

7.1 Motion Practice.

All miscellaneous motions, applications, requests, and petitions are filed and considered under this rule. Unless this rule states otherwise, a party who does not follow this rule may be considered to have abandoned in whole or in part that party's position on the pending motion.

(a) Supporting a Motion.

A moving party must state the basis for the motion and the specific relief requested.

(1) Supporting Brief.

(A) Substantial Issue of Law.

A motion raising a substantial issue of law must be supported by a brief filed and served together with the motion. The brief must be separate from, and not attached to or incorporated in, the motion or index of evidence. The brief must concisely state the reasons for the motion and cite to supporting authority. A party's failure to brief an issue raised in a motion may be considered a waiver of that issue. The brief must not recite facts unless supported as described in Nebraska Civil Rule 7.1(a)(2).

(B) No Substantial Issue of Law.

A brief is not required if (i) a motion raises no substantial issue of law and (ii) relief is within the court's discretion. Examples include motions to which all parties consent, to withdraw as counsel to a party, for an extension of time, or for leave to proceed in forma pauperis. If the court concludes that a motion raises a substantial issue of law, however, it may treat the failure to file a brief as an abandonment of the motion.

(2) Evidence and Evidence Index.

(A) Factual Support.

If a motion requires the court to consider any factual matters not stated in the pleadings, when filing the supporting brief the moving party must also file and serve supporting evidentiary materials not previously filed.

(B) How to File.

Evidentiary materials in support of a brief or statement of undisputed material facts must be filed separately with an evidence 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 or Exhibit 1) and a description (e.g., Deposition of John Doe), identified in the evidence index.

(C) Required Affidavit.

An affidavit must identify and authenticate any documents offered as evidence. The affidavit must be made on personal knowledge, set forth facts that would be admissible in evidence, show affirmatively that the affiant is competent to testify to the matters stated, and identify the related motion. Evidentiary materials authenticated by the affidavit must be filed separately in accordance with NECivR 7.1(2)(B), and may not be filed in the same document as the affidavit.

The affidavit must identify the evidence being authenticated using the relevant exhibit category provided in the evidence index (e.g., Exhibit A or Exhibit 1). Affidavits may, but are not required to, identify evidence using the description, so long as the exhibit category is also present (e.g., Exhibit A (Deposition of John Doe)).

(D) Citations to Evidence.

A factual assertion in the motion and the supporting brief must cite to the pertinent page of the pleading, affidavit, deposition, discovery material, or other evidence on which the moving party relies.

For already-filed evidence, citations must indicate the correct docket number and the docket page number (e.g., Filing no. 1-2 at 7). Citations should not include the "Page ID" number.

For contemporaneously filed evidence, citations must identify the exhibit category from the index and the page number (e.g., Exhibit A at 7).

Citations may, but are not required to, include the description of the evidence, so long as the exhibit category is also present

(e.g., Exhibit A (Deposition of John Doe) at 7; Filing no. 1-2 (Deposition of John Doe) at 7).

(b) Opposing a Motion.

(1) Opposing Brief.

(A) Form and Content.

The party opposing a motion must not file an "answer," "opposition," "objection," or "response," or any similarly titled responsive filing. Rather, the party must file a brief that concisely states the reasons for opposing the motion and cites to supporting authority. The brief must not recite facts unless supported as stated in Nebraska Civil Rule 7.1(b)(2).

(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.

(C) Effect of Failure to File.

Failure to file an opposing brief is not considered a confession of a motion but precludes the opposing party from contesting the moving party's statement of facts.

(2) Evidence and Evidence Index.

(A) Factual Support.

When filing the opposing brief, the opposing party must also file and serve supporting evidentiary material not previously filed. A factual assertion in the opposing brief must cite to the pertinent page of the pleading, affidavit, deposition, discovery material, or other evidence on which the opposing party relies.

(B) How to File.

Evidentiary materials may be attached to the brief, or the statement respecting undisputed material facts in response to a summary judgment motion, 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.

(C) Required Affidavit.

An affidavit must identify and authenticate any documents offered as evidence. The affidavit must be made on personal knowledge, set forth facts that would be admissible in evidence, show affirmatively that the affiant is competent to testify to the matters stated, and identify the related motion.

(c) Replying to Opposing Briefs and Evidence.

(1) Time for Filing.

A reply brief and index of evidence in support of a motion for summary judgment may be filed within 14 days after the opposing party files and serves the opposing brief. A reply brief in support of any other motion must be filed and served 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.

(d) Word Limits, Generative AI, 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) Generative Artificial Intelligence.

All parties are responsible for the accuracy and reliability of their legal briefing—including quotations, citations, paraphrased assertions, and legal analysis—regardless of whether generative artificial intelligence programs drafted any portion of that filing. See Fed. R. Civ. P. 11(b). All parties are expected, if using generative artificial intelligence programs, to verify the contents of their filings.

(4) Certificate of Compliance.

A brief shall include a certificate executed by the author affirming that the brief complies with the requirements of this subsection.

(A) Word 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.

(B) Generative Artificial Intelligence.

The certificate must state that no generative artificial intelligence program was used in drafting the document, or that to the extent such a program was used, a human signatory of the document verified the accuracy of all generated text, including all citations and legal authority.

(5) 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. A material misrepresentation in the certificate of compliance may result in striking the document and sanctions against the person signing the document. The opposing party shall not file a motion to strike based on alleged noncompliance with this subsection.

(e) Request for Oral Argument or Evidentiary Hearing.

Any request for oral argument or for an evidentiary hearing by a moving party must be included in the motion or else presented by a separate motion filed no later than the deadline for filing a reply brief. Any request for oral argument or for an evidentiary hearing by an opposing party must be presented by a motion filed no later than the deadline for filing an opposing brief. In general the court does not allow oral argument or evidentiary hearings on motions. The party requesting oral argument or an evidentiary hearing must state (1) why argument or a hearing is necessary and (2) an estimate of the time required for the argument or hearing.

(f) Request to Present Oral Testimony.

A party failing to request the opportunity to present oral testimony consents to the motion's submission without oral testimony. No oral testimony is allowed without the court's prior leave.

(g) Submission of Motion.

Unless the court grants leave for oral argument, a motion is submitted on the briefs and any evidence filed when the time limit specified in Nebraska Civil Rule 7.1(c) expires.

(h) Procedures for Summary Judgment Motions.

See Nebraska Civil Rule 56.1.

(i) Extensions of Time for Filing or Responding to Motions.

See Nebraska Civil Rule 6.1.

(j) Discovery Motions.

To curtail undue delay in the administration of justice, this court only considers a discovery motion in which the moving party, in the written motion, shows that after personal consultation with opposing parties and sincere attempts to resolve differences, the parties cannot reach an accord. This showing must also state the date, time, and place of the communications and the names of all participating persons. "Personal consultation" means person-to-person conversation, either in person or on the telephone. An exchange of letters, faxes, voice mail messages, or e-mails is also personal consultation for purposes of this rule upon a showing that person-to-person conversation was attempted by the moving party and thwarted by the nonmoving party.

(k) Conference Telephone Calls.

The judge may conduct a motion hearing by telephone or video conference.