

UNIFORM DISTRICT COURT RULES OF PRACTICE AND PROCEDURE

SCOPE AND EFFECTIVE DATE

These rules become effective September 1, 1995, supersede all existing local rules of practice, and shall govern the procedures in the district courts of the State of Nebraska.

RULE 1

LOCAL RULES

Each district court by action of a majority of its judges may from time to time recommend local rules concerning matters not covered by these rules and which are not inconsistent with any directive of the Supreme Court or statutes of the State of Nebraska. Such recommended rules shall be submitted in writing and on a disk in WordPerfect compatible format. Any language that creates a rule or is to be added to a rule shall be underscored, and any language to be deleted from a rule shall be overstruck. Such recommended rules shall become effective upon the approval of the Supreme Court, at which time they shall be filed with the Clerk of the Supreme Court and Court of Appeals and be published in the Nebraska Advance Sheets. Once approved and published, copies thereof shall be made available to the bar and public through the office of the Clerk of the District Court recommending the rules.

Rule 1 amended October 14, 1999.

RULE 2

ORGANIZATION OF THE COURT

The court may divide itself into such divisions in each district as it deems necessary for the effective administration of justice and may elect a presiding judge if necessary from among its number.

RULE 3

PLEADINGS

A. Form: All pleadings shall be on 8 ½ x 11-inch paper; type shall be 12 point (10 pitch pica) and black in color. Exhibits attached to pleadings shall be similarly prepared in permanent form, shall be readable, and shall not be subject to unusual fading or deterioration.

B. Identification of Pleadings: All petitions offered for filing shall plainly show the caption of the case, a description or designation of the contents, and on whose behalf they are filed. All further

pleadings shall show the number of the case and the docket and page numbers, and a proof of service shall be endorsed upon the original copy.

C. Orders: All proposed orders shall be by separate document and not a part of any other pleadings.

D. Copies: Upon request, parties shall immediately furnish to the clerk clear and legible copies of any pleading, order, judgment, exhibit, or any other matter of record, in such numbers as necessary to enable the clerk to comply with the provisions of any statute or rule. This direction includes, but is not limited to, requirements for service of process and preparation of records on appeal.

E. Identification of Attorney: All pleadings shall be signed by an individual attorney, whether for himself or herself or on behalf of a firm; the name, address, telephone number, and bar identification number shall be typed under all signatures of attorneys appearing on each pleading.

F. Criminal Case Informations: Informations in criminal cases shall cite the statute under which each count of the information is brought and shall cite the class of offense and statute prescribing the penalty.

G. Improperly Filed Pleadings: Any pleading which does not conform to these rules will be subject to a motion to strike from the file or such other action as the court deems proper.

RULE 4

DOMESTIC RELATIONS CASES

A. All applications for temporary custody, support, and maintenance shall comply with Nebraska statutes.

B. All applications for temporary support and allowances shall be determined without testimony upon argument and affidavits setting forth information required by Nebraska Child Support Guidelines and Nebraska statutes.

C. A properly completed Department of Health Bureau of Vital Statistics form shall be filed with each petition for dissolution of marriage, and no decree will be entered unless each form is completed in full.

D. Modification proceedings relating to support, custody, visitation, or removal of children from the jurisdiction of the court shall be commenced by filing a petition to modify the decree or previous order of the court in the original case, and service of process shall be made on the adverse party as provided by statute.

E. If any case contains an order or judgment for child or spousal support, or for the payment of medical expenses, the order shall include the following statements:

1. Delinquent child or spousal support shall accrue interest at the following rate: (insert the rate in effect on judgments as published in the applicable issue of the Nebraska Advance Sheets).

2. If immediate income withholding is not required by law to be ordered in a case and is not so ordered, the following statement shall be included:

In the event the obligor fails to pay any child support, spousal support, or other payment ordered to be made through the clerk of the district court, as such failure is certified each month by said clerk in cases in which court-ordered support is delinquent in an amount equal to the support due and payable for a one-month period of time, the obligor shall be subject to income withholding and may be required to appear in court and show cause why such payment was not made. In the event the obligor fails to pay and appear as ordered, a warrant shall be issued for his or her arrest.

3. If, regardless of whether payments are in arrears, the court orders income withholding pursuant to Neb. Rev. Stat. § 43-1718.01 or § 43-1718.02, the statement specified in part E(2) of this rule shall be altered to read as follows:

In the event the obligor fails to pay any child, spousal support, or medical payment, as such failure is certified each month by the district court clerk in cases in which court-ordered support is delinquent in an amount equal to the support due and payable for a one-month period of time, the obligor may be required to appear in court and show cause why such payment was not made. In the event the obligor (respondent or petitioner) fails to pay and appear as ordered, a warrant shall be issued for his or her arrest.

