

2017 PROPOSED AMENDMENTS TO LOCAL RULES
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

GENERAL RULES

1.1 Introduction.

- (e) **Effective Date.** ~~The court's local rules take effect immediately upon approval by this Court's Judicial Council and, unless ordered otherwise, apply to cases pending when the rules take effect.~~
- (f)(e) **Availability.** Paper copies of all district court local rules are available from the district court clerk. The court's rules can also be accessed and downloaded from the court's website, <http://www.ned.uscourts.gov/attorney/local-rules>.

1.2 General Information.

- (e) **Credit Card Fee Payment.**
- (2) **Refunds of Duplicate or Erroneous Filing Fees and Attorney Assessments Paid Electronically by Credit Card.** The clerk may refund duplicate or erroneous filing fees and attorney assessments paid online by credit card. This limited authority does not otherwise amend the Judicial Conference policy prohibiting filing fee refunds.
- (C) **Payment of Refund.** The clerk processes an authorized refund through the electronic credit card system, pay.gov. If the payor's credit card is no longer valid, ~~a refund will be sent to the payor by check the clerk issues a United States Treasury check to the payor~~. The clerk does not give cash refunds.
- (i) **Judicial Misconduct and Disability Complaints.** Information on filing complaints about a federal judge's behavior is on the ~~court's~~ Eighth Circuit's website at www.ned.uscourts.gov/newcoa/jdcomplaints.htm <http://www.ca8.uscourts.gov/judicial-complaints>.

1.4 Assignment of Judges.

- (a) **District Court.**
- (2) **Assignment Method.** Unless these rules state or the chief judge directs otherwise, the clerk randomly assigns cases from each docket to the participating judges. However, under the chief judge's direction

after consulting with the other active district judges, a magistrate judge may be paired with a district judge on a nonrandom basis ~~when the magistrate judge is not the trial judge~~. See NECivR 73.1 (assignment of civil cases to magistrate judges for trial). In interpreting this rule, the chief judge's decision is final.

(3) Reassignments.

(C) Clerk. The clerk is authorized to reassign a civil case to:

- (i) a referral magistrate judge when the civil case is originally assigned to an Article III judge and all parties voluntarily consent to reassignment in writing in the Rule 26(f) report or otherwise; and
- (ii) a randomly-drawn district judge when the case was originally assigned to a magistrate judge as the presiding judge and all parties do not timely consent in writing to the disposition of the case by a magistrate judge. When necessary, the clerk may also assign a randomly-drawn magistrate judge to the case for judicial supervision and processing of pretrial matters.

(D)(G) Visiting Judges. The assigned district judge or the chief judge, with the consent of the assigned district judge, may reassign a case to a visiting district judge designated for service in this district. If the assigned district judge is disabled and unable to consent to reassignment, the chief judge may reassign a case without the district judge's consent.

(5) The Nebraska Docket.

(A) Applicable Cases. Except for cases challenging the death penalty under 28 U.S.C. § 2254, ~~and~~ cases in which North Platte is designated as the place of trial, ~~and cases involving social security or bankruptcy appeals~~, civil cases are placed on one docket called the "Nebraska docket" if:

- (i) the State of Nebraska or any of its agencies are named defendants in the original complaint;
- (ii) a named defendant in the original complaint is being sued for acts or omissions that allegedly occurred while the defendant was allegedly an employee of the State of Nebraska or one of its agencies;

- (iii) the plaintiff is the United States of America;
- (iv) the plaintiff is pro se when the case is filed; or
- (v) the plaintiff is a prisoner in state custody when the case is filed.;
- (vi) ~~the case is a social security appeal; or~~
- (vii) ~~the case is a bankruptcy appeal.~~

(C) Assignment of Judges. Under Nebraska General Rule 1.4(a)(2), cases placed on the Nebraska docket are randomly assigned to and equitably divided among the district judges regardless of their duty station and the designated place of trial. The magistrate judge normally paired with the assigned district judge is also assigned to the case. If the assigned district judge is not normally paired with a magistrate judge, the clerk randomly assigns an Omaha magistrate judge to an Omaha case and a Lincoln magistrate judge to a Lincoln case.

