UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CRIMINAL RULES

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

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

(b) "Court" shall mean "judge" unless by its context it is determined to mean the judges of the United States District Court for the District of Nebraska collectively.

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

(d) “Marshal” or "marshal’s service" shall mean the United States Marshal or any of his or her deputies.

(e) "Government" shall mean 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 conduct proceedings under the Federal Rules of Criminal Procedure as a prosecutor.

(f) "Counsel" or "attorney" includes, if appropriate, a pro se defendant.

(g) "System" shall mean the District of Nebraska's Electronic Case Filing (ECF) System.

(h) "Administrative Procedures" shall mean the District of Nebraska's procedures for electronically filing documents in criminal cases, as maintained on the court’s website, www.ned.uscourts.gov.

(i) "Electronic filing" or "electronically file" shall mean uploading a pleading or document directly from a registered attorney’s computer, using the court’s Internet-based System to file that pleading or document in the court’s case file. Electronic filing shall also include any uploading to the System done by the clerk’s office of documents submitted to the court in paper format or as .pdf (“Portable Document Format”) files on a 3.5 inch disk or CD. Sending a document or pleading to the court via electronic mail (e-mail) or facsimile transmission (fax) is not electronic filing.

(j) "Filing" or "file" shall mean "electronic filing" or "electronically file" unless otherwise specified. A paper document is deemed filed on the date the

clerk's office receives and file stamps it rather than the date on which the clerk's office subsequently uploads it to the System.

3.1 Presenting a Criminal Complaint.

(a) Presenting to Judge. Complaints should be presented to a magistrate judge for review and execution, but a complaint may be presented to a district judge if no magistrate judge is reasonably available. When no federal judge is reasonably available, including as set forth in subparagraph (c)(2) of this rule, the complaint may be presented to a state judicial officer.

(b) Manner of Presenting. When presenting a complaint to a judge for signing:

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

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

(c) Emergency Circumstances. When emergency circumstances require immediate presentation of the complaint:

(1) The judge may waive the requirements of subparagraph (b) of this rule; and

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

4.1 Sealing Arrest Warrants and Complaints. Criminal complaints, arrest warrants, and supporting affidavits shall be filed under seal. These documents shall be unsealed by the clerk upon receiving notice that all named defendants have been arrested unless, upon a showing of good cause, the presiding judge orders that the documents remain sealed.

5.1 Initial Appearance Before Magistrate Judge.

(a) Scheduling. The government shall schedule an initial appearance by contacting the magistrate judge's courtroom deputy, or individual(s) authorized by the magistrate judge to assist with such scheduling. The initial appearance shall be scheduled before a magistrate judge as soon as practicable after an information, indictment, or complaint is filed.

(b) Initial Appearance; Arrest Prior to Judicial 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 shall be scheduled as soon as the business of the court will permit and no more than forty-eight (48) hours after the defendant was arrested and placed in custody. If necessary under the circumstances, the government may contact a magistrate judge at home to conduct an initial appearance after business hours or on a holiday or weekend.

(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. Grand juries are under the court's direct supervision. They shall convene at such dates and times as ordered by the chief judge. The chief judge or, in the event the chief judge is unavailable or disqualified, the active district judge who is available and next senior in service, shall impanel and discharge the grand jury and shall act on the court's behalf during the grand jury proceedings.

(b) Docket Assignment. Each newly impaneled grand jury shall be assigned a grand jury docket number by the clerk. Motions, orders, and other filings pertaining to matters before the grand jury shall bear the assigned docket number and shall be maintained by the clerk under seal without the necessity for a motion or order to seal.

6.2 Grand Jury Motion Practice.

(a) Motions Pertaining to Composition or Term of Impaneled Grand Jury. Subject to the impaneling judge's approval, the clerk shall determine whether a grand jury pool member's request to be excused from participating in grand jury selection should be granted. All other requests by the government, a panel member, or a grand juror for an order pertaining to service on or the term of an impaneled grand jury, or for appointment of an alternate grand juror, shall be made by ex parte motion or request to the chief judge or the district judge who impaneled the grand jury. If the impaneling judge is unavailable, the motion or request shall be made to an available district judge assigned to the courthouse in which the grand jury sits.

(b) Motions Pertaining to Grand Jury Process or Proceedings.

(1) Form; Content. Pre-indictment challenges to grand jury subpoenas or grand jury proceedings, or to other matters related to grand jury proceedings, shall be made in writing and filed with the clerk under seal, and shall recite all pertinent facts including:

(A) The grand jury docket number;

(B) The date the subpoena was served;

(C) The date set forth in the subpoena for the person served 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 by a magistrate judge assigned to rule on the challenge, any motion filed by a private party shall be accompanied by proof of service of the motion upon the government.

(2) Motion to Quash; Timing. Absent good cause shown, a motion to quash or limit a grand jury subpoena shall be filed and served seven (7) days prior to the date set forth in the subpoena for the appearance of a witness or production of documents or, if service was completed within seven (7) days of that return date, within three (3) days after the subpoena was served.

(3) Timing of Decision. Upon the filing of a motion to quash or limit a grand jury subpoena, the impaneling judge, or a magistrate judge upon referral, will endeavor to rule upon the motion on or before the subpoena's return date.

6.3 Preserving Grand Jury Secrecy.

(a) Courthouse Decorum. While a grand jury is convening, no one shall remain in a location within the courthouse for the purpose of observing or monitoring persons who enter and leave the grand jury chambers. This rule shall not apply to (1) grand jurors; (2) witnesses; (3) the government's attorneys, agents, and employees; (4) court personnel; (5) private attorneys whose clients were called to appear as witnesses at a grand jury session then in progress or about to commence; and (6) others specifically authorized by the court to be present.

(b) Grand Jury Files.

(1) Maintained Under Seal. Records maintained by the clerk within the grand jury docket are restricted documents, shall be filed and maintained under seal, and shall be 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, motions and orders relating to grand jury subpoenas, true bills, and no bills.

(2) Access; Counsel for a Witness. An attorney who has filed an appearance on behalf of a person subpoenaed to appear or produce documents at a grand jury proceeding may move the impaneling judge for an order allowing access to a copy of the grand jury subpoena served upon the attorney's client, and the motions, orders, or documents relating to that subpoena.

(c) Free Press-Fair Trial Provisions.

(1) Attorneys. A lawyer participating in or associated with the investigation shall refrain from making any extrajudicial statement which a reasonable person would expect to be disseminated, by any means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.

(2) Court Personnel. All court personnel, including marshals, deputy marshals, court clerks, courtroom deputies, court reporters, and employees or subcontractors retained by court reporters, are prohibited from disclosing to any person, without the court's authorization, information relating to a pending grand jury proceeding or a criminal case that is not part of the court's public records.

(d) Contact with Grand Jurors.

(1) Contacts by Defendants or Witnesses. Except by leave of court, no actual or potential defendant or witness, and no attorney or other person acting on the defendant's or witness's behalf, may contact, interview, examine, or question any grand juror or potential grand juror concerning the juror's actual or potential grand jury service.

(2) Contacts by the Government. Except by leave of court, no attorney for the government or other person acting on the attorney's behalf may contact, interview, examine, or question any grand juror or potential grand juror concerning the juror's actual or potential grand jury service, except that contacts may be made on the record during

grand jury proceedings and as necessary 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 shall return any indictment in open court. An indictment must be returned to a magistrate judge, or if one is not available, to a district judge. The judge may, upon request of the government, order the indictment sealed.

6.5 Issuance of Warrant of Arrest by Clerk. When the grand jury returns an indictment or when the government files an information supported by oath, the clerk, at the government's request, shall issue an arrest warrant for the person charged.

7.1 Criminal Case Cover Sheet. A completed criminal case cover sheet shall accompany every indictment or information filed in this court.

7.2 Superseding Indictment or Information. When a superseding indictment or information is filed, the government must contemporaneously file a brief statement describing any 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 shall be delivered to the marshal's service. If another agency wants a copy of a warrant, it may be provided by the marshal's service, and must be 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" upon which the warrant or summons was issued must accompany the warrant or summons.

11.1 Change of Plea Hearing.

(a) Notice. If a defendant decides to change a previously entered "not guilty" plea, the pro se defendant or the defendant's attorney shall notify the government attorney and judge assigned to the case as soon as possible. If notice of a change of plea or a dismissal of the charges occurs too late for the court to avoid summoning a jury, the court may impose juror costs and interpreter costs pursuant to Nebraska Criminal Rule 31.2.

(b) Requirements for Scheduling Change of Plea Hearing. Defense counsel shall not contact the court to schedule a change of plea proceeding until (1) a plea agreement has been reached between the government and the defendant, and (2) the defendant has been advised that, by entering a plea of guilty, the defendant waives the constitutional right to a trial by jury. The defendant's understanding of the constitutional rights that are involved and the defendant's acceptance of the plea agreement may be orally conveyed

to defense counsel. 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, for the purposes of considering or entering a change of plea, a defendant requires the assistance of an interpreter:

(1) The government shall submit a request for interpreter form to the courtroom deputy at least five (5) days in advance of the hearing; and

(2) The defendant's counsel shall ensure that the petition to enter a plea of guilty and any plea agreement have, in advance of the plea hearing, been properly translated for the defendant.

(d) Delivery to Presiding Judge. The petition to enter a plea of guilty and any plea agreement, completed and executed by the defendant, defendant's counsel, and the government, shall be electronically filed and the original signed documents delivered to the clerk's office or to the judge presiding over the change of plea proceeding at least twenty-four (24) hours before the plea hearing, absent extenuating circumstances. If the plea is to an information, the information shall be simultaneously filed or a copy provided by electronic mail to the presiding judge.

