UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

GENERAL RULES

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

GENERAL RULES

1.1 Introduction

(a) Scope; Title; Citation.

The Court adopts the General Rules of the United States District Court for the District of Nebraska, cited as "NEGenR ___," under Federal Rule of Civil Procedure 83 and Federal Rule of Criminal Procedure 57. These rules apply to civil and criminal court proceedings in this district and regulate the conduct of court personnel, practicing attorneys, parties, and members of the public and the press.

(b) Other Local Rules.

The court has separate local rules of procedure for civil, criminal, and bankruptcy cases adopted under Federal Rule of Civil Procedure 83, Federal Rule of Criminal Procedure 57, and Federal Rule of Bankruptcy Procedure 9029. The local rules of the United States Bankruptcy Court for the District of Nebraska are available at the bankruptcy clerk's office and on that court's website at https://www.neb.uscourts.gov/.

(c) Deviations from Rules or Procedures.

Notwithstanding contrary authority, in the interest of justice a judge may deviate from this court's rules or procedures. A deviation supersedes every other rule or procedure.

(d) Definitions.

The following definitions apply.

(1) "Judge" means any district or magistrate judge serving this district.

(2) "Court" means "judge" or, collectively, the judges of this district.

(3) "Clerk" means the clerk or a deputy clerk of this district.

(4) "Marshal" means the United States Marshal or a deputy marshal of this district.

(5) "Electronic filing" or “electronically file” means uploading a document directly from a registered user’s computer, using the court’s Internet-based System to file that document in the court’s case file. Electronic filing also includes uploading to the System done by the clerk of a document given to the court in paper format or as a .pdf (“Portable Document Format”) file. Sending a document to the court via electronic mail (e-mail) or facsimile transmission (fax) is not electronic filing.

(6) “Filing” or “file” means “electronic filing” or “electronically file” unless otherwise specified. A paper document is considered filed on the date the clerk receives and file stamps it rather than the date the clerk uploads it to the System.

(7) “NEF” means “Notice of Electronic Filing.”

(e) Availability.

Paper copies of all district court local rules are available from the district court clerk. The court’s rules can also be accessed and downloaded from the court’s website, https://www.ned.uscourts.gov/attorney/local-rules.

1.2 General Information.

(a) Court Sessions.

In Omaha and Lincoln, the court is in continuous session on business days throughout the year. In North Platte, the court is in session during periods set by order as business requires.

(b) Clerk's Official Station.

The clerk's official station is in Omaha. The clerk appoints deputy clerks stationed in Omaha and Lincoln.

(c) Court Personnel's Release of Information.

Court personnel must not disclose without the court's authorization any case information not included in the court's public records.

(d) Fee Prepayment.

Before providing a service, the clerk requires prepayment of all collectible fees prescribed by statute or the Judicial Conference of the United States. The clerk may require in advance a deposit estimated to cover the requested service. Any unused part of the deposit is returned when the proceeding ends or the service is completed, if the party owes no other fees.

(1) Method of Paying Filing Fees.

A fee required for filing a document in district court is payable to the clerk by credit/debit card, check, money order, or cash. The court does not keep electronic billing or debit accounts for lawyers or law firms.

(e) Credit Card Fee Payment.

(1) In General.

Fee information is available from the clerk and on the court's website at https://www.ned.uscourts.gov/fees.

(2) Refunds of Duplicate or Erroneous Filing Fees and Attorney Assessments Paid Electronically by Credit Card.

The clerk may refund duplicate or erroneous filing fees, full-time attorney admission fees, pro hac vice admission fees, and attorney assessments paid online by credit card. This limited authority does not otherwise amend the Judicial Conference policy prohibiting filing fee refunds.

(A) Applications to Clerk

(i) Filing Fees and Pro Hac Vice Admission Fees.

To request a refund of a duplicate or erroneous filing fee or pro hac vice admission fee paid online with a credit card, the payor must file an application with the clerk in the applicable case explaining the circumstances and stating the requested refund amount. The clerk must authorize the refund request, deny it, or refer it to chambers.

(ii) Full-time Attorney Admission Fees.

To request a refund of a duplicate or erroneous full-time attorney admission fee paid online with a credit card, the payor must send an application to the clerk explaining the circumstances and stating the requested refund amount. The clerk must authorize the refund request, deny it, or refer it to chambers.

(B) Review of Denial.

If the clerk denies a refund request, the payor has 7 days to file a motion asking the chief judge to review the denial.

(C) Payment of Refund.

The clerk processes an authorized refund through the electronic credit card system, pay.gov. If the payor's credit card is no longer valid, a refund will be sent to the payor by check. The clerk does not give cash refunds.

(f) Miscellaneous Fees.

A schedule of miscellaneous fees is available on the court's website at https://www.ned.uscourts.gov/fees or from the clerk.

(g) Court Reporting Fees.

The court reporting fee schedule is available on the court's website at https://www.ned.uscourts.gov/fees.

(h) Mediation.

The court's mediation plan is available on the court's website at https://www.ned.uscourts.gov/plans-and-policies>"Mediation Plan" or from the clerk. Parties settling a case should advise the court if they engaged in successful or unsuccessful mediation and provide the mediator's name and the date(s) of the mediation.

(i) Judicial Misconduct and Disability Complaints.

Information on filing complaints about a federal judge's behavior is on the Eighth Circuit's website at https://www.ca8.uscourts.gov/judicial-complaints.

(j) Persons with Communications Disabilities.

The court is required to provide reasonable accommodations to persons with communications disabilities. Contact the clerk's office at 402.661.7307 to request accommodations.

1.3 Case Filings; Appearance and Withdrawal of Attorneys; Pro Se Litigants.

(a) Electronic Case Filing ("CM/ECF").

