge whether the plea agreement should be rejected, accepted, or taken under advisement until sentencing. A transcript of the hearing must be prepared and filed with the clerk.

(c) Objection to Recommendation.

Unless the judge extends or shortens the time, any objection to the magistrate judge's recommendation must (1) be in writing, (2) specify the parts of the findings or recommendation objected to, and (3) be filed and served within 14 days after the filing of the plea transcript. *See* NECrimR 59.2(a).

(d) District Judge's Review.

The district judge must conduct a de novo review of the magistrate judge's recommendation regarding the proposed plea and issue an appropriate order. The district judge may defer acceptance of the plea agreement until sentencing. In conducting this review, the district judge may reconduct or refer back to the magistrate judge all or part of the plea hearing, affirm or set aside any finding by the magistrate judge, and make additional findings.

12.1 Motions to Continue Trial.

(a) Content.

Unless excused by the court in an individual case, a motion to continue the trial setting of a criminal case must state facts demonstrating that the ends of justice served by a continuance outweigh the best interests of the public and the defendant in a speedy trial, *see* 18 U.S.C. § 3161(h)(7)(A), or that for some other reason the continuance will not violate the Speedy Trial Act.

(b) Standard.

The court may grant a motion to continue a trial of a criminal case for good cause shown.

(c) Parties.

Counsel for the movant must confer with the counsel for all other parties before filing a motion to continue the trial setting. The motion must state whether the requested continuance is opposed by any party.

12.2 Unopposed Motions.

When all attorneys agree that a motion is unopposed, the motion should reflect the agreement.

12.3 Forms and Deadlines for Pleadings and Motions.

(a) Deadlines Set.

At the arraignment, the magistrate judge sets discovery and pretrial motion deadlines. These dates are strictly enforced. Motions for an extension of time to file pretrial motions are only granted for good cause shown, and absent good cause shown they must be filed within the pretrial motion filing deadline.

(b) Form of Motion.

Unless the pretrial motion is unopposed, *see* NECrimR 12.2, or does not raise a substantial issue of law, the motion must be filed as provided in this rule.

(1) Supporting Briefs.

A motion raising a substantial issue of law must be supported by a brief filed and served together with the motion. The brief must be separate from, and not attached to or incorporated in, the motion. The court may treat a party's failure to simultaneously file a brief as an abandonment of the motion. The brief must (A) concisely state the basis for the motion, (B) cite relevant legal authority, and (C) cite to the pertinent pages of the record, affidavit, discovery material, or other evidence on which the moving party relies. A party's failure to brief an issue raised in a motion may be considered a waiver of that issue.

(2) Evidence.

Unless evidence to be offered in support of a motion will be presented at an evidentiary hearing requested for that motion, when a motion raising a substantial issue of law requires the court to consider factual matters not established by the pleadings or evidence previously filed, the moving party must file additional evidentiary materials on which the party relies. Evidence must be filed under seal upon order of the court or as required under these rules. The evidence must be filed simultaneously with the motion and brief. The method for filing evidence in support of an electronically filed motion is governed by Nebraska Criminal Rule 49.2(a)(2). Evidentiary materials may be attached to the motion or brief if the filing includes a listing of each item of evidence being filed, and the evidence citations within the filing provide hyperlinks to the evidence attached and offered in support of the factual statements. In all other cases, evidentiary materials must not be attached to the brief but rather must be filed separately with an index listing each item of evidence being filed and identifying the motion to which it relates.

(3) Discovery Motions.

A motion seeking discovery or disclosure of evidence must include a statement verifying that (A) the moving party's attorney conferred with the opposing attorney in person or by telephone in a good-faith effort to resolve the issues raised in the motion and (B) the parties were unable to reach an agreement. This showing must also state the date, time, and place of the communications and the names of

all participating persons.

(4) Request for Hearing.

If an evidentiary hearing is requested, the motion must state the estimated length of time needed for the hearing, whether an interpreter is needed, and whether any codefendant should be present or participate in the hearing.

(c) Responsive Brief.

(1) Timing.

(A) ~~Unless otherwise ordered by the court, all parties may respond to the motion within 7 days after the motion is filed.~~ The time for any party to file a response to a motion to suppress is 14 days after the motion to suppress is filed, unless otherwise ordered by the court.

(B) The time for any party to file a response to all other types of motions is 7 days after the motion is filed, unless otherwise ordered by the court.

(2) Form and Content.

The response must be in the form of a brief in opposition to the motion. A party's failure to brief an issue raised in a motion may be considered a waiver of that issue. If the response relies on evidence that has not already been filed, the responding party must comply with Nebraska Criminal Rule 12.3(b)(2) in filing its evidence.

(3) Evidentiary Hearing.

If a party requests an evidentiary hearing, the response must state, unless the moving party has already provided the same information, the information required in Nebraska Criminal Rule 12.3(b)(4).

(d) Court-Ordered Evidentiary Hearing.

(1) Order.

The court determines whether an evidentiary hearing is required on a pretrial motion. Nothing in this rule limits the court's authority to schedule an evidentiary hearing on any issue to assist the court in administering justice or to preserve the parties' right to an evidentiary

hearing under the laws or Constitution of the United States.

(2) Notice to Court.

If the court orders a hearing sua sponte, the parties must promptly advise the court of the information required in Nebraska Criminal Rule 12.3(b)(4).

12.4 Proposed Order.

A party may submit a proposed order to the assigned judge's chambers by e-mail sent to the address listed on that judge's information page on the court's website. *See* https://www.ned.uscourts.gov/attorney/judges-information. A proposed order may not be filed by a party.

12.5 Sealed Documents and Objects.

(a) Procedure.

(1) Motion to Seal.

A party seeking to file a sealed document or object must electronically file a motion to seal. The motion must state why sealing is required and whether redaction could eliminate or reduce the need for sealing. A motion to seal is not required if the document or object is (1) already subject to a protective order or (2) included within a category of documents or objects considered sealed under a federal statute or federal rule of procedure, local rule, or standing order of this court.

(2) Sealed Document not Attached.

The document to be sealed must not be attached to the motion, but rather filed separately as a provisionally sealed document. This document stays provisionally sealed until the court rules on the motion to seal.

(3) Order.

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

(b) Notice.

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

(c) Docket Sheet Entries.

When a sealed document is filed, an entry appears on the electronic docket sheet only for court users. The parties and the public do not have remote access to the sealed document from the docket sheet unless otherwise ordered by the court.

(d) Motion to Unseal.

A motion to unseal or view a document or object may be made on any legal grounds.

12.6 Disclosure of Evidence.

This rule applies to all evidentiary hearings on pretrial motions in criminal cases.

(a) Witnesses.

At the time of the hearing, and to the extent reasonably possible, the parties should give the judge and courtroom deputy a written list of all potential witnesses.

(b) Exhibits.

At least 24 hours before the hearing, each party should (1) mark the exhibits that party intends to introduce into evidence at the hearing and (2) send copies to all other attorneys and the presiding judge.

12.7 Numbering Exhibits for Hearing or Trial.

Each party shall affix/add an exhibit sticker and each exhibit sticker shall include the case number and exhibit number. In a criminal case with only one defendant, the defendant numbers exhibits with the next 100 series following the government's last exhibit number (e.g., Ex. 201 where the government's last exhibit was Ex. 154). In cases with multiple defendants with separate attorneys, the first defendant numbers exhibits with the next 100 series following the government's last exhibit number (e.g., Ex. 201 where the government's last exhibit was Ex. 154); each defendant numbers exhibits with a subsequent, separate 100 series (e.g., Ex. 501 for the fourth defendant where the third

defendant's final exhibit was Ex. 417).

15.1 Subpoenaed Depositions.

Except upon order, depositions to secure testimony or obtain documents or things before trial are not allowed in a criminal case. The procedures for obtaining an order allowing subpoenas to produce documents before trial or a pretrial criminal proceeding are stated in Nebraska Criminal Rule 17.2.

16.1 Disclosure Requirements.

This court presumes that a defendant has requested disclosure of Federal Rule of Criminal Procedure Rule 16(a)(1) discovery and that the government has requested reciprocal discovery, except as to expert witnesses under Rule 16(a)(1)(G) and (b)(1)(C), unless the procedures of this rule overcome the presumption.

(a) Government's Disclosure.

(1) No Discovery Requested.

If ~~the defendant does not request federal~~ Rule 16(a)(1) discovery is not requested, the defendant must state so during the arraignment or otherwise file a notice ~~within 2 days after the arraignment~~ stating that ~~the defendant does not request the~~ discovery is not requested. ~~If this notice is filed, the government is relieved of any federal Rule 16 discovery obligations to the defendant.~~ The notice shall be filed within 2 days after the arraignment or as otherwise ordered by the court.

(2) Partial Discovery Requested.

If ~~the defendant requests federal~~ Rule 16(a)(1)~~(A)-(D)~~ discovery is only partially requested, the defendant must state so during the arraignment or otherwise file a notice specifically stating what discovery is not requested. ~~but files a notice within 2 days after the arraignment stating that the defendant does not request Rule 16(a)(1)(E), (F), or (G) discovery, then the government must provide Rule 16(a)(1)(A)-(D) discovery and any Rule 16(a)(1)(E)(F) and (G) discovery not specifically identified in the defendant's notice.~~ The notice shall be filed within 2 days after the arraignment or as otherwise ordered by the court. The defendant may subsequently request Rule 16(a)(1)(E), (F), or (G) discovery in accordance with the court's case progression orders.

(3) Disclosure Deadline.

Unless the court orders otherwise, the government must provide discovery under this rule no sooner than 2 but not later than 14 days after the arraignment.

(4) Certificate of Service.

Upon providing the required discovery, the government must file and serve a notice of compliance.

(b) Defendant's Disclosure.

(1) Reciprocal Disclosure; Deadline.

~~If the government provides Rule 16(a)(1)(E), (F), or (G) discovery, unless the court orders otherwise, the defendant must then disclose reciprocal discovery under Federal Rule of Criminal Procedure 16(b)(1)(A), (B), and (C) within 30 days after the arraignment.~~ The defendant shall disclose reciprocal discovery as required under Rule 16(b)(1)(A) and (B) within 30 days after the arraignment or as otherwise ordered by the court. The government may request Rule 16(b)(1)(C) discovery in accordance with the court's case progression orders.