11.2 Change of Plea Hearing Before Magistrate Judge.

(a) Hearing. With the consent of the assigned district judge and the parties, a magistrate judge may preside over a change of plea proceeding in:

(1) A felony case; or

(2) A misdemeanor case where consent is required but the parties have not consented to trial, judgment, and sentencing by a magistrate judge.

If, upon hearing, the magistrate judge finds that defendant's written or oral consent to proceed with the change of plea before a magistrate judge is knowing and voluntary, the magistrate judge shall conduct the change of plea proceedings. The magistrate judge shall inquire concerning the existence and understanding of the terms of any plea agreement but shall not accept or reject any such agreement.

(b) Findings of Fact and Recommendation. The magistrate judge shall state on the record findings concerning the knowing and voluntary nature of the guilty plea, the adequacy of the factual basis for the plea, and any other relevant matter, and shall recommend to the district judge whether the guilty plea should be accepted. If there is a plea agreement, the magistrate judge shall also recommend to the district judge whether the plea agreement

should be rejected, accepted, or taken under advisement until sentencing. A transcript of the proceeding shall be prepared and filed with the clerk.

(c) Objection to Recommendation. Any objection to or application for review of the magistrate judge's recommendation made by a party must be in writing, must specify the portions of the findings or proceedings to be reviewed, and must be filed and served no later than ten (10) days after the transcript of the plea hearing has been filed, unless the time is extended by the district judge. *See* NECrimR 57.3(a).

(d) Review by District Judge. The district judge shall conduct a de novo review of the magistrate judge's recommendation regarding the proposed plea and issue an appropriate order. In addition, the district judge may defer acceptance of any plea agreement until sentencing. In conducting this review, the district judge may re-conduct or refer back to the magistrate judge all or any 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 of Motion. Unless excused by the court in individual cases, 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 interest of the public and the defendant in a speedy trial, (*see* 18 U.S.C. § 3161(h)(8)), or that for some other reason, the continuance will not violate the Speedy Trial Act. Unless excused by the court in individual cases, if the defendant is a moving party the motion shall be accompanied by the defendant's affidavit or declaration (*see* 28 U.S.C. § 1746) stating that defendant:

(1) Was advised by counsel of the reasons for seeking a continuance;

(2) Understands that the time sought by the extension may be excluded from any calculation of time under the Speedy Trial Act, 18 U.S.C. § 3161 *et seq.*;

(3) With this understanding and knowledge, agrees to the filing of the motion; and

(4) Waives the right to a speedy trial.

(b) Standard. A motion to continue a trial of a criminal case shall be granted only for good cause shown.

12.2 Unopposed Motions. When all counsel agree that a motion is unopposed, the motion shall reflect that such an agreement has been reached. When filing an

unopposed motion, the moving party shall submit a proposed order to the presiding judge's chambers by electronic mail or, when necessary or appropriate under the circumstances, on paper. The proposed order shall state that the motion is granted and specifically identify the relief granted. Submission of proposed orders shall be made in accordance with Administrative Procedure II.E.

12.3 Form and Deadlines for Discovery and Pretrial Motions.

(a) Time of Filing. At the arraignment, the magistrate judge shall set deadlines for requesting discovery and filing pretrial motions. These dates shall be strictly enforced unless the court grants an extension of time. Absent good cause shown, a motion for an extension of time to file pretrial motions must be made within the time set for the filing of motions. Motions for extensions of time to file pretrial motions will be granted only upon a showing of good cause. If the defendant is a moving party, the motion for extension of time to file pretrial motions shall be accompanied by the defendant's affidavit or declaration (*see* 28 U.S.C. § 1746) stating that defendant:

(1) Has been advised by counsel of the reasons for seeking a continuance;

(2) Understands that the time sought by the extension may be excluded from any calculation of time under the Speedy Trial Act, 18 U.S.C. § 3161 *et seq.*;

(3) With this understanding and knowledge, agrees to the filing of the motion; and

(4) Waives the right to a speedy trial.

(b) Form of Motion. Unless the pretrial motion is unopposed, *see* Nebraska Criminal Rule 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 contemporaneously filed brief. The brief must concisely state the reasons for the motion, cite to the relevant legal authorities, and cite to the pertinent page of the record, affidavit, discovery material, or other evidence upon which the moving party relies.

(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 of record, the moving party at the time of filing the

supporting brief shall also file the additional evidentiary materials upon which the party relies. Evidence shall be filed under seal upon order of the court or as required under these rules. The method for filing evidence in support of an electronically filed motion shall be governed by Administrative Procedure IV.B. Evidentiary materials shall not be attached to the brief but shall instead be filed separately with an index listing each item of evidence being filed and identifying the motion to which it relates.

(3) Discovery Motions. In the case of a motion seeking discovery or disclosure of evidence, the motion must include a statement verifying that counsel for the moving party has conferred with opposing counsel in person or by telephone in a good-faith effort to resolve by agreement the issues raised by the motion and that the parties have been unable to reach such an agreement.

(4) Request for Hearing. If an evidentiary hearing is requested, the motion must state the estimated length of time needed for the hearing, whether any interpreters will be needed, and whether any codefendant should be present and/or participate in the hearing.

(c) Response.

(1) Time of Response. All parties may respond to the motion within five (5) days following the filing of the motion.

(2) Form and Content. The response shall be in the form of a brief in opposition to the motion. If the response relies on evidence which has not already been filed, the responding party shall comply with subparagraph (b)(2) of this rule in presenting that evidence to the court. The responsive brief shall cite to the relevant legal authorities and, with respect to any statement of facts, to the pertinent page of the record, affidavit, discovery material, or other evidence upon which the responding party relies.

(3) Evidentiary Hearing. If an evidentiary hearing is requested by any party, the response shall state, unless the moving party has already provided the same information, whether an interpreter is needed, the estimated length of time needed for the hearing, and whether any codefendant should be present and/or participate in the hearing.

(d) Court-Ordered Evidentiary Hearing.

(1) Order. The court shall determine whether an evidentiary hearing is required on a pretrial motion. Nothing in this rule shall limit 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 shall promptly advise the court whether an interpreter is needed, the estimated length of time needed for the hearing, and whether any codefendant should be present and/or participate in the hearing.

12.4 Sealed Pleadings, Documents, and Objects.

(a) In General. No pleading, document, or object shall be sealed except by an order of the court which specifically addresses the particular pleading, document, or object to be sealed unless the pleading, document, or object is (1) already subject to an existing protective order, or (2) included within a category of pleadings, documents, or objects deemed sealed pursuant to a federal statute, Federal Rule of Criminal Procedure, local rule, or standing order of this court.

(b) Motion to Seal. A motion for an order sealing an object or a specific pleading or document may be made on any grounds permitted by law and shall (1) explain why sealing all or a portion of the pleading, document, or object is required, and (2) state whether redaction may serve to eliminate or reduce the need for sealing.

(c) Accompanying Documents. A motion to seal must be accompanied by (1) a proposed order granting the motion, and (2) the pleading, document, or object to be sealed. The pleading, document, or object shall be filed provisionally under seal, and will remain provisionally sealed until the court rules on the motion.

(d) Form of Sealed Filing. Any pleading, document, or object filed under seal or provisional seal shall be submitted in an unsealed envelope, bearing the caption of the case, the case number, and the caption of the document or object to be sealed. The clerk shall file stamp and docket the motion to seal. The pleading, document or object to be sealed shall be file stamped and docketed with no identifying information. If ordered by the court, the clerk shall file the document or object under seal.

(e) Motion to Unseal. A motion to unseal or view a pleading, document, or object may be made on any grounds permitted by law and shall be accompanied by a proposed order granting the motion.

12.5 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 shall submit to the judge and courtroom deputy a written list of all witnesses whom the parties expect to call.

(b) Exhibits. At least twenty-four (24) hours before the hearing, each party shall mark the exhibits that party intends to introduce into evidence at the hearing, and provide a copy to counsel for all other parties and to the presiding judge.

15.1 Subpoenaed Depositions in Criminal Cases. Except upon order of a judge, depositions to secure testimony or obtain documents or things prior to the trial are not permitted in a criminal case. The procedures for obtaining an order permitting subpoenas to produce documents prior to a trial or pretrial criminal proceeding are set forth 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, unless the presumption is overcome by the procedures of this rule.

(a) Disclosure by the Government.

(1) No Discovery Requested. If the defendant is not requesting Rule 16(a)(1) discovery, then the defendant shall file a notice within two (2) days after the arraignment stating that the defendant does not request the discovery. If such a notice is filed, the government is relieved of any discovery obligations to the defendant imposed by Federal Rule of Criminal Procedure 16.

(2) Partial Discovery Requested. If the defendant is requesting Rule 16(a)(1)(A)-(D) discovery but files a notice within two (2) days after the arraignment stating that the defendant does not request Rule 16(a)(1)(E) or (F) or (G) discovery, then the government shall provide Rule 16(a)(1)(A)-(D) discovery and any Rule 16(a)(1)(E)(F) and/or (G) discovery not specifically identified in the defendant's notice.

(3) Disclosure Deadline. Unless the court orders otherwise, the government shall provide discovery in accordance with this rule no sooner than two (2) days nor later than ten (10) days after the arraignment.

(4) Certificate of Service. Upon providing the information required under this rule, the government shall file and serve a notice of compliance.

(b) Disclosure by the Defendant.