The district court uses an electronic case filing ("CM/ECF") system ("System"). Failure to comply with CM/ECF procedures may result in sanctions on an attorney or party. Information about CM/ECF is on the court's website at https://www.ned.uscourts.gov/attorney/electronic-case-filing.

(1) Public Access to the System.

Public remote electronic access to the System for viewing purposes is limited to subscribers of the Public Access to Court Electronic Records ("PACER") system, https://www.pacer.psc.uscourts.gov. The Judicial Conference of the United States ruled that a user fee must be charged for remotely accessing certain detailed case information including docket sheets and filed documents but excluding written opinions and general information.

(A) Exemptions from PACER User Fees.

The PACER user fee does not apply to:

(i) official recipients of electronic documents, *i.e.*, parties legally required to receive service or to whom service is directed under the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure. Official recipients receive the initial electronic copy of a document free to download as they see fit, but if they remotely access the document again, they are charged the standard PACER user fee;

(ii) persons to whom the court grants an exception, *see* https://pspsc.psc.ao.dcn/documents/epafee_sched.pdf; or

(iii) individuals who access the electronic docket and documents filed in the System at the clerk's office during regular business hours. Paper and certified copies of electronically filed documents may be purchased from the clerk for a fee collected under 28

U.S.C. § 1914.

(B) Restrictions on Remote Access.

(i) Sealed Documents.

A sealed case or document is placed on the System but is not remotely accessible to the public or available at the terminals in the clerk's office unless the court orders the case or document unsealed. *See* NECivR 7.5; NECrimR 12.5.

(ii) Restricted Access Documents.

Remote access to documents containing personal identifying information protected by the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899 (Dec. 17, 2002) (codified at 5 U.S.C. §§ 3701-3707 and scattered sections) ("E-Government Act"), is restricted to case participants and court users. Public access to these documents is not allowed at terminals in the clerk's office. *See* NECivR 5.3; NECrimR 49.1.1.

(iii) Administrative Documents and Records.

Public access will not be available to the court's internal administrative documents and records filed on the System.

(2) Electronic Orders and Judgments.

All court orders, judgments, and proceedings are filed under these rules, resulting in entry on the clerk's docket. Court personnel file signed orders electronically. Any order or other court-issued document filed electronically with an electronic signature has the same effect as an originally signed, nonelectronically filed document. Orders issued as "text-only" docket entries (*i.e.*, without an attached .pdf document) are also official and binding.

(A) Oral Orders.

Copies of oral orders are distributed electronically as minutes, text-only orders, or .pdf documents.

(B) Notice to Unregistered Users.

The clerk mails paper copies of orders to parties who are not registered users of the System. A paper copy bears the System's automatic header or is accompanied by an NEF.

(3) Filing Errors.

Once a document is submitted and becomes part of the case docket, only the clerk may correct the document. The System does not allow the filing party to change a document or its docket entry once a transaction is accepted. If an error is discovered, the filing party should immediately contact the clerk with the relevant case and document numbers. If necessary, the clerk notifies a party to refile a document or file a motion to strike.

(4) Striking .PDF Documents and Text-Only Entries.

The clerk may enter an order striking a .pdf document filed electronically and note in the docket entry of the stricken document that the document is "STRICKEN" if the document is (A) a duplicate of a document already filed electronically in the same case; (B) filed in the wrong case; (C) empty, upside down or illegible; or (D) related to an application to clerk for refund under NEGenR 1.2(e)(2). The stricken document or entry remains visible and electronically available on the docket unless otherwise ordered by the court. The clerk may also enter an order striking a text-only entry if a court employee uploaded the entry in error.

(5) Technical Failures.

A filing party whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.

(b) Registration for CM/ECF

(1) District Court Registration.

Before electronically filing a document with the court, an attorney must register with PACER at the following web address: https://www.pacer.gov/. A pro se party, *i.e.*, one not represented by an attorney, to a pending civil case may register with PACER at the following web address: https://www.pacer.gov/. Registration constitutes a party's consent to electronic service and waiver of the

right to service by personal service or first class mail. Once registration is complete, a login and password are issued by PACER and serve as part of the user's electronic signature on documents filed on the System. *See* NECivR 11.1; NECrimR 49.2.

(A) An attorney must not knowingly facilitate the use of the attorney's password by anyone other than an authorized agent. If an attorney believes that a password's security is compromised and that a threat to the System exists, the attorney must immediately change the password.

(B) Once registered, an attorney is responsible for all documents filed with the attorney's password.

(C) An attorney admitted pro hac vice must register for a password with PACER at https://www.pacer.gov/.

(D) If a pro se party retains an attorney who appears in a pending action, only the attorney receives future NEFs.

(2) Withdrawal from System.

A registered user may withdraw from the System by sending the clerk a written notice of withdrawal, either on paper or electronically. Upon receipt, the clerk immediately terminates access in the System. Withdrawal does not constitute authorization to file cases or documents nonelectronically.

(a) Privacy Policy.

Federal rules support compliance with the E-Government Act. *See* Fed. R. Civ. P. 5.2; Fed. R. Crim. P. 49.1. Parties and their attorneys are responsible under the rules for preventing the disclosure of certain confidential information in case filings. The clerk does not review case filings for compliance or independently redact or seal noncomplying filings.

(d) Attorney Appearances.

An attorney appears in a case by (1) filing a written entry of appearance or signed pleading or (2) personally appearing at a hearing. An attorney who orally enters an appearance must promptly file and serve a written appearance. A written appearance or pleading signed by an attorney must show the attorney's bar number, office address, telephone number, fax number, and e-mail address.

