

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.
- (b) **Form of Motion.** Unless the pretrial motion is unopposed, see Nebraska Criminal Rule 12.2, or does not raise a substantial issue of law, the motion must be filed as provided in this rule.
- (1) **Supporting Briefs.** The court may treat a party's failure to simultaneously file a brief as an abandonment of the motion. The brief must (A) concisely state the basis for the motion, (B) cite relevant legal authority, and (C) cite to the pertinent pages of the record, affidavit, discovery material, or other evidence on which the moving party relies. A party's failure to brief an issue raised in a motion may be considered a waiver of that issue.
 - (2) **Evidence.** Unless evidence to be offered in support of a motion will be presented at an evidentiary hearing requested for that motion, when a motion raising a substantial issue of law requires the court to consider factual matters not established by the pleadings or evidence previously filed, the moving party must file additional evidentiary materials on which the party relies. Evidence must be filed under seal upon order of the court or as required under these rules. The evidence must be filed simultaneously with the motion and brief. The method for filing evidence in support of an electronically filed motion is governed by Nebraska Criminal Rule 49.2(a)(2). Evidentiary

materials may be attached to the motion or brief if the filing includes a listing of each item of evidence being filed, and the evidence citations within the filing provide hyperlinks to the evidence attached and offered in support of the factual statements. In all other cases, evidentiary materials must 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.

(3) **Discovery Motions.** A motion seeking discovery or disclosure of evidence must include a statement verifying that (A) the moving party's attorney conferred with the opposing attorney in person or by telephone in a good-faith effort to resolve the issues raised in the motion and (B) the parties were unable to reach an agreement. This showing must also state the date, time, and place of the communications and the names of all participating persons.

(4) **Request for Hearing.** If an evidentiary hearing is requested, the motion must state the estimated length of time needed for the hearing, whether an interpreter is needed, and whether any codefendant should be present or participate in the hearing.

(c) **Responsive Brief.**

(1) **Timing.** All parties may respond to the motion within 7 days after the motion is filed.

(2) **Form and Content.** The response must be in the form of a brief in opposition to the motion. A party's failure to brief an issue raised in a motion may be considered a waiver of that issue. If the response relies on evidence that has not already been filed, the responding party must comply with Nebraska Criminal Rule 12.3(b)(2) in filing its evidence.

(3) **Evidentiary Hearing.** If a party requests an evidentiary hearing, the response must state, unless the moving party has already provided the same information, the information required in Nebraska Criminal Rule 12.3(b)(4).

(d) **Court-Ordered Evidentiary Hearing.**

(1) **Order.** The court determines whether an evidentiary hearing is required on a pretrial motion. Nothing in this rule limits the court's authority to schedule an evidentiary hearing on any issue to assist the

court in administering justice or to preserve the parties' right to an evidentiary hearing under the laws or Constitution of the United States.

- (2) Notice to Court.** If the court orders a hearing sua sponte, the parties must promptly advise the court of the information required in Nebraska Criminal Rule 12.3(b)(4).