

1.4 Assignment of Judges.

(a) District Court.

(1) Dockets.

As determined by the majority of the active district judges, the court maintains various dockets generally defined by geography or the nature of the case. Not all judges participate in each docket. A judge who participates in a docket may not necessarily receive cases in the same proportion as other participating judges. The chief judge, after consulting with the other active district judges, determines the judges selected to participate in one or more of these dockets and the proportion of participation.

(2) Assignment Method.

Unless these rules state or the chief judge directs otherwise, the clerk randomly assigns cases from each docket to the participating judges. However, under the chief judge's direction after consulting with the other active district judges, a magistrate judge may be paired with a district judge on a nonrandom basis. See NECivR 73.1 (assignment of civil cases to magistrate judges for trial). In interpreting this rule, the chief judge's decision is final.

(3) Reassignments.

(A) District Judges.

The chief judge, with the assigned district judge's consent, may reassign a case to another district judge due to personal disqualification of the assigned district judge or other good cause. If the assigned district judge is disabled and unable to consent to reassignment, the chief judge may reassign the case without the district judge's consent. If the chief judge is disqualified or disabled, the reassignment authority passes to the active status district judge then available and next senior in service. If all active status district judges are disqualified or disabled, the reassignment authority passes to the senior status district judge then available and most senior in service. If all district judges are disqualified or incapacitated, and if a visiting judge has been designated for service in this district, the reassignment authority passes to the visiting judge.

(B) Magistrate Judges.

The assigned district judge may reassign the reference on the case from one magistrate judge to another magistrate judge due to the assigned magistrate judge's personal disqualification or other good cause.

(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 magistrate judge to the case for judicial supervision and processing of pretrial matters.

(D) Visiting Judges.

The assigned district judge or the chief judge, with the consent of the assigned district judge, may reassign a case to a visiting district judge designated for service in this district. If the assigned district judge is disabled and unable to consent to reassignment, the chief judge may reassign a case without the district judge's consent.

(4) Related Cases.

(A) Notification.

Attorneys of record must notify the court that a case is or may be related to another pending or closed case in this court. Failure to notify the court may result in sanctions on attorneys and parties. Accordingly,

- (i) in civil cases, on the "open unassigned case" screen, the filer should enter "USDC-NE" in the "other court" name field and the number of the related case in the "other court number" field;

- (ii) in criminal cases, the filer should enter the number of the related case in the "Related to" field on the criminal cover sheet; and
- (iii) after filing, an attorney of record who learns that a case is or may be related to another pending or closed case in this court must inform the clerk and the chief judge by electronically filing a notice of related cases.

(B) Assignments.

- (i) If a case is noted as related on the criminal cover sheet or on the civil case opening screen when filed, the clerk assigns it to the district judge who handled the earlier pending or closed case, and the clerk docketed a public text-only remark stating that the case was noted as related on the criminal cover sheet or civil case opening screen.
- (ii) If at any time after case opening and judge assignment a judge assigned to a case determines that the case is or may be related, the judge informs the chief judge. If the chief judge determines the cases are related, the chief judge orders reassignment of the higher numbered case(s) to the district judge with the lowest numbered case unless good cause exists for not ordering the reassignment.

(C) "Related" Cases Defined.

- (i) Open or closed criminal cases are related when some or all of the charges arise from the same general set of events. A new criminal case is related to a previous open or closed criminal case involving the same defendant when the new case arose during a period of incarceration, supervised release, probation or pretrial release based on or in the course of the previous case. A superseding indictment or information is related to the superseded indictment or information.
- (ii) Open or closed bankruptcy appeals are related when they involve some or all of the same property or the same debtor(s).

(iii) Open or closed civil cases are related when they involve some or all of the same issues of fact, arise out of the same transaction, or involve the validity or infringement of the same patent.

(iv) Civil cases are not related to criminal cases.

(D) Challenges.

Motions challenging operation of this rule under Nebraska General Rule 1.4(a)(7) must be made within 14 days of a defendant's original answer date.

(5) The Nebraska Docket.