(c) Change of Address, Telephone, Fax, or E-Mail.

An attorney whose address, telephone number, fax number, or e-mail address changes during a pending case must file and serve notice of the change within 30 days.

(d) Withdrawal of Appearance.

An attorney of record may withdraw upon showing good cause, but is relieved of duties to the court, the client, and opposing attorneys only after (1) filing a motion to withdraw, (2) providing proof of service of the motion on the client, and (3) obtaining the court's leave to withdraw.

(e) Proceedings by Persons Without an Attorney.

Unless stated otherwise, parties who proceed pro se are bound by and must comply with all local and federal procedural rules.

(f) Attorney Appointments.

Any indigent pro se civil litigant may file a motion requesting appointment of an attorney. If filed with an original complaint, the motion must be a separate document. Attorneys are appointed under statute, court rule, or in the court's discretion. If an appointed attorney moves to withdraw, the court may appoint a substitute attorney. This rule does not limit the court's authority to appoint an attorney on its own motion.

(g) Communication with Court.

Once an attorney is appointed or retained, all further documents and other communications with the court must be submitted through the attorney, unless the court permits otherwise. Any further pro se documents or other communications submitted to the court may be (1) returned unfiled to the sending party or (2) forwarded to the sending party's attorney.

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 randomly-drawn 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) 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; and

(ii) 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 immediately inform the clerk and the chief judge by electronically filing a notice of related cases.

(B) Assignments.

If a case is noted as related on the cover sheet or on the case opening screen when filed, the clerk assigns it to the district judge who handled the earlier pending or closed case. If the court or the clerk learns after filing that cases are or may be related, the chief judge must be informed as soon as possible. If the chief judge determines the cases are related, the higher numbered case(s) are reassigned 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.

(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.

[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.

(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.

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.

1.5 Bankruptcy Cases.

(a) Reference to Bankruptcy Court.

All cases under Title 11 of the United States Code, and all proceedings arising under Title 11 or related to a case brought under Title 11, are referred to the bankruptcy court of this district under 28 U.S.C. § 157.

(1) Civil Cases.

Upon the filing of a suggestion in bankruptcy, or other notification that a defendant in a civil case is a debtor in a bankruptcy case, the court issues an order staying further proceedings in the case as to the party in bankruptcy. The case may proceed as to any parties not in bankruptcy. If any party files a motion requesting referral of the case to the bankruptcy court, the case is referred to the bankruptcy court for further action. Upon receiving the referral, the bankruptcy judge requests status reports from the parties. After reviewing the status reports, the bankruptcy judge determines whether the case should proceed in bankruptcy court or be returned to district court. If the case is to be returned to district court, the bankruptcy judge files a report and recommendation concerning withdrawal of the reference. The report includes a recommendation regarding the necessity of the debtor's participation in the case, and, if appropriate, the bankruptcy judge enters an order in the bankruptcy case granting relief from the automatic stay to allow the case to proceed with the debtor as a party.

(2) Criminal Cases.

Upon notice to the court that a defendant in a criminal case is a debtor in a bankruptcy case, the district court may refer to the bankruptcy court questions about: restitution; forfeiture of assets, which may be property of the bankruptcy estate; or other monetary penalties. The bankruptcy judge responds with a recommendation related to the estate issues.

(b) Withdrawal of Reference.

The district court may withdraw, in whole or in part, a reference under this rule on its own or a party's timely motion.

(1) Motions for Withdrawal.

Motions for withdrawal of reference must be filed with the bankruptcy court clerk. The district court refers motions for withdrawal of reference to the bankruptcy court for a report and recommendation, except as stated in Nebraska General Rule 1.5(b)(7).

(2) Report and Recommendation; Objections.

When a motion for withdrawal of reference is filed, a bankruptcy judge after notice and hearing files a report and recommendation with the bankruptcy and district courts. The district court may adopt the report and recommendation if the parties file no objections within 14 days of service. Parties must file any objections to the report and recommendation with both the bankruptcy and district courts.

(3) Assignment of District Judge.

When the bankruptcy judge files the report and recommendation with the district court, the motion for withdrawal of reference and the bankruptcy court's report and recommendation are assigned to a district judge under Nebraska General Rule 1.4(a)(2) and any applicable general order regarding assignment of district judges. The assigned district judge rules on the motion to withdraw. A motion for withdrawal of reference does not stay any bankruptcy matter pending before a bankruptcy judge, unless a district judge or a bankruptcy judge issues a stay.

(4) Hearing on Objections.

If the assigned district judge holds a hearing on objections to the report and recommendation, the order setting the hearing is filed in both the district and bankruptcy courts.

(5) Order of Withdrawal.

If the district court withdraws the reference, the order is filed in both the district and bankruptcy courts. The district court clerk notices interested parties. When the bankruptcy court clerk receives a withdrawal order, the bankruptcy court clerk delivers to the district court clerk a transmittal letter with a list of the bankruptcy or adversary documents necessary for the district court proceeding.

(6) Denial of Motion.

If the district court denies a motion for withdrawal of reference, the order is filed in both the district and bankruptcy courts.

(7) Bankruptcy Judges Disqualified or Incapacitated.

If all bankruptcy judges are disqualified or incapacitated, the bankruptcy court clerk refers motions for withdrawal of reference to the district court clerk. The motion for withdrawal of reference is then assigned to a judge under Nebraska General Rule 1.4(a)(2) and any general order regarding assignment of judges. After conducting any necessary proceedings, the assigned judge rules on the motion to withdraw.

(c) Appeals from Bankruptcy Court Decisions.

Appeals from bankruptcy court decisions must comply with 28 U.S.C. § 158 and federal and local bankruptcy rules.

