

2022 Proposed Amendments to Local Rules

The Local Rules Committee met on August 10, 2022 and August 22, 2022 to discuss multiple proposals seeking amendments to the local rules. After thorough review, the Committee recommends that the local rules be amended as set out below. Redline versions of the local rules incorporating the proposed changes are attached.

I. General Rules

The Clerk's Office submitted a proposal suggesting these changes, which the Committee recommends adopting:

- **NEGenR 1.4(a)(4):** Amend to reflect changes to the “related case” rules.
- **NEGenR 1.7(h):** Amend in accordance with the Circuit's Rules Committee's recommendation.
- **NEGenR 1.8(a)(4):** Amend to simplify and to strike an extra space before the footnote number.
- **NEGenR 1.8(d)(1), (3), and (5):** Amend to reflect the Clerk does not obtain certified copies of judgments, but rather obtains copies and takes steps to verify they are authentic.
- **NEGenR 1.8(e)(2):** Amend to reflect the Clerk does not obtain certified copies of judgments or orders, but instead obtains copies and takes steps to verify they are authentic.
- **NEGenR 1.8(f)(1):** Amend to reflect the Clerk does not obtain certified copies of judgments or orders, but instead obtains copies and takes steps to verify they are authentic.
- **NEGenR 1.8(i)(2):** Amend to reflect the Clerk does not obtain certified copies of judgments or orders, but rather obtains copies and takes steps to verify they are authentic.

II. Civil Rules

- **NECivR 7.1**

Attorney Wes Kappelman submitted a proposal suggesting that the local rules be amended to clarify whether the word count and other requirements of NECivR 7.1 apply to social security cases. Mr. Kappelman indicated the confusion regarding the applicability of NECivR 7.1 to social security cases stems from General Order 2015-05—which is entered in social security cases. The Committee agrees that the interplay between General Order 2015-05 and NECivR 7.1 could cause confusion regarding the applicability of the local rules to social security cases. The Committee believes that a revised general order would work best to resolve this issue. The Committee recommends that language regarding word limits be added to the general order, as well as a reference to NECivR 7.1(d). A proposed revised general order for social security cases is attached.

- **NECivR 16.1**

Roger Mastalir submitted a proposal recommending that NECivR 16.1 be amended because the rule suggests that “progression orders” are only entered in pro se cases. The Committee agrees with Roger that the rule is confusing because in this district, scheduling orders under Fed. R. Civ. P. 16(b) are called “case progression orders.” The Committee proposes that NECivR 16.1 be revised to indicate that Fed. R. Civ. P. 16(b) scheduling orders are referred to as case progression orders in this district and that a document called “Order Setting Schedule for Progression of Case” is entered in pro se cases.

- **NECivR 41.2**

Roger Mastalir submitted a proposal suggesting that NECivR 41.2 be modified to clearly reflect that the rule is meant to explain possible consequences of failure to prosecute. The Committee agreed the rule should be shortened and simplified to read in its entirety: “At any time, after appropriate notice, a case not being prosecuted with reasonable diligence may be dismissed for lack of prosecution.”

III. Criminal Rules

- **NECrimR 11.1:**

Judge Nelson submitted a proposal suggesting that a subsection be added to NECrimR 11.1 which requires the government's attorney to submit a statement of the elements of any offense which a plea will be entered to the presiding judge before the plea hearing. Judge Nelson originally suggested that the statement of the elements be required to be provided 24 hours before the hearing. The Committee recommends that a slightly longer time (72 hours) be required by the rules.

- **NECrimR 12.1:**

Judge Nelson submitted a proposal recommending that a subsection be added to NECrimR 12.1 directing the parties to confer before filing a motion to continue the trial setting. The Committee recommends the addition of a subsection which provides:

Parties. Counsel for the movant must confer with the counsel for all other parties before filing a motion to continue the trial setting. The motion must state whether the requested continuance is opposed by any party.

- **NECrimR 12.3(c)(1):**

Judge Nelson submitted a suggestion that NECrimR 12.3(c)(1) be modified to add the italicized language: "*Unless otherwise ordered by the Court, all parties may respond to the motion within 7 days after the motion is filed.*" The Committee suggests this proposal be adopted.

- **NECrimR 4.1:**

The Clerk's Office submitted a proposal recommending that references to criminal complaints and supporting affidavits being filed under seal be stricken because not all criminal complaints and supporting affidavits are filed under seal. The Committee recommends this proposal be adopted.

- **NECrimR 41.2(a)**

The Clerk's Office submitted a proposal recommending that the word "insuring" be changed to "ensuring." The Committee recommends this proposal be adopted.

IV. Rule 56.1 Subcommittee

Following the 2021 local rules revision cycle, Judge Buescher created a subcommittee to study the Court's procedures pertaining to summary judgment motions/briefing. The subcommittee was chaired by David Dirgo. The subcommittee members included: Roger Mastalir (Judge Buecher's career law clerk); Jeff Mindrup (Judge Rossiter's career law clerk); Allison Balus (attorney from Baird Holm); Sheila Bentzen (attorney from Rembolt Ludtke); Marcia Washkuhn (attorney from Kutak Rock); Aaron Clark (attorney from McGrath North); and Robert Futhey (attorney from Fraser Stryker).