(A) Applicable Cases.

Except for cases challenging the death penalty under 28 U.S.C. § 2254, cases in which North Platte is designated as the place of trial, and cases involving social security or bankruptcy appeals, civil cases are placed on one docket called the "Nebraska docket" if:

- (i) the State of Nebraska or any of its agencies are named defendants in the original complaint;
- (ii) a named defendant in the original complaint is being sued for acts or omissions that allegedly occurred while the defendant was allegedly an employee of the State of Nebraska or one of its agencies;
- (iii) the plaintiff is the United States of America;
- (iv) the plaintiff is pro se when the case is filed; or
- (v) the plaintiff is a prisoner in state custody when the case is filed.

(B) Application Notes.

- (i) An "agency" of the State of Nebraska does not include local political subdivisions such as cities or counties, natural resource districts, public power districts, or similar entities.

- (ii) Motions filed under 28 U.S.C. § 2255 are not civil cases for purposes of this rule.
- (iii) If the clerk does not know if a case is properly placed in the Nebraska docket, the clerk may ask the chief judge, whose decision is final.

(C) Place of Trial.

The district judge handling a Nebraska docket case may try the case in Omaha or Lincoln, regardless of the place designated for trial, after considering the convenience of the parties, lawyers, witnesses, and other related matters.

(D) Jury Selection.

All juries in Nebraska docket cases are selected from the jury pool used where the case is tried.

(6) Death Penalty Cases.

(A) Location of Proceedings.

The assigned district judge may decide the location of all proceedings, regardless of the location designated for trial.

(B) Stay of Execution.

If the assigned district judge is absent or unavailable to consider a motion for a stay of execution, any district judge may rule on the motion.

(C) Judge Assignment.

When assigning a death penalty habeas corpus case, the clerk will exclude from random assignment any judge who has two or more pending death penalty habeas corpus cases. This rule has been adopted to conform to the policy of the Eighth Circuit Judicial Council's Death Penalty Committee, which provides that "no district judge should be charged with the disposition of more than two death penalty habeas cases at

any one time."¹

(7) Challenges.

All motions challenging the operation or seeking avoidance or restraint of this rule must be made to the chief judge or, if the chief judge is disqualified or disabled, to the district judge then available and next senior in service.

(8) Sanctions.

No person may (a) reveal the sequence of district or magistrate judges' names within a docket or any rotation randomly determined; (b) assign any case other than as stated in this rule or ordered by the court; or (c) directly or indirectly cause, or attempt to cause, any person to (i) reveal the sequence of district or magistrate judges' names within a docket or rotation randomly determined, or (ii) assign any cases other than as stated in this rule or ordered by the court. The court will sanction any person violating this provision with criminal contempt.

(b) Bankruptcy Court.

(1) Assignment Method.

From time to time, the bankruptcy judges adopt a general policy concerning case assignment for implementation by the clerk. The general policy varies on a case-by-case basis at the judges' discretion based on a number of factors including the judges' relative workload, conflicts of interest, and recusals. When a petition is filed, the bankruptcy court clerk assigns the case to a judge.

(2) Subsequent Filings.

After the bankruptcy court assigns a case, subsequent documents must be filed in the bankruptcy court clerk's office in the assigned judge's location.

(3) Place of Hearings.

¹ In a Memorandum dated May 19, 2017, Eighth Circuit Judge Bobby Shepherd, in consultation with the Ad Hoc Committee on Death Penalty Cases, explained that a death penalty habeas case on appeal does not count toward a judge's two cases. In addition, the policy does not apply to non-habeas cases such as ancillary proceedings or other civil cases challenging the method of execution.

The clerk and the assigned judge determine the location of hearings in a bankruptcy case.

(4) Reassignments.

If the assigned bankruptcy judge is disabled and unable to consent to the reassignment of a case, the chief bankruptcy judge may reassign the case without consent. If the chief bankruptcy judge is disqualified or disabled, the reassignment authority passes to the next senior bankruptcy judge. If all bankruptcy judges are disqualified or disabled, the reassignment authority passes to the chief district judge.