(d) Jury Trials.

If the right to a jury trial applies in a bankruptcy proceeding, the district judges specifically designate the bankruptcy judge to exercise the jurisdiction to conduct jury trials in bankruptcy cases and adversary proceedings with the consent of all parties.

1.6 Public Security and Conduct in Courthouse and Courtroom.

(a) General Conduct.

No person may loiter, sleep, or act in an abusive or disorderly manner.

(b) Entering and Leaving Building, Courtroom, or Corridor.

Persons must enter or leave the building, courtroom, or building corridor only through doorways designated by court security officers. Persons may be required to show court security officers a valid photo ID to enter the courthouse.

(c) Weapons and Destructive Devices.

No person, except federal, state, county, and city law enforcement officers and federal probation and pretrial services officers authorized to carry weapons in performing their duties, may possess or cause to be brought into a courthouse any weapon, destructive device, or related component.

The marshal may prohibit or otherwise regulate firearm possession by other law enforcement officers and federal probation and pretrial services officers within a courthouse. Except for law enforcement officers and federal probation and pretrial services officers with specific, prior authorization from the marshal to possess or carry a weapon in the courthouse, all persons, including attorneys, are subject to (1) a search of their persons and possessions for any weapon, destructive device, or related component, and (2) a security officer's determination that persons do not possess any weapon, destructive device or related component, as a condition to enter the courthouse.

(d) Food and Tobacco.

Unless the presiding judge authorizes otherwise, no person may eat food or use tobacco in a courtroom.

(e) Electronic Devices.

The following provisions govern the use and admission of electronic devices into the courthouse. Electronic devices covered by these provisions include, but are not limited to: cellular phones; smartphones (iPhones, Android devices, and other mobile phones that perform many of the functions of a computer); tablets; laptop computers; devices that wirelessly connect to and pair with computers and smartphones to transmit data (including smart watches, earpieces, headphones, and fitness trackers); audio recorders; still cameras; and video cameras.

(1) Admission of Electronic Devices.

Only federal employees with agency identification, attorneys with bar cards, and jurors with summonses may bring an electronic device into the courthouse. Other visitors must leave their electronic devices outside the courthouse or with the court security officers at the security screening station, unless allowed by a judge assigned to the case.

(2) Cameras and Other Image/Video Electronic Devices.

(A) Use Prohibited.

No person may photograph, record, videorecord, televise, or cause to be photographed, videorecorded, televised, or send images or sounds of any person or thing in a courtroom, jury room, building corridor on the floor on which a courtroom or

jury room is located, or judge's chambers. The term "televise" includes Internet broadcasting.

(B) Placement Prohibited.

No person may place or cause to be placed any electronic device at any location from which it is capable of photographing, video recording, or televising any person or thing in a courtroom, jury room, building corridor on the floor on which a courtroom or jury room is located, or judge's chambers. Court security officers may prohibit related equipment from being brought into the courthouse.

(3) Sound Recording and Broadcasting Electronic Devices.

(A) Use Prohibited.

No person may record or broadcast or cause to be recorded or broadcast any sounds of proceedings or take any recording or broadcasting equipment into a courtroom, a jury room, or a judge's chambers. The term "broadcast" includes Internet broadcasting.

(B) Placement Prohibited.

No person may place or cause to be placed any electronic device at any location from which the device could record or broadcast sounds of proceedings in a courtroom, jury room, or judge's chambers. Court security officers may prohibit related equipment from being brought into the courthouse.

(C) Exemptions.

This subparagraph (3) does not apply when:

(i) the presiding judge authorizes electronic means to present evidence or perpetuate a record;

(ii) the presiding judge authorizes courtroom audio to be transmitted to the judge's chambers; or

(iii) the presiding judge of a ceremonial proceeding approves the use of specifically identified electronic

devices for the sound recording or broadcasting of the proceeding.

(4) Electronic Devices in Courtroom.

(A) No Audible Signals in Courtroom.

Electronic devices must be turned off or silenced before entering a courtroom.

(B) Use Prohibited.

No person may use an electronic device in a courtroom during a judicial proceeding without the presiding judge's permission.

(f) Spectator and News Media Seating.

On days of judicial proceedings, a security officer may reserve for members of the news media and spectators designated areas in the courtrooms for seating, and all persons must abide by the designation. The term "news media" includes sketch artists. Sketch artists may attend judicial proceedings unless the presiding judge restricts their attendance. Seating not designated for the media is available to spectators on a first-come, first-served basis. When all regular spectator seats except those reserved for the news media are filled, only seated persons may remain as spectators. No seats are reserved for spectators or members of the media leaving the courtroom after having been admitted. Only court personnel, attorneys of record, and other persons specifically authorized by the court may be in the well of the courtroom. A pass system may be instituted by which some spectator seats in the courtroom may be equitably allocated to persons receiving passes from the court and the parties. If a pass system is instituted, those spectator seats not covered by passes from the court or the parties are available to spectators on a first-come, first-served basis.

(g) Enforcement.

The marshal and other United States security personnel authorized by law or deputized must enforce Nebraska General Rule 1.6(a)-(g) and take violators into custody and promptly bring a violator before a judge. The marshal and other United States security personnel may also seize equipment from violators.

(h) Exemption From or Interpretation of This Rule.

A person seeking an exemption from or interpretation of Nebraska General Rule 1.6(a) (h) should present a request to the officer in charge of security, who may present it to a judge.

(i) Attorney Courtroom Decorum.

(1) Addressing the Court.

Attorneys must stand when addressing or being addressed by the court. When objecting, attorneys need not stand unless directed by the court. In courtrooms in which digital recording is used to make the record, attorneys must sit when addressing or being addressed by the court so that microphones on the counsel tables can record their voices.