(C) Place of Trial. The district judge handling a Nebraska docket case may try the case in Omaha or Lincoln, regardless of the place designated for trial, after considering the convenience of the parties, lawyers, witnesses, and other related matters.

(D) Jury Selection. All juries in Nebraska docket cases are selected from the jury pool used where the case is tried.

(6) Death Penalty Cases. ~~The chief judge assigns cases brought under 28 U.S.C. § 2254 that challenge the death penalty.~~

(A) Location of Proceedings. The assigned district judge may decide the location of all proceedings, regardless of the location designated for trial.

(B) Stay of Execution. If the assigned district judge is absent or unavailable to consider a motion for a stay of execution, any district judge may rule on the motion.

(C) Judge Assignment. When assigning a death penalty habeas corpus case, the clerk will exclude from random assignment any judge who has two or more pending death penalty habeas corpus cases. This rule has been adopted to conform to the policy of the Eighth Circuit Judicial Council's Death Penalty Committee, which provides that "no district judge should be

charged with the disposition of more than two death penalty habeas cases at any one time.”¹

- (7) **Challenges.** All motions challenging the operation or seeking avoidance or restraint of this rule must be made to the chief judge or, if the chief judge is disqualified or disabled, to the district judge then available and next senior in service.
- (8) **Sanctions.** No person may: (a) reveal the sequence of district or magistrate judges' names within a ~~docket calendar category~~ or any rotation randomly determined; (b) assign any case other than as stated in this rule or ordered by the court; or (c) directly or indirectly cause, or attempt to cause, any person to (i) reveal the sequence of district or magistrate judges' names within a ~~docket calendar category~~ or rotation randomly determined, or (ii) assign any cases other than as stated in this rule or ordered by the court. The court will sanction any person violating this provision with criminal contempt.

1.5 Bankruptcy Cases.

- (b) **Withdrawal of Reference.** The district court may withdraw, in whole or in part, a reference under this rule on its own or a party's timely motion.
- (5) **Order of Withdrawal.** If the district court withdraws the reference, the order is filed in both the district and bankruptcy courts. The district court clerk notifies interested parties. When the bankruptcy court clerk receives a withdrawal order, the bankruptcy court clerk delivers to the district court clerk ~~a transmittal letter with a list of the bankruptcy or adversary documents parts of the bankruptcy or adversary file~~ necessary for the district court proceeding.
- (7) **Bankruptcy Judges Disqualified or Incapacitated.** If all bankruptcy judges are disqualified or incapacitated, the bankruptcy court clerk refers motions for withdrawal of reference to the district court clerk. The motion for withdrawal of reference is then assigned to a ~~district~~ judge under Nebraska General Rule 1.4(a)(2) and any general order regarding assignment of ~~district~~ judges. After conducting any necessary proceedings, the assigned ~~district~~ judge rules on the motion to withdraw.

¹ In a Memorandum dated May 19, 2017, Eighth Circuit Judge Bobby Shepherd, in consultation with the Ad Hoc Committee on Death Penalty Cases, explained that a death penalty habeas case on appeal does not count toward a judge's two cases. In addition, the policy does not apply to non-habeas cases such as ancillary proceedings or other civil cases challenging the method of execution.

1.6 Public Security and Conduct in Courthouse and Courtroom.

(d) **Food and Tobacco.** Unless the presiding judge authorizes otherwise, no person may eat food or use tobacco in a courtroom.

(I) Attorney Courtroom Decorum.

(5) **Leaving the Courtroom.** Attorneys, including co-counsel, must have the court's permission to leave the courtroom. Co-counsel may have continuing permission to leave the courtroom at any time, although no attorney should leave during the testimony of a witness whom that attorney has examined.

1.7 Practice of Law.

(f) **Admission for a Particular Case (Pro Hac Vice).** An attorney admitted and licensed to practice before the highest court of any state may apply in writing to practice in this court for a particular case. The clerk will verify the attorney's admission to the bar of the state identified on the application. An attorney admitted pro hac vice ~~is not charged an admission fee, but~~ must read and acknowledge the oath in subsection 1.7(e) of this section.