(2) Certificate of Service.

Upon providing the required discovery, the defendant must file and serve a notice of compliance.

16.2 Motion for Extending or Shortening Discovery Time.

An affidavit or other statement explaining the reasons for the request must accompany a motion to continue a discovery deadline. The court only extends a motion to continue a discovery deadline in unusual cases and upon a showing of good cause, which must include facts showing that the moving party diligently pursued discovery during the originally specified period.

17.1 Subpoenas and Writs.

(a) Subpoenas; Service by Marshal.

The serving party is responsible for providing the marshal with an original and 2 copies of each subpoena to be served by the marshal. The serving party must deliver to the marshal a subpoena for a hearing or trial to be

served by the marshal (1) within this district at least 14 days and (2) outside this district at least 21 days before the hearing or trial at which the witness is to testify. Service of a subpoena delivered to the marshal after these deadlines is not guaranteed. Without a court order under Nebraska Criminal Rule 17.1(c), the marshal serves a tardy subpoena only if the marshal can conveniently do so.

(b) Delivery of Writ to Obtain Incarcerated Person's Presence.

The serving party must deliver to the marshal a writ of habeas corpus ad testificandum to be served (1) within the district at least 14 days and (2) outside the district at least 30 days, before the hearing or trial at which the witness is to testify. If the government has made prior arrangements for obtaining a defendant's presence, it may deliver a writ of habeas corpus ad prosequendum to the marshal at any time before the hearing at which the defendant is to appear.

(c) Exception to Delivery Deadlines.

The time periods and deadlines in Nebraska Criminal Rule 17.1(a) and (b) may be shortened by court order upon motion and for good cause shown.

(d) Service at Federal Public Defender's Request.

The marshal serves subpoenas and makes fact witness payments for the Office of the Federal Public Defender. Fact witness vouchers issued for payment must be approved by the federal public defender or assistant federal public defender assigned to the case, whose signature is maintained on record by the marshal.

(e) Issuance of Electronic Subpoenas and Writs Authorized.

The clerk is authorized to sign, seal, and issue subpoenas and writs electronically. Such electronically issued subpoenas and writs may not, however, be served electronically.

17.2 Subpoenas for Production of Books, Documents, or Objects.

(a) General.

No subpoena in a criminal case may require the production of books, documents or objects at a date, time or place other than the date, time, and place of the trial, hearing, or proceeding at which the items are to be offered in evidence, unless the court has entered an order under Federal Rule of

Criminal Procedure 17(c) authorizing the issuance of the subpoena.

(b) Motions for Pre-Proceeding Document Production.

Motions for the issuance of a subpoena to produce documents before a trial or evidentiary proceeding under Federal Rule of Criminal Procedure 17(c) must be made to the assigned magistrate judge when the motion is filed.

(1) Content; Supporting Brief; Affidavit.

Except in an extraordinary case where ex parte consideration may be justified, the motion for issuance of the subpoena must be served on the opposing attorney. The requirements of Nebraska Criminal Rule 12.3(b)(3) apply. Also, motions for subpoenas duces tecum under this subsection must be supported by an affidavit or declaration, *see* 28 U.S.C. § 1746, establishing the following:

(A) the documents or objects sought cannot otherwise be reasonably obtained by due diligence in advance of the trial or evidentiary proceeding;

(B) the moving party cannot properly prepare for the trial or evidentiary proceeding without advance production and inspection;

(C) the failure to obtain advance production and inspection of the documents or objects may unreasonably delay the proceeding; and

(D) the application is made in good faith and is not intended for the purpose of general discovery.

(2) Ruling.

The magistrate judge makes a preliminary determination whether the material sought is probably relevant and probably admissible. The magistrate judge also determines if the request is specific enough to be intelligently evaluated and may place limits on the requested production.

(3) Return of Service.

(A) Return; Inventory.

A subpoena duces tecum issued under this rule must be (i) returned to the magistrate judge who authorized the subpoena and (ii) accompanied by an inventory that lists all items produced. The return and the inventory are filed with the clerk.

(B) Possession of Produced Documents or Items.

Absent a motion for protective order filed under Nebraska Criminal Rule 17.2(b)(3)(C), the items produced must be (i) provided to and kept in the possession of the attorney who sought the subpoena or (ii) in the case of a pro se defendant, filed with the clerk.

(C) Motion for Protective Order.

Any party, the witness or entity responding to the subpoena, or any person or entity whose interests may be affected by disclosure of the subpoenaed documents, may file a motion for a protective order. The magistrate judge reviews the documents produced and issues any appropriate protective order. The clerk then keeps the items produced and makes them available for inspection under the terms of the protective order.

17.3 Subpoenas Issued by Clerk; Contempt.

For the purposes of applying Federal Rule of Criminal Procedure 17(g), a subpoena issued by the clerk as ordered by a magistrate judge is considered issued by the magistrate judge.

17.4 Motion to Quash or Enforce Subpoena.

A proceeding to quash or enforce a subpoena is first held by the assigned magistrate judge, subject, if necessary, to a district judge's review as required by 28 U.S.C. § 636(b)(1)(A) and Nebraska Criminal Rule 59.2.

18.1 Place of Prosecution and Trial.

(a) Initial Request.

When filing an indictment or information, the government must request in writing on the indictment or information trial in Omaha or Lincoln. Criminal cases are held in North Platte only upon motion granted by the court. The clerk calendars the case according to the initial request or, if none is made,

in the city where the clerk receives the case for filing.

(b) Subsequent Request.

(1) The government may amend its initial request for place of trial, as of right, at any time prior to entry of an order scheduling the arraignment.

(2) A party may file a motion and supporting affidavit for a change of the place of trial after the arraignment.

24.1 Voir Dire.

The court determines whether the court, the attorneys, or both will conduct voir dire examination. The court may limit an attorney's examination by time and subject matter.

24.2 Peremptory Challenges.

(a) Equal Number.

In any case in which each side has an equal number of challenges, the challenges alternate one by one, with the government exercising the first challenge.

(b) Federal Rule of Criminal Procedure 24(b)(2).

In criminal cases in which the government has 6 peremptory challenges and the defense jointly has 10 peremptory challenges, the government exercises the first challenge, the defense exercises the second challenge, the next is by the government, the next two are by the defense, and the challenges alternate in this manner until the government exercises its sixth and the defense its tenth peremptory challenge.

(c) Multiple Defendant Cases.

In a case with more than one defendant, a request for additional peremptory challenges must be made in writing at least 14 days before jury selection. If the court allows the defendants additional peremptory challenges, the court establishes the order of challenge.

(d) Alternate Jurors.

In challenging alternate jurors, peremptory challenges alternate one by one with the government exercising the first challenge.

(e) Exception.

The presiding judge may modify the foregoing procedure for exercising peremptory challenges in a particular case.

(f) Waiver.

Passing or refusing to exercise a peremptory challenge is considered a waiver of the right to exercise the challenge. If a party waives the right to exercise a peremptory challenge, the court exercises the challenge after the parties exercise or waive all other challenges to which they are entitled.

24.3 Disclosure of Juror Identity.

Documents identifying jurors or potential jurors must not appear in the public case file or be given to the public at the courthouse or electronically.

26.2.1 Motion to Produce.

Nebraska Criminal Rule 12.3(b)(3) applies to motions to produce a statement.

28.1 Court Interpreters; Clerk's Responsibilities.

With respect to court interpreters, the clerk:

(a) maintains a list of interpreters certified by the Director of the Administrative Office of the United States Courts, and makes the list available to interested persons upon request;

(b) is responsible for obtaining the services of certified or otherwise qualified interpreters for court proceedings, and, when possible, obtains the services of interpreters certified or otherwise approved or recommended by the Director of the Administrative Office of the United States Courts;

(c) when possible for short hearings, uses the telephone interpreter program administered by the Administrative Office of the United States Courts;

(d) before a proceeding begins, takes reasonable steps to assure that the court interpreter has taken the required oath; and

(e) provides a copy of Nebraska Criminal Rule 28.3 to each interpreter at the interpreter's first court appearance in this district.

Unless otherwise directed by the presiding judge in an unusual circumstance, the clerk and the court never engage an interpreter to provide court interpretation services if that person is retained or employed by one of the parties. The clerk independently obtains a court interpreter's services and does not rely on a party to do so.

28.2 Court Interpreters; Attorneys' Responsibilities.

(a) Government Request.

(1) Form.

When a government attorney knows that the court will need the services of a court interpreter for the defendant, a defense witness, or a government witness, the government attorney must file a request in CM/ECF using the interpreter request event.

(2) Timing.

The government attorney must submit the interpreter request as follows.

(A) An interpreter request for *trial* must be submitted 14 days before trial or as soon as otherwise possible.

(B) An interpreter request for a *hearing* must be submitted 7 days before the hearing or as soon as otherwise possible.

(b) Defense Request.

When a defense attorney knows that the court will need a court interpreter's services for a defendant or a defense witness, the defense attorney must advise the court of the need for a court interpreter as soon as reasonably possible by filing a request in CM/ECF using the interpreter request event.

28.3 Court Interpreter Responsibilities.

(a) Confidentiality.

Court interpreters must comply with all statutory requirements of confidentiality and secrecy and must protect all privileged and confidential information. Court interpreters must not disclose to anyone confidential

information obtained while performing interpreting duties in or relating to proceedings in this court unless the court orders otherwise.

(b) Disclosure of Conflict.

Court interpreters must disclose promptly to the court and the parties any apparent or actual conflict of interest, including any prior involvement with the case or persons significantly involved in the case.

(c) Legal Advice.

A court interpreter must refrain from giving advice of any kind to any party or individual involved in court proceedings in which the interpreter has been engaged to perform interpreting services.

(d) Public Statement.

A court interpreter must not publicly express an opinion concerning court proceedings in which the interpreter has been engaged to perform interpreting services.

(e) Representative of the Court.