(2) Examination of Witnesses.

Unless necessary to approach a witness or an exhibit, attorneys must examine witnesses from the counsel table or lectern. When examining witnesses from a lectern, an attorney must stand close to the lectern and with the lectern between the attorney and the witness. When examining witnesses from the counsel table, attorneys must sit or stand immediately next to the counsel table.

(3) Movement in the Courtroom.

Except to make an opening statement or closing argument, an attorney must not approach opposing counsel, the bench, a witness, the court reporter, courtroom deputy, the law clerk, or otherwise move from the counsel table or lectern without the court's permission. If an attorney must move often during a trial, upon request the court may grant continuing leave to make specified approaches.

(4) Colloquy Between Attorneys.

Attorneys may not audibly or inaudibly communicate with each other without the court's permission.

(5) Leaving the Courtroom.

Attorneys, including cocounsel, must have the court's permission to leave the courtroom. Cocounsel may have continuing permission to leave the courtroom at any time, although no attorney should leave

during the testimony of a witness whom that attorney has examined.

(6) Referring to and Addressing Witnesses and Parties.

Witnesses and parties must be referred to and addressed by their surnames, unless the court grants leave to do otherwise.

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.

An attorney admitted and licensed to practice before the highest court of any state may apply for admission to practice in this court. The request must be submitted through PACER at the following web address: https://www.pacer.gov/. The attorney must read and acknowledge the oath in subsection 1.7(e) of this section and pay the prescribed fee. Once the clerk has verified the attorney's admission to the bar of the state identified on the application, the clerk will issue a certificate of admission and add the applicant's name to the attorney roll.

(1) Fee Waiver.

Attorneys employed with federal agencies are not required to pay the admission fee, but must still apply for admission to the court's bar as prescribed in subsection 1.7(d).

(e) Oath of Admission.

An applicant for admission to this court's bar must swear, affirm, or acknowledge the following:

> As an officer of the United States District Court for the District of Nebraska I will demean myself faithfully, uprightly, and

according to law; and I 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 in writing to practice in this court for a particular case. An initial request to proceed pro hac vice in this court must be submitted through PACER at the following web address: https://www.pacer.gov/; then, a motion filed in the applicable case. Unless directed otherwise, attorneys making subsequent appearances pro hac vice in this court need only file a motion in the applicable case. The clerk will verify the attorney's admission to the bar of the state identified on the motion. An attorney admitted pro hac vice must read and acknowledge the oath in subsection 1.7(e) of this section.

(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, https://www.ned.uscourts.gov/plans-and-policies. 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 and Pro Hac Vice Admission Fee.

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, https://www.ned.uscourts.gov/internetDocs/pom/crtplans/fedpract.pdf. To insure that the fund will cover these expenses, the court charges a pro hac vice fee to attorneys seeking to be admitted pro hac vice, and also 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 and fee 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 the biennial assessment is cause to remove an attorney from the court's roll. Failure to pay the pro hac vice fee is cause to deny an attorney admission to proceed pro hac vice.

(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.

1.8 Attorney Discipline.

(a) Assignment of Disciplinary Matters.

(1) Assignments to Chief District Judge.

The chief district judge is assigned to resolve any attorney discipline matter that relates to (i) grand jury proceedings, (ii) an attorney convicted of a crime, (iii) an attorney who has been disbarred or suspended by another court, (iv) an open or closed criminal or civil case (including bankruptcy cases) in which the assigned judge is unable or unwilling to resolve the attorney discipline matter, or (v) any other instance not otherwise provided for by this rule. The chief district judge may reassign any such matter to any other judge of this court including a magistrate judge or a bankruptcy judge. If the chief district judge is unable or unwilling to resolve or reassign the matter, an active district judge selected at random will receive the assignment and, if there is no active district judge able or willing to accept the assignment, a senior district judge selected at random will receive the assignment.

(2) Assignments to Presiding Judge.

The judge (including a bankruptcy judge or a magistrate judge) assigned to resolve an open or closed criminal or civil case is also assigned to resolve any attorney discipline matter that relates to that open or closed criminal or civil case. In cases in which a district judge and a magistrate judge have both been assigned to an open or closed criminal or civil case, the assignment of the disciplinary matter will be to the district judge. In an open or closed bankruptcy case, the assignment will be to the bankruptcy judge except where the alleged disciplinary violation occurred before a district judge (as in appeals or otherwise) and in that circumstance the assignment will be to the district judge. If the assigned judge is no longer a member of the court, the chief district judge will either handle the case or assign it to another judge.

(3) Assignments and Other Responsibilities of the Clerk.

In accordance with this rule, the clerk of the district court will make assignments to judges of disciplinary matters. The clerk will establish and implement a separate attorney discipline docket. All filings regarding disciplinary matters will be included in that docket and sealed unless ordered otherwise. All filings regarding disciplinary matters will be made in an "Attorney Discipline" ("AD") case and the clerk will "relate" that matter in the CM/ECF record keeping system with the civil, criminal, or bankruptcy cases in which the disciplinary matter arose, if any. "AD" cases involving the same attorney will also be "related." The clerk may seek guidance from the chief district judge in the event a question arises regarding the construction or operation of this rule. The clerk shall follow the direction of the chief district judge, and the chief district judge's decision is final.

(4) Assistance of Magistrate Judge.

The chief district judge will assign one magistrate judge to assist in the handling of all attorney discipline matters and the clerk will make that magistrate judge the "referral judge" for purposes of the court's CM/ECF recording keeping system.[2] The judge to whom the attorney discipline matter has been assigned will determine what role the magistrate judge will perform in a particular case and the magistrate judge will take no action until authorized to do so by the

[2]On April 20, 2011, Magistrate Judge Zwart was appointed by Chief Judge Bataillon to serve in this capacity. That appointment is hereby confirmed. (Fall, 2011)

assigned judge.