(1) Reciprocal Disclosure; Deadline. If the government provides Rule 16(a)(1)(E), (F), or (G) discovery as required by this rule, then, unless the court orders otherwise, the defendant shall disclose reciprocal discovery in accordance with Federal Rule of Criminal Procedure 16(b)(1)(A), (B), and (C) within thirty (30) days after the arraignment.

(2) Certificate of Service. Upon providing the information required under this rule, the defendant shall file and serve a notice of compliance.

16.2 Motion for Enlargement or Shortening of Time for Discovery. Any application for enlargement or shortening of time for discovery must be accompanied by an affidavit or other statement explaining the reason(s) for the request. A motion for extension of time for discovery will be granted only in unusual cases and upon a showing of good cause. This showing must include facts demonstrating that the moving party has diligently pursued discovery during the originally specified period. If the defendant is a moving party, the motion shall be accompanied by the defendant's affidavit or declaration (*see* 28 U.S.C. § 1746) stating that defendant:

(a) Was advised by counsel of the reasons for seeking a continuance;

(b) Understands that the time sought by the extension may be excluded from any calculation of time under the Speedy Trial Act, 18 U.S.C. § 3161 *et seq.*;

(c) With this understanding and knowledge, agrees to the filing of the motion; and

(d) Waives the right to a speedy trial.

The defendant's affidavit or declaration may be filed after the motion is filed if permitted by the assigned judge and if the motion declares that counsel has discussed the motion with the defendant and the defendant has agreed to sign the affidavit or declaration but was not able to do so before the motion was filed.

17.1 Subpoenas and Writs.

(a) Subpoenas; Service by Marshal. The serving party is responsible for providing the marshal's service with an original and two (2) copies of each subpoena to be served by the marshal. A subpoena for a hearing or trial to be served by the marshal's service within this district must be delivered to the marshal's service at least fourteen (14) days before the hearing or trial at which the witness is to testify. A subpoena for a hearing or trial to be served by the marshal's service outside this district must be delivered to the marshal's service at least twenty-one (21) days before the hearing or trial at which the witness is to testify. Service of a subpoena delivered to the marshal's service after these deadlines is not guaranteed; absent an order

of the court pursuant to subparagraph (c) of this rule, the subpoena will be served only if the marshal's service is able to schedule service conveniently within the time allowed.

(b) Delivery of Writ to Obtain Presence of an Incarcerated Person. A writ of habeas corpus ad testificandum to be served within the district must be delivered to the marshal's service at least fourteen (14) days before the hearing or trial at which the witness is to testify, and a writ of habeas corpus ad testificandum to be served outside of the district must be delivered to the marshal's service at least thirty (30) days before the hearing or trial at which the witness is to testify. If the government has made prior arrangements for obtaining the presence of the defendant, a writ of habeas corpus ad prosequendum may be delivered to the marshal's service at any time before the hearing at which the defendant is to appear.

(c) Exception to Delivery Deadlines. The time periods and deadlines set forth in subparagraphs (a) and (b) of this rule may be shortened by order of the court upon motion and for good cause shown.

(d) Service at Request of Federal Public Defender. The marshal's service shall serve subpoenas and make fact witness payments for the Office of the Federal Public Defender. All 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 will be maintained on record in the office of the marshal's service.

17.2 Subpoenas for Document Production.

(a) General. No subpoena in a criminal case may require the production of books, papers, documents or other objects at a date, time or place other than the date, time, and place of the trial, hearing, or proceeding at which these 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 prior to any trial or evidentiary proceeding under Federal Rule of Criminal Procedure 17(c) shall be made to the magistrate judge assigned to the case when the motion is filed.

(1) Content; Supporting Brief; Affidavit. Except in the extraordinary case where ex parte consideration may be justified, the motion for issuance of the subpoena shall be served on counsel for the adverse party and the requirements of Nebraska Criminal Rule 12.3(b)(3) shall apply to such motions. In addition, motions seeking subpoenas duces

tecum under this subsection shall be supported by an affidavit or declaration (*see* 28 U.S.C. § 1746) establishing that:

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

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

(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 shall make a preliminary determination of whether the material sought is probably relevant and probably admissible. The magistrate judge shall also determine if the request is specific enough to be intelligently evaluated and may place limits on the scope of the requested document production.

(3) Return of Service.

(A) Return; Inventory. Any subpoena duces tecum issued under this rule shall be returned to the magistrate judge who authorized the subpoena, and shall be accompanied by an inventory which lists all items or documents produced. The return and the inventory shall be filed with the clerk.

(B) Possession of Produced Documents or Items. Absent a motion for protective order filed pursuant to subparagraph (3)(C) of this rule, the items produced shall 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 protective order. The magistrate judge shall review the documents produced and issue any appropriate protective order regarding disclosure of the materials. Thereafter, the clerk shall maintain the items

produced and make them available for inspection in accordance with the terms of the magistrate judge's 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 shall be presented in the first instance to the assigned magistrate judge, subject, if necessary, to review by a district judge as required by 28 U.S.C. § 636(e) and pursuant to Nebraska Criminal Rule 57.2.

18.1 Place of Prosecution and Trial.

(a) Initial Request. At the time of filing an indictment or information, the government shall endorse upon the indictment or information a written request for trial at Omaha or Lincoln. Criminal cases will be held in North Platte only upon motion. The clerk shall calendar the case in accordance with the initial request. If the parties make no initial request, the clerk will calendar the case in the city where the clerk's office receiving the case for filing is located.

(b) Subsequent Request. Any party may request a change of the place of trial after the arraignment and before the time set for filing pretrial motions in the scheduling or progression order. The request must be made by motion and supported by affidavit.

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

24.2 Exercise of Peremptory Challenges.

(a) Equal Number of Challenges. In any case where each side is entitled to an equal number of challenges, these challenges shall alternate one by one, with the government exercising the first challenge.

(b) Under Federal Rule of Criminal Procedure 24(b)(2). In criminal cases where the government is entitled to six (6) peremptory challenges and the defendant or defendants jointly to ten (10) peremptory challenges, the government may exercise the first challenge, the defense may exercise the second challenge, the next by the government, the next two by the defense, and alternating in this fashion until the government exercises its sixth challenge and the defense its tenth peremptory challenge.

(c) Multiple Defendant Cases. In a case where there is more than one defendant, any request for additional peremptory challenges must be made in writing at least fourteen (14) days before jury selection. If the court allows the defendants additional peremptory challenges, the order of challenge will be established by the court.

(d) Alternate Jurors. In challenging alternate jurors in a criminal case, peremptory challenges shall alternate one by one with the government exercising the first challenge.

(e) Exception. The foregoing procedure for exercising peremptory challenges may be modified in a particular case at the discretion of the presiding judge.

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

24.3 Jury Pool Questionnaires.

(a) Standard Jury Questionnaire. The clerk shall submit questionnaires to potential members of the jury pool. These completed questionnaires by prospective jurors cannot be obtained by counsel or the parties and are not available for review unless ordered by the court. A list of potential jurors will be available to parties and their counsel prior to trial and is to be used exclusively for the purposes of jury selection. Information included on the list shall not be released to members of the public.

(b) Additional Questionnaire for a Specific Case. The district judge who will preside over a trial may determine sua sponte or upon the motion of a party that the circumstances of a particular case justify submitting additional questions to prospective members of a jury pool. In the interest of securing a fair and impartial trial, the district judge may solicit assistance from the parties in drafting additional questions and may require that additional written questions be submitted to potential members of the jury pool.

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

26.2.1 Motion to Produce. The provisions of Nebraska Criminal Rule 12.3(b)(3) apply to motions to produce a statement.

28.1 Court Interpreters; Responsibilities of Clerk. Where court interpreters are required in criminal proceedings conducted by a magistrate or district judge, the clerk shall:

(a) Maintain a list of all interpreters who have been certified by the Director of the Administrative Office of the United States Courts, and make the list available to interested persons upon request.

(b) Be responsible for obtaining the services of certified or otherwise qualified interpreters for court proceedings, and, whenever possible, obtain the services of interpreters who are certified or otherwise approved or recommended by the Director of the Administrative Office of the United States Courts.

(c) Whenever possible for short hearings, use the telephone interpreter program administered by the Administrative Office of the United States Courts.

(d) Prior to the commencement of any proceeding, take reasonable steps to assure that the court interpreter has taken the required oath.

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

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

28.2 Court Interpreters; Responsibilities of Counsel.

(a) Government Request.

(1) Form. When an attorney for the government is aware that the court will require the services of a court interpreter for the defendant, a defense witness, or a government witness, or to translate documents or recordings offered in evidence, counsel for the government is required to submit a written "Request for Interpreter" on a form available from the clerk.

(2) Timing. The attorney for the government shall submit the request for an interpreter as follows:

(A) A request for an interpreter at trial shall be submitted two (2) weeks in advance of the trial or as soon thereafter as possible.

(B) A request for an interpreter at a hearing shall be submitted five (5) days in advance of the hearing or as soon thereafter as possible.

(b) Defense Request. When defense counsel becomes aware that the court will require the services of court interpreter for the defendant or a defense witness, or to translate documents or recordings offered in evidence, defense counsel shall advise the court of the need for a court interpreter as soon as reasonably possible.

28.3 Responsibilities of Court Interpreters.

(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 information of a confidential nature obtained while performing interpreting duties in or relating to proceedings in this court unless ordered to do so by the court.