Court interpreters work for the court and not the parties. Therefore, a court interpreter should provide only services requested by the presiding judge. Attorneys may request additional assistance from a court interpreter during a trial or hearing and during related recesses, but the court interpreter may not provide that additional assistance without the presiding judge's prior approval.

28.4 Noncourt Interpreter Services.

Under the Criminal Justice Act, 18 U.S.C. § 3006A, court appointed attorneys may retain a noncourt interpreter to assist the defense. In this case, the noncourt interpreter works only for the defense. Defense attorneys should consult with the federal public defender regarding procedures for hiring and paying noncourt interpreters.

29.1.1 Opening Statements and Closing Arguments.

(a) Opening Statement.

After the jury is selected and sworn, the government may, without arguing, make an opening statement, after which each defendant may do the same.

(b) Closing Argument.

The parties may each make a final argument. The judge, after conferring with the attorneys, allots time for each argument. The government may use no more than one-third of the government's allotted time for rebuttal. Unless ordered otherwise, during rebuttal the government may discuss only subjects previously discussed during either party's closing argument. If the defendant waives closing argument, the government may not offer rebuttal. However, if the government waives closing argument, the defendant may make a closing argument.

31.1 Jury Deliberations.

(a) Recess.

After trial, the court may recess while the jury deliberates. The court directs the jurors that upon arriving at a verdict they must seal it, give it to the courtroom deputy, and return to the courtroom at a predetermined time for the opening and reading of the verdict.

(b) Defendant's Presence.

Unless the court orders otherwise, during jury deliberations criminal defendants must remain in the building where the trial was held.

(c) Attorney Availability.

Attorneys must be available on short notice during jury deliberations and must inform the courtroom deputy of their whereabouts at all times during deliberations.

(d) Verdict.

The defense attorney and the defendant must be in the courtroom when the court announces the verdict. The defendant is only excused if the defendant fled or was removed from the courtroom for misconduct. Unless the record clearly shows otherwise, it is presumed that the parties were present or by their voluntary absence waived their presence.

31.2 Taxation of Costs.

Court costs are not imposed in any criminal case unless the government timely files a verified bill of costs. The bill of costs (a) may be filed at any time after 14 days following trial or any proceeding in which costs are to be taxed and (b) must be filed no later than 30 days before sentencing. The clerk timely taxes costs and

notifies the judge so that the judge may consider the taxation at sentencing. "Costs" as used in this rule do not include attorney's fees.

32.1 Presentence Reports.

(a) Initiation of the Presentence Investigation.

(1) Government's Information.

Within 7 days after receiving the probation and pretrial services officer's written request for information (*e.g.*, investigative reports), the government must respond to the request and may supply other relevant information. The government must serve a defense attorney with a copy of any material given to the probation and pretrial services officer that the defense attorney does not already have.

(2) Interview.

On request, a defense attorney is entitled to notice and a reasonable opportunity to attend a probation and pretrial services officer's interview of the defendant during a presentence investigation. A defense attorney must advise the probation and pretrial services office within 2 days after the presentence report is ordered that the attorney wishes to be present at any interview of the defendant.

(b) Sentencing Schedule and Procedure.

After a guilty plea is tendered or a verdict of guilty is received, each sentencing judge, or a magistrate judge acting for the sentencing judge, may issue an order setting the sentencing schedule and procedure. If an order is not issued, or if the order does not address one or more of the matters listed below, the following schedules and procedures are followed.

(1) No later than 7 days after the date a guilty plea is tendered or a guilty verdict is filed, the attorneys must send their respective versions of the offense to the probation and pretrial services officer.

(2) No later than 21 days after the date set in subparagraph (1), the attorneys must send the probation and pretrial services officer all financial information, restitution proposals, and chemical or mental health information that they wish the probation and pretrial services officer to consider.

(3) No later than 14 days after the date set in subparagraph (2), the probation and pretrial services officer must distribute to the attorneys

the initial version of the presentence report.

(4) No later than 14 days after the date set in subparagraph (3), the attorneys must send the probation and pretrial services officer any objections to the initial version of the presentence report.

(5) No later than 7 days after the date set in subparagraph (4), the probation and pretrial services officer must send the sentencing judge and the attorneys the final version of the presentence report including an addendum that addresses any of the parties' objections regarding the initial version of the presentence report.

(6) No later than 7 days after the date set in subparagraph (5), the attorneys for both parties must file:

(A) any proposals for community service, community confinement, intermittent confinement, or home detention;

(B) motions by either party for departure, deviation, or variance; and

(C) statements of position regarding, or objections addressed to, the final presentence report. Any objections to the presentence report not filed under this subparagraph may be considered waived.

If documentary evidence will be offered in support of or in opposition to a motion, objection, or statement of position, the evidence must accompany the motion, objection, or statement of position. If oral testimony is desired, a request must also be made. The request for oral testimony must include (i) the nature of the expected testimony; (ii) an explanation of why oral testimony, instead of documentary evidence, including affidavits, is necessary; (iii) the proposed witness's identity; and (iv) the time length anticipated for presentation of the witness's direct examination. If a request for oral or documentary evidence is made by one party but not by the adverse party, the adverse party may promptly make a responsive request for oral or documentary evidence setting out the details required by this paragraph. It is expected that the court will not consider any sentencing issue first raised after the date set in this subparagraph for filing statements, objections, or motions for departure, deviation, or variance.

(7) No later than 7 days after the date set in subparagraph (6), the sentencing judge may issue an order notifying the attorneys as to:

(A) the judge's rulings on the presentence report (including a notice of the judge's intention to depart, deviate, or vary on the judge's own motion) and tentative findings regarding objections or motions for departure, deviation, or variance;

(B) whether objections or motions for departure, deviation, or variance will be resolved at sentencing, and, if so, whether oral testimony will be permitted; and

(C) when and how objections to the judge's rulings or tentative findings may be made.

If the judge does not issue an order, objections and motions for departure, deviation, or variance submitted by the parties will be decided at sentencing according to procedures as the judge may then specify.

(8) A probation and pretrial services officer must submit a sentencing recommendation to the sentencing judge no later than seven days before the sentencing hearing. Each sentencing judge may, within his or her discretion, direct the probation and pretrial services office to disclose or not disclose sentencing recommendations to all parties.

(9) If the court has not set a date for sentencing within 90 days after the date a guilty plea is tendered or guilty verdict is filed, the government's attorney must promptly file a motion requesting a sentencing date.

32.1.1 Sealing Petitions.

(a) Procedures for Sealing and Unsealing.

A "Petition for Warrant," "Summons for Offender under Supervision," "Petition for Action on Conditions of Release," and "Amended Petition" must be sealed and unsealed as stated in this rule.

(1) Issuance of a Warrant.

Petitions authorizing the issuance of a warrant are sealed automatically upon filing and unsealed automatically upon the named defendant's arrest, after which the government must notify

the clerk as soon as possible.

(2) Issuance of a Summons.

Unless a judge orders otherwise in a specific case, petitions that authorize the issuance of a summons, direct that service not be issued for a named defendant, or authorize the ordering of the named defendant to appear before the court, are not sealed. Any petitions ordered sealed may be unsealed only by court order.

(b) Government Attorney and Court Officer Access.

The government and any probation and pretrial services officer for this district may be given a copy of any sealed petition.

32.2 Pretrial Services, Presentence, and Probation Post-conviction Supervision/Supervised Release Records.

(a) Confidentiality.

Information contained in pretrial services, presentence, and probation post-conviction supervision/supervised release records is confidential and may not be disclosed except as authorized by statute, regulation, or court order.

(b) Filing Under Seal.

(1) Records Sealed.

Except as stated in Nebraska Criminal Rule 32.1.1, and unless a judge orders otherwise in a specific case, the clerk files under seal all pretrial services, presentence, and probation post-conviction supervision/supervised release records that the clerk receives from the probation and pretrial services office.

(2) Unsealed for Appeal Purposes.

The clerk unseals presentence reports to copy and send them to the Office of the Clerk of the United States Court of Appeals for the Eighth Circuit.

(c) Agency Access.

(1) Agency Use.

Although the information in pretrial services, presentence, and probation post-conviction supervision/supervised records remains confidential, those records may be accessed by the United States Sentencing Commission, the United States Parole Commission, the United States Attorney, the Bureau of Prisons, the defendant, and the defense attorney unless:

(A) a statute, regulation, or court order prohibits disclosure;

(B) a party or the probation and pretrial services officer has an order from the assigned district or magistrate judge prohibiting disclosure; or

(C) the assigned district or magistrate judge bars disclosure.

A judge may bar or refuse to bar disclosure for any reason, and the judge may make this decision without notice or a hearing.

(2) Obligations of Agency Recipients.

When information in pretrial services, presentence, and probation post-conviction supervision/supervised release records is disclosed under Nebraska Criminal Rule 32.2(c)(1), the recipient of the disclosure must keep the information confidential and use the information only for administering justice. Any writing containing the information must be returned at the court's request.

(3) Return of Copy Given to a Party.

All copies of the presentence report given to a pro se defendant must be returned to the United States Probation and Pretrial Services Office after sentencing. No copies or any dissemination of the presentence report or information in the report may be made. Unauthorized copying or disclosure is an act in contempt of court and is punished accordingly.

(d) Requests for Disclosure.

Each judge may authorize the disclosure of pretrial services, presentence, and probation post-conviction supervision/supervised release records. Oral or written requests for an order authorizing disclosure should be made to the district or magistrate judge assigned to the case for which disclosure is sought. The judge may make or refuse to make a disclosure for any reason and without notice or a hearing. However, in deciding, the judge should

consider:

(1) any promise of confidentiality made to the source of information;

(2) the privacy interests of those who provided the information;

(3) the need to maintain the court's access to the information by providing confidentiality to sources of information;

(4) the purpose for which the information is requested and the materiality of the information for that purpose;

(5) the availability of the information from other sources;

(6) whether the potential harm from the disclosure outweighs the potential benefits of the disclosure; and

(7) whether the disclosure is consistent with the purposes of the Bail Reform Act of 1984 or the Sentencing Reform Act of 1984.

(e) Subpoenas for Disclosure.