(b) Power of Assigned Judge.

The judge to whom an attorney discipline matter has been assigned will determine the procedures to be followed for each attorney discipline case and may deviate from this rule in the judge's discretion when necessary or appropriate. However, except where it is apparent that discipline will not be imposed, all disciplinary procedures will provide the accused attorney with notice and an opportunity to be heard by an impartial judge. A judge to whom an attorney discipline matter has been assigned, and not the court en banc, may alone impose discipline including suspension, disbarment, reprimand, or any other sanctions. However, before ordering disbarment, the assigned judge shall informally consult with the active and senior district judges and secure the concurrence of the majority of those judges for imposition of an order of disbarment. In the event of a tie, the decision of the Chief Judge shall prevail.

(c) Coordination with Nebraska's Counsel on Discipline.

With the agreement of the Nebraska Supreme Court, the Counsel for Discipline of the Nebraska Supreme Court ("Counsel for Discipline") is authorized to disclose and refer to the judges and clerks of this court, including bankruptcy judges and the bankruptcy clerk, disciplinary complaints that are filed with its office and that are related to (i) open or closed federal criminal or civil cases including opened or closed bankruptcy cases, (ii) federal grand jury proceedings, or (iii) a federal case involving a lawyer who is a potential witness. This court and this court's judges and staff will maintain such complaints and documents in confidence and as sealed records. The Counsel for Discipline will hold in abeyance the investigation of such a referred matter until a judge of this court informs the Counsel for Discipline of the resolution of the matter. After a judge of this court has resolved the referred matter, the Counsel for Discipline will take such further or other action as appropriate. Should a judge of this court not resolve the referred matter in a timely manner, the Counsel for Discipline will take further or other action as appropriate, without regard to the referral to a judge of this court.

(d) Attorneys Convicted of Crimes.

(1) Suspension.

When a certified copy of a judgment of conviction is filed with the court showing that an attorney admitted to practice in this court has

been convicted of a serious crime in any court of the United States or the District of Columbia, or of any state, territory, commonwealth, or possession of the United States, the judge enters an order immediately suspending the attorney. The judge enters the suspension order whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial, and regardless of the pendency of an appeal. The judge immediately serves the attorney with a copy of the suspension order. The judge may set aside the suspension order for good cause and in the interest of justice. The suspension is effective until the final disposition of the disciplinary proceeding required by this rule.

(2) "Serious Crime" Defined.

The phrase "serious crime" includes any felony. It also includes any lesser crime a necessary element of which, as determined by the statutory or common law definition of crime in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a serious crime.

(3) Conclusive Evidence.

A certified copy of a judgment of conviction of an attorney for any crime is considered conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based on the conviction.

(4) Mandatory Disciplinary Proceeding.

In addition to suspending an attorney convicted of a serious crime, the judge issues an order to show cause requiring the attorney to explain why the attorney should not be immediately disbarred. If the attorney fails to respond, the attorney will be immediately disbarred. If the attorney responds, the judge may refer the matter to counsel for prosecution of a disciplinary proceeding before the judge or take such other action as may be appropriate to resolve the matter. The sole issue to be determined in this proceeding is the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction. If the attorney responds to the order to show cause, the judge will not resolve the matter until the attorney has exhausted all direct appeals from the conviction.

(5) Discretionary Disciplinary Proceeding.

When a certified copy of a judgment of conviction is filed with the court showing that an attorney admitted to practice in this court has been convicted of a crime not constituting a serious crime as defined in this rule, the judge may refer the matter to counsel for whatever action counsel may consider warranted, including the institution of a disciplinary proceeding or the judge may take such further or other action as may be appropriate.

(6) Reinstatement.

An attorney suspended under this rule will be reinstated immediately upon the filing of a certificate showing a reversal of the underlying conviction of a serious crime. An attorney's reinstatement does not terminate any disciplinary proceeding then pending against the attorney.

(e) Discipline Imposed by Other Courts.

(1) Attorney's Duty to Notify This Court.

Any attorney admitted to practice in this court must promptly inform the clerk if any other court of the United States or the District of Columbia or a court of any state, territory, commonwealth, or possession of the United States publicly disciplines the attorney.

(2) Notice to Attorney.

If a certified or exemplified copy of a judgment or order is filed demonstrating that an attorney admitted to practice in this court has been disciplined by another court for misconduct not involving failure to comply with a state or court's annual-dues or attorney-education requirements, the judge issues a notice directed to the attorney, containing:

(A) a copy of the other court's judgment or order; and

(B) an order directing the attorney to show cause why the court should not impose the same discipline.

(3) Discipline Stayed.

If the other jurisdiction has stayed its imposed discipline, the judge defers any reciprocal discipline until the stay expires.

(4) Discipline Imposed.

The judge imposes the same discipline imposed by another jurisdiction 30 days after service of the notice issued under this rule, unless the respondent/attorney shows, or the judge finds, that on the face of the record upon which the other jurisdiction's discipline is based, it clearly appears:

(A) the procedure was so lacking in notice or opportunity to be heard that it resulted in a deprivation of due process;

(B) an infirmity of proof establishing the misconduct shows that the judge could not, consistent with his or her duty, accept as final the conclusion on that subject;

(C) the imposition of the same discipline would result in injustice;

(D) the established misconduct warrants substantially different discipline; or

(E) the conduct found to warrant discipline in the other jurisdiction would not constitute a violation of the ethical standards stated in Nebraska General Rule 1.7(b) and, accordingly, no discipline should be imposed in this court.

