

2019 PROPOSED AMENDMENTS TO LOCAL RULES

SUMMARY

Miscellaneous Changes

- Convert rules from WordPerfect to Microsoft Word.
- Formatting and grammatical changes:
 1. Under Sealed Documents and Objects in the civil and criminal rules, the numbering/lettering in the current rules jumps directly from (a), (b), (c) and so on, to (i), (ii), (iii) and so on. Therefore, under NECivR 7.5(a) and NECrimR 12.5(a), change (i), (ii), and (iii) to (1), (2), and (3).
 2. Add hyphens to compound modifiers (e.g., “court-issued document” and “Internet-based System”).
 3. Use consistent approach when a series of items appears within the paragraph (not items shown as a list). In the current rules, a colon is used in some instances and in others it is not, even though the structure is otherwise the same. Text such as the following would read: “When a grand jury convenes, no one may be in the courthouse to observe or monitor persons who enter and leave the grand jury chambers. This rule does not apply to (1) grand jurors; (2) witnesses; (3) government attorneys, agents, and employees . . .”
 4. Capitalize “Internet,” change “Web” to “web,” and change “Web site” to “website” throughout the rules. Capitalization of these words in the current rules varies.

General Rules

- NEGenR 1.3(a)(1)(B)(ii): Change “attorneys of record” to “case participants” to account for the possibility that a litigant is self-represented, and to match the terminology used in the court’s “Filing Sealed or Restricted Documents” procedures on the court’s external website.

(ii) Restricted Access Documents. Remote access to documents containing personal identifying information protected by 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”), is restricted to ~~attorneys of record~~ **case participants** and court users. Public access to these documents is not allowed at terminals in the clerk’s office. *See* NECivR 5.3; NECrimR 49.1.1.

- NENGenR 1.3(a)(4): Revise to allow the clerk to strike documents related to applications made to the clerk for refunds of fees and assessments. In addition, revise to reflect there are times the court will direct that a document be stricken and restricted or sealed.

(4) **Striking .PDF Documents and Text-Only Entries.** The clerk may enter an order striking a .pdf document filed electronically and note in the docket entry of the stricken document that the document is “STRICKEN” if the document is (A) a duplicate of a document already filed electronically in the same case; (B) filed in the wrong case; ~~or (C) empty,~~ upside down or illegible; or (D) related to an application to clerk for refund under NENGenR 1.2(e)(2). The stricken document or entry remains visible and electronically available on the docket unless otherwise ordered by the court. The clerk may also enter an order striking a text-only entry if a court employee uploaded the entry in error.

- NENGenR 1.3(b)(1): Strike “Form” from heading since a form is no longer used.

(1) **District Court Registration** ~~Form.~~

- NENGenR 1.5(a)(1): Modify to provide that a stay is required only when the court is notified that a defendant in a civil case is the party in bankruptcy.

1.5 Bankruptcy Cases.

(a) **Reference to Bankruptcy Court.** All cases under Title 11 of the United States Code, and all proceedings arising under Title 11 or related to a case brought under Title 11, are referred to the bankruptcy court of this district under 28 U.S.C. § 157.

(1) **Civil Cases.** Upon the filing of a suggestion in bankruptcy, or other notification that a party to defendant in a civil case is a debtor in a bankruptcy case, the court issues an order staying further proceedings in the case as to the party in bankruptcy. The case may proceed as to any parties not in bankruptcy. If any party files a motion requesting referral of the case to the bankruptcy court, the case is referred to the bankruptcy court for further action. Upon receiving the referral, the bankruptcy judge requests status reports from the parties. After reviewing the status reports, the bankruptcy judge determines whether the case should proceed in bankruptcy court or be returned to district court. If the case is to be returned to district court, the bankruptcy judge files a report and recommendation concerning withdrawal of the reference. The report includes a recommendation regarding the necessity of the debtor’s participation in the case, and, if appropriate, the bankruptcy judge enters an order in the bankruptcy case granting relief from the automatic stay to allow the case to proceed with the debtor as a party.

- NEGenR 1.7(f): Revise to clarify that only the initial request to proceed pro hac vice in this court requires PACER registration.

(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 initial request~~ **An initial request to proceed pro hac vice in this court** must be submitted through PACER at the following web address: <https://www.pacer.gov/>; then, a motion filed in the applicable case. **Unless directed otherwise, attorneys making subsequent appearances pro hac vice in this court need only file a motion in the applicable case.** The clerk will verify the attorney’s admission to the bar of the state identified on the motion. An attorney admitted pro hac vice must read and acknowledge the oath in subsection 1.7(e) of this section.

Civil Rules

- NECivR 5.2: Revise to correct conflicting information about how to serve nonregistered users.

5.2 Electronic Service.

~~(a) Service on Nonregistered Party.~~

~~(1) A party filing electronically must serve a nonregistered user of the System with: (A) a paper copy of any electronically filed document, *see* Fed. R. Civ. P. 5(a), and (B) proof of the filing, defined as a copy of either (i) the associated NEF or (ii) the document bearing the header printed by the System.~~

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

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

- NECivR 7.1(a)(2)(B): Modify to specify that electronically-filed exhibits must include both a category and description.

(B) **How to File.** Evidentiary materials may be attached to the brief if the brief includes a listing of each item of evidence being filed, and the evidence citations within the brief provide hyperlinks to the evidence attached and offered in support of the factual statements. In all other cases, evidentiary materials may not be attached to the brief but rather must be

filed separately with an index listing each item of evidence being filed and identifying the motion to which it relates. **Electronically filed exhibits must include both a category (e.g., Exhibit A) and a description (e.g., Deposition of John Doe).**

- NECivR 7.1: Incorporate a provision that imposes word limits on briefs. This provision would be inserted into NECivR 7.1 as subsection (d), which would require the current subsections of the rule to be re-numbered: New subsection (d) would provide:

(d) Word Limits and Certificate of Compliance.