If disclosure of probation and pretrial services records or a request for the testimony of a probation and pretrial services officer is sought by subpoena or other judicial process, the probation and pretrial services officer must request the court orally or in writing for authority and instructions before responding to the subpoena or other judicial process.

(1) Authorized Disclosure.

If the court rules that a probation and pretrial services officer is authorized to testify or to produce records, the authorization is limited to only those matters directly relevant to the demonstrated need. The court's order must identify the records to be produced and the authorized subject matter of the testimony.

(2) Unauthorized Disclosure.

If the court rules that a probation and pretrial services officer is not authorized to testify or to produce records, then the court must issue an order quashing the subpoena or other judicial process under the authority of the Supremacy Clause, Article VI of the Constitution of the United States.

32.2.1 Criminal Forfeiture; Referral to Bankruptcy Court.

Upon notice to the court that a criminal defendant is a debtor in a bankruptcy case, the district court may refer to the bankruptcy court questions about restitution, the forfeiture of assets that may be property of the bankruptcy estate, or other pecuniary penalties. The bankruptcy judge responds to a referral with a recommendation related to the estate issues.

33.1 Post-Trial Motions.

Post-trial motions must comply with Nebraska Criminal Rule 12.3(b)(1) and (2) governing pretrial motions. Responses to a post-trial motion must be filed within 7 days after the filing of the motion.

41.1 Search Warrant Applications.

(a) To Judge.

A search warrant application should be presented to a magistrate judge, but may be presented to a district judge if no magistrate judge is reasonably available. When no federal judge is reasonably available, including emergency circumstances as stated in Nebraska Criminal Rule 41.1(a)(3), the warrant application may be presented to a state judicial officer.

(1) Request.

Copies of the application, the proposed search warrant, and any supporting affidavits must be delivered to the judge for private review before presentation of the warrant to the judge for signing. In an emergency situation, the judge may waive this requirement. If authorized by law, and consented to by the judge considering the application, a search warrant may be considered and issued by telephone or other means.

(2) Government Attorney.

Ordinarily, an officer presenting a search warrant application to a judge should be accompanied by a government attorney. In unusual circumstances, a judge may entertain a search warrant application from an officer not accompanied by a government attorney.

(3) Emergency.

In an emergency, a magistrate judge may be contacted away from the courthouse, including at home, to consider a search warrant

application. If no magistrate judge is reasonably available, a district judge may be contacted away from the courthouse, including at home, to consider a search warrant application.

(b) Sealing of Search Warrant Documents.

Unless the court orders otherwise, search warrants, all affidavits filed in support of search warrants, and all search warrant returns, must be filed by the clerk under seal within 14 days after the executed warrant is returned.

41.2 Intercepted Communications.

Applications to intercept wire, oral, or electronic communications under 18 U.S.C. § 2518, and related requests are subject to this rule.

(a) Assignment of Judge; General Procedures.

An application for authorization to intercept wire, oral, or electronic communications under 18 U.S.C. § 2518 and related requests must be submitted to the chief judge. If the chief judge is unavailable, an application and related requests may be submitted to the active district judge next senior in service who is available. A judge is not considered "unavailable" merely because the judge presides in Lincoln or Omaha and the government's attorney or the affiant resides or works in another city. Unless the judge waives the requirement, all applications, supporting affidavits, proposed orders, and other documents must be provided in draft form for review by the judge at least 24 hours before the time set for consideration of the documents. Unless the judge waives the requirement, the government's attorney and the law enforcement officer who serves as the affiant must personally appear before the judge at all proceedings related to the interception. Since consideration of interception applications and related matters are often conducted in chambers without a deputy clerk, the government's attorney is responsible for ensuring that all interception applications, orders, and other related documents and recordings are properly filed with, or submitted to, the clerk after being presented to or issued by the judge. Unless otherwise ordered, all interception applications, orders, and other related documents and recordings presented to or issued by the judge must be sealed.

(b) Handling of Recordings Upon Expiration of Order.

Unless the issuing judge directs otherwise, recordings of the contents of any wire, oral, or electronic communication that have been intercepted must be made available to the issuing judge immediately after the interception

order expires, and the procedures stated below must be followed.

(1) Delivery.

The recordings must be delivered personally to the issuing judge and the clerk. Thereafter, the clerk must maintain custody of the recordings. In the presence of the issuing judge and the clerk, the recordings must be placed in a box or other container, and the box or other container must be sealed with tape or other sealant. The clerk must initial the tape or sealant and include the date and approximate time the box or other container was sealed. In addition, the clerk must prepare a receipt reflecting the evidence received, and the receipt must be signed by the clerk receiving the evidence and the agent delivering the evidence.

(2) Sealing.

While in the clerk's custody, the recordings must be kept in a secure facility in a manner that protects the recordings from editing or other alterations.

(c) Disclosure.

(1) In General.

Without relieving the government of its initial responsibility as described in Nebraska Criminal Rule 41.2(c)(2), the existence and contents of intercepted communications may be referred to and discussed in a party's motions and briefs, exhibits offered and received in evidence, and in judicial opinions.

(2) Government's Initial Responsibility.

If the government intends to disclose the substance of intercepted communications in briefs, exhibits, motions, or otherwise, it must comply with Title III of the Omnibus Crime Control and Safe Street Act of 1968, 18 U.S.C. §§ 2510-2522, particularly 18 U.S.C. § 2517 and 18 U.S.C. § 2518(8)(b), or, in the case of conversations intercepted under a state court order, the Nebraska equivalent of the provisions of Title III. Applications for disclosure in a federal proceeding must be addressed to a federal judge even if the interception was authorized under state law. If federal and state law conflict, federal law governs federal court proceedings.

(d) Use at Trial.

Because the use of intercepted communications at trial presents special problems, the government's attorney must try to stipulate with the opposing attorney at least 60 days before trial regarding the use of interceptions at trial. If a stipulation is reached, it must promptly be given to a judge for review. The judge may approve or reject all or part of the stipulation and enter appropriate orders. If a stipulation is not reached, then the government's attorney must file, no later than 50 days before trial, a motion requesting an order instructing the parties regarding the use of intercepted communications at trial.

43.1 Corporate Defendant.

A corporate defendant need not be present at criminal proceedings and may proceed through the defense attorney, if the attorney is authorized to act on the defendant's behalf in the proceedings through a specific corporate resolution from the defendant's board of directors. When the attorney is not authorized to act, the defendant's authorized officer, director, or managing agent must be at the proceedings identified in Federal Rule of Criminal Procedure 43(a).

44.1 Defendant's Representation.

(a) Appointed Counsel.

The Criminal Justice Act Plan adopted by this district sets out procedures governing the appointment of counsel. A copy of the plan is available from the clerk or on the court's website, https://www.ned.uscourts.gov/plans-and-policies "Criminal Justice Act Plan." When appropriate, the court may appoint an attorney to represent a defendant even though that attorney's name does not appear on the panel of Criminal Justice Act attorneys.

(b) Retained Counsel or Pro Se Defendant.

A defendant who does not request or who is not eligible for appointed counsel must inform the court of the retained attorney's name, or of the defendant's desire to appear pro se, within 14 days of the first court appearance in this district. Retaining an attorney outside this period does not justify a continuance of pretrial proceedings or trial unless the defendant demonstrates diligent attempts to retain an attorney.

(c) Attorney Appearances.

An attorney makes an appearance in a case by (1) filing a written entry of appearance or signed pleading or (2) personally appearing at a hearing or

proceeding. An attorney who orally enters an appearance must promptly file and serve a written appearance. A written appearance or pleading must show the attorney's signature, bar number, office address, telephone number, fax number, and e-mail address.

(d) Change of Address, Telephone, Fax, or E-Mail.

An attorney whose address, telephone number, fax number, or e-mail address changes from that previously provided in any ongoing case must file and serve notice of the change within 30 days of the change.

(e) Withdrawal of Appearance.

An attorney who has appeared of record in a case may withdraw for good cause shown, but is relieved of applicable duties to the court, the client, and opposing attorneys only after filing a motion to withdraw with the court, providing proof of service of the motion on the client, and obtaining the court's leave to withdraw.

44.2 Appointed Counsel in Ancillary Matters.

(a) Appointment.

The Office of the Federal Public Defender is appointed on ancillary matters appropriate to proceedings in which the federal public defender was previously appointed by court order, if:

(1) the defendant clearly continues to be financially eligible for appointed counsel under the Criminal Justice Act; and

(2) no foreseeable conflict of interest or violation of the rules of ethics will occur if the federal public defender continues to represent the defendant.

(b) Eligibility Ceases; Notification.

The federal public defender must advise the court when, at any time during the representation in an ancillary matter, the federal public defender obtains information indicating the client is financially able to pay, in whole or in part, for legal or other services related to the representation, and the information is not protected as a privileged communication.

44.3 Filing of Fee and Expense Voucher.

(a) Deadline.

Counsel appointed under the Criminal Justice Act must submit the completed voucher for fees and expenses electronically using the court's eVoucher payment processing system within 45 days after sentencing or dismissal of a case. (Information on using the court's eVoucher payment processing system can be obtained by contacting the federal public defender's office.) A letter showing good cause why the voucher should be paid must accompany a voucher submitted after 45 days and less than 1 year after sentencing or dismissal of a case. The court summarily denies an application or voucher submitted more than 1 year after sentencing or dismissal of a case. Vouchers must be submitted to the federal public defender, unless an attorney believes that the federal public defender has a conflict of interest that would preclude the federal public defender from properly receiving information in the voucher. If a potential conflict of interest exists, the voucher may be submitted to the clerk.

(b) Fee Application Guidelines.

With respect to services performed and expenses incurred in a Criminal Justice Act case, the following guidelines should help attorneys present to the court information essential to a reasoned explanation of the fee award. Attorneys should also review the most recent circuit court decisions for additional guidance. These fee guidelines also may be appropriate in applications for sanctions.

(1) Services Performed.

(A) Identify with particularity the work done.

(i) For a conference, state who was present, the subjects discussed, and how long it lasted.

(ii) For research, state who did it, the subjects and issues researched, and whether the results were incorporated into a brief, motion, or pleading.

(iii) For travel time, segregate it, and state who traveled and the purpose and mode of travel.