1.8 Attorney Discipline.

(e) Discipline Imposed by Other Courts.

(2) **Notice to Attorney.** If a certified or exemplified copy of a judgment or order is filed demonstrating that an attorney admitted to practice in this court has been disciplined by another court ~~for misconduct not involving failure to comply with a state or court's annual-dues or attorney-education requirements~~, the judge issues a notice directed to the attorney, containing:

- (A) a copy of the other court's judgment or order; and
- (B) an order directing the attorney to show cause why the court should not impose the same discipline.

CIVIL RULES

~~3.1 Civil Cover Sheet. Except in pro se cases, when a complaint is filed nonelectronically it must be accompanied by a civil cover sheet. A civil cover sheet is a form available from the clerk and on the court's Web site. Matters appearing on the civil cover sheet have no legal effect.~~

7.5 Sealed Documents and Objects.

(c) **Docket Sheet Entries.** When a sealed document is filed electronically, an entry appears on the electronic docket sheet only for court users ~~and the filing party~~. The parties and the public do not have remote access to the sealed document from the docket sheet.

40.1 Trial Calendar.

(b) **Request for Place of Trial; Form.** The plaintiff at the time of filing a complaint in a civil action, or the removing party at the time of filing a petition for removal, must request ~~in writing~~ trial in Omaha, Lincoln, or North Platte. ~~For cases filed electronically, the place of trial selected on the CM/ECF filing system during case opening will serve as the plaintiff's (or removing party's) designated place of trial.~~ Each defendant or third-party defendant at the time of filing that defendant's first pleading in a civil action, or the plaintiff in a removed action, within 14 days after service of the notice of removal, may file a written request for trial at Omaha, Lincoln, or North Platte. A request for a place different from that requested by the plaintiff, third-party plaintiff, or removing party must be filed as a motion. Any other party then has 14 days to respond.

45.1 Subpoenas to Nonparties.

(b) **Objections.** After receipt of the notice, the adverse party has 7 days to serve written objections to the subpoena on the noticing party. The adverse party must specifically identify the grounds for the objections and must file a certificate of service with the court. No subpoena may be issued for documents or premises whose inspection or production is contested under this rule until the parties resolve the objections. Any unresolved objections will be resolved by the court on appropriate motion filed in accordance with NECivR 7.1. Nothing in this rule affects the availability of objections described in Federal Rule of Civil Procedure ~~45(c) and (d)~~ ~~45(d) and (e)~~.

54.1 Taxation of Costs.

(a) **Handbook.** Attorneys should read the ~~bill of costs handbook~~ Bill of Costs Handbook available on the court's Web page,

<http://www.ned.uscourts.gov/plans-and-policies>

www.ned.uscourts.gov/forms > "Bill of Costs Form (Handbook)," or from the clerk before submitting a bill of costs or filing a response to a bill of costs.

67.1 Deposits.

(b) Investment of Registry Funds.

- (5) Unless otherwise ordered by the court, interpleader funds deposited under 28 U.S.C. § 1335 will be deposited in the CRIS Disputed Ownership Fund.

PROPOSED NEW CIVIL RULE 12.1

The Local Rules Committee suggests that the Court adopt a local rule which instructs parties that when a defendant files a partial motion to dismiss, the defendant is not required to answer any part of the complaint until the Court has ruled upon the motion to dismiss. The Committee recommends that the following rule be adopted:

12.1 Motions to Dismiss; Suspension of Time to Answer. When a party files a motion to dismiss, the time for that party to file an answer to all claims, including those not addressed in the motion, is suspended until the court issues a ruling on the motion.