(1) Word Limits.

(A) Supporting and Opposing Briefs. Except with the court's prior permission, a party's supporting brief or opposing brief may not exceed 13,000 words.

(B) Reply Briefs. Except with the court's prior permission, a moving party's reply brief may not exceed 6,500 words.

(C) Text Included. All text—including the caption, headings, footnotes, and quotations—counts toward these limits.

(2) Motion to Exceed Limits. A party who seeks to exceed these word limits must first obtain the court's permission to do so by filing and serving a motion of no more than 500 words that (1) indicates whether the motion is unopposed or opposed after conferring with opposing parties; (2) explains the reason for the requested relief; and (3) states the proposed number of additional words. The court will grant such a motion only upon a showing of good cause. A party who opposes such a motion may, within 7 days, file and serve a response in opposition of no more than 500 words. A motion under this section shall not serve to extend the deadline for filing the brief, and any extension must be separately sought and granted.

(3) Certificate of Compliance. A brief shall include a certificate executed by the author affirming that the brief complies with these limits. The certificate must state how many words the brief contains. Certifying authors may rely on the word-count function of their word-processing software if they certify that the function was applied to include all text, including the caption, headings, footnotes, and quotations, and include the name and version of the word-processing software used.

(4) Consequence of Noncompliance. Any brief not in compliance with this subsection may be stricken, with or without further notice, in the sole discretion of the court. The opposing party shall not file a motion to strike based on alleged noncompliance with this subsection.

- NECivR 7.4: Add a provision stating that parties must pay applicable fees and costs directly to the state court.

7.4 Motion to Certify a Question to State Court. A party may move to certify a question of state law to the highest court of that state when it appears that (a) an issue of that state’s law is determinative of the case and (b) there is no clear controlling state law precedent. The moving party’s brief must include a statement of the precise issue to be certified. If the court grants the motion, it orders the parties to prepare and file stipulated facts, which this court forwards to the state court. **The filing fees and court costs of the state court must be paid directly to the clerk of the state court.**

- NECivR 16.1(c): Strike references to August 6, 2007, since all pro se cases from such time have been resolved.

(c) Pro Se Cases.

Pro se cases assigned to a district judge for trial ~~that are pending or filed after August 6, 2007,~~ are exempt from the disclosure and conference requirements of Federal Rule of Civil Procedure 26. Unless otherwise ordered by the court, no scheduling orders will be entered in those cases.

~~(1) — Prior Scheduling or Progression Order.~~

~~If the court has already issued a scheduling or progression order in a case pending on August 6, 2007, the parties must abide by the order.~~

~~(2)~~(1) Progression Order.

Approximately 30 days after the last defendant files an answer, the court issues a progression order addressing discovery and other issues. No discovery may take place until this progression order is entered except upon motion and order.

- NECivR 55.1(c): Change to include a provision that a party must file a motion for default judgment.

55.1 Default Judgment.

(c) Court’s Entry of Default Judgment. If a party requests a judgment from the court under Federal Rule of Civil Procedure 55(b)(2), the party must, **after** obtaining a clerk’s entry of default under Federal Rule of Civil Procedure 55(a) and Nebraska Civil Rule 55.1(a):

(1) file a motion for default judgment;

- (+2) file an affidavit stating that the party against whom the default judgment is requested is (a) not an infant or incompetent person as stated in Federal Rule of Civil Procedure Rule 55(b)(2) or (b) meets the exceptions stated in Federal Rule 55(b)(2);
 - (23) e-mail to the judge’s chambers a proposed judgment; and
 - (34) in cases in which damages must be proved, request an evidentiary hearing before the trial judge.
- NECivR 67.1(c): Strike section and replace with language in the *Guide*, which sets forth the current process used by the AO to assess CRIS and DOF fees.

(c) **Deduction Assessment of Fees.** ~~The custodian will deduct a registry fee for maintaining accounts in CRIS and an investment services fee for the management of investments. The registry fee is determined by the rates published by the Director of the Administrative Office of the United States Courts, as approved by the Judicial Conference. The investment services fee is assessed from interest earnings according to the court’s miscellaneous fee schedule.~~

Depending on the CRIS fund used, one of two fees are assessed by the AO on behalf of the courts each time interest is credited to the investment.

- (1) The CRIS Fee is assessed against deposits in the CRIS Liquidity Fund or any other funds created.
- (2) The Disputed Ownership Fund (DOF) Fee is assessed against deposits in the CRIS Disputed Ownership Fund.

Criminal Rules

- NECrimR 49.1.1: Revise to account for mandatory redaction requirements under 18 U.S.C. § 3509 (i.e., all “child victim” and “child witness” information – as those terms are defined in the statute – must be redacted from criminal transcripts).

49.1.1 Privacy.

(a) Mandatory Redaction.

See Federal Rule of Criminal Procedure 49.1 and 18 U.S.C. § 3509(d) for specific rules regarding mandatory redaction in electronic and nonelectronic filings. The following privacy rules also apply to all documents and exhibits filed in this court.

(b) Discretionary Redaction.

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

- (1) personal identifying numbers, including driver's license numbers;
- (2) employment history;
- (3) individual financial information;
- (4) proprietary or trade secret information;
- (5) information that may identify a cooperating individual;
- (6) information regarding **an adult crime victim (see 18 U.S.C. § 3509(d) for mandatory redaction requirements concerning a child victim);**
- (7) national security information;
- (8) sensitive security information as described in 49 U.S.C. § 114(s);
- (9) education records as defined by 20 U.S.C. § 1232g(a)(4)(A); and
- (10) other data as the court orders.