(b) Disclosure of Conflicts. Court interpreters must disclose promptly to the court and to the parties any apparent or actual conflict of interest, including any prior involvement with the case or with 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 those services requested by the presiding judge. Counsel may request additional assistance from a court interpreter during a trial or hearing and during related recesses, but the court interpreter should not provide that additional assistance without first seeking the approval of the presiding judge.

28.4 Non-Court Interpreter Services. Pursuant to the terms of the Criminal Justice Act, 18 U.S.C. § 3006A, attorneys appointed by the court may retain the services of a non-court interpreter for the purpose of assisting the defense. In such a case, the non-court interpreter works solely for the defense. Defense counsel should consult with the federal public defender regarding the procedures for retaining and paying non-court 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, in like manner, make an opening statement.

(b) Closing Argument. At the conclusion of all the evidence at trial, the parties may make a final argument. The judge, after conferring with counsel, will allot time for each argument. The government may take no more than one-third of the government's allotted time for the rebuttal portion of the summation. Unless otherwise ordered, the government may discuss in the rebuttal portion of the summation only those subjects previously discussed during the summation of either the government or the defendant. If the defendant waives closing argument, the government may not offer rebuttal, but if the government waives closing argument, the defendant is not precluded from making a closing argument.

31.1 Jury Deliberations.

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

(b) Defendant's Presence. Unless otherwise ordered by the court, during jury deliberations all defendants in criminal cases shall remain in the building where the trial was held.

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

(d) Receipt of Verdict. Defendant's counsel must be present in the courtroom when the verdict is announced. Provided the defendant has not fled or been removed from the courtroom for misconduct, the defendant must also be present in the courtroom when the verdict is announced. Unless the contrary affirmatively appears of record, it will be presumed that the parties were present or by their voluntary absence waived their presence.

31.2 Taxation of Trial Costs. Except for costs related to juries and interpreters, court costs will not be imposed in any criminal case unless the government timely files a verified bill of costs. The bill of costs may be filed at any time after fifteen (15) days following the conclusion of the trial or other proceeding in which costs are to be

taxed and shall be filed no later than thirty days (30) prior to sentencing. The clerk will timely tax costs and notify the judge of such taxation so that the judge may consider the taxation at the sentencing hearing. Costs as used in this rule shall not include attorney's fees. If a plea of guilty or a dismissal of the charges comes too late for the court to avoid summoning a jury or incurring costs under contract with an interpreter, the court on its own initiative may impose juror or interpreter costs against one or more of the parties.

32.1 Presentence Reports.

(a) Initiation of the Presentence Investigation.

(1) Government's Information. Within five (5) days after receiving a written request from the probation officer for information (*e.g.*, indictment, plea agreement, investigative report), the government shall respond to the request and may supply other relevant information. The government shall serve defense counsel with a copy of any material provided to the probation officer that is not already in the possession of defense counsel.

(2) Interview. On request, the defendant's counsel is entitled to notice and a reasonable opportunity to attend any interview of the defendant by a probation officer in the course of a presentence investigation. Defendant's counsel must advise the probation office within two (2) days after the presentence report is ordered that counsel wishes to be present at any interview of the defendant.

(b) Sentencing Schedules and Procedures. After a plea of guilty 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 the procedures to be followed regarding sentencing. In the event that no such order is issued, or if the order fails to address one or more of the eight matters listed below, the following schedules and procedures shall be followed to the extent not otherwise provided in a judge's sentencing order:

(1) No later than five (5) days after the date a plea of guilty is tendered or a verdict of guilty is received, counsel shall provide their respective versions of the offense to the probation officer.

(2) No later than twenty-one (21) days after the last date set in the preceding paragraph, counsel shall provide to the probation officer all financial information, restitution proposals, and chemical or mental health information that they wish the probation officer to consider.

(3) No later than fourteen (14) days after the last date set in the preceding paragraph, the probation officer shall distribute the initial version of the presentence report to counsel.

(4) No later than fourteen (14) days after the last date set in the preceding paragraph, counsel shall provide the probation officer with any objections to the initial version of the presentence report.

(5) No later than seven (7) days after the last date set in the preceding paragraph, the probation officer shall submit to the sentencing judge and to counsel the final version of the presentence report including an addendum that addresses any objections submitted by counsel regarding the initial version of the presentence report.

(6) No later than five (5) days after the last date set in the preceding paragraph, counsel shall submit to the sentencing judge and the probation officer:

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

(B) Any motion for departure (including, but not limited to, government motions for departure); and

(C) Any statements of position regarding, or objections addressed to, the presentence report provided to the judge.

If documentary evidence is to be offered in support of or in opposition to a motion, objection, or statement of position, such evidence shall 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 reveal: (i) the nature of the expected testimony; (ii) an explanation of why oral testimony, instead of documentary evidence such as affidavits, is necessary; (iii) the identity of the proposed witness; and (iv) the length of time anticipated for presentation of the direct examination of the witness. 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 no consideration will be given to any sentencing issue first raised after the date set herein for filing statements, objections, or motions for departure.

(7) No later than five (5) days after the last date set in the preceding paragraph, the sentencing judge may issue an order notifying counsel of:

(A) The judge's rulings on the presentence report (including a notice of the judge's intention to depart on the judge's own motion) and tentative findings regarding objections or motions for departure submitted by the parties;

(B) Whether objections or motions for departure submitted by the parties 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 such an order, objections and motions for departure submitted by the parties will be decided on the day of sentencing pursuant to such procedures as the judge may then specify.

(8) If the court has not set a date for sentencing within eighty (80) days after the date a plea of guilty is tendered or verdict of guilty is received, counsel for the government shall promptly file a motion requesting that the court set a sentencing date.

32.2 Pretrial Services, Presentence, and Probation/Supervised Release Records.

(a) Confidential Information. Information contained in pretrial services, presentence, and probation/supervised release records is confidential information and shall not be disclosed except as authorized by statute, regulation, or court order.

(b) Filing Under Seal.

(1) Records Sealed. Except as set forth in Nebraska Criminal Rule 32.1.1, and unless otherwise ordered by a judge in a specific case, the clerk shall file under seal all pretrial services, presentence, and probation/supervised release records the clerk receives from pretrial services and the probation office.

(2) Unsealed for Appeal Purposes. The clerk shall unseal presentence reports for the purpose of making copies for transmission 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 contained therein remains confidential, pretrial services, presentence, and probation/supervised

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 counsel for the defendant unless:

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

(B) A party or the pretrial service or probation officer obtains an order from the assigned district or magistrate judge prohibiting disclosure; or

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

A judge has the power and discretion to bar or refuse to bar disclosure for any reason, and the judge may make this determination without giving a party notice or a hearing.

(2) Obligations of Agency Recipients. When information contained in pretrial services, presentence, and probation/supervised release records is disclosed pursuant to subparagraph (c)(1) of this rule, the recipient of the disclosure shall keep the information confidential and use the information only in furtherance of administering justice. Any writing containing the information must be returned upon the court's request.

(3) Return of Copies Provided to Parties. All copies of the presentence report provided to a pro se defendant shall be returned to the United States Probation Office after the sentencing proceedings are complete. No copies or any dissemination of the presentence report or information contained therein shall be made. Unauthorized copying or disclosure is an act in contempt of court and will be punished accordingly.

(d) Requests for Disclosure. Each judge has the power to authorize disclosure of pretrial services, presentence, and probation/supervised release records. Oral or written requests for an order authorizing disclosure should be transmitted to the district or magistrate judge who is assigned the case for which disclosure is sought. The judge has the discretion to make or refuse to make a disclosure for any reason, and the judge may decide without giving a party notice or hearing. However, before 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 such information by providing confidentiality to sources of information;

(4) The purpose for which the information is requested and how material the information is to 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 or pretrial services records or a request for the testimony of a probation or pretrial services officer is sought by way of subpoena or other judicial process, the probation or pretrial services officer shall submit to the court a written or oral request for authority and/or obtain instructions from the court with respect to responding to the subpoena or other judicial process.

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

(2) Unauthorized Disclosure. If the court rules that a probation or pretrial services officer is not authorized to testify or to produce records, then the court shall 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.

32.1.1 Sealing Petitions.

(a) Procedures for Sealing and Unsealing. A "Petition for Warrant," "Summons for Offender under Supervision," "Petition for Action on Conditions of Release," or "Amended Petition" shall be subject to being sealed and unsealed as provided in this rule.

(1) For Issuance of a Warrant. Petitions which authorize the issuance of a warrant shall be sealed automatically upon filing and unsealed automatically upon the arrest of the named defendant. The government shall notify the clerk when the defendant has been arrested as soon as possible following the arrest.

(2) For Issuance of a Summons. Unless otherwise ordered by a judge in a specific case, petitions which authorize the issuance of a summons, or which direct that service not be issued for a named defendant, or authorize the ordering of the named defendant to appear before the court, will not be sealed. Any such petitions ordered sealed will be unsealed only by order of the court.

(b) Access of Government Counsel and Court Officers. The government and any pretrial services officer or probation officer for the District of Nebraska may be provided a copy of any sealed petition.

32.2.1 Criminal Forfeiture; Referral to Bankruptcy Court. Upon notice to the court that a defendant in a criminal case is a debtor in a bankruptcy case, the district court may refer to the bankruptcy court questions about restitution, forfeiture of assets which may be property of the bankruptcy estate, or other pecuniary penalties. The bankruptcy judge shall respond to such referral with a recommendation related to the estate issues.

41.1 Search Warrant Applications.

(a) Presenting 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 as set forth in subparagraph (a)(3) of this rule, the warrant application may be presented to a state judicial officer.