CRIMINAL RULES

12.1 Motions to Continue Trial.

- (a) **Content.** Unless excused by the court in an individual case, a motion to continue the trial setting of a criminal case must state facts demonstrating that the ends of justice served by a continuance outweigh the best interests of the public and the defendant in a speedy trial, see 18 U.S.C. § 3161(h)(7)(A), or that for some other reason the continuance will not violate the Speedy Trial Act. ~~Unless excused by the court in an individual case, if the defendant is the moving party the motion must be accompanied by the defendant's affidavit or declaration, see 28 U.S.C. § 1746, stating that the defendant:~~
- ~~(1) was advised by the defense attorney of the reasons for seeking a continuance;~~
 - ~~(2) understands that the time requested in the extension may be excluded from any calculation of time under the Speedy Trial Act, 18 U.S.C. §§ 3161-3174; and~~
 - ~~(3) with this understanding and knowledge, agrees to the filing of the motion.~~
- (b) **Standard.** The court may grant a motion to continue a trial of a criminal case for good cause shown.

12.3 Forms and Deadlines for Pleadings and Motions.

- (a) **Deadlines Set.** At the arraignment, the magistrate judge sets discovery and pretrial motion deadlines. These dates are strictly enforced. Motions for an extension of time to file pretrial motions are only granted for good cause shown, and absent good cause shown they must be filed within the pretrial motion filing deadline. ~~If the defendant is a moving party, a motion for extension of time to file pretrial motions must be accompanied by the defendant's affidavit or declaration, see 28 U.S.C. § 1746, stating that the defendant:~~
- ~~(1) was advised by the defense attorney of the reasons for seeking an extension;~~
 - ~~(2) understands that the time requested in the extension may be excluded from any calculation of time under the Speedy Trial Act, 18 U.S.C. §§ 3161-3174; and~~

~~(3) with this understanding and knowledge, agrees to the filing of the motion.~~

12.5 Sealed Documents and Objects.

- (c) **Docket Sheet Entries.** When a sealed document is filed, an entry appears on the electronic docket sheet only for court users ~~and the filing party~~. The parties and the public do not have remote access to the sealed document from the docket sheet.

16.2 Motion for Extending or Shortening Discovery Time. An affidavit or other statement explaining the reasons for the request must accompany a motion to continue a discovery deadline. The court only extends a motion to continue a discovery deadline in unusual cases and upon a showing of good cause, which must include facts showing that the moving party diligently pursued discovery during the originally specified period. ~~If the defendant is a moving party, the motion must be accompanied by the defendant's affidavit or declaration, see 28 U.S.C. § 1746, stating that the defendant:~~

- ~~(a) was advised by the defense attorney of the reasons for seeking a continuance;~~
- ~~(b) understands that the time requested in the extension may be excluded from any calculation of time under the Speedy Trial Act, 18 U.S.C. §§ 3161-3174; and~~
- ~~(c) with this understanding and knowledge, agrees to the filing of the motion.~~

~~The defendant's affidavit or declaration may be filed after the motion is filed if allowed by the assigned judge and if the motion states that the attorney 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.~~

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

- (b) **Handling of Recordings Upon Expiration of Order.** Unless the issuing judge directs otherwise, recordings of the contents of any wire, oral, or electronic communication that have been intercepted must be made available to the issuing judge immediately after the interception order expires, and the procedures stated below must be followed.

- (1) **Delivery.** The recordings must be delivered personally to the

issuing judge, and the clerk, ~~or one of the following clerk's designees: (A) the chief deputy clerk; (B) the operations manager; or (C) the court services supervisor~~. Thereafter, the clerk must maintain custody of the recordings. In the presence of the issuing judge, and the clerk, ~~or one of the designees~~, the recordings must be placed in a box or other container, and the box or other container must be sealed with tape or other sealant. The issuing judge, and the clerk, ~~or one of the designees~~ must initial the sealed box or other container and write on the box or other container the date and the approximate time of sealing.

44.1 Defendant's Representation.

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

- 50.2 **Speedy Trial Act Implementation Plan.** To minimize undue delay and further the prompt disposition of criminal cases, this district has adopted a Speedy Trial Act Implementation Plan approved by the ~~United States Court of Appeals for the~~ Eighth Circuit Judicial Council. A copy of the plan is available on the court's Web site at <http://www.ned.uscourts.gov/plans-and-policies> "Speedy Trial Act Plan Implementation" or from the clerk.