

2020 Proposed Amendments to Local Rules

All Rules

Amend to change the hyperlinks in the following rules because they are pointing to the wrong location:

- NEGenR 1.1(e), 1.2(h), 1.2(i), 1.3(a)
 - NECivR 7.2, 10.1(a)(2)(D)
 - NECrimR 49.2(a)(2)(D)
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General Rules

NEGenR 1.2(e)(2): 1) Amend to reflect when an application to the clerk is and is not required for the clerk to refund a fee paid electronically by credit card. 2) Amend to remove references to attorney assessments, which are no longer collected in this district.

(2) Refunds of Duplicate or Erroneous ~~Filing Fees and Attorney Assessments~~ Paid Electronically by Credit Card.

The clerk may, ~~without motion or application,~~ refund ~~duplicate or erroneous~~ filing fees, full-time attorney admission fees, and pro hac vice admission fees, ~~and attorney assessments~~ paid online by credit card ~~when the clerk's records demonstrate the fee was erroneously paid or is a duplicate. An application to the clerk is required when the clerk's records do not demonstrate a fee was erroneously paid or is a duplicate.~~ This limited authority does not otherwise amend the Judicial Conference policy prohibiting filing fee refunds.

(A) Applications to Clerk

(i) Filing Fees and Pro Hac Vice Admission Fees.

To ~~file an application with the clerk for request~~ a refund of a ~~duplicate or erroneous~~ filing fee or pro hac vice admission fee paid online with a credit card, the payor must file an application with the clerk in the applicable case explaining the circumstances and stating the requested refund amount. The clerk must authorize the refund request, deny it, or refer it to chambers.

(ii) Full-time Attorney Admission Fees.

To ~~file an application with the clerk for request~~ a refund of a ~~duplicate or erroneous~~ full-time attorney admission fee paid online with a credit card, the payor must send an application

to the clerk explaining the circumstances and stating the requested refund amount. The clerk must authorize the refund request, deny it, or refer it to chambers.

NEGenR 1.3(a)(2)(B): Strike reference to a paper copy bearing the System’s automatic header. Rule 77 of the Federal Rules of Civil Procedure states that when the clerk serves an order or judgment, the clerk must also serve “notice of the entry.” The clerk, in consultation with other courts, has determined “notice of the entry” is the NEF, not a copy of the document bearing the header from CM/ECF.

(B) Notice to Unregistered Users.

The clerk mails paper copies of orders to parties who are not registered users of the System. A paper copy ~~bears the System’s automatic header or~~ is accompanied by an NEF.

NEGenR 1.4(a)(3)(C): Amend rule to reflect magistrate judges are no longer randomly drawn in civil cases when parties do not consent. In January of 2019, the judges determined that, when a consent case needs to be reassigned to an Article III Judge, the clerk’s office should not randomly assign the magistrate judge in the referral capacity. Instead, the magistrate judge that is the presider on the case should be directly assigned as the referral judge.

(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.

NEGenR 1.7(h): Strike references to biennial assessments, which are no longer charged in this district.

(h) ~~Biennial Assessment and~~ Pro Hac Vice Admission Fee.

In civil cases the only source of funds available to reimburse appointed attorneys for reasonable expenses incurred in representing an indigent litigant is the Federal Practice Fund,

<https://www.ned.uscourts.gov/internetDocs/pom/crtplans/fedpract.pdf>. To insure that the fund will cover these expenses, the court charges a pro hac vice fee to attorneys seeking to be admitted pro hac vice., ~~and also orders each attorney enrolled in this court's bar, except attorneys employed by the federal, state, county, city, or local government, to pay an assessment. This assessment must be paid on or before March 1 every other year.~~ The proceeds of this ~~assessment and~~ fee are used to defray the cost of maintaining a roll of attorneys admitted to practice before this court and for the Federal Practice Fund. ~~Failure to pay the biennial assessment is cause to remove an attorney from the court's roll.~~ Failure to pay the pro hac vice fee is cause to deny an attorney admission to proceed pro hac vice.

Civil Rules

NECivR 7.1(b)(1)(B): Amend to provide that briefs in opposition to motions for a more definite statement be filed and served within 21 days after the motion and supporting brief are filed and served.

(B) Time for Filing.

A brief opposing a motion to dismiss, for judgment on the pleadings, **for a more definite statement**, 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.

NECivR 7.1(c): Amend to expressly provide that reply briefs should not assert new arguments without the court's leave.

(c) Replying to Opposing Briefs and Evidence.

(1) Time for Filing.

The moving party may file a reply brief and index of evidence within 7 days after the opposing party files and serves the opposing brief.

(2) Contents of Reply Brief.

The reply brief may not merely repeat the moving party's initial arguments, but rather must address factual or legal issues raised in the opposing brief. **Without leave of court, a reply brief may not raise new grounds for relief or present matters that do not relate to the opposing party's response.**

(3) Leave of Court; When Required

No party may file further briefs or evidence without the court's leave. If the moving party does not file an initial brief, it may not file a reply brief without the court's leave.

NECivR 72.2: Modify to provide that reply briefs in support of an objection to a magistrate judge's order are not allowed without the court's leave.

72.2 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 recommendation in a dispositive matter by filing a "Statement of Objections to Magistrate Judge's Order" or "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 objecting party relies on a previously or newly filed brief. 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. **The objecting party may not file a reply brief without the court's leave.**

Criminal Rules

NECrimR 18.1: Modify to allow the government to amend its initial request for place of trial at any time prior to the entry of an order scheduling the arraignment.

18.1 Place of Prosecution and Trial.

(a) Initial Request.

When filing an indictment or information, the government must request in writing on the indictment or information trial in Omaha or Lincoln. Criminal cases are held in North Platte only upon motion granted by the court. The clerk calendars the case according to the initial request or, if none is made, in the city where the clerk receives the case for filing.

(b) Subsequent Request.

(1) The government may amend its initial request for place of trial, as of right, at any time prior to entry of an order scheduling the arraignment.

(2) A party may file a motion and supporting affidavit for a change of the place of trial after the arraignment. ~~and before the scheduling or progression order sets the time for filing pretrial motions.~~

NECrimR 59.2(a): Modify to provide that reply briefs in support of an objection to a magistrate judge's order are not allowed without the court's leave.

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. ~~The objecting party may not file a reply brief without the court's leave.~~