(1) The 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) Attorney for Government. Ordinarily, an officer presenting a search warrant application to a judge should be accompanied by an attorney for the government. If justified by unusual circumstances, a judge may entertain a search warrant application from an officer who is not accompanied by a government attorney.

(3) Emergency Circumstances. In the event of an emergency, a magistrate judge may be contacted away from the courthouse, including at home, for purposes of considering a search warrant application. If no magistrate judge is reasonably available, a district judge may be contacted away from the courthouse, including at home, for purposes of considering a search warrant application.

(b) Sealing of Search Warrant Papers. Unless the court orders otherwise, search warrants, all affidavits filed in support of search warrants, and all search warrant returns, shall be filed by the clerk under seal within ten (10) days after the warrant is returned executed.

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

(a) Assignment of Judge and General Procedures. An application for authorization to intercept wire, oral, or electronic communications under the provisions of 18 U.S.C. § 2518 and related requests shall be submitted to the chief judge. If the chief judge is unavailable, such an application and related requests may be submitted to the active district judge next senior in service who is available. A judge will not be considered "unavailable" merely because the judge resides in Lincoln or Omaha and government's counsel or the affiant resides in another city. Unless the judge waives the requirement, all applications, supporting affidavits, proposed orders, or other documents shall be provided in draft form for review by the judge at least twenty-four (24) hours prior to the time set for consideration of the documents. Unless the judge waives the requirement, counsel for the government and the law enforcement officer who serves as the affiant shall 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 the aid of a deputy clerk, it shall be the responsibility of counsel for the government to insure that all interception applications, orders, other documents and recordings related thereto are properly filed with, or submitted to, the clerk after they have been presented to or issued by the judge. Unless otherwise ordered, all interception applications, orders, and other documents and recordings related thereto which are presented to or issued by the judge shall be sealed.

(b) Handling of Recordings Upon Expiration of Order. Except as otherwise directed by the issuing judge, recordings of the contents of any wire, oral, or electronic communication which have been intercepted shall be made available to the issuing judge immediately after the expiration of the interception order and any extensions thereof, and the procedures stated below shall be followed.

(1) Delivery. The recordings shall be delivered personally to the issuing judge, or to the clerk, or one of the following clerk's designees: (A) the chief deputy clerk; (B) the deputy in charge; (C) the courtroom deputy supervisor; or (D) the docketing supervisor. Thereafter, custody of the recordings shall be maintained by the clerk. In the presence of the issuing judge, the clerk, or one of the designees, the recordings

shall be placed in a box or other container and the box or other container shall be sealed with tape or other sealant. The issuing judge, the clerk, or one of the designees shall initial the box or other container that is sealed and also write thereon the date that the box or other container was sealed and the approximate time of sealing.

(2) Sealing. While in the custody of the clerk, the recordings shall be kept in a secure facility in such a manner as to protect the recordings from editing or other alterations.

(c) Disclosure of Intercepted Communications.

(1) In General. Without relieving the government of its initial responsibility as set forth in subparagraph (c)(2) of this rule, the existence and contents of intercepted communications may be referred to and discussed in motions and briefs filed by a party, exhibits offered and received in evidence, and in opinions issued by a judge.

(2) Initial Responsibility of Government. 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 *et seq.*, particularly 18 U.S.C. §§ 2517 and 18 U.S.C. § 2518(8)(b), or, in the case of conversations intercepted pursuant to a state court order, the Nebraska equivalent of the provisions of Title III. Applications for disclosure in a federal proceeding shall be addressed to a federal judge even though the interception may have been authorized under state law. If there is a conflict between federal and state law, federal law shall govern proceedings in federal court.

(d) Use of Intercepted Communications at Trial. Because the use of intercepted communications at trial presents special problems, counsel for the government shall endeavor to reach a stipulation with opposing counsel at least sixty (60) days prior to trial regarding the use of such interceptions at trial. If a stipulation is reached, it shall promptly be provided to a judge for review. The judge may then approve or reject the stipulation in whole or in part and enter such further or other orders as may be appropriate. If a stipulation is not reached, then counsel for the government shall file, no later than fifty (50) days prior to trial, a motion requesting that a judge issue an order instructing the parties regarding use of intercepted communications at trial.

43.1 Corporate Defendant. A corporate defendant in a criminal proceeding need not be present and may proceed through counsel, provided that counsel is authorized to act on behalf of the defendant in such proceedings by virtue of a specific

corporate resolution to that effect from the defendant's board of directors. When counsel is not so authorized, an authorized officer, director, or managing agent of the defendant shall be present at the proceedings identified in Federal Rule of Criminal Procedure 43(a).

44.1 Defendant's Representation.

(a) Appointed Counsel. The procedures governing appointment of counsel are set forth in the Amended Criminal Justice Act Plan adopted by this district. A copy of the plan is available from the clerk's office or on the court's website, www.ned.uscourts.gov. 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 attorneys drawn pursuant to the plan.

(b) Defendant with Retained Counsel or Appearing Pro Se. A defendant who does not request or who is not eligible for appointed counsel must inform the court of the identity of retained counsel, or of the defendant's desire to appear pro se, within ten (10) days of the first appearance before a judge in this district. Retaining counsel outside this period will not justify a continuance of pretrial proceedings or the trial unless the defendant demonstrates diligent attempts to retain counsel.

(c) Appearance of Counsel. 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 has orally entered an appearance shall promptly file and serve a written appearance. A written appearance or pleading signed by an attorney shall show the attorney's bar number, office address, telephone number, fax number, and e-mail address.

(d) Change of Address, Telephone, Fax, or E-Mail. An attorney or pro se defendant whose address, telephone number, fax number, or e-mail address has changed from that previously provided in any ongoing case must file and serve notice thereof within thirty (30) days of the change.

(e) Withdrawal of Appearance. An attorney who has appeared of record in a case may withdraw upon a showing of good cause, but will be relieved of applicable duties to the court, the client, and opposing counsel only after filing a motion to withdraw with the court, providing proof of service of the notice 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 pursuant to an order of this court, provided:

(1) It is apparent that the defendant 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 shall 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 make payment, in whole or in part, for legal or other services in connection with the representation, and the information is not protected as a privileged communication.

44.3 Filing of Voucher for Fees and Expenses.

(a) Deadline for Filing. Counsel appointed under the Criminal Justice Act shall submit the completed voucher for fees and expenses within forty-five (45) days after a case is dismissed or after the defendant is sentenced. Any voucher submitted beyond forty-five (45) days and less than one (1) year after the case is dismissed or after the defendant is sentenced shall be accompanied by a letter demonstrating good cause why the voucher should be paid. Any application or voucher submitted more than one (1) year after the case is dismissed or after a defendant is sentenced shall be summarily denied. Except as next provided, vouchers shall be submitted to the federal public defender for processing. If counsel believes, however, that the federal public defender has a conflict of interest that would preclude the federal public defender from properly receiving information contained within the voucher, 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 will assist counsel in presenting the court with information essential to a reasoned explanation of the fee award. Counsel should also review the most recent decisions of the circuit court for additional guidance. These fee guidelines also may be appropriate in applications for sanctions.

(1) Services Performed.

(A) Identify with particularity the work done.

(i) For a conference, state who was present, what subjects were discussed, and how long it lasted;

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

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

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

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

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

(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 what items were copied, why they were copied, what use was made of them, and how many pages of material were photocopied.

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

(C) For long-distance telephone calls, list the date, by whom, to whom, and where calls were made, 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 pursuant to the Criminal Justice Act shall not be included in the public case file and shall not be made available to the public at the courthouse or via electronic access.

(2) Payments to Counsel.

(A) Public Access. Volume VII of the Guide to Judiciary Policies and Procedures (Appointment of Counsel in Criminal Cases), Section A, Chapter V, paragraph 5.01, distributed by the Administrative Office of the United States Courts, sets forth the procedures for publicly disclosing or sealing from public disclosure payments made under the Criminal Justice Act, 18 U.S.C. § 3006A. The information accessible to the public in accordance with paragraph 5.01 is available for viewing at the clerk's office but shall not be available through electronic access to the court's files.

(B) Notice to Appointed Counsel. The Office of the Federal Public Defender shall, contemporaneously with the issuance to counsel of the CJA 20 or CJA 30 form, provide appointed counsel a copy of the form created and distributed by the Administrative Office of the U.S. Courts entitled: "Notice to Court Appointed Counsel of Public Disclosure of Attorney Fee Information."

(d) Requests in Excess of Statutory Limit. If an appointed counsel's claim for fees and expenses exceeds the statutory limit, counsel shall submit a memorandum with the CJA voucher supporting and justifying counsel'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 VII of the Guide to Judiciary Policies and Procedures (Appointment of Counsel in Criminal Cases), Section A, Chapter II, Part C, subparagraph 2.22 C(2).

(e) Requests for Interim Payments. When a criminal case is extended or complex and appointed counsel would endure financial hardship without interim payments, counsel may file a motion for approval of interim payments of fees and expenses for the court's consideration in accordance with Volume VII of the Guide to Judiciary Policies and Procedures (Appointment of Counsel in Criminal Cases), Section A, Chapter II, Part C, paragraph 2.30.

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 which states that defendant is knowingly and voluntarily waiving the right to separate representation, consenting to joint representation, and, when applicable, waiving the attorney/client privilege.

(b) Government's Response. A response to the motion must be filed by the government within ten (10) days.

(c) Hearing on Proposed Joint Representation. A hearing shall be held on a motion for proposed joint representation in accordance with Federal Rule of Criminal Procedure 44(c). This hearing may be held ex parte. Each party subject to or affected by the proposed joint representation shall attend the hearing on the motion to permit joint representation.