(iv) For pleadings, identify the pleading and who prepared it.

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

(C) If a paralegal or law student performed services, state the salary or other wage rate at which the attorney or law firm pays the paralegal or law student.

(D) If the services apply to more than one case, identify the relative applicability to each case.

(2) Expenses Incurred.

Identify the expense with particularity.

(A) For photocopies, state the items copied, why they were copied, how they were used, and the number of pages copied.

(B) For depositions, list the court reporter's name, the date of taking, the deponent's identity, the purpose of taking the deposition (discovery or evidentiary), and the use made of the deposition.

(C) For long-distance telephone calls, list the date, by whom, to whom, the location of the person called, and the subject of the call.

(c) Public Disclosure of Financial Information.

(1) Defendant's Financial Information.

Financial affidavits filed by defendants in seeking appointed representation under the Criminal Justice Act must not be included in the public case file or made available to the public at the courthouse or via electronic access.

(2) Payments to Counsel.

(A) Public Access.

Volume 7, Part A, Chapter 5 of the Guide to Judiciary Policy, distributed by the Administrative Office of the United States Courts, describes the procedures for public disclosure of information pertaining to activities under the Criminal Justice Act, 18 U.S.C. § 3006A, and related statutes.

(B) Notice to Appointed Counsel.

The Office of the Federal Public Defender must, simultaneously with the issuance to counsel of the CJA 20 or CJA 30 form, provide the appointed counsel a copy of the CJA 19 form entitled: "Notice to Court-Appointed Counsel of Public Disclosure of Attorney Fee Information."

(d) Requests Above Statutory Limit.

If an appointed counsel's claim for fees and expenses exceeds the statutory limit, the attorney must submit a memorandum with the CJA voucher supporting and justifying the attorney's claim that the representation given was in an extended or complex case, and that the excess payment is necessary to provide fair compensation. *See* Volume 7, Part A, Chapter 2, § 230.30(b)(1) of the Guide to Judiciary Policy.

(e) Requests for Interim Payments.

When a criminal case is extended or complex and appointed counsel would endure financial hardship without interim payments, the attorney may file a motion for approval of interim payments of fees and expenses in accordance with Volume 7, Part A, Chapter 2, § 230.73 of the Guide to Judiciary Policy.

44.4 Joint Representation.

(a) Notice of Proposed Joint Representation.

An attorney who intends to represent two or more persons or entities in the same criminal matter must file a motion to permit joint representation. The motion must include:

(1) the attorney's certification that, after careful investigation of potential conflicts of interest, it is clear that no actual conflict exists or is foreseeable; and

(2) a written certification signed by each defendant to be represented stating that the defendant knowingly and voluntarily waives the right to separate representation, consents to joint representation and, when applicable, waives the attorney/client privilege.

(b) Government's Response.

The government must respond to the motion within 14 days.

(c) Hearing.

A hearing must be held on a motion to allow joint representation under Federal Rule of Criminal Procedure 44(c). The hearing may be held ex parte. Each party subject to or affected by the proposed joint representation must attend the hearing.

(d) Court Ruling.

Even if the parties affected consent to joint representation, the court must deny joint representation if a conflict of interest exists or where joint representation would be contrary to the interests of justice.

(e) Continuing Duty.

If after review of the evidence, representations, and arguments, the court allows joint representation, and then a potential conflict of interest is discovered or arises, the party aware of the potential conflict must promptly notify the court and all other attorneys in the case.

(f) Court's Responsibility.

Nebraska Criminal Rule 44.4(a) through (e) assists the court by obligating the parties to promptly advise the court of any issue of joint representation. Subparagraphs (a) through (e), however, do not limit or replace the court's responsibility and authority under Federal Rule of Criminal Procedure 44(c)(2).

45.1 Time; Computation.

Federal Rule of Criminal Procedure 45 applies when computing any period of time specified in these rules.

46.1 Bonds and Other Sureties.

(a) General Requirements.

Unless a judge supervising a criminal action under 18 U.S.C. § 3142 expressly directs otherwise, 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 criminal case.

(c) Corporate Surety.

A corporate surety upon any undertaking in which the United States is the obligee must be qualified under 31 U.S.C. §§ 9301-9309 and approved by the Secretary of the Treasury of the United States. The parties may consult with the clerk to confirm that a surety is qualified. In all other instances, a corporate surety qualified to write bonds in the State of Nebraska is an acceptable surety. In all cases, a power of attorney showing the authority of the agent signing the bond must be attached to the bond.

(d) Personal Surety.

Persons competent to convey real estate who own land in the State of Nebraska of an unencumbered value of at least the stated penalty of the bond may obtain consideration for qualification as a surety by attaching an acknowledged justification showing:

(1) a legal description of the real estate;

(2) a complete list of all encumbrances and liens on the real estate;

(3) the real estate's 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 of the aggregate amount of the penalties of any other subsisting undertakings assured by the bondsman as of that date.

The judge before whom the proceeding is pending 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 in form and setting forth the conditions of the bond. Withdrawal of deposited cash bonds may not be made except upon a written court order.

(f) Insufficiency; Remedy.

The government may object 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 defendant does not comply with the order, the judge may take other appropriate action, including ordering that the defendant required to post a bond be taken into custody.

46.2 Appeal of Release or Detention Orders.

(a) Review of Another Court's Order.

When a judge of another district has entered a detention order in a criminal case pending in this court, the magistrate judge in this district to whom the case has been referred or assigned reviews the detention order under 18 U.S.C. § 3145(b).

(b) Motion to Reopen Proceeding.

When a magistrate judge enters a detention or release order after a hearing held under 18 U.S.C. § 3142(f), a motion to "reopen" the proceeding under § 3142(f) is considered as a motion for the ~~same~~ assigned magistrate judge to review the matter of detention or release.

(c) Appeal of Detention Order.

When reviewing a magistrate judge's order of detention or release, a district judge may hear and consider additional evidence not considered by the magistrate judge if that evidence was not available to be presented to the magistrate judge at the hearing held under 18 U.S.C. § 3142(f) or for other good cause shown. In the alternative, the district judge may remand the matter to the magistrate judge to reopen the hearing. Unless additional evidence is received on review, the district judge reviews an order of release or detention de novo on the record made before the magistrate judge.

46.3 Defendant as Confidential Informant.

Defendants under the supervision of the probation and pretrial services office under an order of this court may not be used as confidential informants, or in a manner that would violate any release condition, including any "association" restrictions, without first obtaining an order modifying the release conditions to allow for the proposed governmental assistance.

(a) Request for Use as Confidential Informant.

The procedure for obtaining an order to permit a defendant's participation as a confidential informant and any necessary modifications of conditions of pretrial release follows.

(1) Requesting Agency's Initial Duty.

Before asking the court to approve defendant's use as a confidential informant and any necessary modifications of the defendant's pretrial release conditions, a representative of the law enforcement agency requesting the defendant's assistance must:

(A) conduct an in-depth discussion with the defendant and the defense attorney concerning:

(i) the anticipated relationship between the defendant and the federal law enforcement agency;

(ii) the intended targets of the federal agency's investigation;

(iii) the anticipated manner and operation of the defendant's assistance in the investigation; and

(B) if time permits, meet with a probation and pretrial services officer to determine which conditions of pretrial release must be modified if the defendant is to perform duties as a confidential informant for the agency.

(2) Presentation and Content.

The agency's request must be presented through the government and submitted ex parte to the magistrate or district judge assigned to the case. In case of emergency, any magistrate or district judge in this district may consider the request for modification. The request must contain:

(A) an explanation of how the law enforcement agency intends to use the defendant under pretrial supervision;

(B) the instructions the agency will provide to that defendant for carrying out the proposed assistance;

(C) the agency's proposed administrative controls over the defendant and the circumstances the defendant may

encounter in assisting with the government's investigation;

(D) an evaluation of the risk posed to the defendant and the community by using the defendant as a confidential informant, the government's plan to ameliorate that risk, and an explanation of why the potential benefit to the government outweighs the risk created by the defendant's re-involvement with criminal associates;

(E) the identity of any targets of the investigation already under this court's supervision;

(F) the specific time period of the proposed investigation; and

(G) the names of the law enforcement personnel who will oversee the defendant's work and conduct.

(b) Judicial Review.

(1) Consult with Probation and Pretrial Services.

The judge considering the request must consult with probation and pretrial services before granting the request unless:

(A) due to time constraints, the judge cannot reasonably obtain an assessment from probation and pretrial services; or

(B) the court, in its discretion and at the request of the federal law enforcement agency seeking the defendant's assistance, decides that (i) the case is extremely sensitive and (ii) overriding circumstances justify placing the defendant under the law enforcement agency's supervision and ceasing probation and pretrial services supervision.

(2) In Camera Review; Sealed Order.

The review of the agency's request must be conducted in camera, and the order granting or denying the request must be filed under seal.

(c) Term of Assistance.

(1) Timing.

If the court grants the agency's request, the defendant's services as a confidential informant may begin when a court order grants the request and may continue as specified in the court's order for a term of up to 90 days. Probation and pretrial services must advise the court 14 days before the end of that term that the defendant's term as a confidential informant is ending. Absent emergency circumstances, an extension of the term must (1) be requested in writing 7 days before the term ends and (2) include an explanation of why more time is needed.

(2) Emergency.

If an emergency exists requiring use of the confidential informant in order to protect life or prevent substantial property loss, to apprehend or identify a fleeing defendant, or to prevent the imminent loss of evidence before court approval can reasonably be obtained, the law enforcement agency (A) may, upon notice to the supervising officer or the officer's supervisor, use the defendant as a confidential informant for no more than 4 hours and (B) must notify the court as soon as possible.

(3) Termination of Service; Notice.

When the defendant's services as a confidential informant are complete, the agency must provide written notice to the court, probation and pretrial services, and the defendant that the defendant's services as a confidential informant are terminated. The defendant must provide a written receipt for the notice.

(d) Supervision of Defendant.

