

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

Proposed Amendments to Local Rules  
September 2013

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GENERAL RULES

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1.7 Practice of Law

(a) **Bar of the Court.** The bar of this court consists of persons admitted to practice before the court. See NEeGenR 1.7(d).

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CIVIL RULES

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5.1 Electronic Case Filing (CM/ECF).

- (a) **Electronic Documents Authorized.** Under Federal Rule of Civil Procedure 5(d), the clerk accepts documents filed, signed, or verified electronically that are consistent with technical standards established by the Judicial Conference of the United States. A document filed in compliance with this rule is a written document for purposes of the local rules and the Federal Rules of Civil Procedure.
- (b) **Mandatory Electronic Case Opening and Filing.** Attorneys filing new civil cases in this district are required to open the cases themselves using the System. All documents must be filed electronically.
- (c) **Exceptions.** The following matters or individuals are excepted from mandatory electronic case opening and filing:
- (1) pro se parties who are not registered users;
  - (2) cases filed under seal by court order;
  - (3) exhibits, evidence, or attachments, the nature of which precludes electronic filing;

- (4) cases or documents excepted by statute or rule; and
- (5) situations in which an attorney applies for and receives permission from:
  - (A) the chief judge to have the clerk open the new case on the System; or
  - (B) the assigned judge to file documents nonelectronically.
- (d) **Facsimile and E-mail Filings Not Allowed.** A document is not filed under the Federal Rules of Civil Procedure until the filing party receives a System generated NEF after uploading the document to the System. A document faxed or e-mailed to the clerk or assigned judge is not considered filed without a court order.
- (e) **Timely Filing.** A document is considered timely filed if filed before midnight Central Standard Time (or Central Daylight Time, if in effect). However, the assigned judge may order a document filed by a time certain.
- (f) **Official Record.** The clerk does not maintain a paper court file in any case unless required by law or local rule. When a document is filed electronically, the official record is the electronic recording of the document as stored by the court, and the filing party is bound by the document as filed.
  - (1) **Documents Filed Nonelectronically.** The official record also includes documents filed nonelectronically under local rule.
  - (2) **Original Documents Scanned and Discarded.** The clerk scans and discards original documents brought to the clerk for filing unless the document's size or nature requires that it be kept in a paper format. An attorney who wishes to have an original document returned after the clerk scans and uploads it to the System may, before submitting the document to the clerk, ask the assigned judge for written authorization for the document's return. Authorization is granted on a case-by-case basis. The court does not allow blanket authorizations for the return of all original documents filed by an attorney or office.
  - (3) **Copies of Filings.** A party who requests a copy of a paper document submitted for filing must, at the time of filing, supply the clerk's office with the copy and, if the return is to be made by mail, a self-addressed, stamped envelope.

- (g) **File Date.** Except for documents first filed with the court nonelectronically and then uploaded to the System, a document filed electronically is considered filed as of the date and time stated on the NEF.
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### 5.3 Privacy.

- (a) **Mandatory Redaction.** See Federal Rule of Civil Procedure 5.2(a) or Federal Rule of Bankruptcy Procedure 9037 regarding mandatory redaction in electronic and nonelectronic filings. The following privacy rules also apply to all documents and exhibits filed in the district and bankruptcy courts.
- (b) **Discretionary Redaction.** The filing party may also redact the following information from all documents and exhibits filed electronically or nonelectronically, unless the assigned judge orders otherwise:
- (1) personal identifying numbers, such as driver's license numbers;
  - (2) home street addresses;
  - (3) medical or psychological records;
  - (4) employment history;
  - (5) individual financial information;
  - (6) proprietary or trade secret information;
  - (7) information that may identify a cooperating individual;
  - (8) information regarding a crime victim;
  - (9) national security information;
  - (10) sensitive security information as described in 49 U.S.C. § 114(s);
  - (11) education records as defined by 20 U.S.C. § 1232g(a)(4)(A); and
  - (12) other data as the court orders.
- (c) **Restricting Access to Unredacted Documents.** With the court's leave, a party may restrict access to a document containing the unredacted personal data identifiers listed in Nebraska Civil Rule 5.0-3(b), Federal Rule of Civil Procedure 5.2, or Federal Rule of Bankruptcy Procedure 9037.

(1) **Motion.**

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

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

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

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

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

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(b) **Opposing a Motion.**

(1) **Opposing Brief.**

(A) **Form and Content.** The party opposing a motion must not file an "answer," "opposition," "objection," or "response," or any similarly titled responsive **filing pleading**. Rather, the party must

file a brief that concisely states the reasons for opposing the motion and cites to supporting authority. The brief must not recite facts unless supported as stated in Nebraska Civil Rule 7.1(b)(2).

- (B) **Time for Filing.** A brief opposing a motion to dismiss, for judgment on the pleadings, or for summary judgment must be filed and served within 21 days after the motion and supporting brief are filed and served. A brief opposing any other motion must be filed and served within 14 days after the motion and supporting brief are filed and served.
- (C) **Effect of Failure to File.** Failure to file an opposing brief is not considered a confession of a motion but precludes the opposing party from contesting the moving party's statement of facts.

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

**(a) Services Performed.**

- (1) Identify with particularity the work done.
  - (A) For a conference, state who was present, the subjects discussed, and how long it lasted.
  - (B) For research, state who did it, the subjects and issues researched, and whether the results were incorporated into a brief, motion, or pleading.
  - (C) For travel time, segregate it, state who traveled, and the purpose and mode of travel.
  - (D) For filings/pleadings, identify the filing/pleading and who prepared it.
- (2) Identify the status and background (attorney, paralegal, law student) of each person performing an item of work.