(d) Court Ruling. Even if the parties affected consent to joint representation, the court shall deny joint representation where a conflict of interest exists or where joint representation would be contrary to the interests of justice in the case.

(e) Continuing Duty. If after review of the evidence, representations, and arguments, the court permits joint representation, and thereafter a potential conflict of interest is discovered or arises, the party aware of the potential conflict shall promptly notify the court and all other counsel or pro se defendants in the case.

(f) Responsibility of the Court. The purpose of subparagraphs (a) through (e) of this rule is to assist the court by placing an obligation on the parties to promptly advise the court of any issue of joint representation. Nothing contained in subparagraphs (a) through (e) shall be interpreted to limit or replace the court's responsibility and authority under Federal Rule of Criminal Procedure 44(c)(2).

45.1 Time. The provisions of Federal Rule of Criminal Procedure 45 apply when computing any period of time specified in these local rules.

46.1 Bonds and Other Sureties.

(a) General Requirements. Unless a judge supervising a criminal action pursuant to 18 U.S.C. § 3142 expressly directs otherwise, the principal obligor and one or more sureties qualified as provided in this provision shall 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 in accordance with the provisions of 31 U.S.C. §§ 9301-9309, and approved thereunder by the Secretary of the Treasury of the United States. The parties may consult with the clerk to confirm that a surety is qualified. In all other instances, a corporate surety qualified to write bonds in the State of Nebraska shall be an acceptable surety. In all cases, a power of attorney showing the authority of the agent signing the bond must be attached to the bond.

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

(1) A legal description of the real estate;

(2) A complete list of all encumbrances and liens thereon;

(3) Its market value based on recent sales of like property;

(4) A waiver of inchoate rights of any character and certification that the real estate is not exempt from execution; and

(5) Certification as to the aggregate amount of the penalties of all other subsisting undertakings, if any, assured by the bondsman as of that date.

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

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

(f) 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 such 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 Detention Orders.

(a) Review of Another Court's Order. When a judicial officer 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 shall review the detention order pursuant to 18 U.S.C. § 3145(b).

(b) Motion to Reopen Proceeding. When a magistrate judge enters a detention or release order pursuant to a hearing held under 18 U.S.C. § 3142(f), any motion to "reopen" the proceeding as provided in that section shall be considered as a motion for the same magistrate judge to review the matter of release or detention.

(c) Appellate Review 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 time of the hearing held pursuant to 42 U.S.C. § 3142(f) or for other good cause shown. In the alternative, the district judge may remand the matter to the magistrate judge to reopen the hearing. Unless additional evidence is received on review, the district judge shall review an order of release or detention de novo on the record made before the magistrate judge.

46.3 Defendants as Confidential Informants. Defendants who are under the supervision of the pretrial services office pursuant to an order of this court shall not be used as confidential informants, or in a manner which would violate any condition of release, including any “association” restrictions, without first obtaining an order modifying the conditions of release to allow for the proposed governmental assistance.

(a) Request for Use as Confidential Informant. The procedure for obtaining an order to permit defendant’s participation as a confidential informant and any necessary modifications of conditions of pretrial release is as follows.

(1) Initial Duty of Requesting Agency. Before requesting the court to approve the use of defendant as a confidential informant and any necessary modifications of defendant’s pretrial release conditions, a representative of the law enforcement agency requesting defendant’s assistance must:

(A) Conduct an in-depth discussion with the defendant and defendant’s counsel concerning:

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

(ii) The intended targets of the federal agency’s investigation; and

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

(B) If time permits, meet with a 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 of Request. 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 the event of an 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 providing assistance 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 defendant's re-involvement with criminal associates;

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

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

(G) The names of the personnel from the federal law enforcement agency who will oversee the work and conduct of the defendant serving as a confidential informant.

(b) Judicial Review.

(1) Consult with Pretrial Services. The judge considering the request shall consult with pretrial services before granting the request unless:

(A) Due to time constraints, the judge cannot reasonably obtain an assessment from 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 the case is extremely sensitive and overriding circumstances justify placing the defendant under the supervision of the law enforcement agency and ceasing pretrial services supervision.

(2) In Camera Review; Sealed Order. The review of the agency's request shall be conducted in camera and the order granting or denying the request shall be filed under seal.

(c) Term of Assistance as Confidential Informant.

(1) Timing. If the court grants the agency's request, the defendant's services as a confidential informant may begin when the request is granted by court order and may continue as specified in the court's order for a term of up to ninety (90) days. Fifteen (15) days prior to the end of that term, pretrial services must advise the court that defendant's term as a confidential informant is ending. Absent emergency circumstances, any extension of the term must be requested in writing five (5) days before the term ends and shall include an explanation of why additional time is necessary.

(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 may, upon notice to the supervising officer or the officer's supervisor, use the defendant as a confidential informant for no more than four (4) hours and shall notify the court as soon as possible thereafter.

(3) Termination of Service; Notice. When the defendant's services as a confidential informant are completed, the agency shall provide written notice to the court, to pretrial services, and to the defendant that the defendant's services as a confidential informant are terminated, and the defendant shall provide a written receipt for this notice.

(d) Supervision of Defendant as Confidential Informant. When use of a defendant as a confidential informant is approved, the law enforcement agency obtaining defendant's services shall:

(1) With the assistance of pretrial services, advise the defendant that the defendant must abide by all conditions of pretrial release set by the court, including those that were modified, and that the defendant cannot participate in any criminal activity without prior approval from the court;

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

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

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

(e) Report at Sentencing. The law enforcement agency which requested the defendant's services as a confidential informant shall, either directly or through the government's attorney, provide a report to the sentencing court which outlines the extent of the defendant's cooperation and effectiveness in the investigation, and which states whether financial remuneration or other consideration or reward has been provided to the defendant. All such reports shall remain under seal until such time as it may be appropriate to make known the defendant's cooperation.

(f) Records. All records identifying the defendant as a confidential informant are confidential and shall not be viewed by anyone other than the court and pretrial services officers.

46.4 Offenders as Confidential Informants. An offender under the supervision of the probation office shall 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 is as 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 the event of an emergency, any magistrate or district judge in this district may consider the request for modification.

(2) Notice to Probation Office. Except in the case of an emergency, the government's attorney shall submit a written request to the Chief United States Probation Officer ten (10) 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 office shall discuss the requirements set forth in subparagraph (b)(2) of this rule with the designated case officer for the law enforcement agency requesting the offender's assistance in an investigation. The requirements in subparagraph (b)(2) shall also be included in any written agreement between the defendant, defendant's counsel, the government's attorney, and the investigating agency.

(2) Requirements and Restrictions.

(A) Unauthorized Criminal Activity. The offender shall 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 shall not be used in any manner which might jeopardize the offender's safety without prior approval of the court.

(C) Instruction Changes. Any development that would require any significant change in the operating instructions or conditions of supervision shall be brought to the attention of the probation officer and submitted to the court for approval.

(D) Length of Participation. The time period for participation as an informant shall not exceed ninety (90) days without prior approval of the court. In the event that circumstances develop that would indicate the need for an extension beyond ninety (90) days, the government shall submit a written request to the court to obtain the requested extension.

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

(F) Reports. The probation officer shall submit periodic reports to the court as necessary to make changes in the agreement and a closing progress report to the court.

(G) Notice of Violations. During the period of the offender's service as an informant, the sponsoring agency shall promptly inform the court, either directly or through the probation office, of any violations of the cooperation agreement, including any other criminal activity. The sponsoring agency shall also immediately inform the probation officer whenever the sponsoring agency believes that the probation officer may be in danger due to the activity of the offender.

46.5 Appearance of Defendants and Witnesses on Release. Defendants and witnesses released pursuant to law shall, unless otherwise ordered, appear before the court upon notice from the government to do so.

49.1 Electronic Case Filing (ECF).

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

of Criminal Procedure. The clerk's office will not, however, accept any facsimile transmission (fax) unless ordered by the court or authorized by the Administrative Procedures.

(b) Mandatory Filing. All documents submitted for filing in criminal cases in this district, no matter when a case was originally filed, shall be filed electronically using the System.

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

(1) Parties proceeding pro se;

(2) Cases filed under seal;

(3) Juvenile criminal cases;

(4) Documents excepted from electronic filing requirements by the provisions of the Administrative Procedures; and

(5) Cases in which counsel applies for and receives permission from the assigned judge to file documents in paper format.

49.2 Form of Pleadings.

(a) Electronic Filings. Unless otherwise permitted by the local rules, the Administrative Procedures, or the order of the assigned judge, all pleadings and documents submitted for filing in this district in criminal cases shall be filed electronically using the Electronic Filing System ("System"). The following provisions apply to all electronically filed pleadings or documents.

(1) Legibility. The filing party is responsible for the legibility of any scanned pleading or document uploaded to the System. If for any reason a document cannot be easily read after scanning, the filing party must file it in paper format with the clerk's office.

(2) Evidence or Exhibits. The filing of evidence or exhibits in criminal cases is governed by Administrative Procedure IV.

(3) Content of Pleading or Motion. A pleading or motion shall plainly show the caption of the case, a description or designation of its contents, and the party or person/entity on whose behalf it is filed. All pleadings and motions subsequent to the pleading initiating a proceeding shall also show the proper docket number.

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

(1) Paper Size; Margins. The paper used shall be 8½ "x 11", white, and of standard weight. A two inch margin shall be left at the top of the first page of any paper filed with the clerk so that the filing stamp of the clerk can be applied.