F. Any order for support presented to the court shall require the obligor to furnish to the clerk of the court his or her address, telephone number, social security number, the name of his or her employer, and the name of his or her health insurance carrier, if any, together with the number of the policy and the address at which claims are to be submitted. The order shall further require the obligor to advise the clerk of any changes in such information until the judgment has been fully paid. If both parents are parties to the action, such order shall provide that each be required to furnish to the clerk of the court whether he or she has access to employer-related health insurance coverage and, if so, the health insurance policy information.

G. A worksheet showing calculations under the Nebraska Child Support Guidelines shall be attached to every child support application, order, or decree and shall be prepared by the party requesting child support, except that in a contested matter the worksheet shall be prepared by the court and attached to the order or decree.

RULE 5

BRIEFS

A. Paper: Briefs shall be typed on 8½ x 11-inch paper; type shall be 12 point (10 point pica) and black in color.

B. Distribution: The original brief shall be presented to the judge and not filed with the clerk, with a copy served upon opposing counsel; proof of such service shall be endorsed on the original brief.

C. Citations: Citation to authorities shall conform to generally accepted uniform standards of citation; citation of Nebraska cases shall include both the Nebraska Reports and North Western Reporter citation.

RULE 6

BANKRUPTCY

A. Civil cases in which a party has been named as a debtor in a voluntary or involuntary bankruptcy petition: In any civil case pending before this court in which a party has been named as a debtor in a voluntary or involuntary bankruptcy petition, a Suggestion of Bankruptcy and either a certified copy of the bankruptcy petition or a copy of the bankruptcy petition bearing the filing stamp of the clerk of the bankruptcy court shall be filed by the party named as a debtor or by any other party with knowledge of the bankruptcy petition. Upon the filing of the Suggestion of Bankruptcy and either a certified copy of the bankruptcy petition or a copy of the bankruptcy petition bearing the filing stamp of the clerk of the bankruptcy court, no further action will be taken in the case by the court or by the parties until it can be shown to the satisfaction of the court that the automatic stay imposed by 11 U.S.C. § 362 (1982) does not apply or that the automatic stay has been terminated, annulled, modified, or conditioned so as to allow the case to proceed. Such a showing shall be made by motion.

B. Requests for disbursement of funds or distribution of property of or to a party named as a debtor in a bankruptcy proceeding: In any civil case in which a Suggestion of Bankruptcy and either a certified copy of the bankruptcy petition or a copy of the bankruptcy petition bearing the filing stamp of the clerk of the bankruptcy court have been filed, no request for a disbursement of funds or distribution of property of or to a party named as a debtor shall be made, and no order disbursing funds or distributing property of or to a party named as debtor will be entered. A request for disbursement of funds or distribution of property may be made after a showing, satisfactory to the court, that such funds or property has been abandoned by the trustee in bankruptcy or by the debtor. Such a showing shall be made by affidavit.

RULE 7

REGISTRATION OF FOREIGN JUDGMENTS

Upon the filing of a foreign judgment and affidavit as required by statute, the clerk of the district court shall, within 10 days of such filing, mail notice of the filing of the foreign judgment to the judgment debtor at the address provided within the affidavit.

Rule 7 amended June 28, 1995.

RULE 8

DEFAULT JUDGMENTS

When a party is entitled to have a monetary judgment or an amount determined to be due by default based upon a contract action, such party shall submit, with the order entering judgment, a statement of the principal amount due, which shall not exceed the amount sued for, showing credit for any payments and the amounts and dates thereof, and a separate computation of interest, if prayed for, to date of judgment. To such statement shall be appended an affidavit of the party or his or her attorney showing that the party against whom judgment is sought is not a minor or incompetent person or in the military service, that such amount shown by the statement is justly due and owing, and that no part thereof has been paid except as set forth in the statement.

When a party is entitled to a monetary judgment on all other actions, such party shall adduce evidence in proof of damages. Such evidence shall be under oath unless waived by the court. Such party, in addition, shall submit an affidavit of the party or the party's attorney that the party against whom the judgment is sought is not a minor or incompetent person or in the military service.

If further documentation, proof, or hearing is required, the court shall so notify the moving party.

RULE 9

DISMISSALS AND SETTLEMENTS

It shall be the duty of attorneys to immediately notify the court of the dismissal, settlement, or other final disposition of any case. Upon notice to the court or to the clerk that an action has been settled, counsel shall file, within 30 days thereafter, unless otherwise directed by written order, such pleadings as are necessary to terminate the action; upon failure to do so, the court may order dismissal of the action without further notice and without prejudice to the right to secure reinstatement of the case within 60 days after the date of said order by making a showing of good cause as to why settlement was not in fact consummated.