If the judge determines any of these elements exists, he or she may enter an appropriate order.

(5) Conclusive Evidence.

In all other respects, another court's final adjudication that an attorney is guilty of misconduct conclusively establishes the misconduct in any disciplinary proceeding in this court.

(6) Appointment of Prosecuting or Investigating Counsel.

The judge may at any stage appoint counsel to prosecute the disciplinary proceedings or to conduct an investigation and report the results of that investigation to the judge.

(f) Disbarment on Consent or Resignation in Other Courts.

(1) Disbarment.

When a certified copy of a judgment or order accepting an attorney's disbarment on consent or resignation is filed with the court showing that an attorney admitted to practice in this court will be disbarred on consent or resign from the bar of any other court of the United States or the District of Columbia or from the bar of any state, territory, commonwealth, or possession of the United States while an investigation into allegations of misconduct is pending, the attorney is no longer allowed to practice in this court and is stricken from the court's roll of attorneys.

(2) Attorney's Duty to Notify This Court.

Any attorney admitted to practice in this court must promptly inform the clerk of a disbarment on consent or resignation from the bar of any other court of the United States or the District of Columbia or from the bar of any state, territory, commonwealth, or possession of the United States while an investigation into allegations of misconduct is pending.

(g) Violation of Ethical Standards.

(1) Jurisdiction.

This court has disciplinary jurisdiction to investigate and, if appropriate, discipline any attorney admitted to practice in this court, and any attorney specially admitted to this court for a particular case, with respect to the attorney's alleged misconduct arising during or in the preparation of a case pending in this court. This court also has jurisdiction to investigate and, if appropriate, discipline any attorney admitted to practice in this court, and any attorney specially admitted to this court for a particular case, with respect to the attorney's alleged misconduct in any matter or circumstance that reasonably bears upon the attorney's fitness to practice law in this court.

(2) Disciplinary Action.

Misconduct, as defined in these rules, may result in disciplinary action against an attorney if, after providing the attorney with notice and opportunity to be heard, good cause is shown to support a finding of misconduct. An attorney subject to the court's disciplinary

jurisdiction may be disbarred, suspended from practice before the court, reprimanded, or subjected to other appropriate disciplinary action.

(3) "Misconduct" Defined.

Acts or omissions by an attorney, acting individually or in concert with any other person or persons, that violate the ethical standards stated in Nebraska General Rule 1.7(b) constitute misconduct and are grounds for discipline, whether or not the act or omission occurred in the course of an attorney/client relationship.

(4) Suggested Disciplinary Procedure.

Where a more specific procedure has not otherwise been provided for in this rule, the following procedure may be used in investigating alleged misconduct occurring within the court's disciplinary jurisdiction. The following procedure does not limit or govern the court's exercise of additional powers necessary to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States Code or Federal Rule of Criminal Procedure 42. In addition, the following procedure does not limit the power of a judge to establish such further or other procedures as are necessary or appropriate in any attorney disciplinary case.

(A) Initial Review.

When a judge of this court learns by complaint or otherwise of an attorney's alleged misconduct that, if substantiated, would warrant discipline, the judge may conduct an initial review of the matter, or refer it to the magistrate judge for initial review and recommendation. The judge or magistrate judge may solicit the views of the accused attorney and anyone else before concluding the initial review. If, after initial review, it appears that no discipline is warranted, the judge may enter an appropriate order.

(B) Further Action.

When a judge of this court learns by complaint or otherwise of an attorney's alleged misconduct that, if substantiated, would warrant discipline, the judge may (i) impose an appropriate sanction if the judge concludes that the misconduct is

substantiated by the record before him or her, (ii) refer the matter to counsel for investigation and the prosecution of further disciplinary proceedings or other appropriate recommendation, or (iii) take such further or other action as the judge deems appropriate. At any time, the judge may solicit the views of the accused attorney and anyone else.

(C) Investigating Counsel.

If the complaint alleges misconduct that, if substantiated, may warrant discipline and the judge believes an investigation of the facts by counsel would be helpful, the judge may appoint counsel under this rule to investigate the allegations of misconduct and prosecute disciplinary proceedings if appropriate.

(D) Investigating Counsel's Recommendation.

After investigation, investigating counsel may file a recommendation indicating that the matter should be (i) dismissed because insufficient evidence exists to support the imposition of discipline, or (ii) deferred because another proceeding is pending against the respondent/attorney, the disposition of which should be awaited before the judge considers additional action. Investigating counsel may also recommend other courses of action.

(E) Order to Show Cause.

To initiate additional disciplinary proceedings, and upon a showing of probable cause, investigating counsel must obtain an order from the judge requiring the respondent/attorney to show cause why the attorney should not be disciplined. If an order to show cause is issued, investigating counsel will proceed to prosecute the disciplinary matter as prosecuting counsel.

(F) Hearing After an Order to Show Cause.

If the respondent/attorney answers the order to show cause, the judge will set a hearing if (i) the answer raises an issue of fact or (ii) the respondent/attorney wishes to be heard in mitigation. If the attorney fails to respond, or the response fails to raise an issue of fact and fails to request the opportunity to

be heard in mitigation, the judge proceeds, without a hearing, to take such action as may be warranted under the circumstances.

(5) Disbarment on Attorney's Consent.

(A) Attorney's Affidavit; Contents.