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

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

(4) Content of Pleading or Motion. A pleading or motion shall plainly show the caption of the case, a description or designation of its contents, and the party or person/entity on whose behalf it is filed. All pleadings and motions subsequent to the pleading initiating a proceeding shall also show the proper docket number.

(c) Identification and Signature of Attorney. An electronically filed pleading or other document which requires an attorney's signature shall be signed in the following manner: "s/ (attorney name)." The attorney's signature block should also contain the attorney's address, telephone number, fax number, and a bar number. *See* Administrative Procedure II.C.

49.3 Privacy.

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

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

(1) Minors' names. Minors' initials shall be used.

(2) Financial account numbers. The name or type of account and the financial institution where the account is maintained shall be used, but only the last four numbers of the account number shall be stated.

(3) Social Security numbers. Only the last four numbers shall be used.

(4) Dates of birth. Only the year shall be used.

(5) Home addresses. Only the city and state shall be listed.

(6) Other data as permitted by order of the court.

(b) Discretionary Redaction of Filed Documents. In addition, the filing party may omit or, where inclusion is necessary, partially redact the following confidential information from all pleadings, documents, and exhibits, whether filed electronically or on paper, unless the assigned judge orders otherwise.

(1) Personal identifying numbers, such as driver's license numbers.

(2) Employment history.

(3) Individual financial information.

(4) Proprietary or trade secret information.

(5) Information which may serve to identify an individual cooperating with the government.

(6) Information regarding the victim of any criminal activity.

(7) National security information.

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

(9) Other data as permitted by order of the court.

(c) Unredacted Documents Filed Under Seal. With leave of the court, a party may file under seal a document containing the unredacted personal data identifiers listed above.

(1) Motion. The party seeking to file an unredacted document may, but is not required to, file electronically a motion or application to file the document under seal pursuant to the E-Government Act of 2002. A motion or application not filed electronically shall be presented in

paper format to the chambers of the assigned judge along with a proposed order.

(2) Procedure. If the assigned judge grants the motion or application, the filing party shall then submit the unredacted paper document to the clerk's office. The paper document must have a cover page or notation on the first page stating the following: "Document filed under seal pursuant to the E-Government Act." The court will retain this paper document as part of the record.

(3) Redacted Copy. In granting the motion or application to seal, the assigned judge may require the party to file a redacted copy for the public record.

(d) 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, shall be filed under seal. *See* NECrimR 12.4(a). Such records shall be unsealed only upon an order of the court issued sua sponte or in response to a motion to unseal filed pursuant to Nebraska Criminal Rule 12.4(e).

(e) Responsibility for Redaction. The responsibility for redacting personal data identifiers rests solely with counsel and the parties. The clerk's office will not review documents for compliance with this rule, seal on its own motion documents containing personal data identifiers, or redact documents, whether filed electronically or on paper.

49.4 Service. Receipt of the Notice of Electronic Filing generated by the System shall constitute the equivalent of service of the pleading or other paper on persons who have consented to electronic service and waived the right to service by personal service or first class mail.

49.5 Certificate of Service.

(a) Form. Except as otherwise provided in the Federal Rules of Criminal Procedure, or by order of the court or statute, or by the Administrative Procedures, the certificate of service filed with any pleading, motion, or other document required to be served may consist of (1) a certificate of counsel, (2) written receipt of the opposing party or opposing counsel, (3) affidavit of the person making service, (4) return of the marshal's service, or (5) other proof satisfactory to the court. The certificate of service shall show the name and address of each person served and shall be signed by one of the counsel of record.

(b) Electronic Certificate of Service.

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

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

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

50.1 Setting Trial. The court will from time to time issue orders setting trial directed to all counsel of record affected thereby. Counsel shall keep informed of the progress of the business before the court and be ready when their respective cases are reached. The court must approve any arrangement as to time or order.

50.2 Speedy Trial Act Implementation Plan. To minimize undue delay and further the prompt disposition of criminal cases, the District of Nebraska has adopted a Speedy Trial Act Implementation Plan which has been approved by the United States Court of Appeals for the Eighth Circuit. A copy of the Plan is available on the court's website at www.ned.uscourts.gov, or from the clerk.

53.1 Free Press-Fair Trial Guidelines. The free press-fair trial guidelines applicable in criminal cases are set forth 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 (September 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, shall be held in open court and shall be available for attendance and observation by the public. This rule does not apply to bench conferences, conferences in chambers, and other matters normally handled in camera.

(b) Motion for Closure. Upon motion, the court may in the exercise of its discretion order a pretrial proceeding to be closed to the public, in whole or in part, on the grounds that:

(1) There is a substantial probability 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 will adequately protect the defendant's right to a fair trial or another overriding public interest.

(c) Opposition by Non-Parties. Any news organization or other interested person may file an opposition to a closure motion. The opposition shall be filed and handled as a separate civil case.

(d) Order of Closure. A judge will rule on the motion for closure. If the judge enters a closure order, the order shall state the specific findings which require closure.

55.1 Custody of Files and Exhibits.

(a) Clerk's Custody. In general, papers or physical items belonging to the files of the court, whether the files are paper or electronic, remain in the clerk's custody throughout a judicial proceeding.

(b) Viewing and Copying Court Files.

(1) Paper Files. The public may view files and pleadings in the clerk's office in Omaha and Lincoln between the hours of 8:00 a.m. and 4:45 p.m. on days when the courthouses are open for business. A coin-operated copier is available in the public viewing room of the clerk's office in Omaha and Lincoln. Upon request, the clerk's staff will copy public documents for a fee as prescribed by 28 U.S.C. § 1914.

(2) Electronic Files. Electronic access to the electronic docket and documents filed in the System is available to the public at no charge at the clerk's office in Omaha and Lincoln between the hours of 8:00 a.m. and 4:45 p.m. on days when the courthouses are open for business. Fees to print a paper copy of an electronic filing and to obtain a certified copy of electronically filed document are as prescribed by 28 U.S.C. § 1914.

(3) Payment for Copies. Payment must be made at the time the service is requested by cash, check, or money order made payable to "Clerk, U.S. District Court." Fees shall apply to copying services rendered on behalf of the United States if the record or paper requested is

available through electronic access. The clerk's staff cannot make change for cash payments to the clerk or for the public's use of the coin-operated copier.

(c) Inspecting Physical Evidence. No one may inspect physical evidence in the clerk's custody such as photographic negatives, tape recordings, contraband (including drugs and narcotics, firearms, and ammunition), currency, negotiable instruments, computer disks or tapes, and other items designated by a judicial officer except while in the presence and under the control of the clerk. The clerk may limit or preclude access and copying in order to preserve such evidence.

(d) Temporary Withdrawal of Paper Court Files and Documents. Court files, documents, and transcripts will not be taken from the clerk's office or custody without a written order from the chief judge. To request permission to check out a court file, an attorney must electronically file a written motion and submit a proposed order to the chief judge. If the chief judge grants the motion, the attorney may have the court file upon delivery of a receipt for the file to the clerk. The attorney must return the court file, document, or transcript within two (2) days in the same condition and order in which it was filed in the clerk's office.

(e) Trial or Evidentiary Hearing Exhibits.

(1) Custody. Exhibits received into evidence during a hearing or trial must be left in the clerk's custody. Exhibits offered but not received into evidence may be left in clerk's custody at the offeror's request.

(2) Special Cases. In cases involving a large number of exhibits or in cases requiring special provisions for access, safekeeping, or inspection of exhibits, counsel shall confer with the courtroom deputy to establish procedures for handling exhibits during and after the trial. In cases involving a large number of paper documents, counsel should consider preparing trial evidence in an electronic format, and may consult with the court's information technology staff for further information on this may be best accomplished.

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

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

(1) Withdrawal. As soon as possible, but not later than ten (10) days after a judgment is entered, the offering attorney or pro se defendant must withdraw all exhibits in the clerk's custody and give the clerk a receipt for the exhibits.

(A) Duty to Retain Exhibits.

(i) The attorneys or the pro se defendant must maintain custody of withdrawn exhibits until the court has authorized their disposal, except that the attorney for the government may deliver the exhibits to the appropriate state or federal agency. In the latter case, the agency shall become subject to this rule. The attorney for the government or the state or federal government agency maintaining custody of the exhibits may store the exhibits at any location within or outside the District of Nebraska.

(ii) The attorneys, pro se defendant, or agency retaining the exhibits must preserve the exhibits in the same state and condition that they were in when they were offered into evidence.

(iii) If an attorney or the pro se defendant requests the exhibits, the attorney, agency, or pro se defendant retaining the exhibits must make them available for examination and use at reasonable times and places.

(iv) The attorney, agency, or pro se defendant retaining the exhibits must promptly return them to the clerk if requested to do so.

(B) Length of Retention. All withdrawn exhibits must be retained until at least thirty (30) days after the final disposition of the case, 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 request for post-conviction relief pursuant to 28 U.S.C. § 2255.

(C) Sanctions. Failure to abide by the provisions of this rule may subject the attorney, agency, or pro se defendant to sanctions. Despite entry of judgment, the court retains jurisdiction over the parties, agencies, and attorneys for purposes of enforcing this rule.

(2) Sealed Documents. Counsel shall have ninety (90) days from the date a case is closed or dismissed to file a motion for the return of any sealed documents or objects. Unless an attorney or pro se defendant requests their return, sealed documents or objects will be retained by the clerk for five (5) years. Before the clerk sends a criminal file to the Federal Records Center, the clerk will dispose of all presentence investigation reports in that file. The clerk will automatically unseal any remaining sealed documents or objects in the file when the clerk sends the file to the Federal Records Center.

