

# 2023 Proposed Amendments to Local Rules

The Local Rules Committee met on July 26, 2023, and August 23, 2023, to discuss multiple proposals seeking amendments to the Local Rules. After thorough review, the Committee recommends that the Local Rules be amended as set out below. Redline versions of the Local Rules incorporating the proposed changes are attached.

## I. General Rules

The Clerk's Office submitted a proposal recommending these changes to the General Rules:

- **NEGenR 1.2(e)(2):** Amend to clarify when the clerk may refund a fee without application. Also, amend to specify the event used when requesting refund.
- **NEGenR 1.2(f) and (g):** Amend to consolidate provisions and re-letter subsections accordingly.
- **NEGenR 1.2(h):** Update for consistency with the Court's revamped Mediation Plan.
- **NEGenR 1.3(a)(1):** Amend to direct reader to national fee schedule rather than restating national rules and re-letter subsections accordingly.

## II. Civil Rules

- **NECivR 40.1**

Judge Buescher proposed an amendment to NECivR 40.1 concerning the place of trial. A memorandum explaining his proposed amendment is attached.

- **NECivR 56.1(b)(1)(A)**

The Committee noticed a typo in this Rule that needs corrected. It is corrected in the attached redline.

- **NECivR 12.1**

Attorney Tim Hook recommended that the Court adopt a rule clarifying how long a party has to file a responsive pleading after the Court rules on a motion for partial dismissal. The

Committee agreed this clarification could be helpful for magistrate judges because they would not need to chase down as many answers to complaints.

### **III. Criminal Rules**

- **NECrimR 46.2 and NECrimR 16.1**

The Magistrate Judges submitted proposed amendments to NECrimR 46.2 and NECrimR 16.1. The proposed amendment to Rule 46.2 is minimal. The proposed change to NECrimR 16.1 reflects amendments made to Federal Rule of Criminal Procedure 16.

- **NECrimR 12.3:**

Attorney Tessie Smith recommended that NECrimR 12.3(c)(1) be modified to allow for 14 days to respond to motions. It currently allows for seven days. The Committee decided Ms. Smith's proposal should not be adopted in its entirety due to the Court's preference in speeding up dispositions in criminal cases. However, the Committee agreed extending the response time for motions to suppress to 14 days may be helpful because motions to suppress tend to be more complicated and fact based.

## MEMORANDUM

To: District Judges, Magistrate Judges, and Members of the Judicial Council  
From: Hon. Brian C. Buescher  
Date: 9/11/23  
Re: Proposed amendment of NECivR 40.1 concerning place of trial

In the course of dealing with the difficulties in scheduling trials during and in the aftermath of the COVID-19 crisis, it came to my attention that local rules applicable to setting the place for trial of civil cases should be amended. Specifically, I believe that NECivR 40.1 should be amended (1) to provide more guidance on the factors an assigned judge should consider when deciding the appropriate place for trial, and (2) to authorize an assigned judge to raise concerns with an existing designation of the place for trial on the judge's own initiative.

One example illustrating the need for this proposed change is that during the COVID pandemic the state courthouse where Federal cases are to be tried in North Platte, Nebraska, became substantially unavailable even though Federal civil cases were still being tried in Omaha and Lincoln. I realized at that time that the Court's local rules did not contemplate the necessity of changing the location of trial on the Court's own initiative in the interest of justice. I ended up changing the place of trial for the North Platte trial to Omaha, but considerable review of applicable law led to the realization that if there was an objection, the move could be argued to be a technical violation of our local rules. The proposal I make here would alleviate this problem. Although the North Platte example was an impetus for me making this proposal, I also recognize that there could be times when the courthouses in Omaha or Lincoln could become unexpectedly unavailable for whatever reason (including reasons involving threats or judicial security) and justice would favor a change of location.

The first amendment, to subdivision NECivR 40.1(b)(1), is to provide more guidance on the factors an assigned judge should consider by making those factors more consistent with the

factors listed in NECivR 1.4(a)(5)(C). NECivR 1.4(a)(5)(C) relates to choosing between Omaha and Lincoln as the place for trial for so-called “Nebraska docket cases.” *See* NECivR 1.4(a)(5)(C) (listing consideration of “convenience to parties, lawyers, witnesses, and other related matters”). The proposed amendment also expressly allows consideration of “the interests of justice.” The second amendment goes to the heart of my concerns. The addition of NECivR 40.1(d) authorizes an assigned judge to address problems with an existing designation of the place of trial. This amendment also provides that parties will always be heard if a judge wishes to change the place of trial.

I note that the Court’s jury plan (*i.e.*, which counties jurors are pulled from based on location of trial) is purposely not addressed in this proposal. In other words, the jury plan does not need to change with this proposed amendment. It would be up to the parties to bring up the composition of the jury (*i.e.*, which counties a jury is pulled from) if that is of concern to a party opposing a court-led change of place of trial. I will note when I moved a case from North Platte to Omaha during COVID the parties acquiesced to a jury pulled from the Omaha area.