RULE 10

WITHDRAWAL OF COUNSEL

Upon motion for withdrawal and notice to all counsel and the client involved, an attorney who has appeared of record in a case may be given leave to withdraw for good cause shown after filing with the clerk the motion, notice of hearing, and proof of service upon counsel and the client involved.

Upon entry of any final order in any case, and after the time for appeal has expired, the attorney of record shall no longer be deemed to continue as the attorney of record unless he or she shall have entered a new appearance in the case.

When an attorney is discharged by his or her client, the attorney shall forthwith file notice thereof in the case and serve opposing counsel therewith.

RULE 11

COURTROOM DECORUM

A. Attendance: All parties and their attorneys shall be present in the courtroom and prepared to proceed at the hour set for hearing by the court. Unjustified failure to appear shall subject the case to dismissal or disciplinary action to the attorneys concerned.

B. Attire: Attorneys shall be attired in ordinary business wear.

C. Conduct in Courtroom: When the judge enters the courtroom, those present shall rise and remain standing until the judge is seated. When sessions of court are recessed or concluded, those present shall remain in their seats until the judge or jury has left the courtroom.

Except when it is necessary for counsel to approach a witness or exhibit, the examination of witnesses shall be conducted while seated at the counsel table or, if the courtroom is equipped with an attorney's lectern, from the lectern.

Except upon express permission of the judge, all communications to the court shall be made from the counsel table or lectern.

Counsel shall not approach opposing counsel, the bench, the witness, the court reporter's desk, or the clerk's desk or otherwise move from the counsel table or lectern, without the permission of the court, except to make a voir dire examination, opening statement, or closing argument or to present an exhibit for identification.

Counsel shall not participate in colloquy with opposing counsel, whether audible or inaudible,

without the permission of the court.

If any counsel, including co-counsel, wishes to leave the courtroom, permission of the court shall be obtained. No counsel shall leave during the testimony of any witness he or she is examining, or has examined, without the permission of the court.

Witnesses and parties shall be referred to and addressed by their surnames. Only one counsel for each party shall examine a witness or make objections during the testimony of such witness. Counsel shall not approach a witness without permission of the court.

All persons entering the courtroom while court is in session shall be seated immediately and shall conduct themselves in a quiet and orderly manner. No person shall smoke, eat, drink beverages, or engage in other distracting conduct in the courtroom while court is in session.

No person shall possess any firearm or other dangerous weapon in the courtroom or in any public area adjacent to it without the permission of the court.

Upon order of the court, any person may be subjected to a search of his or her person and possessions for any weapons, destructive device, or components thereof.

Jurors, either prospective or selected, shall not mingle or converse with counsel, litigants, witnesses, or spectators during the trial of a case.

RULE 12

DUTIES OF COURT PERSONNEL

A. Sheriff's Duties: The sheriff or designated deputy shall be in attendance at all times when the court is in session, unless excused by the court.

The sheriff shall maintain order in the courtroom and shall correct or repress all improper deportment so as not to interrupt the orderly process of the court, without any express order from the court.

B. Bailiff's Duties: The bailiff shall have and carry out such duties as may be assigned to the bailiff by the court, including, but not limited to, the following:

Before beginning each session of court, the bailiff shall see that the jury and all required court personnel are in their proper places, and the bailiff shall notify the court. The bailiff shall be responsible for the comfort and welfare of any juror under the bailiff's charge and for compliance with the rules attendant on jurors. The bailiff shall immediately notify the court of all communications from the jurors to the bailiff, and the bailiff shall not respond to any such communication without the direction of the court.

C. Duties of the Clerk of the Court:

1. The clerk of the district court shall be present at all times during the sessions of the court, either in person or by deputy, unless excused by the court.

2. The clerk shall prepare and maintain such dockets and records as may be required by the court, Supreme Court rule, or the statutes of Nebraska.

3. The clerk shall have the following duties in addition to all statutory duties, if so directed by the court:

(a) The clerk shall immediately, upon receipt, notify the court and sheriff of the return of any mandate from the Nebraska Supreme Court in every criminal case, and notify the court in every civil case.

(b) The clerk shall have such other and additional duties, not inconsistent with the responsibilities of the office, as may be directed by the court.

RULE 13

RELEASE OF INFORMATION BY COURT PERSONNEL

All court personnel, including, but not limited to, sheriffs, deputy sheriffs, court clerks, bailiffs, court reporters, law clerks, secretaries, or other employees of the court, shall not disclose, without authorization by the court, to any person any information relating to a pending case that is not part of the public records of the court.

Court personnel shall not communicate in any form or manner, directly or indirectly, with any member of a jury panel, any venireperson, or any juror, any facts, opinions, or information of any nature directly or indirectly related to any cause pending before the court to which personnel are assigned.

