

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 NeGenR 1.7(d).
- (b) **Ethical Standards.** The standards of conduct governing the members of this court's bar follow.

 - (1) **Rules.** Attorneys must comply with this court's rules.
 - (2) **Conduct.** Attorneys must refrain from conduct unbecoming of a member of the bar.

 - (A) The court declines to adopt other codes of professional responsibility or ethics.
 - (B) However, and in addition to any other material, the court may consult other codes of professional responsibility or ethics to determine whether a lawyer has engaged in conduct unbecoming of a member of the bar.
- (c) **Free Press-Fair Trial Provisions.**

 - (1) **Inappropriate Statements.** A lawyer must not make an extrajudicial statement that the lawyer knows or reasonably should know will have a substantial likelihood of materially prejudicing a judicial proceeding. An extrajudicial statement, other than one permitted by Nebraska General Rule 1.7(c)(2), is likely to have a prejudicial effect when it refers to a civil matter triable to a jury, or a criminal matter or proceeding that could result in incarceration, and the statement relates to:

 - (A) the character, credibility, reputation, or criminal record of a party, suspect in a criminal investigation, or witness, or the identity of a witness, or the expected testimony of a party or witness;
 - (B) in a criminal matter that could result in incarceration, the possibility of a plea of guilty, or the existence or contents of any confession, admission, or statement given by a defendant or suspect, or that person's refusal or failure to make a statement;

- (C) the performance or results of any examination or test, or a person's refusal or failure to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;
- (D) an opinion about the guilt or innocence of a defendant or suspect in a criminal matter that could result in incarceration; or
- (E) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudicing an impartial trial.

(2) Appropriate Statements. A lawyer involved in the investigation or litigation of a matter may state without elaboration:

- (A) the general nature of the claim or defense;
- (B) information stated in a public record;
- (C) that investigation of the matter is in progress, including the general scope of the investigation, the offense or claim or defense involved, and, unless prohibited by law, the identity of the persons involved;
- (D) the scheduling or result of any step in litigation;
- (E) a request for assistance in obtaining related necessary evidence and information;
- (F) a warning of danger concerning the behavior of a person involved, when danger reasonably exists; and
- (G) in a criminal case:
 - (i) a defendant's or suspect's identity, residence, occupation, and family status;
 - (ii) information necessary to aid in a defendant's or suspect's apprehension;
 - (iii) the fact, time, and place of arrest, resistance, pursuit,

and use of weapons; and

- (iv) the identity of investigating and arresting officers or agencies, and the length of the investigation.

(d) **Admission to Practice.** Upon oral or written application, a judge or the clerk may admit to practice in this court an attorney admitted and licensed to practice before the highest court of any state. The applicant must (1) satisfactorily show good moral character, (2) take the prescribed oath, and (3) pay the prescribed fee. The showing of good moral character may be made by (1) an oral or written declaration of a member of this court's bar or (2) a certificate of the clerk of the highest court of any state in which the applicant is admitted to practice. The clerk then issues a certificate of admission and adds the applicant's name to the attorney roll.

(e) **Oath of Admission.** The following oath or affirmation is administered to an applicant for admission to this court's bar:

You do solemnly swear (or affirm) that as an officer of the United States District Court for the District of Nebraska you will demean yourself faithfully, uprightly, and according to law; and that you will support, uphold, and defend the Constitution of the United States of America.

(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 orally or in writing to a judge or the clerk to practice in this court for a particular case. The attorney must (1) submit a certificate from the clerk of the highest court of any state in which the attorney is admitted to practice, and (2) take the prescribed oath.

(g) **Attorney Appointments.** A judge may appoint any member of this court's bar to represent indigent litigants. This is an attorney's ethical obligation. Once appointed, an attorney is expected to conduct the litigation in a professionally zealous manner. An appointment does not, however, require an attorney to advance to the litigant the expenses of the litigation; expenses remain the litigant's responsibility, and the attorney may contract with the litigant for payment. Appointed attorneys may request authorization to incur expenses under the Criminal Justice Act, 18 U.S.C. § 3006A, or the Amended Plans for Administration of the Federal Practice Fund and the Federal Practice Committee, <http://www.ned.uscourts.gov/pom/crtplans/fedpract.pdf>. Appointed attorneys may not, however, contract with the litigant for the payment of attorney fees

for professional services without the court's explicit prior approval. Fees are available to appointed attorneys only as prescribed by the court or, alternatively, by the statutory framework of the litigant's claim or defense. See, e.g., 18 U.S.C. § 3006A; 42 U.S.C. § 1988.