When the court approves a defendant's use as a confidential informant, the law enforcement agency obtaining the defendant's services must:

(1) with the assistance of probation and pretrial services, advise the defendant (A) to abide by all pretrial release conditions set by the court, including modified conditions, and (B) that the defendant may not participate in any criminal activity without prior court approval;

(2) take all necessary and reasonable precautions to ensure the safety of the defendant and the community;

(3) during the term of the defendant's service as a confidential informant, advise the court directly or through probation and pretrial services of any violations of the defendant's pretrial release conditions, including

any criminal activity; and

(4) inform the probation and pretrial services office when the law enforcement agency believes any person is or may be in danger due to the defendant's activities.

(e) Report at Sentencing.

The law enforcement agency that requested the defendant's services as a confidential informant must, directly or through the government's attorney, provide a report to the sentencing judge that (1) outlines the extent of the defendant's cooperation and effectiveness in the investigation and (2) states whether the defendant received financial remuneration or other consideration or reward. All reports must remain sealed until it is appropriate to make the defendant's cooperation known.

(f) Records.

All records identifying the defendant as a confidential informant are confidential and may only be viewed by the court and probation and pretrial services officers.

46.4 Offenders as Confidential Informants.

An offender under the probation and pretrial service office's supervision may not serve as an informant for a law enforcement agency without a court order modifying the conditions of supervision and permitting the offender to serve as an informant.

(a) Request for Use as Confidential Informant.

The procedure for obtaining an order modifying conditions of supervision and permitting the offender to serve as a confidential informant follows.

(1) Presenting Request.

The law enforcement agency's request must be presented through the government's attorney and submitted ex parte to the magistrate or district judge assigned to the case. In an emergency, any magistrate or district judge in this district may consider the request for modification.

(2) Notice to Probation and Pretrial Services Office.

Except in the case of an emergency, the government's attorney must submit a written request to the Chief United States Probation and Pretrial Services Officer 14 days before the law enforcement agency proposes to use the offender as an informant. The written request shall include:

(A) the instructions the agency will provide to the offender for carrying out the proposed assistance;

(B) information regarding the significance of the intended target of the investigation;

(C) an evaluation of the risk posed to the offender by using the offender as a confidential informant;

(D) the specific time period of the offender's proposed services as a confidential informant;

(E) any projected monetary compensation to the offender; and

(F) an explanation of why the potential benefit to the government outweighs the risk created by the offender's re-involvement with criminal associates.

(b) Use of Offender as a Confidential Informant.

(1) Notice to Agency and Defendant.

The probation and pretrial services office must discuss the requirements of Nebraska Criminal Rule 46.4(b)(2) with the designated case officer for the law enforcement agency requesting the offender's assistance in an investigation. The requirements in Nebraska Criminal Rule 46.4(b)(2) must also be included in any written agreement between the defendant, the defense attorney, the government's attorney, and the investigating agency.

(2) Requirements and Restrictions.

(A) Unauthorized Criminal Activity.

The offender must not participate in any activity that would constitute a crime under state or federal laws without authority and approval of a law enforcement agency.

(B) Safety.

The offender must not be used in any manner that might jeopardize the offender's safety without prior court approval.

(C) Instruction Changes.

Any development that would require any significant change in the operating instructions or conditions of supervision must be brought to the probation and pretrial services officer's attention and submitted to the court for approval.

(D) Length of Participation.

The time period for participation as an informant must not exceed 90 days without prior court approval. If circumstances develop that indicate the need for an extension beyond 90 days, the government must request the court in writing for an extension.

(E) Notice of Completion.

When the offender's services as a confidential informant are complete, the probation and pretrial services officer must specifically advise the offender in writing that the offender (1) is no longer authorized to act as an informant and (2) must refrain from all associations or activities previously authorized for the performance of this service. The offender must provide a written receipt of this notice.

(F) Reports.

The probation and pretrial services officer must send the court (1) periodic reports as necessary to make changes in the agreement and (2) a closing progress report.

(G) Notice of Violations.

While the offender serves as an informant, the sponsoring agency must promptly inform the court, directly or through the probation and pretrial services office, of any violations of the cooperation agreement, including any other criminal activity. The sponsoring agency must also immediately inform the probation and pretrial services officer when the sponsoring agency believes that the probation and pretrial services officer

may be in danger due to the offender's activity.

46.5 Appearance of Defendant and Witness on Release.

Defendants and witnesses released under the law must, unless otherwise ordered, appear before the court upon the government's notice to do so.

49.1 Electronic Case Filing (CM/ECF).

(a) Mandatory Filing.

All documents must be filed electronically.

(b) Exceptions.

The following matters or individuals are excepted from mandatory electronic filing:

(1) pro se parties who are not registered users;

(2) cases filed under seal;

(3) exhibits, evidence, or attachments the nature of which precludes electronic filing;

(4) juvenile criminal cases, even if the court subsequently rules that the juvenile must be tried as an adult;

(5) documents excepted from electronic filing requirements by these rules; and

(6) situations in which an attorney applies for and receives permission from the assigned judge to file documents nonelectronically.

(c) Facsimile and E-mail Filings Not Allowed.

A document is not considered filed under the Federal Rules of Criminal Procedure until the filing party receives a System generated NEF after uploading the document to the System. A document faxed or e-mailed to the clerk or assigned judge is not considered filed without a court order.

(d) Timely Filing.

A document is considered timely filed if filed before midnight Central Standard Time (or Central Daylight Time, if in effect). However, the

assigned judge may order a document filed by a time certain.

(e) Official Record.

The clerk does not maintain a paper court file in any case unless required by law or local rule. When a document is filed electronically, the official record is the electronic recording of the document as stored by the court, and the filing party is bound by the document as filed.

(1) Documents Filed Nonelectronically.

The official record also includes any documents filed nonelectronically under local rule.

(2) Original Documents Scanned and Discarded.

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

(3) Copies of Filings.

A party who requests a copy of a paper document submitted for filing must, at the time of filing, supply the clerk's office with the copy and, if the return is to be made by mail, a self-addressed, stamped envelope.

(f) File Date.

Except for documents first filed with the court nonelectronically and then uploaded to the System, a document filed electronically is considered filed as of the date and time stated on the NEF.

49.1.1 Privacy.

(a) Mandatory Redaction.

See Federal Rule of Criminal Procedure 49.1 and 18 U.S.C. § 3509(d) for specific rules regarding mandatory redaction in electronic and nonelectronic

filings. The following privacy rules also apply to all documents and exhibits filed in this court.

(b) Discretionary Redaction.

The filing party may also redact the following information from all documents and exhibits filed electronically or nonelectronically, unless the assigned judge orders otherwise:

(1) personal identifying numbers, including driver's license numbers;

(2) employment history;

(3) individual financial information;

(4) proprietary or trade secret information;

(5) information that may identify a cooperating individual;

(6) information regarding an adult crime victim (see 18 U.S.C. § 3509(d) for mandatory redaction requirements concerning a child victim);

(7) national security information;

(8) sensitive security information as described in 49 U.S.C. § 114(s);

(9) education records as defined by 20 U.S.C. § 1232g(a)(4)(A); and

(10) other data as the court orders.

(c) Restricting Access to Unredacted Documents.

With the court's leave, a party may restrict access to a document containing the unredacted personal data identifiers listed in Nebraska Criminal Rule 49.1.1(b) or in Federal Rule of Criminal Procedure 49.1.

(d) Timely Filing.

A document is considered timely filed if filed before midnight Central Standard Time (or Central Daylight Time, if in effect). However, the assigned judge may order a document filed by a time certain.

(e) Official Record.

The clerk does not maintain a paper court file in any case unless required by law or local rule. When a document is filed electronically, the official record is the electronic recording of the document as stored by the court, and the filing party is bound by the document as filed.

(1) Motion.

(A) Procedure.

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

(B) Unredacted Document not Attached.

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

(2) Order.

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

(3) Docket Sheet Entries.

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

(f) Medical, Mental Health, and Drug Rehabilitation Records.

In criminal cases, medical, mental health, and drug rehabilitation records and evaluations, even if offered in support of an unsealed motion, must be filed under seal. *See* NECrimR 12.5(a). These records may be unsealed only on a court order issued sua sponte or in response to a motion to unseal filed under Nebraska Criminal Rule 12.5(d).

49.2 Form of Documents.

(a) Electronic Filings.

Absent a contrary local rule or assigned judge's order, all documents must be filed electronically using the System. The following provisions apply to all electronically filed documents.

(1) Legibility.

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

(2) Evidence, Exhibits, and Attachments.

(A) Listing of Index.

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

(B) Excerpts Required.

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

(C) Paper Documents.

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

(D) Additional Information.

Additional information on filing documents in CM/ECF in available on the court's website at https://www.ned.uscourts.gov/attorney/electronic-case-filing.

(3) Content.

A document must plainly show the case caption, a description or designation of its contents, and the party or person/entity on whose behalf it is filed. All documents after the pleading initiating a proceeding must also show the correct docket number.

(4) Hyperlinks.

Hyperlinks are provided only for users' convenience. Users are cautioned that hyperlinked documents in CM/ECF are subject to PACER fees.

(A) Cited Authority.

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

(B) Responsibility for Hyperlinks.

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

affect the court's opinion.

(b) Nonelectronic Filings.

If a document must be filed nonelectronically, the following provisions apply.

(1) Paper Size; Margins.

The paper used must be 8½" x 11", white, and of standard weight. A 2-inch margin must appear at the top of the first page for the clerk's filing stamp.

(2) Presentation.

All documents must be single-sided and legibly typewritten, photocopied, printed, or handwritten if necessary, without materially defacing erasures or interlineations. Exhibits attached to documents must be similarly typewritten, printed, photocopied, or handwritten if necessary, in clear, legible, and permanent form.

(3) Additional Materials.

Any materials filed in connection with a motion must be accompanied by an index listing each item attached. If not pre-bound, such as a transcript or book, all attachments to the index printed on 8½" x 11" paper must be bound together by fasteners. All materials not amenable to binding must be submitted in an envelope or other closeable container.

(4) Content.

A document filed nonelectronically shall must include the same information as an electronically filed document. *See* NECrimR 49.2(a)(3).

(5) Physical Media Required.

Electronic documents filed nonelectronically, such as audio or video files, must be provided to the Clerk of the Court and parties entitled to service in the case by a commonly used physical media format, such as an optical disc or flash drive. Providing a document only by linking to a cloud storage service such as Dropbox or OneDrive is not sufficient.