RULE 14

RELEASE OF INFORMATION BY ATTORNEYS

A. Statements Not to be Made: A lawyer shall not make an extra-judicial statement that the lawyer knows or reasonably should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. An extra-judicial statement ordinarily is likely to have such an 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:

1. 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;

2. The performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

3. Any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration; or

4. 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.

B. Statements Which May be Made: A lawyer involved in the investigation or litigation of a matter may state without elaboration:

1. The general nature of the claim or defense;

2. Information contained in a public record;

3. That investigation of the matter is in progress, including the general scope of the investigation, the offense, claim, or defense involved, and, except when prohibited by law, the identity of the person involved;

4. The scheduling or result of any step in litigation;

5. A request for assistance in obtaining evidence and information necessary thereto;

6. A warning of danger concerning the behavior of a person involved, when there is reason to believe that such danger exists; and

7. In a criminal case, a lawyer may disclose:

(a) The identity, residence, occupation, and family status of the defendant or suspect;

(b) If the defendant or suspect has not been apprehended, information necessary to aid in apprehension of that person;

(c) The fact, time, and place of arrest, and resistance, pursuit, and use of weapons; and

(d) The identity of investigating and arresting officers or agencies and the length of that investigation.

RULE 15

JUDICIAL SALES

Every purchaser at a judicial sale held by a sheriff, receiver, referee, or master commissioner, except a lienholder to the extent that he or she uses his or her lien as his or her bid, shall, at the time of acceptance of the bid, deposit with the sheriff, receiver, referee, or master commissioner, a sum equal to 15 percent of the bid to be held for disposition on the further order of the court.

RULE 16

JURY TRIALS

A. Voir Dire Examination of Prospective Jurors:

1. Questions are to be asked collectively of the entire panel whenever possible.
2. The case may not be argued in any way while questioning the jurors.
3. Prospective jurors may not be questioned concerning anticipated instructions or theories of law and may not be asked for promises or commitments as to the kind of verdict they would return under any given circumstance.

B. Objections and Motions: Objections and motions during trial, and the grounds therefor, shall be briefly and succinctly stated to the trial judge. If either counsel desires to be heard further, a request may be made to the trial judge, but arguments on such matters shall not be made without permission of the court.

C. Argument to Jury: The length of time allotted to each side for the final argument shall be determined by the court, after giving due consideration to the nature and duration of the trial and the amount of time requested by each side.

RULE 17

PROCEDURE FOR FILING OF CRIMINAL HOMICIDE REPORTS

In order to fulfill the purpose of Neb. Rev. Stat. § 29-2524.01, the following procedure is established: (1) The county attorney shall complete the reporting form (Appendix 1), (2) the sentencing

judge shall sign the form on line 10, and (3) the defense counsel (if any) shall sign the form on line 11. The county attorney shall then forward the form to the State Court Administrator within 30 days of the disposition of the case.

Rule 17 adopted November 18, 1998.

RULE 18

STATEMENT OF ERRORS

Within 10 days of filing the bill of exceptions in an appeal to the district court, the appellant shall file with the district court a statement of errors which shall consist of a separate, concise statement of each error a party contends was made by the trial court. Each assignment of error shall be separately numbered and paragraphed. Consideration of the cause will be limited to errors assigned and discussed, provided that the district court may, at its option, notice plain error not assigned. This rule shall not apply to small claims appeals.

Rule 18 amended November 18, 1998.

RULE 19

MODIFICATION OF RULES

Upon the showing of good cause, a rule may be suspended in a particular instance in order to avoid a manifest injustice.

Rule 19 amended November 18, 1998.

RULE 20

BILL OF EXCEPTIONS CHECKOUT

Any bill of exceptions prepared for appeal of a case to the Supreme Court or Court of Appeals and filed in the office of the clerk of the district court shall be made available for checkout to an attorney of record for a period of 30 days. A receipt shall be signed for such record and left with the clerk. If counsel is notified by the clerk of the district court within the 30-day checkout period that the bill of exceptions is required for filing with the appellate courts pursuant to Neb. Ct. R. of Prac. 5B(3)(d), the attorney shall immediately return the record to the district court clerk.

In the event that a brief date extension is requested by counsel of record pursuant to Neb. Ct. R. of Prac. 9, and the same is granted, the clerk of the district court shall afford counsel additional time to retain such bill of exceptions to complete the appellate brief. Such additional time shall be for either (1) a

period not to exceed the date established as the Final Brief Date in the appellate court order or (2) a period of 30 days if no Final Brief Date is set therein. A copy of such extension request and order granting the same shall be sent to the district court clerk by counsel making such request.

Rule 19 amended December 29, 1999.

Uniform District Court Rules of Practice and Procedure adopted May 24, 1995.

Appendix 1 Nebraska County Attorney Criminal Homicide Report

(omitted; obtain from State Court Administrator's office)

Form adopted November 18, 1998.

Appendix 1