- (3) If a paralegal or law student performed any services, state the salary or other wage rate at which the attorney or law firm pays the paralegal or law student.
  - (4) If the services apply to more than one case, identify the relative applicability to each case.
- (b) Expenses Incurred. Identify the expense with particularity.
- (1) For photocopies, state the items copied, why they were copied, how they were used, and the number of pages copied.
  - (2) For depositions, list the court reporter's name, the date of taking, the deponent's identity, the purpose of the deposition (discovery or evidentiary), and the use made of the deposition.
  - (3) For long-distance telephone calls, list the date, by whom, to whom, and the location of the person called, and the subject of the call.
- (c) **Rates of Compensation Requested.** Except in Criminal Justice Act cases, attorneys must file affidavits or other evidence in support of claimed hourly rates and hours.
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**81.1 Removed Actions.** If a motion is pending and undecided in state court at the time of removal, the court will not consider the motion unless and until a party refiles the motion in federal court in conformity with federal practice requirements.

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## CRIMINAL RULES

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### 49.1 Electronic Case Filing (CM/ECF).

- (a) **Electronic Documents Authorized.** Under Federal Rule of Criminal Procedure 49(d) and Federal Rule of Civil Procedure 5(d), the clerk accepts documents filed, signed, or verified electronically that are consistent with court-ordered technical standards established by the Judicial Conference of the United States. A document filed in compliance with this rule is a written document for purposes of applying the local rules and the Federal Rules of Criminal Procedure.
- (b) **Mandatory Filing.** All documents must be filed electronically.

- (c) **Exceptions.** The following matters or individuals are excepted from mandatory electronic filing:
- (1) pro se parties who are not registered users;
  - (2) cases filed under seal;
  - (3) exhibits, evidence, or attachments the nature of which precludes electronic filing;
  - (4) juvenile criminal cases, even if the court subsequently rules that the juvenile must be tried as an adult;
  - (5) documents excepted from electronic filing requirements by these rules; and
  - (6) situations in which an attorney applies for and receives permission from the assigned judge to file documents nonelectronically.
- (d) **Facsimile and E-mail Filings Not Allowed.** A document is not considered filed under the Federal Rules of Criminal Procedure until the filing party receives a System generated NEF after uploading the document to the System. A document faxed or e-mailed to the clerk or assigned judge is not considered filed without a court order.
- (e) **Timely Filing.** A document is considered timely filed if filed before midnight Central Standard Time (or Central Daylight Time, if in effect). However, the assigned judge may order a document filed by a time certain.
- (f) **Official Record.** The clerk does not maintain a paper court file in any case unless required by law or local rule. When a document is filed electronically, the official record is the electronic recording of the document as stored by the court, and the filing party is bound by the document as filed.
- (1) **Documents Filed Nonelectronically.** The official record also includes any documents filed nonelectronically under local rule.
  - (2) **Original Documents Scanned and Discarded.** The clerk scans and discards original documents brought to the clerk for filing unless the document's size or nature requires that it be kept in paper format. An attorney who wishes to have an original document returned after the clerk scans and uploads it to the System may, before submitting the document to the clerk, ask the assigned judge for written authorization for the document's return. Authorization is granted on a case-by-case

basis. The court does not allow blanket authorizations for the return of all original documents filed by an attorney or office.

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

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

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

**(a) Statement of Objections.** A party may object to a magistrate judge's order in a nondispositive matter or findings and recommendations in a dispositive matter by filing a "Statement of Objections to Magistrate Judge's Order" or "Statement of Objections to Magistrate Judge's Findings and Recommendations" within 14 days after being served with the order or findings and recommendations, unless the order or recommendation states a different time. The party must specify (1) the parts of the order or findings and recommendations to which the party objects and (2) the legal basis of the objections. The statement of objections should also indicate whether the party relies on a previously or newly filed brief. A party may not merely reference or refile the original brief submitted to the magistrate judge. A party's failure to state a legal argument supporting objections to an order may be considered an abandonment of the party's objections. Unless ordered otherwise, an opposing party may file an opposing brief within 14 days of being served with the statement of objections. This brief may refer to previously filed briefs.

**(b) Evidence.** If evidentiary materials were filed or received in evidence when the matter was before the magistrate judge, the parties need not refile or reoffer the materials and may refer to them in their legal arguments.

**(1) Orders.** A party may not offer additional evidentiary materials without a court order.

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



- (c) **No Stay of Order Pending Resolution of Objections.** The filing of a statement of objections to an order does not stay the magistrate judge's order pending resolution of the statement of objections. The magistrate judge whose order is objected to decides a motion for stay pending the resolution of the statement of objections. If the magistrate judge denies the motion for stay, the party may address the motion to the assigned district judge.
- (d) **Findings and Recommendations; Remand.** If the district judge remands the matter to the magistrate judge, the magistrate judge's subsequent recommendation is also subject to objection under this rule.
- (e) **Findings and Recommendations; Failure to Object.** Failure to object to a finding of fact in a magistrate judge's recommendation may be construed as a waiver of the right to object from the district judge's order adopting the recommendation of the finding of fact.
- (f) **Appeals of Detention or Release Orders.** An appeal of a magistrate judge's release or detention order is brought to a district judge under 18 U.S.C. § 3145(c) and NECrimR 46.2. Nebraska Criminal Rule 59.2 does not apply.