After extensive study, the subcommittee made the following recommendations for amendments to NECivR 56.1:

1. **Separation of a summary judgment brief from the statement/response to statement of undisputed material facts.** Many members of the subcommittee felt that it would be easier to separate factual disputes from argument about the materiality or importance of those facts if two documents were used to categorically separate them—that there would be less opportunity for argument to "slop over" into the undisputed material facts if they were segregated. This is the practice in several other districts.
2. **A statement of additional undisputed material facts for the responding party.** This is the practice in several other districts. The rationale is that a responding party who wants to point the Court to additional facts not stated by the moving party is likely to do so in responding to the moving party's statement of facts, muddying the response and leading to confusion. Providing the responding party with a clear means to assert facts of their own will make it easier for the responding party to cleanly admit or dispute the moving party's facts.
3. **Specific instructions on the contents of a responsive statement.** The suggested amendment makes clear that whatever else may be in the response to a stated fact, the response should at least make it clear what is disputed and what is not. The proposed amendment also directs the responding party to reserve argument about the materiality of an asserted fact for the argument section of their brief. (In other words: The question on summary judgment is whether there is a genuine issue of material fact, and the proposed rule is intended to focus the factual statement and response on whether there's a genuine factual dispute, and the brief on whether a fact is material.

4. **Effect of admission.** The subcommittee felt that parties may be more likely to admit facts for purposes of summary judgment if it was more expressly clear that such admissions were not judicial admissions for all purposes, and multiple members of the committee reported having been part of cases where such tactics were pursued.
5. **Remedy.** The proposed rule expressly mentions the Court's authority to enforce the rule, less as authorization and more as part of discouraging parties from trying to "call their own fouls." Everyone agreed that the point was to make following the rule easier for everyone, including the parties and the Court, and that it would be helpful to try and avoid additional motions or objections based on technical noncompliance with the rule.
6. **Extended reply brief deadline.** The members of the subcommittee agreed that with the likely additional need to for a moving party's reply to include a response to an opposing party's statement of additional material facts, the moving party will in most cases need another few days to reply.

The Local Rules Committee proposes that NECivR 56.1 be modified as recommended by the subcommittee. Implementation of the proposed changes to NECivR 56.1, will require slight changes to NECivR 7.1—which deals with motion practice in general.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

IN THE MATTER OF PROCEDURES) GENERAL ORDER NO. 2015-05
FOR SOCIAL SECURITY CASES)

IT IS ORDERED that the following procedures shall govern all actions filed on or after **January 1, 2016**, to challenge a final decision of the Commissioner of the Social Security Administration pursuant to § 205(g) of the Social Security Act, 42 U.S.C. § 405(g):

1. Within 60 days of receipt of the summons and complaint, the Commissioner shall file a response to the complaint and, if answering, shall also file a certified copy of the administrative record. If a closed case is reopened, the Commissioner shall file a certified copy of the administrative record within 60 days after the order reopening the case is entered.

2. Within 30 days after the administrative record is filed, the plaintiff shall file a motion for an order reversing the Commissioner's decision, or granting other relief, together with a supporting brief [of not more than 13,000 words](#). The brief should be in text-searchable format (see NECivR 10.1) and should contain at least the following sections:
 - a. A statement of the issues presented for review.

 - b. A concise statement of the case, describing briefly the course of the proceeding and its disposition at the administrative level.

 - c. A statement of material facts, preferably set forth in short paragraphs arranged in chronological order. All facts stated must be supported by page references to the administrative record (*e.g.*, Filing No. 10-1, at CM/ECF p. 123), and counsel are strongly encouraged to hyperlink such page references to the electronically filed administrative record.

 - d. An argument divided into subsections separately treating each issue presented for review.

 - e. A short conclusion stating the relief sought.

3. Within 30 days after the plaintiff's motion is filed, the Commissioner shall file a motion for an order affirming the Commissioner's decision, or granting other relief, together with a supporting brief [of not more than 13,000 words](#). If the Commissioner disagrees with the plaintiff's statement of issues, statement of the case, or statement of facts, or thinks the plaintiff's statement is incomplete, the Commissioner's brief should include a non-repetitive counter-statement. Any facts stated must be supported by page references to the administrative record, preferably hyperlinked. The Commissioner's brief (which should be in text- searchable format) should also contain:
 - a. An argument divided into subsections responding to the plaintiff's argument.
 - b. A short conclusion stating the relief sought.
4. Within 14 days after the Commissioner's brief is filed, the plaintiff may file a reply brief [of not more than 6,500 words](#). The reply brief may not merely repeat the plaintiff's initial arguments, but rather must address factual or legal issues raised in the Commissioner's brief.
5. No other briefs or filings opposing or supporting a motion are permitted. [Compliance with the word limits contained in this order shall be established pursuant to the procedures set forth in NECivR 7.1\(d\)](#).
6. Unless otherwise ordered, all Social Security cases will be submitted to the court for decision on the foregoing briefs, without oral argument.
7. The clerk of the court shall file a copy of this order in each Social Security case filed on or after January 1, 2016.

DATED this 16th day of November, 2015.

BY THE COURT:

sf Laurie Smith Camp

Chief United States District Judge