(c) Signing Documents.

(1) Electronic Filings.

The user login and password required to file documents on the System serve as the filer's signature on electronically filed documents and for purposes of the local rules and any other signature requirement.

(A) Attorney's Signature.

An electronically filed document that requires an attorney's signature must be signed as follows: "s/ (attorney name)."

(i) Format.

The correct format for an electronic signature follows.

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

(ii) Challenges to Authenticity.

Any party challenging the authenticity of an electronically filed document or an electronic signature must file an objection within 7 days of receiving the NEF.

(B) Defendant or Nonattorney Signature.

If an original document requires a defendant's or other nonattorney's signature, the filer may (A) scan and upload the signed document to the System or (B) electronically file the document with the nonattorney signature represented by an "s/" and the name typed in the space where the signature would otherwise appear.

(i) Maintenance of Original Document.

The filer must maintain the original signed document in paper form until all time periods for appeal expire. At the court's request, the filer must provide the original document for review.

(ii) Disputes.

A nonfiling signatory or party who disputes i) the authenticity of an electronically filed document with a nonattorney signature or ii) the authenticity of the signature on a document must file an objection to the document within 7 days of receiving the NEF.

(C) Multiple Signatures.

(i) 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 other parties' consent on the document; or iii) any other court approved manner.

(ii) Disputes.

A nonfiling signatory or party who disputes the authenticity of an electronically filed document containing multiple signatures or the authenticity of the signatures must file an objection to the document within 7 days of receiving the NEF.

(2) Nonelectronic Filings.

The name, address, telephone number, fax number, and a bar number must be typed under each attorney signature.

49.3 Service.

When a document is filed electronically under these rules, the System generates a NEF to the filing party, any other party who is a registered user and has requested electronic notice in that case, and the assigned judge if the judge has

elected to receive notice.

(a) Service on Nonregistered Party.

(1) A party filing electronically must serve a nonregistered participant of the System with (A) a paper copy of any electronically filed document as stated in the Federal Rules of Civil and Criminal Procedure and (B) proof of the filing, defined as a copy of either (i) the associated NEF or (ii) the document bearing the header printed by the System.

(2) Service on a nonregistered party of the document and NEF may be by e-mail.

(3) If a filer must bring a document to the clerk for scanning and uploading to the System, the filer must serve paper copies on all nonregistered parties. Due to possible delay for uploading and electronic noticing, the filer should consider service by paper or alternate means including e-mail or fax.

49.4 Certificate of Service.

If a certificate of service is required by the federal rules or local rules of this court, the certificate of service filed with a document required to be served must include (1) an attorney's certificate; (2) a written receipt of the opposing attorney; (3) an affidavit of the person making service; (4) a marshal's return; or (5) other proof satisfactory to the court. The certificate of service must (1) show the name and address of each person served and (2) be signed by one attorney of record.

50.1 Setting Trial.

The court may issue occasional orders or communicate by e-mail to all affected attorneys of record regarding trial settings. Attorneys must keep informed of the progress of the court's business and be ready when their cases are reached.

50.2 Speedy Trial Act Plan.

To minimize undue delay and further the prompt disposition of criminal cases, this district has adopted a Speedy Trial Act Plan approved by the Eighth Circuit Judicial Council. A copy of the plan is available on the court's website at https://www.ned.uscourts.gov/plans-and-policies "Speedy Trial Act Plan" or from the clerk.

53.1 Free Press-Fair Trial Guidelines.

The free press-fair trial guidelines applicable in criminal cases are set out in Nebraska General Rule 1.7(c), and the "Revised Free Press-Fair Trial Guidelines of the Judicial Conference of the United States - 1980: Recommendation Relating to the Release of Information by Attorneys in Criminal Cases," published at 87 F.R.D. 518, 525 (Sept. 25, 1980).

53.2 Closure of Pretrial Proceedings.

(a) General Rule.

Unless otherwise provided by law or this rule, all criminal proceedings, including preliminary examinations and hearings on pretrial motions, must be held in open court and available for public attendance and observation. This rule does not apply to bench conferences, conferences in chambers, and other matters normally handled in camera.

(b) Motion.

Upon motion, the court may order a pretrial proceeding closed to the public, in whole or in part, on the following grounds:

(1) a substantial probability exists that the dissemination of information disclosed at the proceeding would impair the defendant's right to a fair trial or another overriding public interest; and

(2) no reasonable alternative to closure would adequately protect the defendant's right to a fair trial or another overriding public interest.

(c) Nonparty Opposition.

A news organization or interested person may file an opposition to a closure motion, which must be filed and handled as a separate civil case.

(d) Order.

A judge rules on a motion for closure. If the judge enters a closure order, the order states the specific findings that require closure.

55.1 Custody of Files and Exhibits.

(a) Clerk's Custody.

In general, documents or physical items belonging to the court's paper or electronic files remain in the clerk's custody throughout a judicial

proceeding.

(b) Viewing and Copying Court Files.

(1) Paper Files.

The public may view files and documents in the clerk's office in Omaha and Lincoln between 8:00 a.m. and 4:30 p.m. on days when the courthouses are open for business. Upon request, the clerk's staff copies public documents for a fee as allowed by 28 U.S.C. § 1914.

(2) Electronic Files.

Electronic access to the electronic docket and documents filed in the System is available to the public at no charge at the clerk's office in Omaha and Lincoln between 8:00 a.m. and 4:30 p.m. on days when the courthouses are open for business. Fees to print a paper copy of an electronic filing and to obtain a certified copy of an electronically filed document are allowed by 28 U.S.C. § 1914.

(3) Payment for Copies.

Payment must be made when the service is requested in cash, by credit card, or by check or money order payable to "Clerk, U.S. District Court." Fees apply to copying services for the United States if the record or paper requested can be electronically accessed. Clerk's staff cannot make change for cash payments.

(c) Inspecting Physical Evidence.

No one may inspect physical evidence in the clerk's custody, including 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 evidence.

(d) Temporary Withdrawal of Paper Court Files, Exhibits, and Documents.

Paper court files, exhibits, documents, and transcripts may not be taken from the clerk's office or custody without a written order of the assigned judge. To request permission to check out a court file, exhibit, document, or transcript, an attorney must electronically file a written motion. If the assigned judge grants the motion, the attorney may have the court file,

exhibit, document, or transcript upon delivery of a receipt for the file to the clerk. The attorney must return the court file, exhibit, document, or transcript when the judge directs or no later than 7 days, in the same condition and order in which it was filed in the clerk's office. The judge may direct the file, exhibit, document, or transcript to be returned the next morning.

(e) Trial or Evidentiary Hearing Exhibits.

(1) Custody.

Exhibits offered or received into evidence during a hearing or trial must be left in the clerk's custody.

(2) Special Cases.

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

(f) Permanent Withdrawal of Files and Documents.

Upon a showing of good cause, the court may order an item in a file to be permanently withdrawn. The clerk may require a party requesting withdrawal to provide a copy of the item for certification and a receipt for the original. The certified copy and receipt are filed in lieu of the original, and the party receiving the original must pay the clerk any costs.

(g) Withdrawal or Destruction of Exhibits at Case Conclusion.

(1) Withdrawal.

After trial or as soon as possible, but within 14 days after a verdict is rendered or a judgment is entered, the offering attorney must withdraw all exhibits in the clerk's custody and give the clerk a receipt for the exhibits.

(A) Duty to Retain Exhibits.

An attorney must:

(i) retain exhibits withdrawn from the clerk's custody, except that the government attorney may deliver the exhibits to the appropriate state or federal agency. In the latter case, the agency is subject to this rule. The government attorney for the state or federal agency maintaining custody of the exhibits may store the exhibits anywhere inside or outside this district;

(ii) preserve the exhibits in the same condition that they were in when they were offered into evidence;

(iii) if an attorney requests the exhibits, make them available for examination and use at reasonable times and places; and

(iv) upon request, promptly return the exhibits to the clerk.

(B) Length of Retention.

All withdrawn exhibits must be retained until at least 30 days after a case's final disposition, including (i) any appeal; (ii) the denial of or expiration of the time in which to file a petition for writ of certiorari; and (iii) the denial of or expiration of the statutory time (including any reasonably foreseeable tolling of that time) for filing a motion for post-conviction relief under 28 U.S.C. § 2255.

(C) Sanctions.

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

(2) Destruction.

The attorney or agency maintaining custody of the exhibits may destroy or otherwise dispose of them without notice 30 days after the final disposition of the case as defined by Nebraska Criminal Rule 55.1(g)(1)(B). A party opposing the destruction or disposal of the exhibits must file an objection before the 30-day period expires. The exhibit custodian may not destroy or dispose of the exhibits until the court rules on the objection.

59.1 Magistrate Judge Duties in Felony Cases.

In addition to the powers and duties set out in 28 U.S.C. § 636(a), after an indictment is returned or an information is filed in a felony case, magistrate judges are authorized under 28 U.S.C. § 636(b) to perform any duties assigned to them by any district judge of this court that are consistent with the Constitution and laws of the United States.

(a) Pretrial Matters.