(3) Destruction of Exhibits. Thirty (30) days after the final disposition of the case as defined by subparagraph (g)(1)(B) of this rule, the attorney, agency, or pro se defendant maintaining custody of the exhibits must file a motion for an order to destroy or otherwise dispose of the exhibits. The opposing party has ten (10) days after service to respond to the motion. If the court grants the motion, the moving party must notify the clerk when the exhibits have been destroyed, and the clerk will then enter a remark on the System stating that the exhibits were destroyed and the date of destruction.

56.1 When Court is Open. At Omaha and Lincoln, the court shall be in continuous session on all business days throughout the year. At North Platte, the court shall be in session during periods set by order from time to time and as the business there shall require.

56.2 Official Station of Clerk. The official station of the clerk shall be at Omaha. Deputy clerks in such number as required shall be appointed by the clerk and shall be stationed at Omaha and Lincoln.

57.1 Duties of Magistrate Judges in Felony Cases. In addition to the powers and duties set forth 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 pursuant to 28 U.S.C. § 636(b) to perform any duties assigned to them by any district judge of this court which are not inconsistent with the Constitution and laws of the United States.

(a) Assignment of Magistrate Judge to Determine Pretrial Matters. In the absence of a determination by a district judge reserving a proceeding for conduct by a district judge (*see* subparagraph (e) of this rule), and with the exception of those motions and petitions specified in subparagraph (c) of this rule, a magistrate judge of this court is authorized and assigned to hear and determine pretrial matters which include but are not limited to:

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

(2) Conducting initial appearance proceedings for defendants, informing them of the charges against them and of their rights, and imposing conditions of release (Fed. R. Crim. P. 5; NECrimR 5.1);

(3) Conducting preliminary examinations (Fed. R. Crim. P. 5.1 and 18 U.S.C. § 3060);

(4) Receiving grand jury returns (Fed. R. Crim. P. 6(f); NECrimR 6.4);

(5) Accepting waivers of indictment (Fed. R. Crim. P. 7(b));

(6) Receiving executed or cancelling unexecuted arrest warrants (Fed. R. Crim. P. 4(c)(4) and 9(c)(2));

(7) Conducting arraignment proceedings (Fed. R. Crim. P. 10);

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

(9) Hearing and determining discovery motions and motions to sever (Fed. R. Crim. P. 12, 14, 15, and 16; NECrimR 12.3-12.5 and 16.2-16.3);

(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 (Fed. R. Crim. P. 17; NECrimR 17.2);

(11) Conducting preliminary hearings in probation violation proceedings (Fed. R. Crim. P. 32.1);

(12) Conducting proceedings for defendants charged with criminal offenses in other districts and issuing all necessary orders incident thereto (Fed. R. Crim. P. 40);

(13) Issuing search warrants, including warrants based upon oral or telephonic testimony, and receiving warrant returns (Fed. R. Crim. P. 41; NECrimR 41.1);

(14) Authorizing installation of pen registers, trap and trace devices (and issue orders to assist), beeper devices (transponders), clone beepers, and the like;

(15) Determining if defendants have knowingly and voluntarily waived counsel, appointing attorneys for defendants who are unable to afford

or obtain counsel, and approving attorneys' expense vouchers in appropriate cases (18 U.S.C. § 3006A; Fed. R. Crim. P. 44(a)-(b); NECrimR 44.1 and 44.3);

(16) Determining issues of release or detention of defendants and material witnesses (18 U.S.C. §§ 3001, 3142, and 3144; Fed. R. Crim. P. 46 (a) and (h); NECrimR 46.1 and 46.3);

(17) Ordering exoneration or forfeiture of bonds (Fed. R. Crim.P. 46 (f)-(g));

(18) Determining propriety of joint representation of criminal defendant (Fed. R. Crim. P. 44(c)-(d); NECrimR 44.4);

(19) Hearing and determining applications for admission to practice before this court (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 (18 U.S.C. § 4285);

(21) Setting bail for material witnesses (18 U.S.C. § 3144);

(22) Conducting initial proceedings upon the appearance of an individual accused of an act of juvenile delinquency (18 U.S.C. § 5034); and

(23) Performing the functions specified in 18 U.S.C. §§ 4107, 4108, and 4109 regarding proceedings for verification of consent by offenders to transfer to or from the United States and appointing counsel therein.

(b) Assignment of Additional Pretrial Matters. Upon written order or the oral directive of an individual district judge, a magistrate judge is further authorized to:

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

(2) Exercise general supervision of criminal calendars, including the handling of calendar and status calls, and motions to expedite or postpone the trial of cases for a district judge (NECrimR 12.1); and

(3) Conduct pretrial conferences in a criminal case (Fed. R. Crim. P. 17.1).

(c) Case-Dispositive Motions and Petitions.

(1) Magistrate Judge's Recommendation. A magistrate judge may submit to a district judge of this court a report containing proposed findings of fact and recommendations for disposition by the district judge of the following motions and petitions in criminal cases:

(A) A defendant's motion 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 revocation hearing; and

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

(2) Authority to Conduct Proceedings. A magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority conferred by this subsection.

(d) Duties Assigned 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 shall preclude a district judge from reserving any proceeding for conduct by a district judge, rather than a magistrate judge, or modifying the method of assigning matters to a magistrate judge as the circumstances may warrant.

57.2 Appeals of Magistrate Judges' Orders in Nondispositive Matters.

(a) Statement of Appeal and Briefs. A party may appeal a magistrate judge's order in a nondispositive matter (*i.e.*, not excepted by 28 U.S.C. § 636(b)(1)(A)) by filing a "Statement of Appeal of Magistrate Judge's Order" within ten (10) days after being served with the order, unless the order establishes a different time. The party shall specifically state the order or portion thereof appealed from and the basis of the appeal. The appealing party shall file contemporaneously with the statement of appeal a brief

setting forth the party's arguments that the magistrate judge's order is clearly erroneous or contrary to law. A party may not merely reference or refile the original brief submitted to the magistrate judge. A party failing to file a brief in support of the appeal may be deemed to have abandoned the appeal. Unless otherwise ordered, any opposing party may file a brief opposing the appeal within ten (10) days of being served with the statement of appeal, arguing that the order of the magistrate judge is not clearly erroneous or contrary to law.

(b) Evidence on Appeal. If evidentiary materials were filed or received in evidence at the time of the magistrate judge's determination of the matter, the parties need not refile or re-offer the materials and may refer to them in the briefs. The parties may not offer additional evidentiary materials unless the court so orders.

(c) Scope of Review. The district judge will not modify, set aside, or remand to the magistrate judge any nondispositive order or portion thereof unless clearly erroneous or contrary to law.

(d) Stay Pending Appeal. The filing of a statement of appeal does not stay the magistrate judge's order pending appeal. Any motion for stay pending appeal shall be filed and presented first to the magistrate judge whose order is appealed. If the magistrate judge denies the motion for stay, the party may address the motion to the assigned district judge.

57.3 Objections to Magistrate Judges' Recommendations in Dispositive Matters.

(a) Statement of Objection. A party may object to a magistrate judge's recommendation in a dispositive matter (*i.e.*, excepted by 28 U.S.C. § 636(b)(1)(A)) by filing a "Statement of Objection to Magistrate Judge's Recommendation" within ten (10) days after being served with the recommendation, unless the court orders a different time. The statement of objection shall specify those portions of the recommendation to which the party objects and the basis of the objection. The objecting party shall file contemporaneously with the statement of objection a brief setting forth the party's arguments that the magistrate judge's recommendation should be reviewed de novo and a different disposition made. A party may not merely reference or refile the original brief submitted to the magistrate judge. A party failing to file a brief in support of the objection may be deemed to have abandoned the objection. Unless otherwise ordered, any opposing party may submit a brief opposing the objection within ten (10) days of being served with the statement of objection.

(b) Evidence. If evidentiary materials were filed or received in evidence at the time of the magistrate judge's determination of the matter, the parties need not refile or re-offer the materials and may refer to them in the briefs. The

parties may not offer additional evidentiary materials; however, if the magistrate judge held an evidentiary hearing, the objecting party may request a supplemental hearing to consider additional evidence. The district judge may convene the hearing if the party demonstrates good cause why the evidence was not adduced before the magistrate judge.

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

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

58.1 Duties of Magistrate Judges in Misdemeanor Cases.

(a) Authority. A full-time magistrate judge shall be 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 to:

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

(2) Direct the probation service of the court 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 trial by jury under the Constitution and laws of the United States;

(4) Conduct any necessary hearings upon applications to revoke probation and enter final orders when such probation was imposed by a magistrate judge 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 shall be made by specific order as circumstances may require.

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

58.2 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 forth in the standing orders of the court and may, by standing order, be modified in accordance with Federal Rule of Criminal Procedure 58(d)(1).

(b) Exceptions. Notwithstanding subparagraph (a) of this rule, the defendant must appear before the magistrate judge if:

(1) The offense charged is not identified in the schedules attached to the 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 discretion of the issuing law enforcement officer, an appearance before the magistrate judge is mandatory.

(c) Mandatory Appearance. The citation or violation notice issued by the law enforcement officer shall 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 shall be 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.

60.1 Title; Citation. These rules shall be known as the Criminal Rules of the United States District Court for the District of Nebraska (“Nebraska Criminal Rules”). They may be cited as "NECrimR ____."