An attorney admitted or specially admitted to practice before this court who is the subject of an investigation or pending proceeding involving allegations of misconduct in any jurisdiction, including this court, may consent to disbarment by this court, but only by delivering to the court an affidavit stating that the attorney consents to disbarment and:

(i) the attorney freely and voluntarily consents, is not under coercion or duress, and is fully aware of the implications of consenting;

(ii) the attorney is aware of a presently pending investigation or proceeding involving allegations that grounds exist for the attorney's discipline, the nature of which the attorney must specifically state;

(iii) the attorney acknowledges that the alleged material facts are true; and

(iv) the attorney consents because the attorney knows that if charges were brought based on the matters under investigation or if the proceeding were prosecuted, the attorney could not present a successful defense.

(B) Court Order.

Upon receiving the attorney's affidavit, a judge will order the attorney disbarred.

(C) Public Disclosure of Affidavit and Order.

An order disbarring the attorney on consent is a matter of public record; however, the affidavit required under this rule must not be publicly disclosed or made available for use in any other proceeding except upon the judge's order.

(6) Reinstatement.

(A) After Disbarment or Suspension.

An attorney suspended for 3 months or less is automatically reinstated at the end of the suspension period upon filing an affidavit of compliance with the provisions of the order. An attorney suspended for more than 3 months or disbarred may not resume practice until a judge orders the attorney reinstated.

(B) Time of Application After Disbarment.

A person disbarred after hearing or by consent may not apply for reinstatement until 5 years from the disbarment's effective date.

(C) Petition for Reinstatement.

A disbarred or suspended attorney must file a petition for reinstatement with the chief judge. After receiving the petition, the chief judge may:

(i) waive further proceedings under this rule and order the disbarred or suspended attorney reinstated;

(ii) assign the matter for disposition before a judge without the appointment of investigating counsel under this rule; or

(iii) appoint investigating counsel under this rule, and assign the matter for disposition before a judge.

(D) Investigating Counsel's Duty.

In reinstatement proceedings where investigating counsel has been appointed, investigating counsel cross-examines the respondent/attorney's witnesses and submits any evidence opposing the petition.

(E) Deposit for Costs of Proceeding.

A respondent/attorney seeking reinstatement must include with the petition an advance cost deposit in an amount to be

set from time to time by the court to cover anticipated costs of the reinstatement proceeding.

(F) Conditions of Reinstatement.

If the petitioner is found unfit to resume the practice of law, the petition is dismissed. If the petitioner is found fit to resume the practice of law, the judgment reinstates the petitioner, if the petitioner:

(i) pays all or part of the costs of the proceedings;

(ii) makes partial or complete restitution to parties harmed by the petitioner's conduct that led to the suspension or disbarment; and

(iii) furnishes proof of competency and learning in the law, in the discretion of the judge before whom the matter is heard, if the petitioner has been suspended or disbarred for 5 years or more. Proof may include certification by bar examiners from another state or jurisdiction that the attorney successfully completed an examination for admission to practice after the suspension or disbarment date.

(G) Successive Petitions.

No petition for reinstatement under this rule may be filed within 1 year of an adverse judgment on a petition for reinstatement filed by or on behalf of the same person.

(7) Service of Documents and Other Notices.

Service of documents or other notices required or permitted under this rule will be made in a manner reasonably calculated to provide prompt advice to the intended recipient of the contents of the documents or other notice. No particular form of service is required.

(8) Prosecuting or Investigating Counsel's Appointment.

When counsel is appointed under this rule, the judge appoints one or more members of this court's bar provided that lawyers employed with the Nebraska Counsel for Discipline should not be appointed. The respondent/attorney may move to disqualify an appointed

attorney. Counsel will not be removed unless the respondent/attorney shows by the greater weight of the evidence that the prosecuting or investigating counsel is unlikely to perform his or her duties consistently with the ethical standards stated in Nebraska General Rule 1.7(b). Once appointed, counsel may not resign without the judge's permission. The Federal Practice Fund pays counsel's fees and expenses.

(h) Policy on Uncivil and Unprofessional Conduct.

(1) Generally.

Any attorney admitted to practice in this court, or any attorney who has applied for and been specially admitted to this court for a particular case, together with the judges of this court, are strongly encouraged to follow the court's Policy on Uncivil and Unprofessional Conduct. However, this policy is aspirational only.

(2) Policy.

The court's Policy on Uncivil and Unprofessional Conduct states:

- the litigation process, although adversarial in nature, should be nondiscriminatory and professional; all participants should be accorded fair, equal, and respectful treatment; to this end, the conduct of judges and lawyers should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms;

- nondiscriminatory and professional conduct includes, as those terms are used in this policy, reasonable attempts by all participants to recognize and accommodate persons for family emergencies and responsibilities, as well as making reasonable accommodation for professional conflicts; and

- conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently, and such conduct tends to delay and often to deny justice.

(i) Clerk's Duties

(1) Attorneys Convicted of Crimes.

When the clerk learns that an attorney admitted to practice before this court has been convicted of a crime, the clerk must determine whether the clerk of the court in which the conviction occurred has forwarded a certificate of the conviction to this court. If a certificate has not been forwarded, the clerk must promptly obtain a certificate and file it.

(2) Discipline Imposed by Other Courts.

When the clerk learns that another court has disciplined an attorney admitted to practice before this court, the clerk must determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this court, and if not, the clerk must promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this court.

(3) Notice to Other Courts.

If a person is still admitted to practice law in another jurisdiction or before another court after being (A) convicted of a crime by this court, or (B) disbarred, suspended, censured, or disbarred on consent by this court, the clerk must, within 14 days of that conviction, disbarment, suspension, censure, or disbarment on consent, send to the disciplinary authority in the other jurisdiction or court a certificate of the conviction or a certified or exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent. The clerk must include in this notice the person's last known address.

(4) Notice to National Discipline Data Bank.

The clerk must likewise promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline on an attorney admitted to practice before this court.