In the absence of a district judge's decision to reserve a proceeding for decision by a district judge, *see* NECrimR 59.1(e), and with the exception of the motions and petitions listed in Nebraska Criminal Rule 59.1(c), a magistrate judge of this court is authorized and assigned to hear and determine pretrial matters including but not limited to:

(1) accepting criminal complaints and issuing arrest warrants or summonses, *see* Fed. R. Crim. P. 3 and 4; NECrimR 3.1 and 4.1;

(2) conducting initial appearances and imposing release conditions, *see* Fed. R. Crim. P. 5; NECrimR 5.1;

(3) conducting preliminary examinations, *see* Fed. R. Crim. P. 5.1; 18 U.S.C. § 3060;

(4) receiving grand jury returns, *see* Fed. R. Crim. P. 6(f); NECrimR 6.4;

(5) accepting waivers of indictment, *see* Fed. R. Crim. P. 7(b);

(6) receiving executed or cancelling unexecuted arrest warrants, *see* Fed. R. Crim. P. 4(c)(4), 9(c)(2);

(7) conducting arraignments, *see* Fed. R. Crim. P. 10;

(8) hearing motions and entering orders for examinations to determine mental competency, *see* 18 U.S.C. §§ 4241-4248; Fed. R. Crim. P. 12.2(c);

(9) hearing and determining discovery motions and motions to sever, *see* Fed. R. Crim. P. 12, 14-16; NECrimR 12.1-12.3, 16.2;

(10) issuing subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties, witnesses or evidence needed for

court proceedings, *see* Fed. R. Crim. P. 17; NECrimR 17.2;

(11) conducting initial appearances and preliminary hearings in probation and supervised release revocation proceedings, *see* Fed. R. Crim. P. 32.1;

(12) conducting proceedings for defendants arrested in this district under a warrant issued in another district for allegedly failing to appear or violating release conditions and issuing all necessary orders incident thereto, *see* Fed. R. Crim. P. 40;

(13) issuing search warrants and receiving warrant returns, *see* Fed. R. Crim. P. 41; NECrimR 41.1;

(14) authorizing the installation of pen registers and devices including trap and trace devices (and issuing orders to assist), beeper devices (transponders), and clone beepers;

(15) determining if defendants have knowingly and voluntarily waived counsel, appointing attorneys for defendants who cannot afford them, and approving attorney expense vouchers, *see* 18 U.S.C. § 3006A; Fed. R. Crim. P. 44; NECrimR 44.1, 44.2, 44.3; NEGenR 1.7(g);

(16) determining issues of release or detention of defendants, material witnesses, and confidential informants, *see* 18 U.S.C. §§ 3141-3156; Fed. R. Crim. P. 46 (a), (d), (e)-(j); NECrimR 46.1, 46.3;

(17) ordering exoneration or forfeiture of bonds, *see* Fed. R. Crim. P. 46 (f)-(g); NECrimR 46.1;

(18) determining the propriety of joint representation of criminal defendants, *see* Fed. R. Crim. P. 44; NECrimR 44.4;

(19) hearing and determining applications for admission to practice before this court, *see* NEGenR 1.7(d)-(f);

(20) directing the payment of basic transportation and subsistence expenses for defendants financially unable to bear the costs of travel to required court appearances, *see* 18 U.S.C. § 4285;

(21) conducting initial proceedings upon the appearance of an individual accused of an act of juvenile delinquency, *see* 18 U.S.C. § 5034; and

(22) performing the functions specified in 18 U.S.C. §§ 4107, 4108, and 4109 regarding (1) offenders' verification of consent to transfer to or from the United States and (2) attorney appointments.

(b) Additional Pretrial Matters.

Upon written order or a district judge's specific oral referral, a magistrate judge is also authorized to:

(1) rule on pre-indictment challenges to grand jury subpoenas or other motions related to grand jury proceedings, *see* NECrimR 6.2;

(2) exercise general supervision of criminal calendars, including the handling of calendar and status calls, and motions to continue or expedite trials, *see* NECrimR 12.1; and

(3) conduct pretrial conferences in a criminal case, *see* Fed. R. Crim. P. 17.1.

(c) Dispositive Matters.

(1) Magistrate Judge's Recommendation.

A magistrate judge may submit to a district judge a report containing proposed findings of fact and a recommendation for disposition by the district judge of the following matters:

(A) motions to dismiss or quash an indictment or information;

(B) motions to suppress evidence;

(C) with the consent of the parties and the assigned district judge, petitions to enter a plea of guilty;

(D) petitions to revoke probation and supervised release, including the conduct of the final probation or supervised release revocation hearing; and

(E) petitions for habeas corpus and motions for post-conviction relief filed under 28 U.S.C. §§ 2241, 2254, and 2255.

(2) Authority to Conduct Proceedings.

A magistrate judge may issue any preliminary order and conduct any necessary evidentiary hearing or other proceeding arising in the

exercise of the authority conferred by this subsection.

(d) Duties Under 28 U.S.C. § 636(b)(3).

Magistrate judges are also authorized to:

(1) supervise this court's Criminal Justice Act plan; and

(2) perform any additional duty assigned to them by a district judge and not contrary to the Constitution and laws of the United States.

(e) Exception.

Nothing in this rule precludes a district judge from (1) reserving any proceeding for conduct by a district rather than a magistrate judge or (2) modifying the method of assigning matters to a magistrate judge, as circumstances warrant.

59.2 Objections to Magistrate Judge's Order or Findings and Recommendations.

(a) Statement of Objections.

A party may object to a magistrate judge's order in a nondispositive matter or findings and recommendations in a dispositive matter by filing a "Statement of Objections to Magistrate Judge's Order" or "Statement of Objections to Magistrate Judge's Findings and Recommendations" within 14 days after being served with the order or findings and recommendations, unless the order or recommendation states a different time. The party must specify (1) the parts of the order or findings and recommendations to which the party objects and (2) the legal basis of the objections. The statement of objections should also indicate whether the party relies on a previously or newly filed brief. A party may not merely reference or refile the original brief submitted to the magistrate judge. A party's failure to state a legal argument supporting objections to an order may be considered an abandonment of the party's objections. Unless ordered otherwise, an opposing party may file an opposing brief within 14 days of being served with the statement of objections. This brief may refer to previously filed briefs. The objecting party may not file a reply brief without the court's leave.

(b) Evidence.

If evidentiary materials were filed or received in evidence when the matter was before the magistrate judge, the parties need not refile or re-offer the materials and may refer to them in their legal arguments.

(1) Orders.

A party may not offer additional evidentiary materials without a court order.

(2) Findings and Recommendations.

A party may not offer additional evidentiary materials; however, if the magistrate judge held an evidentiary hearing, the objecting party may request a supplemental hearing to offer additional evidence. The district judge may hold the supplemental hearing if the party shows good cause why the evidence was not presented to the magistrate judge.

(c) No Stay of Order Pending Resolution of Objections.

The filing of a statement of objections to an order does not stay the magistrate judge's order pending resolution of the statement of objections. The magistrate judge whose order is objected to decides a motion for stay pending the resolution of the statement of objections. If the magistrate judge denies the motion for stay, the party may address the motion to the assigned district judge.

(d) Findings and Recommendations; Remand.

If the district judge remands the matter to the magistrate judge, the magistrate judge's subsequent recommendation is also subject to objection under this rule.

(e) Findings and Recommendations; Failure to Object.

Failure to object to a finding of fact in a magistrate judge's recommendation may be construed as a waiver of the right to object from the district judge's order adopting the recommendation of the finding of fact.

(f) Appeals of Detention or Release Orders.

An appeal of a magistrate judge's release or detention order is brought to a district judge under 18 U.S.C. § 3145 and Nebraska Criminal Rule 46.2. Nebraska Criminal Rule 59.2 does not apply.

59.3 Magistrate Judge Duties in Misdemeanor Cases.

(a) Authority.

A full-time magistrate judge is responsible for all pretrial matters in misdemeanor cases. When the misdemeanor charge is for a petty offense, or when the misdemeanor charge is not for a petty offense and the defendant has consented orally or in writing to proceed with trial, judgment, and sentencing before a magistrate judge rather than a district judge, a full-time magistrate judge is authorized under 18 U.S.C. § 3401 to:

(1) try persons accused of, and sentence persons convicted of, misdemeanors committed within this district;

(2) direct the probation and pretrial services office to conduct a presentence investigation in any misdemeanor;

(3) conduct a jury trial in any misdemeanor case where the defendant so requests and is entitled to a jury trial under the Constitution and laws of the United States;

(4) conduct any necessary hearings relating to petitions to revoke probation and supervised release and enter final orders when a magistrate judge imposed probation or supervised release after conviction of a misdemeanor; and

(5) with the defendant's consent, hear and determine cases brought under 28 U.S.C. § 2255 in which the magistrate judge entered judgment in the underlying misdemeanor criminal prosecution.

(b) Part-Time Magistrate Judge.

Designation of part-time magistrate judges to conduct duties under 18 U.S.C. § 3401 is made by specific order as required.

(c) Exception.

This rule does not preclude a district judge from (1) reserving any proceeding for conduct by a district rather than a magistrate judge or (2) modifying the method of assigning matters to a magistrate judge as required.

59.4 Forfeiture of Collateral.

(a) In General.

An accused may pay a fixed sum (*i.e.*, forfeit collateral) in lieu of an appearance before a magistrate judge for certain scheduled offenses committed within the territorial and subject matter jurisdiction of the District

of Nebraska. The schedules of offenses and the amounts to be forfeited are set out in the court's general/standing orders and may, by general/standing order, be modified in under Federal Rule of Criminal Procedure 58(d)(1).

(b) Exceptions.

Notwithstanding Nebraska Criminal Rule 59.4(a), the defendant must appear before the magistrate judge if:

(1) the offense charged is not identified in the schedules attached to the general/standing orders or any subsequent modifications to those schedules;

(2) the law enforcement officer was not authorized to issue a citation or violation notice for the type or magnitude of offense charged;

(3) the offense resulted in serious personal injury, death, or property damage in excess of $1,000; or

(4) the circumstances surrounding the charged offense were aggravated and, in the issuing law enforcement officer's discretion, an appearance before the magistrate judge is mandatory.

(c) Mandatory Appearance.

The citation or violation notice issued by the law enforcement officer must indicate if an appearance before the magistrate judge is mandatory. If so, the accused may not post collateral in lieu of an appearance.

(d) Payment of Forfeiture.

Timely payment of the appropriate forfeiture amount terminates the proceedings on the citation or violation notice.

(e) Prosecution.

This rule does not preclude the government from initiating a prosecution for any of the scheduled offenses by means of a complaint, information, or indictment.

(f) Administration.

The clerical, administrative, and fiscal operations necessary for the administration of the collateral forfeiture system are conducted by the clerk and the Consolidated Central Violations Bureaus operated under the laws

of the United States and the regulations established by the Administrative Office of the United States Courts.

61.1 Title; Citation.

These rules are the Criminal Rules of the United States District Court for the District of Nebraska ("Nebraska Criminal Rules"). They may be cited as "NECrimR."