- (h) **Biennial Assessment.** 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, <http://www.ned.uscourts.gov/pom/crtplans/fedpract.pdf>. To insure that the fund will cover these expenses, the court 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 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 this assessment is cause to remove an attorney from the court's roll.
- (i) **Nonresident Attorneys.** A judge may require an attorney who is not a resident of this district to associate with an attorney who is both a resident of this district and a member of this court's bar. This resident attorney's name must be identified on all documents filed thereafter and that attorney must continue in the case unless another resident attorney makes an appearance. The resident attorney need not be present in court during all proceedings unless the court orders otherwise. The resident attorney must have full authority to act for and on behalf of the client in all matters, including appearing at pretrial conferences, trial, or any hearings.
- (j) **Clinical Legal Education.**
 - (1) **Limited Admission.**
 - (A) **By Motion.** An eligible law student acting under a supervising attorney may be admitted to the limited practice of law in this court on the supervising attorney's motion.
 - (B) **Representation.**
 - (i) An eligible law student may represent the United States in both civil and criminal matters.
 - (ii) If a supervising attorney and the client give written consent, an eligible law student may represent the client in any civil or criminal matter.

(C) **Permitted Activities.** The eligible law student may, under the conditions stated below, interview, advise, hold consultations, and prepare and sign documents for filing. The eligible law student may participate orally in contested and uncontested matters, including trials.

(D) **Application of Rules.** The eligible law student is bound by all of this court's rules applicable to the supervising attorney in the case in which the law student is participating.

(2) **Eligibility.** To be eligible to appear and participate a law student must:

(A) be a student enrolled and in good standing in a law school approved by the American Bar Association. A law student is considered enrolled during the student's law school's summer vacation after completion of the requirements of Nebraska General Rule 1.7(j)(2)(B);

(B) have completed 4 semesters of legal study or the equivalent if the law school is not on a semester basis;

(C) file with the clerk:

(i) a law school dean's certificate stating that the student is of good moral character, meets the requirements in Nebraska General Rule 1.7(j)(2)(A) and (B), and is qualified to serve as a legal intern. The certificate must be in a court approved form and is effective for 12 months after it is filed or until the student's graduation from law school, whichever is earlier;

(ii) a certificate in a court approved form stating that the student has read and agrees to abide by this court's rules, applicable ethical standards, and other relevant federal practice rules; and

(iii) a notice of appearance in each case in which the student participates or appears as a law student intern. The notice must be in a court approved form and signed by the supervising attorney, the student intern, and the client or authorized representative;

- (D) be introduced to the court in which the student appears by an attorney admitted to practice in this court; and
- (E) receive the court's affirmative consent for the student to appear before it.

(3) Restrictions. A law student admitted under these rules may not:

- (A) request or receive compensation or remuneration of any kind directly from the client. This restriction does not prevent the supervising attorney or the attorney's law firm, a law school, a public defender, or any government agency from compensating the law student, or prevent any firm or agency from charging for its services as it may otherwise properly charge;
- (B) appear in court without the supervising attorney; or
- (C) file any documents the student prepared that were not read, approved, and signed by the supervising attorney and cosigned by the student.

(4) Notice. A supervising attorney who intends to use a student attorney under this rule in a contested matter must notify the court and opposing counsel before the matter is scheduled to begin. If the court decides the student attorney's participation would be inappropriate, the court will advise the supervising attorney and the student attorney may not appear.

(5) Termination. A student attorney's certification terminates if the student attorney (A) does not take the first bar examination after graduation, (B) takes the examination and fails it, or (C) is admitted to full practice before this court. The student attorney's law school dean or the supervising attorney may withdraw the certification at any time by submitting a notice to the clerk. The notice need not state the cause for the withdrawal. A judge may also terminate a student attorney's admission to limited practice at any time without notice, hearing, or showing of cause.

(6) Supervising Attorney. Any person acting as a supervising attorney under this rule must be admitted to practice in this court and must also:

- (A) assume personal professional responsibility for the conduct of the student being supervised;
- (B) cosign all documents prepared by the student;
- (C) advise the court of the student's participation under Nebraska General Rule 1.7(j)(4), be present with the student at all times in court, and be prepared to supplement oral or written work of the student as the court requests or as necessary to ensure the client's proper representation; and
- (D) be available for client consultation.